

**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 JEFFREY C. DURANT 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 Proof of Claim No. 250-1 filed by Jeffery C. Durant. As set forth below, the Trustee objects to Mr. Durant's asserted claim on the basis that such claim must be disallowed as it is unenforceable against the Debtor under applicable law. In support of this Objection, 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.

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 sections 502(b)(1) 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 unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the “Derailment”). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian Pacific Railway (“CP”) and the Debtor’s wholly owned subsidiary, Montreal Maine & Atlantic Canada Co. (“MMA Canada”), later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

6. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was temporarily halted between Maine and Québec on the MMA Canada line, resulting in the Debtor losing much of its freight business. These effects of the Derailment caused the Debtor's aggregate gross revenues to fall drastically to approximately \$1 million per month.

7. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the “Case”). Simultaneously, MMA Canada filed for protection under Canada’s Companies’ Creditors Arrangement Act (Court File No. 450-11-000167-134). On

August 21, 2013, the U.S. Trustee appointed the Trustee to serve as trustee in the Debtor's Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

**B. Events Leading up to Mr. Durant's Termination and Mr. Durant's Claim**

8. On October 15, 2013, while Mr. Durant was working at the Debtor's Northern Maine Junction Yard in Hermon, Maine, Inspector Raylinsky from the Federal Railroad Administration (the "FRA") was on the Debtor's premises and observed a track that was not properly secured with handbrakes (the "Incident"). After a formal investigation, a hearing was held on October 29, 2013, and the hearing officer determined that Mr. Durant was indeed responsible for leaving "rail cars unattended and unsecured on Track No. 1. . .," which placed Mr. Durant in violation of the Debtor's "Rules . . ., Job Briefing Guidelines, and General Safety Instructions . . . ." See Cote Letter (as defined below). On November 12, 2013, Robert N. Cote, General Manger-Engineering wrote to Mr. Durant to inform him that he had been assessed "Dismissal" (attached hereto as Exhibit A, the "Cote Letter").

9. On June 13, 2014, Mr. Durant filed a proof of claim pursuant to Bankruptcy Code section 502(a) (the "Claim"). The Claim asserts a priority claim against the Debtor in the amount of \$525,644.70 in the nature of "[w]rongful [t]ermination of [e]mployment". Mr. Durant provides no substantiation for the calculation or magnitude of the Claim.<sup>1</sup>

10. Attached to the Claim are (a) a letter from Kevin J. Moore, General Chairman of the Brotherhood of Locomotive Engineers and Trainmen (the "Union"), to Mr. Durant (the "Claim Instruction Letter"), providing Mr. Durant instructions on behalf of the Union as to how to fill out his proof of claim,<sup>2</sup> and (b) a letter from Mr. Moore to Ms. Gaynor Ryan, Vice

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<sup>1</sup> Out of concern for the potentially confidential nature of the information, the Trustee has omitted the value of Mr. Durant's yearly earnings, but submits that the amount of such earnings bears no relation, in logic or in magnitude, to the asserted amount of the Claim. The Trustee reserves the right to plead the value of Mr. Durant's yearly earnings should Mr. Durant put that fact at issue.

<sup>2</sup> The record is not clear whether Mr. Durant is a member of the Union and thus enjoys the benefits of the Union's collective bargaining agreement (the "CBA").

President of Human Resources for the Debtor, dated January 6, 2014 (the “Dismissal Appeal Letter”), appealing the dismissal of a Mr. S. Currie, and requesting, among other things, Mr. Curie’s “[i]mmediate restoration to service, removal of “**Dismissal**” from his record, payment of all lost time and all other expenses as a result of the discipline and attendance of his discipline hearing . . . .” Dis. App. Ltr., 1.<sup>3</sup>

### **RELIEF REQUESTED**

11. 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 Claim in its entirety, and (c) granting such other and further relief as this Court deems just and equitable.

### **BASIS FOR RELIEF**

#### **A. The Legal Standard**

12. 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, 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)). Because a “right to payment” constitutes a claim, “the first step in the claims [allowance] process is always to determine whether there *is* a right to payment.” In re Taylor, 289 B.R. 379, 383 (Bankr. N. D. Ind .2003) (emphasis added).

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<sup>3</sup> Mr. Currie filed his own proof of claim, No. 249-1, and included the Claim Instruction Letter he received from Mr. Moore and a Dismissal Appeal Letter with respect to Mr. Durant’s dismissal. For purposes of this Objection, the Trustee presumes that Mr. Durant intended to include his own Dismissal Appeal Letter with his Claim and will treat the Dismissal Appeal Letter attached to Mr. Currie’s proof of claim as having been attached to Mr. Durant’s Claim.

13. Bankruptcy Code 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). In particular, claims that have “no basis in . . . law” must be rejected and disallowed. See, e.g., Hann, 473 B.R. at 355 (quoting Diasonics, Inc. v. Ingalls, 121 B.R. 626, 630 (Bankr. N. D. Fla. 1990) (citation omitted)). The effect of section 502(b)(1) is that a claim “will not be allowed in a bankruptcy proceeding if the same claim would not be enforceable against the debtor outside of bankruptcy.” In re Combustion Engineering, Inc., 391 F.3d 190, 245 n.66 (3d Cir. 2004) (internal quotations omitted).

**A. Mr. Durant Has No Right to Payment Under Applicable Law**

14. Mr. Durant has no right to payment under applicable law, and thus his Claim must be disallowed pursuant to Bankruptcy Code section 502(b)(1). Mr. Durant asserts that the nature of his Claims is for “[w]rongful [t]ermination of [e]mployment,” and yet the State of Maine does not recognize such a cause of action. See Lyons v. Louisiana Pac. Corp., No. CIV. 02-29-B-K, 2002 WL 519745, at \*3 (D. Me. Apr. 5, 2002) (dismissing claim for wrongful termination on the ground that claimant “ha[d] no possibility of recovery under any facts he might be able to establish” given that “Maine law does not recognize a common law claim for wrongful termination”) (citing Maine Bonding & Cas. Co. v. Douglas Dynamics, Inc., 594 A.2d 1079, 1080 (Me. 1991) (acknowledging that Maine does not recognize a tort of wrongful discharge); Bard v. Bath Iron Works Corp., 590 A.2d 152, 156 (Me. 1991) (stating that the Maine Supreme Court has not recognized a common law cause of action for wrongful discharge). Rather, in Maine, “an employer has a common law right to discharge an employee at will, absent a contract for employment restricting this right or a clearly expressed intention

by the employer that it would only discharge the employee for cause.” Lyons, 2002 WL 519745, at \*3 (citing Bard, 590 A.2d at 155).

15. As an initial matter, Mr. Durant does not allege that he is covered by the CBA, and has presented no other evidence of an express restriction on the Debtor’s common law right to discharge him at will, and thus has no recourse against the Debtor under Maine State law for so discharging him. Moreover, to the extent there existed such a restriction (including under the CBA, to the extent applicable), the Debtor *did* have cause to discharge Mr. Durant, as set forth in the Cote Letter. Mr. Durant was found, after a “formal [i]nvestigation hearing,” to have “left rail cars unattended and unsecured on Track No. 1 of the Northern Maine Junction Yard in Hermon, ME[,]” which “[p]laced [Mr. Durant] in violation of [the Debtor’s] Rules . . . , Job Briefing Guidelines, and General Safety Instructions . . . .” See Exhibit A, Cote Letter, ¶2. Accordingly, the Debtor was well within its rights to discharge Mr. Durant, regardless of whether it could only do so for cause, and Mr. Durant would have no recourse against the Debtor under applicable non-bankruptcy law.

16. As Mr. Durant has demonstrated no restriction of the Debtor’s right to discharge him at will, and beyond that, was discharged for cause after a formal investigation and hearing in which he was determined to have violated several safety regulations and guidelines, he has no “right to payment” from the Debtor under applicable state law. Accordingly, Mr. Durant has no claim that is “enforceable against the debtor.” See Taylor, 289 B.R. at 383 (finding that in assessing whether to allow a claim, the first step is for the court to determine whether there exists a right to payment under applicable non-bankruptcy law). The Claim should thus be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with “no basis in fact or law” must be disallowed).

**RESERVATION OF RIGHTS**

17. Nothing contained herein is or should be construed as: (i) an 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**

18. 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) the Official Committee of Victims; (c) Mr. Durant; and (d) the Union, attn.: Mr. Moore. 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 Claim; and (iii) granting such other and further relief as may be just.

Dated: August 10, 2015

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

By his attorneys:

/s/ Lindsay K. Zahradka  
Sam Anderson  
Lindsay K. Zahradka (admitted *pro hac vice*)  
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104  
Telephone: (207) 774-1200  
Facsimile: (207) 774-1127

**EXHIBIT A**

**Cote Letter**





**Montreal, Maine & Atlantic Railway, Ltd.**

15 Iron Road  
Hermon, ME 04401

November 12, 2013

**Certified Mail: 7008 1830 0001 2462 1496**

Mr. Jeffery Durant  
1029 Main Road  
Brownville, ME 04414

Mr. Durant:

Refer to the formal investigation hearing that was held at 9:00 a.m., Tuesday, October 29, 2013, at the Montreal, Maine and Atlantic Railway's main office, Northern Maine Junction, Hermon, ME, for the purpose of ascertaining the facts and determine your responsibility, if any, in connection with the report that in the early afternoon hours on October 15, 2013, you left rail cars unattended and unsecured in Track No. 1 of the Northern Maine Jct. Yard, Hermon, ME, while performing service as crew members of Assignment 210.

The facts presented during the formal investigation revealed that on October 15, 2013, you left rail cars unattended and unsecured on Track No. 1 of the Northern Maine Junction Yard in Hermon, ME. This placed you in violation of the Carrier's Safety Rules 9000, 9001, 9002, Job Briefing Guidelines, and General Safety Instructions 112-1 and 112-2.

For these violations, you are assessed discipline in the form of dismissal. You are dismissed from the service of the Montreal, Maine & Atlantic Railway effective immediately. You are instructed to contact Manager Train Operations Chris Carr at (207)478-9854 no later than the close of business on Friday, November 22, 2012, and make arrangements to return all Company property in your possession.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Cote". The signature is fluid and cursive.

Robert N. Cote  
GM Engineering

Cc: G. Ryan, VP Human Resources  
K. Strout, Director Operating Practices  
C. Carr, Manager Transportation Operations  
K. Moore, BLET General Chairman  
M. Lafrenier, BLET Vice President

**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  
JEFFREY C. DURANT 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 Jeffrey C. Durant 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. 250-1 (the "Claim") filed by Jeffrey C. Durant, 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. Claim No. 250-1 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 10, 2015, Robert J. Keach, the chapter 11 trustee in the above-captioned case (the "Trustee"), filed the *Objection to Proof of Claim Filed by Jeffrey C. Durant 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, 2<sup>nd</sup> Floor, Portland, Maine. If no responses are timely filed and served, then the Court may enter a final order sustaining the Objection 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 10, 2015

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

By his attorneys:

/s/ Lindsay K. Zahradka  
D. Sam Anderson, Esq.  
Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)  
BERNSTEIN, SHUR, SAWYER & NELSON  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104-5029  
Tel: (207) 774-1200  
Fax: (207) 774-1127