UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re:	Bk. No. 13-10670
MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.,	Adversary Proceeding No. 14-1001
Debtor.	
ROBERT J. KEACH, solely in his capacity as the chapter 11 trustee for MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.,	**Canadian Pacific Railway Company's reply memorandum of law in support of motion to dismiss**
Plaintiff	
v.	
WORLD FUEL SERVICES CORPORATION, WORLD FUEL SERVICES, INC., WESTERN PETROLEUM COMPANY, WORLD FUEL SERVICES, CANADA, INC., PETROLEUM TRANSPORT SOLUTIONS, LLC, IRVING OIL LIMITED, CANADIAN PACIFIC RAILWAY COMPANY AND SMBC RAIL SERVICES, LLC,	
Defendants.	

Introduction

Each of Robert J. Keach's, the chapter 11 trustee for Montreal, Maine & Atlantic Railway, Ltd. (MMAR), arguments opposing dismissal fail. The trustee asserts that by filing a proof of claim Canadian Pacific Railway Company's (CP) consented to personal

jurisdiction for all counterclaims. *Stern v. Marshall* and post-*Stern* case law, not addressed by the trustee, reject that contention.

The trustee next argues that CP's forum-based contacts empower the Court to exercise specific-personal jurisdiction. But CP has no forum-based contacts because the trustee bases his claim on a Canadian regulatory violation. The trustee maintains that CP is "at-home" at some undisclosed U.S. location for general-personal-jurisdiction purposes because annual reports and marketing literature refer to "CP" operations in Canada and the United States. But the trustee ignores how those materials define "CP," which is not Canadian Pacific Railway Company, the defendant in these adversary proceedings. Rather the documents embraced but distorted by the trustee refer to Canadian Pacific Railway Limited and all subsidiaries collectively, including various distinct corporations not parties to these proceedings, as "CP." Each annual report discloses that some of those subsidiaries operate in the United States.

The trustee also insists that litigating in Maine is reasonable because CP's counsel has appeared here, and CP's supposed headquarters are "just over the border in Montreal." But CP's headquarters are in western, not eastern, Canada, and this Court's order preserved CP's jurisdictional defenses and dictated when this Rule 12 motion could be brought.

Finally, Rule 12(b)(6) requires dismissal. No pleaded facts render claims that CP knew or should have known that the shipper misclassified crude oil plausible. Yet knowledge of the misclassification is the sole misfeasance about which the trustee now complains, and he bases the duty supposedly breached on Canadian law somehow

enforceable in North Dakota. Even assuming the trustee could make the requisite allegations, for the contention that Canadian law obligated CP not to move the lading because the crude was "forbidden for transport" and therefore should have been "stop[ped]" wants for a factual, or indeed any, basis. ECF Doc. No. 138 at 10. Canadian dangerous goods regulations do not designate crude oil as a "forbidden good."[1]

Argument

I. CP never consented to personal jurisdiction

The trustee deems the Court to have personal jurisdiction by virtue of CP's proof of claim filing. The trustee argues that CP's reliance on *Stern*, which the trustee dismisses as "simply and wholly inapposite," is "entirely misplaced" because "*Stern* has nothing to do with jurisdiction-personal, subject matter or otherwise." Opp. Br., ECF Doc. No. 152 at 9.

To the contrary: "The *Stern* opinion generally stands for the proposition that *the filing of a proof of claim in bankruptcy is not a consent to personal jurisdiction* over claims held by the estate which are unrelated to bankruptcy law or unrelated to the creditor's claim against the bankruptcy estate." *In re LLS America, LLC*, Adv. No. 11-

[1] The trustee states that "CP has completely abandoned its argument that the Second Amended Complaint should be dismissed on preemption grounds." Opp. Br., ECF Doc. No. 152 at 2 n.3. CP's opening Rule 12 motion did not brief preemption because at the withdrawal of the reference oral argument the trustee offered to abandon all U.S. federal regulatory claims. *See* Opening Br. at 2 n.1; *see also* ECF Doc. No. 103 at 20-26 (explaining that U.S. claims pled by the trustee were preempted). The trustee's limitation of claims to Canadian regulations mooted CP's, U.S. federal preemption defense. But, due to the opposition brief's contention (for the first time) that Canadian regulations create duties in North Dakota, CP must now address preemption in that context.

80093, 2012 WL 2564722, at *7 (Bankr. E.D. Wash. July 2, 2012) (emphasis added); *see also Picard v. Estate of Igoin (In re Bernard L. Madoff Inv. Sec. LLC)*, 525 B.R. 871, 887 (Bankr. S.D.N.Y. 2015) (defendants' filing of SIPA claims – the equivalent of filing a bankruptcy proof of claim for jurisdictional purposes – did not subject defendants to personal jurisdiction).

While "[i]t has long been recognized that a creditor filing a proof of claim consents to entry of a final order *as to that claim*," *Mason v. Ivey*, 498 B.R. 540, 548 (M.D.N.C. 2013) (emphasis added), *Stern* teaches that filing of a proof of claim does not amount to a wholesale consent to personal-jurisdiction. 131 S.Ct. 2594, 2614-15, n.8 (2011) (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 59 n.14 (1989)); *see also Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 1946 (2015) (reaffirming that a litigant does "not truly consent to resolution of a claim against it" by filing a proof of claim in a bankruptcy proceeding).

Though not necessarily express, consent must be knowing and voluntary: the "key inquiry is whether 'the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared . . . .'" *Wellness*, 135 S.Ct. at 1948. Because CP's proof of claim filing pre-dated the commencement of these adversary proceedings, CP could not have knowingly consented to the latter by confirming creditor status in the earlier bankruptcy.

Critically, every case cited by the trustee pre-dates *Stern*. *Stern* nullified the *Schwinn Plan Committee v. TI Reynolds 531 Limited (In re Schwinn Bicycle Co.)*, quotation (emphasized by the trustee) that "by filing a proof of claim in a pending

bankruptcy case, a creditor consents to personal jurisdiction in all possible counterclaims brought by the estate." 182 B.R. 526, 531 (Bankr. N.D. Ill. 1995). Opp. Br., ECF Doc. No. 152 at 9 (emphasis by trustee); *see also Kline v. Ed. Zueblin, AG (In re Am. Exp. Grp. Int'l Servs., Inc.)*, 167 B.R. 311, 314 (Bankr. D.D.C. 1994) (pre-*Stern* law that filing proof of claim waives personal jurisdiction defense "with respect to all possible counterclaims by the estate").

While "*Stern* did not abrogate existing decisional authority that the filing of a proof of claim in bankruptcy is a consent to personal jurisdiction over claims held by the estate which arise under bankruptcy law or are related to the creditor's claim against the estate," *In re LLS America, LLC*, 2012 WL 2564722, at *7, the trustee's negligence action neither arises under bankruptcy law nor relates to CP's initial $900,000 proof of claim filing, which is almost entirely based on locomotive lease rent.

The *In re Schwinn Bicycle Co.* estate invoked 11 U.S.C. §§ 547 and 550 to recoup a $59,246 preferential transfer. 182 B.R. at 527-28. Because the creditor had filed a proof claim and the estate's preference cause of action arose under bankruptcy law, the court could exercise personal jurisdiction. While *Stern* would not have changed that result – because the estate's claims arose under bankruptcy law and related to the proof of claim – *Stern* unquestionably overruled prior law, embraced by the trustee, about the filing of a proof of claim waiving personal jurisdiction for "all possible counterclaims by the estate." *See, e.g.*, Opp. Br., ECF Doc. No. 152 at 9.

The trustee's other argument about CP being deemed to have waived a personal jurisdiction defense because CP acted "without reserving any rights with respect to

personal jurisdiction" contravenes the law of this case. Opp. Br., ECF Doc. No. 152 at 12. The first adversary proceeding order entered after the trustee sought to amend to add CP preserved CP's "right to attend and participate" in this action, including the ability to bring a motion to withdraw the reference, "without prejudice" to, among other things, "challeng[ing] personal jurisdiction." ECF Doc. No. 88, ¶¶ 5-6.

CP now makes that challenge. Notably, the order prohibited CP from sooner bringing Rule 12 motions. *Id.* ¶ 5. In sum, the Court condoned what the trustee calls CP's "active participation" (Opp. Br., ECF Doc. No. 152 at 12) without prejudice to any defense and set the time table for bringing Rule 12 motions.

II. No specific-personal jurisdiction

Specific-personal jurisdiction "may only be relied upon where the cause of action arises directly out of, or relates to, the defendant's forum-based contacts." *Cossaboon v. Me. Med. Ctr.*, 600 F.3d 25, 31 (1st Cir. 2010). The trustee wants the Court to exercise specific personal jurisdiction based on an alleged admission about CP operating trains, including the one that MMAR derailed, in the United States. Without regard to the facts, the trustee ordains that "there is no question" about CP originally operating the train. Opp. Br., ECF Doc. No. 152 at 15. The Affidavit of James Clements (¶ 8) establishes otherwise, and the trustee has not challenged that evidence:

> CP did not begin to operate the train that was interchanged with Montreal, Maine and Atlantic Railroad near Montreal and that ultimately derailed at Lac Mégantic until the train crossed the border.

The multiple Form 40-Ks, which the trustee attached to his brief and purposefully misrepresents, disclose that Canadian Pacific Railway Ltd.'s U.S. subsidiaries (as CP explained through the Clement Affidavit), not CP, operate trains in the United States:

> Our network accesses the U.S. market directly through three wholly owned subsidiaries: Soo Line Railroad Company ("Soo Line"), a Class I railway operating in the U.S. Midwest; DM&E, a wholly owned subsidiary of the Soo Line, which operates in the U.S. Midwest; and the Delaware and Hudson Railway Company, Inc. ("D&H"), which operates between eastern Canada and major U.S. Northeast markets, including New York City, New York; Philadelphia, Pennsylvania; and Washington, D.C.

See, e.g., Opp. Br., ECF Doc. No. 152, Ex. H at p. 19 of 163 (2014 Form 40-F).

And the trustee's obsession with the Canadian court's comments regarding CP's activities and filings in Canada have no bearing on this U.S. action. *Id*. at 16-17. To start with, the Canadian court merely accepted as true the allegations of the complaint. At the preliminary proceedings that have so far taken place, the court made no findings and resolved no facts disputes. Besides that, before interchanging the train to MMAR and after being given the train north of the border, CP only moved the lading in Canada. Therefore the Canadian proceedings refer to CP's conduct in Canada, not to the actions of Canadian Pacific Railway Ltd.'s U.S. subsidiaries in the U.S.

Even assuming CP operated in the United States, the trustee's attempt to manufacture U.S. contacts makes no sense. The trustee cannot contend that Canadian regulations have effect in North Dakota and that CP breached a duty, allegedly created by Canadian regulations, while in North Dakota or, for that matter, anywhere this side of the border. Opp. Br., ECF Doc. No. 152 at 4-5. Canadian rail regulations cannot have extra

territorial force of law. *See Stover v. O'Connell Associates, Inc.*, 84 F.3d 132, 136 (4th Cir. 1996). Hence, the wrongs about which the trustee complains – the failure to abide by Canadian regulations – have no effect in this country.

III. No general-personal jurisdiction

The trustee declares that the Court has general-personal jurisdiction because CP is "at-home" in the United States – where? The trustee crafts this argument from literature entitled "Welcome to the New CP" (the "Investor Fact Book") and annual reports filed with the SEC, called Form 40-Ks, over the past several years. According to the trustee "these documents clearly demonstrate that CP is engaged in a substantial, continuous and systematic course of business in the United States." Opp. Br., ECF Doc. No. 152 at 20.

"CP" as used in the materials cited by the trustee does not refer to "Canadian Pacific Railway Company" (the defendant in this action) but rather much more broadly to the holding company, Canadian Pacific Railway Ltd., and all subsidiaries, including the six principal subsidiaries: Canadian Pacific Railway Company; Soo Line Corporation; Soo Line Railroad Company; Dakota, Minnesota & Eastern Railroad Corporation; Delaware and Hudson Railway Company, Inc.; and Mount Stephen Properties Inc. *See, e.g.*, *Id*., Ex. H 2014 Form 40-F at p. 13-14 of 163. "Canadian Pacific Railway Limited ("CPRL") through its subsidiaries (collectively referred to as "CP" or "the Company") operates a transcontinental railway in Canada and the United States." *Id.*, Ex. F at p. 152 of 193 (2012 Form 40-F).

The trustee only sued the railroad that almost exclusively runs trains in Canada – Canadian Pacific Railway Company. That corporate entity (Corporation not Ltd.) hauled

the oil from just north of the U.S. – Canadian border to interchange with MM&A, near Montreal. The existence of U.S. subsidiaries that operate south of the border should come as no surprise to the trustee. The Form 40-Fs specify that U.S. railroad corporations operate in the United States. *See, e.g., id.* Ex. H at p.19 of 163 (2014 Form 40-F). The trustee's fabrication that these "investor materials [] do not distinguish between business entities" is exactly that: not true. Opp. Br., ECF Doc. No. 152 at 21.

In sum, the collective reference to distinct entities as Canadian Pacific or CP, for convenience sake, does not create general-personal jurisdiction over the various separate corporations. *American Trading & Production Corp. v. Fischbach & Moore, Inc.*, 311 F. Supp. 412 (N.D. Ill. 1970) (granting summary judgment to parent, even though annual report and advertising treated the parent and subsidiaries as one "family" and parent claimed credit for projects performed by the subsidiaries); *Coastal States Trading, Inc. v. Zenith Navigation S.A.*, 446 F. Supp. 330, 333 (S.D.N.Y. 1977) (although persons employed under the *Coastal States* "umbrella" commonly referred to the various corporate subsidiaries as "arms," "branches," or "divisions" of the parent company, the court found: "[S]uch superficial indicia of interrelatedness are, of course, not dispositive of the question whether one company is an 'alter ego' of another, as they do not give a complete or necessarily accurate picture of the corporate relationships involved."); *Japan Petroleum Co. (Nigeria) Ltd. v. Ashland Oil, Inc*., 456 F. Supp. 831, 846 (D. Del. 1978) (representations in the parent's annual report that the subsidiary served as an agent or instrumentality of the parent were not determinative, as they "may result from public relations motives or an attempt at simplification.")

IV. The exercise of personal jurisdiction would not be reasonable

In advocating the reasonableness of the exercise of personal jurisdiction, the trustee ignores *Peay v. BellSouth Med. Assistance Plan*, 205 F.3d 1206 (10th Cir. 2000). The *Peay* court held that even in bankruptcy, to comport with due process, the specific forum (Maine) must be fair and reasonable. The trustee improperly substitutes the United States for Maine. *See, e.g.*, Opp. Br. at 24 (arguing that "CP has substantial connections with the United States").

The trustee's reliance on *In re Federalpha Steel, LLC* does not anoint a Maine forum with reasonableness. 341 B.R. 872 (Bankr. N.D. Ill. 2006). To start with, that case applied pre-*Daimler* general-personal-jurisdiction law. On top of that, unlike CP, the *Federalpha Steel* defendants conducted business in the United States "not only through its subsidiaries but also in its own right." Those activities were on such a large scale that the defendant had "'continuous and systematic' contacts with the United States." *Id.* at 885, 889.

The *Federalpha* defendant headquartered in Ontario, near the border, at a location no farther from the Illinois courthouse than the suggested alternative. In contrast, CP's headquarters are distant from Maine, by thousands of miles in western Canada (Calgary, Alberta). Second Am. Complaint ¶ 28. To justify the Maine forum the trustee mistakenly, or purposefully, misrepresents that CP's principal place of business is "just over the border in Montreal." Opp. Br., ECF Doc. No. 152 at 24. That misstatement involves a difference of thousands of miles. Canadian National railroad, not CP, is headquartered in Montreal.

The trustee also asserts that Maine is reasonable because CP's counsel previously appeared before this Court. Yet the trustee cites no authority supporting the satisfaction of due process concerns by counsel's pre-Rule 12 activities. Notably, counsel's prior attendance at hearing in this forum is not among the *Peay* factors that courts weigh. The party's location, not their counsel's, factors into the forum reasonableness assessment. And dispositively, this Court authorized CP's participation in pre-Rule 12 proceeding without prejudice to any defense, including want of personal jurisdiction.

V. Rule 12(b)(6) dismissal is also appropriate

Two independent reasons warrant Rule 12(b)(6) dismissal:

> First, Canadian regulations confirm that "forbidden for transport" refers to the type of good being shipped, not whether transport should be stopped under TDGR § 2.2(6), as the trustee maintains. ….
>
> Second, even if TDGR §§ 2.2(6) and 10.1(2)(a) required the transport of crude oil to be stopped at the border, the second amended complaint pleads no facts about CP "notic[ing] an error in classification" or having "reasonable grounds to suspect an error in classification."

CP Opening Br., ECF Doc. No. 103 at 22-23.

The trustee's opposition makes no response to the first ground for a Rule 12(b)(6) dismissal. By failing to offer a contrary construction of TDGRs, the trustee effectively concedes CP's interpretation. Instead the trustee confines his opposition to *Twombly/Iqbal* pleading standards. Without explaining how, the trustee pronounces that "The Second Amended clearly satisfies pleading requirements" and "there is no question

that Second Amended complaint sets forth a clear and a plausible cause of action against CP." Opp. Br., ECF Doc. No. 152 at 25-26.

A. No *Twombly/Iqbal* plausibility

The trustee goes on to maintain that the Withdrawal of the Reference Order supports *Twombly/Iqbal* plausibility. But the Order language that "the Trustee's argument is not self-evidently implausible" concerned choice-of-law (Order at 9) and did not bear on *Twombly/Iqbal* plausibility.

The trustee argues that the following paragraphs of the Second Amended Complaint supposedly provide the requisite plausibility: ¶¶ 3, 4, 74, 75, 77-80, 83, and 109. But none of those allegations goes beyond paragraph 109's "information and belief" surmise. The Second Amended Complaint never asserts facts that would make "extensive dealings" with the World Fuel defendants plausible or explains how mere "access" to MSDSs could cause CP to believe that the shipper misclassified the crude oil cargo.

B. No claims survive federal preemption

CP previously maintained that, as to railroads, U.S. federal law preempted the negligence claims regarding the misclassification of lading and the loading of oil in DOT-111 tank cars. Federal hazardous material regulations make shippers, not carriers, responsible for accurately classifying lading, and because the federal regulations authorize the packaging of crude oil in DOT-111 tank cars CP had no choice about accepting Western Petroleum's tender. *See*, ECF Doc. No. 103 at 20-26. Despite having pled those claims against CP, the trustee conceded at oral argument before the district

court that U.S. mislabeling and mispackaging charges should not have been leveled against CP. Order at 5 & n.3.

Instead, the trustee now asserts a different claim based on a Canadian regulatory violation. *Id.* Incredibly, according to the trustee, a breach of duty created by a Canadian regulation supposedly "occur[ed] in the United States." Opp. Br., ECF Doc. No. 152 at p. 4 (emphasis by trustee). Since the trustee's only claim is based on Canadian regulations, which cannot govern conduct beyond the territorial boundaries of Canada, the cause of action must involve Canadian activity. Faced with CP's most recent demonstration that Canadian regulations, which have the effect of law in Canada, cannot create specific-personal jurisdiction in the U.S., the trustee concocts another twist, maintaining that Canadian regulations, although maybe not enforceable by any agency, nevertheless impose duties in North Dakota where CP supposedly breached such a foreign regulatory created duty. *Id.* at 4-5 ("CP, despite its knowledge of improper classification, failed to stop the Train in the United States. i.e. before it left North Dakota; that was its breach of duty, and that was its negligent act") (emphasis by trustee). Yet, the trustee offers no authority that would call for the importation of duties supposedly emanating from Canadian regulations into North Dakota.

As a threshold matter, choice-of-law considerations are irrelevant to the trustee's charge that CP breached a foreign regulation in North Dakota because federal law preempts such a claim. Any "choice of law issue is moot" when "claims are preempted by federal law." *Talbott v. C.R. Bard, Inc.*, 865 F.Supp. 37, 42 (D. Mass. 1994); *see also Simoes v. National Railroad Passenger Corp.*, No. 09–3498 (MLC), 2011 WL 2118934,

at *4 (D.N.J. May 27, 2011) (when federal law preempts "there is no choice-of-law issue to be resolved"); *General Motors Corp. v. E.P.A.*, 168 F.3d 1377, 1380 (D.C. Cir. 1999) ("there is no choice of law issue" when "there is a federal statute to apply"); *Georgia Kraft Co. v. Terminal Transport Co.*, 343 F.Supp. 1240, 1245-46 (E.D. Tenn. 1972) ("the interpretation of a provision of a federal law and a provision of a federal regulation issued thereunder" does not "involv[e] a choice of law").

Choice-of-law "alternatives come into play only on the assumption that federal law does preempt[.]" *Southern Pac. Transp. Co. v. U.S.*, 462 F.Supp. 1193, 1209 (E.D. Cal. 1978). To the extent the trustee attempts to resurrect his previously withdrawn lading misclassified and mispackaging claims and with respect to the claim now asserted about conduct in North Dakota violating a Canadian regulatory based duty, federal law preempts obviating any choice-of-law analysis.

The Federal Railroad Safety Act (FRSA) and the Federal Railroad Administration (FRA) regulations would preempt a North Dakota state law that purported to prescribe duties for activities covered by FRA regulations. 49 U.S.C. § 20103; *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664, 671-73 (1993) (FRSA ensures uniformity by preempting state laws that would subject a railroad to standards of care at variance with the federal regulations); *Norfolk S. Ry. Co. v. Shanklin*, 529 U.S. 344, 358 (2000); *Burlington N. R.R. Co. v. Minn.*, 882 F.2d 1349, 1352 (8th Cir. 1989) (the FRSA "creates a comprehensive scheme for the regulation of rail safety" preempting all non-federal authority).

The FRSA preempts when (1) FRA regulations cover the subject matter of common-law claims, and (2) the railroad complies with the covering regulations. *Grade v. BNSF Ry. Co.* 676 F.3d 680, 687 (8th Cir. 2012). Hence, only failure to comply with a covering FRA regulation can subject a railroad to tort-law accountability. *Shanklin*, 529 U.S. 358; 49 U.S.C. § 20106(b)(1); *Grade*, 676 F.3d at 687.

How a foreign regulation could survive FRSA preemption, to which state laws must yield, defies comprehension. Only the U.S. federal railroad regulations, with which the originating railroad indisputably complied, can govern railroad standards of care in the U.S. *Id.*; *see also* 49 U.S.C. § 20106(b)(1); *Frazier v. Burlington N. Santa Fe Corp.*, 788 N.W.2d 770, 775 (Minn. App. 2010), *rev'd on other grounds by* 811 N.W.2d 618, as modified (Minn. 2012); *In re Derailment Cases*, 416 F.3d 787, 793 (8th Cir. 2005) (FRA wields plenary and, when exercised, exclusive authority to prescribe "regulations and issue orders for every area of railroad safety"); *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 388 (1986) (U.S. Constitution's Supremacy Clause and FRSA's statutory mandate requires uniform application of FRSA preemption because "[p]re-emption [is] the practical manifestation of the Supremacy Clause").

CP previously established that the FRSA and the federal regulations preempt the trustee's lading misclassification and DOT-111 tank car claims; to avoid repetition CP incorporates that demonstration by reference. *See*, ECF Doc. No. 70 (CP brief opposing motion to amend), ECF Doc. No. 103 (CP brief to withdraw the reference). The same preemption analysis applies to the trustee's claim that Canadian regulation gives rise to duties in North Dakota. U.S. rail operation only need to comply with U.S. federal safety

and hazardous material regulations. Subjecting a railroad to foreign regulatory duties would sunder the uniformity of rail oversight that Congress enacted the FRSA and that the Department of Transportation promulgated the hazardous materials regulations to effect.

If that were not enough, the trustee's assertion that a Canadian regulation prohibited the originating railroad from accepting crude oil in North Dakota loaded in DOT-111 tank cars violates the Interstate Commerce Commission Termination Act. That statute charges CP with a common carrier obligation. That obligation creates two interrelated duties. Railroads must furnish requesting persons written common-carrier rates. 49 U.S.C. § 11101(b). And upon reasonable request, the services specified by those rates *must* be provided. 49 U.S.C. § 11101(a).

The obligation extends to "transport[ing] hazardous materials where the appropriate agencies have promulgated comprehensive safety regulations." *Riffin v. Surface Transp. Bd.*, 733 F.3d 340, 342 (D.C. Cir. 2013) (quoting *Eric Strohmeyer*, No. 35527, 2011 WL 5006471, at *1 (Surface Transp. Bd. Oct. 18, 2011)); *see also Akron, Canton & Youngstown R.R. Co. v. I. C. C.*, 611 F.2d 1162, 1169 (6th Cir. 1979). And as CP has repeatedly proved (*see, e.g.*, ECF Doc. Nos. 70, 103) comprehensive federal safety regulations govern all aspects of crude oil transportation by rail in and from North Dakota.

The federal-regulatory scheme specifies DOT-111 tank-car-design standards and approves the transportation of all classification of crude oil in such packaging. 49 C.F.R. §§ 172.101; 173.242(a); 173.243(a); Part 179, Subpart D (2014). 49 C.F.R. § 173.22

(entitled "Shipper's responsibility") makes the shipper, not the common carrier, responsible for lading classification. And 49 C.F.R. § 171.2(f) enables the carrier to "rely" on shipper classifications.

No U.S. regulation is equivalent to the Canadian regulation about the carrier stopping a shipment due to a shipper classification error or perceived error. The comprehensive federal-regulatory scheme preempts any attempt to interpose foreign regulatory duties on U.S. rail movements. In any event, assuming *arguendo* the shipper did misclassify and a railroad had grounds to suspect the error, the carrier would not be required to stop the shipment in the U.S. because the regulations authorize movement of all three crude oil Packing Groups in DOT-111 tank cars.[2] Hence regardless of classification, the lading was properly packaged.

Conclusion

Nothing complained about concerning alleged violations of Canadian law could have occurred in the United States, and CP is not "at-home" in this country. Due process requires dismissal for want of personal jurisdiction. Even if the filing of the proof of claim somehow afford bankruptcy court with jurisdiction, the other arguments about the Court having specific- or general-personal jurisdiction over CP come up woefully short.

If personal jurisdiction were to be found, Rule 12(b)(6) requires dismissal because the trustee pleads no facts alleging how CP knew or should have known that the shipper

[2] 49 C.F.R. § 173.242(a) approves the loading of Class 3 crude oil, Packaging Group III (low hazard liquid) and Packaging Group II (medium hazard liquid) in DOT-111 tank cars. Similarly, 49 C.F.R. § 173.243(a) sanctions the carriage of Class 3 crude oil, Packing Group I (high hazard liquid) in DOT-111 tank cars. *See* ECF Doc. 103 at 25.

misclassified the crude oil. And federal law preempts any railroad duty in the U.S. supposedly created by a Canadian regulation. Simply put, any claim against rail transportation activities in North Dakota cannot survive federal preemption unless that claim was based on a violation of FRA or hazardous material regulations, which the trustee never alleges. On top of that, the Canadian regulations do not designate crude oil as a "forbidden good."

Dated: August 11, 2015

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