UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:	)	
	)	
Montreal Maine & Atlantic Railway Ltd.,	)	**Case No. 13-10670**
	)	
Debtor.	)	**Related to Docket Entry 1524**
	)	

WHEELING & LAKE ERIE RAILWAY COMPANY'S OBJECTION TO CONFIRMATION OF THE TRUSTEE'S REVISED FIRST AMENDED PLAN OF LIQUIDATION DATED JULY 15, 2015

NOW COMES Wheeling and Lake Eire Railway Company ("Wheeling") and files this objection (the "Objection") to confirmation of the Trustee's Revised First Amended Plan Of Liquidation Dated July 15, 2015 [D.E. 1534] (the "Amended Plan"),[1] filed by Robert J. Keach, the Chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd (the "Trustee" and the "Debtor," respectively).

OVERVIEW

1. Wheeling objects to confirmation of the Amended Plan for reasons that make the Amended Plan unconfirmable on its face. First, under the Amended Plan, Wheeling is classified as the sole creditor in Class 1 under the Plan, and its secured claim, the sole claim in that Class, is treated as being "unimpaired" within the meaning of § 1124 of title 11 of the United States Code (the "Bankruptcy Code"). Notwithstanding treatment as unimpaired, the Amended Plan actually and materially impairs Wheeling's claim. For one thing, it proposes to release, terminate and discharge assets that constitute collateral for Wheeling's claims; to wit, rights of the Debtor to payment from various parties. In particular, the Debtor's rights to payment from settling parties are released, and the releases are purportedly binding on Wheeling. Notwithstanding the release of Wheeling collateral, under the Plan, Wheeling receives no

[1] Capitalized terms not defined herein shall have the meaning set forth in the Plan.

payment or compensation on account of such releases. Moreover, and to make matters worse, if the Amended Plan were confirmed, the payments received by the Debtor, which constitute Wheeling collateral, would be distributed to other creditors, and not to Wheeling, again without compensation or adequate protection to Wheeling. Finally, exacerbating the release and/or disposition of Wheeling collateral without any compensation, the Plan purports to do all of this in secret. It shields from the view of Wheeling and all other parties (and the Court) all of the Settlement Agreements under which the Debtor's rights to payment are compromised and released. As a result, Wheeling does not know what portion of its collateral is being released and forever discharged, nor what portion of its collateral is being collected by the Debtor and distributed to others. These provisions of the Debtor's Plan make it unconfirmable as a matter of law.

BACKGROUND

2. As the Court is aware, Wheeling holds a valid, perfected, and enforceable security interest in certain assets of the Debtor, including as described in the Security Agreement (a copy of which is annexed hereto as **Exhibit A**):

> All Accounts and other rights to payment (including Payment Intangibles), whether or not earned by performance, including but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) that Debtor may have by law or agreement against any account debtor or obligor of the Debtor

3. The forgoing payment rights are included within the definition of accounts" and "payment intangibles" under the Maine Uniform Commercial Code (the "Maine UCC") *See* 11 M.R.S.A. §§ 9-1101 *et seq.*

4. The Trustee's Amended Plan has placed Wheeling's secured claims in its own class, Class 1, and has treated those claims as unimpaired. As a result, Wheeling is not entitled

to vote with respect to acceptance or rejection of the Amended Plan pursuant to § 1126(f) of title 11 of the United States Code (the "Bankruptcy Code"). A claim is "unimpaired" if, among other things, the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest[.]" 11 U.S.C. § 1124(1).

5. The Amended Plan does not, however, notwithstanding the designation of Wheeling's claims as "unimpaired" leave "unaltered" Wheeling's legal, equitable and contractual rights. Instead, these rights are materially impaired without any compensation or adequate protection for Wheeling.

6. An integral part of the Trustee's Amended Plan is the approval by this Court of Settlement Agreements with many of the Debtor's pre-petition contract counter-parties. The proceeds of such Settlements Agreements are to be transferred to the WD Trust for distribution to the holders of wrongful death claims, free and clear of any liens, security interests, and encumbrances. *See, generally*, Amended Plan, Article 5 and Article 5.11. Under the Amended Plan, the counterparties to the Settlement Agreements are released from all claims, and Wheeling is purportedly bound by that release. Notwithstanding the distribution of proceeds of the Settlement Agreements to parties other than Wheeling, the release of settling counter parties, and the absence of any payment to Wheeling or other form of adequate protection, there is no disclosure of the terms and conditions of all of the foregoing. It is all done in secret.

7. The Amended Plan contemplates that this Court would approve the Settlement Agreements by entry of an order confirming the Amended Plan including by "finding that, to the extent required under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules, the Settlement Agreements are in the best interests of the Debtor, the Estate and all Holders of Claims in the Chapter 11 Case, are fair, equitable and reasonable, and have been entered into in

good faith by all parties thereto." Amended Plan, Article 5.1. The Trustee's Amended Plan goes so far as to state that "the provisions thereof [the Settlement Agreements] are incorporated into this Plan, as if the same were fully set forth herein[.]" Amended Plan, Article 5.1. Thus, the Court is asked to treat the Settlement Agreements as part of the Amended Plan and to find their terms fair, equitable and reasonable, although no one, not even the Court, is permitted to know what these agreements say.

8. Wheeling contends that the monies to be paid to the Debtor, for distribution to other creditors pursuant to the Settlement Agreements, are Wheeling's Collateral because such monies are "payment rights," including "accounts" or "payment intangibles," or proceeds thereof, all subject to Wheeling's valid, perfected and enforceable security interest. Reference is made to *Wheeling's Supplemental Objection To Motion For Entry Of An Order Authorizing Filing Of Settlement Agreements Under Seal,* which Objection is incorporated herein by reference.

9. Moreover, confirmation of the Amended Plan would contravene a prior order entered by this Court on Wheeling's claims with respect to payment rights arising under the Settlement Agreements. Wheeling filed a motion to intervene in the adversary proceeding captioned as *Keach v. World Fuel Services Corp. et al. (In re Montreal Maine & Atlantic Railway),* Adv. No. 14-1001 (the "World Fuel Adversary Proceeding"), based on Wheeling's belief that the Debtor's claims against World Fuels therein litigated were its collateral. On November 4, 2015, the Court entered its *Order On Wheeling & Lake Erie Railway Company's Motion To Intervene As Of Right Pursuant To Bankruptcy Rule 7024 And Rule 24(a) Of The Federal Rules Of Civil Procedure* [D.E. 54; World Fuel Adversary Proceeding] (the "Intervention Order") in which it denied Wheeling's request to intervene but ordered as follows:

B. Notwithstanding denial of the Motion, the Court hereby orders and determines that in the event that the Trustee recovers a judgment in this adversary proceeding against any Defendant***, or makes any recovery in a settlement agreement against any party Defendant***, or recovers a judgment ***or makes a settlement with any party who becomes a Defendant in this Adversary Proceeding after the date hereof,*** no determination by the Court or by any Party as the nature of, or categorization or description of, the proceeds received by the Trustee on account of such judgment and/or settlement shall be binding upon Wheeling.

C. ***Without limiting the generality of the foregoing, Wheeling shall, at any time, be entitled to seek a determination by this Court, or by any other court of competent jurisdiction, as to the actual nature, characterization or description of any such proceeds of judgment or settlement, and in conjunction with any such determination, Wheeling shall not be bound by any preclusive rule, or presumptive effect as to the nature, characterization or description of such proceeds arising from such judgment or settlement.***

Intervention Order (emphasis added).

10. It is known that the Trustee seeks to approve a settlement agreement with World Fuels. If the Amended Plan is confirmed as requested by the Trustee, such confirmation would eviscerate and undermine the Intervention Order. It would eliminate any right of Wheeling to seek a determination by the Court as to the "nature, characterization or description" of the settlement proceeds and the extent to which the same constitute Wheeling collateral. The obvious purpose of the Intervention Order was to reserve to Wheeling the right to assert an interest in any settlement proceeds with respect to the claims in the World Fuels Adversary Proceeding without any deference to the Trustee's business judgment or any other preclusive rule as to the characterization of such proceeds as Wheeling collateral. Entry of a confirmation order as requested by the Trustee would vitiate the Intervention Order without just cause or adequate protection to Wheeling.

11. Although the Trustee's Amended Plan purports to treat Wheeling's secured claims as "unimpaired," it permits Wheeling collateral to be used to pay other creditors (*e.g.* derailment victims), without compensation or adequate protection to Wheeling. As such, it deprives Wheeling of its property rights without just cause, without compensation and without adequate protection. And it does it all in secret.

ARGUMENT

I. The Amended Plan Cannot Be Confirmed Because It Violates § 1129(a) Of The Bankruptcy Code In That Wheeling Is Classified As Unimpaired But The Amended Plan Purports To Distribute Assets to Other Creditors, And Release And Discharge Claims That Are Wheeling's Collateral Without Its Consent Or Payment To Wheeling.

12. The Amended Plan cannot be confirmed as it is currently proposed because it violates § 1129(a) of the Bankruptcy Code due to its treatment of Wheeling's secured claim. This renders the Amended Plan unconfirmable under § 1129(a).

13. Under § 1129 of the Bankruptcy Code, the Amended Plan can only be confirmed if, among other things: it complies with all applicable provisions of the Bankruptcy Code. The Amended Plan fails to do so.

14. First, the Amended Plan does not comply with the Bankruptcy Code in that, among other things, it designates Wheeling's secured claim as unimpaired yet it proposes to release and discharge Wheeling's collateral, and to pay the proceeds of Wheeling's collateral to other creditors—without Wheeling's consent and without payment or adequate protection to Wheeling.

15. Under § 1124(1) of the Bankruptcy Code, a claim is only "unimpaired" if the claimant's legal, equitable, and contractual rights are unaffected. The Amended Plan, however, would release and discharge claims of the Debtor against obligors—claims that are Wheeling's

collateral (specifically, the Debtor's rights to payment by settlement parties who are obligors of the Debtor and receiving releases) without its consent or payment to Wheeling. In addition, the Amended Plan distributes proceeds of the Debtor's rights to payment, realized pursuant to the Settlement Agreements, to creditors other than Wheeling, again without Wheeling consent, compensation or adequate protection. By compromising Wheeling's collateral while failing to provide for cash payment in full of Wheeling's security interest in the claims underlying the Settlement Agreements, the Amended Plan clearly is altering the "legal, equitable and contractual rights" of Wheeling as the holder of such a claim and, accordingly, the Amended Plan violates the Bankruptcy Code and is unconfirmable. 11 U.S.C. §§ 1124 and 1129(a).

II. Wheeling Is Unable To Evaluate The Extent To Which The Settlement Agreements Are Fair And Reasonable As To Its Secured Claim Absent Disclosure Of The Settlement Agreements.

16. As the Court is aware, Wheeling objected to the Trustee's request that the contents of the Settlement Agreements be sealed and engaged in discovery with respect to the same. Those matters were deferred, pending confirmation proceedings, but are ripe for consideration now.

17. Without disclosure of the content of the Settlement Agreements, it is impossible to determine the exact extent to which Wheeling's collateral is being compromised or released. Further, it is impossible to determine whether the Settlement Agreements are fair equitable and reasonable as to Wheeling or as to any other creditors and parties in interest. All parties, including Wheeling, are entitled to complete disclosure of, and material information regarding, the contents of the Settlement Agreements. The Trustee contends that provisions of the Bankruptcy Code permits him to withhold disclosure of the Settlement Agreements and to proceed in secret. This is a preposterous contention, and other parties in this case have

effectively marshalled both statutory and case law authorities that do not need to be restated here. Without repeating the arguments of others, it is sufficient to point out that these authorities make it clear that the limited protections afforded by this section cannot be construed so as to permit adjudication of the rights of parties to take place in secret, with only the Trustee knowing the relevant facts.

18. Until such time as Wheeling is able to review the Settlement Agreements (and other materials requested in now-pending discovery) and obtain compensation for the release, discharge and diversion of its collateral, Wheeling objects to confirmation of the Amended Plan.

CONCLUSION

WHEREFORE, Wheeling respectfully requests that confirmation of the Amended Plan be denied. Alternatively, Wheeling requests that the hearing on confirmation of the Trustee's Amended Plan now set for September 24, 2015, be treated as a preliminary hearing at which a scheduling order is entered with respect to (i) mandatory disclosure of all Settlement Agreements, (ii) discovery with respect thereto, (iii) amendment or supplementation of objections to the Amended Plan, and (iv) a final, evidentiary hearing with respect to confirmation of the Amended Plan.

Dated: September 10, 2015

/s/ George J. Marcus
George J. Marcus
David C. Johnson
Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway Company

MARCUS, CLEGG & MISTRETTA, P.A.
One Canal Plaza, Suite 600
Portland, ME 04101
207.828.8000

EXHIBIT A

SECURITY AGREEMENT

AGREEMENT made this 15th day of June, 2009, by and between **MONTREAL, MAINE & ATLANTIC CORPORATION,** a Delaware corporation with a place of business in Hermon, Penobscot County, Maine, **MONTREAL, MAINE & ATLANTIC RAILWAY , LTD.,** a Delaware corporation with a place of business in Hermon, Penobscot County, Maine, and whose mailing address is 15 Iron Road, Hermon, ME 04401, **MONTREAL, MAINE & ATLANTIC CANADA CO.,** a Nova Scotia corporation with a place of business in Montreal, Quebec, Canada, and **LMS ACQUISITION CORPORATION,** a Delaware corporation with a place of business in Hermon, Penobscot County, Maine (hereinafter collectively called "Debtor") and **WHEELING & LAKE ERIE RAILWAY COMPANY,** a Delaware corporation with a place of business at Brewster, Ohio, and whose mailing address is 10 East First Street, Brewster, OH 44613 (hereinafter called "Secured Party").

Section I. Security Interest.

A. Debtor hereby grants to Secured Party a security interest in the Collateral described in Section II of this Agreement to secure the payment and performance of the Obligations defined in this Agreement. This Security Agreement is entered into with respect to transactions involving business and commercial purposes.

B. This Security Agreement secures the following Obligations:

(1) all obligations of Debtor to Secured Party evidenced by a Line of Credit Note of substantially even date in the original principal amount of Six Million Dollars and No Cents ($6,000,000.00), as the same may be amended or extended (hereinafter referred to as "the Note") and all instruments, documents or agreements referenced or defined therein (such Note and other agreements being hereinafter collectively referred to as the "Loan Documents");

(2) any and all other liabilities of Debtor to Secured Party of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and whether arising out of or under the Note, Loan Documents hereunder, or any other evidence of indebtedness of any kind or description;

(3) all costs incurred by Secured Party, directly or indirectly, for maintenance or preservation of the Collateral or to enforce any of Secured Party's rights under this Agreement or with respect to the Obligations or any of Secured Party's rights or remedies with respect to Debtor and/or any guarantor or other person liable for any of the Obligations, including, without limitation, reasonable attorneys fees and expenses incurred by attorneys for Secured Party;

(4) all obligations under any renewal, replacement, substitution, addition, modification, or extension of any of the foregoing; and

(5) any of the foregoing that arises after the filing of a petition by or against Debtor under the Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise.

"Obligations" include obligations to perform acts and refrain from taking action as well as obligations to pay money.

C. Any term used in the Maine Uniform Commercial Code (Title 11, Maine Revised Statutes Annotated) as amended from time to time ("UCC") and not defined in this Agreement shall have the meaning given to the term in the UCC.

D. To the extent Debtor uses proceeds of a loan from Secured Party to purchase Collateral, Debtor's repayment of the loan shall apply on a "first-in-first-out" basis so that payment will be made in the chronological order that Debtor purchased such Collateral.

Section II. Collateral.

The Collateral of this Security Agreement is the following personal property of Debtor, wherever located, and inuring to the benefit of or owned by the Debtor now, or arising at any time in the future and wherever located as follows:

A. All Accounts and other rights to payment (including Payment Intangibles), whether or not earned by performance, including but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) that Debtor may have by law or agreement against any account debtor or obligor of Debtor.

B. All Inventory

C. All additions, accessions, substitutions, replacements, products to or for, and all cash or non-cash proceeds of any of the foregoing, including insurance proceeds.

Section III. Debtor's Representations and Warranties.

Debtor represents and warrants as follows:

A. Debtor has rights in or the power to transfer the Collateral, and Debtor has good and marketable title to the Collateral, free from any adverse claims, liens, security interests, encumbrances, or restrictions on pledge or transfer, except as created by this Agreement.

B. All information furnished by Debtor to Secured Party concerning the Collateral is, or will be at the time the same is furnished, accurate and complete in all material respects.

C. The office where Debtor keeps its records concerning Accounts is Hermon, Maine. Debtor will not remove any such records from Hermon, Maine, without the written consent of Secured Party.

D. All Collateral is located solely in the State of Maine, and shall not be removed from that location without the prior consent of Secured Party.

E. Debtor's exact legal name, place of residence (if Debtor is an individual), chief executive office, and state of incorporation or registration (if applicable) are as set forth in the first paragraph of this Security Agreement.

F. Until the Obligations are satisfied in full, Debtor agrees that it will not merge into or consolidate with any other entity or otherwise change Debtor's business structure, or sell all or substantially all of Debtor's assets, or change the state where Debtor is located, or change Debtor's name, without prior written notice to and consent of Secured Party.

Section IV. Accounts.

A. So long as Secured Party does not request that the account debtors be notified of the assignment of Accounts to Secured Party, Debtor shall receive all amounts due for services rendered or goods sold and shall make collections of all Accounts, and Debtor shall have full dominion and control over such proceeds and Accounts. Debtor will use all reasonable and diligent effort to collect Accounts when due.

B. At any time before or after default by Debtor hereunder, Debtor, when requested in writing by Secured Party, shall assign or endorse the Accounts, and all amounts due to Debtor for services rendered or goods sold, to Secured Party; shall notify account debtors that the Accounts have been assigned and should be paid to the Secured Party; and shall deliver to Secured Party, promptly upon receipt, all amounts due for services rendered or goods sold received by Debtor. Debtor, shall upon request of Secured Party, account for and pay over or deliver to Secured Party all such sums received from account collections and, pending such payment or delivery to Secured Party, Debtor will hold all such money and other proceeds in trust for Secured Party separate and apart from, and without in any manner commingling the same with, Debtor's funds, and Debtor will not use the same in the conduct of Debtor's business or for any other purpose.

C. At the time any Account becomes subject to a security interest in favor of Secured Party, Debtor warrants that such Account shall be valid and undisputed and that there shall be no setoffs or counterclaims against such Account except for disputes that may arise in the ordinary course of business have no material effect (financial or otherwise) in the aggregate upon Debtor.

Section V. Taxes, Assessments and Governmental Charges.

Debtor will pay promptly when due all taxes, assessments and governmental charges imposed upon Debtor or Debtor's Collateral, including without limitation, income, excise, sales, and use taxes.

Section VI. Prohibition on Other Security Interests or Financing Statements.

Except as expressly permitted by Secured Party, Debtor will not permit or suffer to exist any other security interest in or lien upon the Collateral nor any financing statement covering the Collateral to be on file in any public office except the financing statement in favor of Secured Party. Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein. Secured Party, in the name of Debtor, may contest any claims made against Debtor wherein an adverse decision would impair Secured Party's security.

Section VII. Reports, Examinations, Inspections.

A. Debtor will immediately notify the Secured Party of any event causing loss or depreciation in value of the Collateral, and the amount of such loss or depreciation. Debtor will upon the request of Secured Party at any reasonable time furnish to Secured Party a report showing all Accounts and all other information relating to the Accounts as Secured Party may request.

B. Debtor will provide Secured Party with all such financial reports and data as required in the Loan Documents, and in addition, Debtor shall deliver such financial reports and data pertaining to the Collateral as Secured Party may reasonably request from time to time. Secured Party shall be entitled at its own expense to have audits made of Debtor during business hours by independent accountants, and to examine, inspect and make extracts from Debtor's books, electronically stored data, and other records.

C. Debtor and Secured Party may each inspect any Collateral in the other party's possession, at any time, upon reasonable notice.

Section VIII. Costs and Expenses Paid by Secured Party.

A. If Debtor fails to do so, Secured Party may, at its option, pay for, taxes, assessments or other charges on the Collateral; may discharge any security interest in or lien upon the Collateral. Any such payment made or expense incurred by Secured Party shall be added to the indebtedness of Debtor to Secured Party, shall be payable on demand, and shall be an Obligation secured by this Agreement.

B. Debtor shall pay to Secured Party on demand any and all expenses, including legal expenses and reasonable attorneys fees, incurred or paid by Secured Party for any purpose related to the Collateral or the Obligations, including, without limitation, expenses for (1) defending any claims against the Collateral; (2) enforcing any rights of Secured Party under this Agreement; (3) commencing, defending, intervening in or taking any other action in or with respect to any litigation or arbitration proceeding, including any bankruptcy, insolvency, or similar proceeding, relating to the Debtor or the Collateral.

Section IX. Financing Statements; Perfection.

A. Debtor authorizes Secured Party to file financing statements, amendments and continuations in its name at any time and from time to time until all Obligations secured hereby are paid in full, and in addition, Debtor agrees to execute a financing statement pursuant to the UCC in form satisfactory to Secured Party. Debtor shall pay all costs of filing any and all financing, continuation, or termination statements with respect to the security interest created by this Agreement.

B. So long as Debtor is not in default, Debtor shall have possession of the Collateral, except as expressly provided otherwise in this Agreement, and except to the extent Secured Party chooses to perfect its security interest in any Collateral by possession in addition to the filing of a financing statement. If any Collateral is in the possession of a third party, Debtor shall join with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Secured Party.

C. Debtor will cooperate with Secured Party in obtaining control with respect to any Collateral consisting of Accounts.

Section X. Events of Default.

Debtor shall be in default under this Agreement upon the happening of any of the following events:

A. Any default by Debtor in the payment or performance of any of the Obligations, including the occurrence of any event of default as defined or set forth in the Loan Documents, subject to any applicable notice and cure provisions;

B. Debtor's failure to observe or perform any other covenant or agreement contained in this Security Agreement;

C. If applicable, any default under the terms of any guaranty held by or in favor of Secured Party of the indebtedness secured hereby, or under any agreement providing collateral for any such guaranty;

D. Breach by Debtor of, or the incorrectness of any representation or warranty contained in this Security Agreement, the Note, Loan Documents, or any of the other Obligations or any other agreement between Debtor and Secured Party;

E. Debtor shall be involved in financial difficulties as evidenced by:

(1) an attachment made on the Collateral or other assets of Debtor that is not discharged within thirty (30) days from the making thereof; or

(2) an admission in a written notice by Debtor to Secured Party of Debtor's inability to pay Debtor's debts generally as they become due; or

(3) the making of an assignment by Debtor for the benefit of creditors; or

(4) Debtor consenting to the appointment of a receiver fox all or a substantial part of Debtor's property; or

(5) Debtor filing a petition in bankruptcy or for reorganization or the adoption of an arrangement under any federal or state bankruptcy or insolvency law, or the entry of an order for relief, or the entry of a court order without the consent of Debtor appointing a receiver or trustee for all or a substantial part of Debtor's property or for any other judicial modification or adjustment of the rights of creditors, which order is not vacated, set aside, or stayed within sixty (60) days of the date of its entry; or Debtor's insolvency meaning either that Debtor's liabilities exceed assets or that Debtor is unable to pay debts as the same come due;

F. Material uninsured loss, theft, substantial damage, destruction or encumbrance of airy of the Collateral.

G. The encumbering or hypothecation or sale of any of the issued or authorized to be issued shares of stock of the Debtor, whether direct or indirect, and however occurring or arising.

H. Debtor or any guarantor of any of the Obligations is convicted of any offense that could result in the forfeiture of the Collateral, or the Collateral is subject to an order of forfeiture.

I. Secured Party receives a report from the Secretary of State of Maine or the Secretary of State of any other state where Debtor is located or where any Collateral is located indicating that Secured Party's security interest is not prior to all other security interests or other interests reflected in the report.

Section XI. Remedies.

A. If any event of default has occurred, the Secured Party may declare all Obligations secured hereby to be immediately due and payable and may exercise any and all rights and remedies available at law or in equity, including those available under the provisions of the Maine Uniform Commercial Code, and Secured Party shall have the right to pursue all such remedies separately, successively, or simultaneously. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party. Debtor shall not be entitled to possess any of the Collateral after default, and Secured Party may enter upon and into the premises where Collateral may be located and remove the same. Such repossession shall not affect Secured Party's right to retain all payments made by Debtor prior thereto. Secured Party's acceptance of any payment subsequent to Debtor's default shall not affect any rights or obligations hereunder with respect to any subsequent payments or defaults.

B. Secured Party shall give such notice of any private or public sale or other disposition of Collateral as may be required by the UCC. Any requirement of reasonable notice shall be met, if notice is sent to Debtor or other person entitled thereto at least ten (10) days before the time of any sale or disposition of the Collateral, or any act contemplated.

C. Debtor shall pay to Secured Party on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by the Secured Party in protecting or enforcing any rights of the Secured Party hereunder, including expenses incurred in taking possession of the Collateral, storing, and disposing of the same, or collecting the proceeds thereof.

D. If Secured Party elects to take possession of the Collateral, Secured Party shall have the right to continue to operate and manage Debtor's business for such period of time as Secured Party deems necessary in order to attempt to sell all of the Collateral as a going business.

E. Any proceeds of collection or enforcement or sale or other disposition of Collateral shall be applied first to expenses and reasonable attorneys' fees incurred by Secured Party and then to the satisfaction of the Obligations in such order as Secured Party may, in its sole discretion, determine, and Debtor shall remain liable for any deficiency.

F. After default, Secured Party may sell, lease, or otherwise dispose of any of the Collateral in its then present condition and Secured Party has no obligation to clean or repair the Collateral prior to sale. Secured Party may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral. Secured Party may sell the Collateral without giving any warranties as to the Collateral. Secured Party may specifically disclaim any warranties relating to title, possession, quiet enjoyment and the like. Any procedures allowed by this paragraph shall not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

G. No delay in accelerating the maturity of any Obligation or in taking any other action with respect to any event of default shall affect the rights of Secured Party later to take such action, and no waiver as to one event of default shall affect Secured Party's rights as to any other default.

H. Secured Party has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them. Secured Party may release, modify, or waive any collateral provided by any other person to secure any of the Obligations, all without affecting Secured Party's rights against Debtor. Debtor waives any rights it may have to require Secured Party to pursue any third party for any of the obligations.

I. Secured Party may exercise any rights or remedies set forth in the Loan Documents.

Section XII. Miscellaneous Provisions.

A. This Agreement may be amended only by the written agreement of Secured Party and Debtor. This Agreement, together with the Loan Documents, is the entire agreement of Debtor and Secured Party concerning the subject matter hereof. This Agreement restates the grant of security interests set forth in the Note and the other Loan Documents.

B. Debtor agrees to execute and deliver such additional documents and to do all such additional acts as Secured Party may reasonably request in order to evidence or perfect or maintain the priority of the security interest granted in this Agreement, or to effectuate the rights of Secured Party under this Agreement.

C. Any notice required by this Agreement shall be deemed to have been sufficiently given when a record has been (1) deposited in any United States postal box, with postage prepaid and properly addressed to the intended recipient, (2) received by telecopy, (3) received through the internet; or (4) personally delivered.

D. All rights of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party and all obligations of Debtor hereunder shall bind all persons who become bound as a debtor to this Security Agreement. Secured Party does not consent to any assignment by Debtor except as expressly provided in this Agreement.

E. This Security Agreement and all of the rights, remedies and duties of Secured Party and Debtor shall be governed by the laws of the State of Maine, except to the extent that the Maine Uniform Commercial Code provides for the application of the law of the state where Debtor is located.

F. If any provisions of this Agreement should be found to be void, invalid, or unenforceable by a court of competent jurisdiction, that finding shall only affect the provisions found to be void, invalid, or unenforceable, and shall not affect the remaining provisions of this Agreement.

Section XIII. Jury Trial Waiver.

DEBTOR AND SECURED PARTY AGREE THAT NEITHER OF THEM NOR ANY ASSIGNEE OR SUCCESSOR SHALL (A) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT, ANY RELATED INSTRUMENTS, OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM, OR (B) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY DEBTOR AND SECURED PARTY, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER DEBTOR NOR SECURED PARTY HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under seal as of the day and year first above written.

WITNESS:

MONTREAL, MAINE & ATLANTIC CORPORATION

By: _____
M. Donald Gardner
Its CFO
Hereunto Duly Authorized

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

By: _____
M. Donald Gardner
Its CFO
Hereunto Duly Authorized

MONTREAL, MAINE & ATLANTIC CANADA CO.

By: _____
M. Donald Gardner
Its CFO
Hereunto Duly Authorized

LMS ACQUISITIONS CORPORATION

By: _____
M. Donald Gardner
Its CFO
Hereunto Duly Authorized

DEBTORS

WHEELING & LAKE ERIE RAILWAY COMPANY

By: _____

Its Hereunto Duly Authorized

SECURED PARTY