

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

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In re:

Bk. No. 13-10670

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Chapter 11

Debtor.

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**Canadian Pacific Railway Company's supplemental objections to declarations filed by the trustee**

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1. Canadian Pacific Railway Company (CP) makes these supplemental objections to numerous declarations (ECF Doc. Nos. 1688, 1697-1728, collectively the "Declarations") filed by Robert J. Keach, the chapter 11 trustee for Montreal, Maine & Atlantic Railway, Ltd. (MMAR) on the basis that the Declarations lack foundation, contain hearsay, and provide improper opinion testimony. Fed. R. Evid. 602, 701, 801, 802. CP also objects to the trustee's introduction of redacted settlement agreements into the record on the bases that Fed. R. Evid. 106 and fairness require introduction of complete unredacted copies of those agreements as CP has demanded. The Federal Rules of Evidence are applicable to cases under the Bankruptcy Code. Fed. R. Bankr. P. 9017.

2. The Declarations almost uniformly state as follows:

All facts set forth herein are based on my personal knowledge, on information supplied to me by others within MMA's organization or by the Trustee or his professionals, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of MMA's operations, financial condition, and present liquidity needs. If I were called to testify, I could and would testify competently to the facts set forth herein.

Caruso Decl. ¶ 3 (ECF Doc. No. 1688) (emphasis added).<sup>1</sup>

3. Fed. R. Evid. 602 provides that “[a] witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has person knowledge matter of the matter.” The Declarations are at least in part admittedly based on “information supplied to [the declarant] by others.” No distinction as to what testimony is based on “others” as opposed to being “based on [the declarant’s] personal knowledge” is made. Thus this Court should exclude the Declarations under Rule 602.

4. Fed. R. Evid. 701 limits lay witness opinion testimony to that which is “(a) rationally based on the witness’s perception; (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Being “rationally based on the witness’s perception” is the “familiar requirement of first-hand knowledge or observation.” Adv. Committee Notes to Rule 701. Because the Declarations fail this requirement Rule 701 warrants exclusion.

5. Hearsay “means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter

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<sup>1</sup> See also McLey Dec. ¶ 3 (ECF Doc. No. 1697); Washington Decl. ¶ 3 (ECF Doc. No. 1698); Agarwal Decl. ¶ 3 (ECF Doc. No. 1699); Burkhardt Decl. ¶ 4 (ECF Doc. No. 1700); Stinson Decl. ¶ 3 (ECF Doc. No. 1701); Godbold Decl. ¶ 3 (ECF Doc. No. 1702); Seymour Decl. ¶ 2 (ECF Doc. No. 1703); McCoy Decl. ¶ 3 (ECF Doc. No. 1704); Champagne Decl. ¶ 3 (ECF Doc. No. 1705); McKee Decl. ¶ 3 (ECF Doc. No. 1706); Mayer Decl. ¶ 3 (ECF Doc. No. 1707); Moser Decl. ¶ 3 (ECF Doc. No. 1708); Ross Decl. ¶ 3 (ECF Doc. No. 1709); Lorentzatos Decl. ¶ 3 (ECF Doc. No. 1710); Lorentzatos Decl. ¶ 3 (ECF Doc. No. 1711); Franciscus Decl. ¶ 3 (ECF Doc. No. 1712); Ross Decl. ¶ 3 (ECF Doc. No. 1713); Hanrahan Decl. ¶ 3 (ECF Doc. No. 1714); Penner Decl. ¶ 3 (ECF Doc. No. 1715); Burkhardt Decl. ¶ 4 (ECF Doc. No. 1716); Habal Decl. ¶ 3 (ECF Doc. No. 1717); Kowalski Decl. ¶ 3 (ECF Doc. No. 1718); Stevens Decl. ¶ 3 (ECF Doc. No. 1719); Habal Decl. ¶ 3 (ECF Doc. No. 1720); Henderson Decl. ¶ 3 (ECF Doc. No. 1721); Jardine Decl. ¶ 3 (ECF Doc. No. 1722); Richardson Decl. ¶ 4 (ECF Doc. No. 1723); Jardine Decl. ¶ 4 (ECF Doc. No. 1724); Lake Decl. ¶ 3 (ECF Doc. No. 1725); Davidson Decl. ¶ 3 (ECF Doc. No. 1727); Ridgeway Decl. ¶ 3 (ECF Doc. No. 1728).

assert in the statement.” Fed. R. Evid. 801. Fed. R. Evid. 802 precludes the introduction of hearsay unless an exception applies. The Declarations contain hearsay; no exception applies. All Declarations contain testimony that parrots back certain unspecified information told to the declarants by “others” including in some circumstances the trustee himself.

6. Finally, as stated on the record during the September 24, 2015 hearing, all evidentiary objections are preserved until the October 9, 2015 hearing.

Dated: October 2, 2015

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