

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

TRUSTEE’S REPLY IN SUPPORT OF OBJECTION TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY LIMITED ON THE BASIS THAT CERTAIN OF SUCH CLAIMS ARE DUPLICATIVE OF OTHERS, AND SUCH OTHERS ARE IMPROPERLY ASSERTED AS ADMINISTRATIVE AND/OR PRIORITY CLAIMS

Robert J. Keach, the chapter 11 trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”), files this reply (the “Reply”) in support of the *Trustee’s Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company Limited on the Basis That Certain of Such Claims are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims* [D.E. 1826] (the “Objection”)¹ and in reply to the MN/NB Railways’ response to the Objection (the “Response”).

INTRODUCTION

1. In short, the evidence will establish unequivocally that the “freight services” that form the basis of the Asserted 1171(b) Claims were interline services that do not qualify, as a matter of law, for section 1171(b) status because, *inter alia*, they are not necessary to the operation of MMA and, in any event, were not provided at the discretion of the MN/NB Railways. The evidence will also establish unequivocally that the MN/NB Railways knowingly extended credit to MMA and then mitigated the credit risk they willingly assumed by

¹ Capitalized terms not defined in this Reply shall have the meanings ascribed to such terms in the Objection.

unilaterally establishing a system of triangular setoffs using payables owed to MMA by affiliates of the MN/NB Railways (which were under common control by virtue of their common parent) as collateral to secure the payment of MMA's obligations to the MN/NB Railways. The evidence will further establish that the MN/NB Railways relied entirely on that collateral and not on MMA's cash flow in securing such payments until they found themselves "undercollateralized," at which time the MN/NB Railways agreed to an additional payment arrangement pursuant to which MMA would collect amounts through the ISS system for the benefit of the MN/NB Railways and remit them on agreed credit terms, usually more than 60 days after the so-called services were rendered by the MN/NB Railways. In the words of the person in charge of all credit extension for the common parent and the MN/NB Railways, the MN/NB Railways relied not at all on the financial condition of MMA or its cash flow, because the MN/NB Railways were extending credit on a "secured basis." Trans., Dep. of K. Hansen (Nov, 19, 2015) (attached as Exhibit A, the "Hansen Dep. Tr."), at 46:12-15. The very existence of this collateralization as a credit risk mitigation tactic demonstrates an extension of credit to MMA (whether secured or otherwise), and the MN/NB Railways have failed to demonstrate—and cannot demonstrate—any reliance on MMA's cash flow.

2. Lastly, the evidence will establish that the MN/NB Railways were at all times aware of Wheeling's security interest in the Debtor's accounts and proceeds thereof, including payments flowing to the Debtor under the ISS. Given (a) the admitted extension of credit on a secured basis, (b) the fact that the MN/NB Railways were aware of Wheeling's security interest, (c) the fact that the MN/NB Railways were not providing other goods or services to MMA, and (d) the fact that the interchange charges underlying the Asserted 1171(b) Claims were not necessary operating expenses of the Debtor, as a matter of both law and fact, the MN/NB Railways fail the test in all respects for meriting priority status under section 1171(b).

REPLY

3. In filing the Objection, the Trustee satisfied his burden of refuting at least one of the allegations essential to the Asserted 1171(b) Claims' legal sufficiency. See In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992) (“[T]he objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim’s legal sufficiency.”). The burden thus reverted to the MN/NB Railways “to prove the validity of the claim by a preponderance of the evidence,” and “[t]he burden of persuasion is always on the claimant.” Allegheny, 954 F.2d at 174 (internal citations omitted). Moreover, when the claim at issue is asserted to be a priority claim (as opposed to a general unsecured claim), the claimant bears the burden of showing entitlement to priority status. In re Trentadue, 527 B.R. 328, 332 (Bankr. E.D. Wis.) *aff’d sub nom. Trentadue v. Gay*, 538 B.R. 770 (E.D. Wis. 2015).²

4. For the reasons set forth below, the MN/NB Railways have not met their burden of demonstrating that the Asserted 1171(b) Claims are entitled to priority status. As acknowledged in the Response, to merit priority status under Bankruptcy Code section 1171(b), a claim must, among other things, have been for *goods or services* that were *necessary operating expenses* provided *other than in reliance on the railroad’s general credit*. See Response, at 1-2 (a claim is entitled to priority status under Bankruptcy Code section 1171(b) if such claim “(1) represents a current operating expense *necessarily* incurred . . . and (3) the *goods or services* were delivered in the expectation that they would be paid for out of current operating revenues of the railroad, and *not in reliance on the road’s general credit*”) (citing In re Boston & Maine Corp., 634 F.2d 1359, 1378 (1st Cir. 1980)) (emphasis added).

² See also In re Micek, 473 B.R. 185, 188 (Bankr. E.D. Ky. 2012) (same); In re Clark, 441 B.R. 752, 755 (Bankr. M.D.N.C. 2011) (same); cf. In re PMC Mktg. Corp., 517 B.R. 386, 391 (B.A.P. 1st Cir. 2014) (“An administrative expense claimant bears the burden of establishing that its claim qualifies for priority status.”) (internal citations omitted).

5. The MN/NB Railways have failed to establish (and cannot establish) that (a) they relied on the Debtor's cash flow, (b) they provided goods or services to the Debtor, or (c) the obligations underlying the Asserted 1171(b) Claims were necessary operating expenses of the railroad, *each* of which is required for priority status under section 1171(b). The Asserted 1171(b) Claims should thus be disallowed and allowed only as general unsecured claims, subject to the Trustee's ability to contest the amount of such claims.³

A. The MN/NB Railways Cannot Demonstrate That They Relied on the Debtor's Cash Flow

6. As an initial matter, the MN/NB Railways have not refuted the Trustee's assertion that Wheeling had a security interest in the proceeds of the Debtor's receivables, which were the source of funding for payments to the MN/NB Railways. *See Resp.*, at 12. Indeed, the MN/NB Railways have *agreed* that Wheeling does have such a security interest. *See Stip.*, ¶ 3. And the MN/NB Railways have not refuted the Trustee's assertion that an unsecured creditor's "reliance" on a debtor's encumbered cash flow *requires* an extension of credit, as the unsecured creditor has no assurance that the encumbered cash flow will be used to satisfy its claims. *See Obj.*, ¶ 29; *Resp.*, at 12.⁴ The MN/NB Railways thus cannot reasonably argue that they relied solely on MMA's cash flow—they had no right to or control over the cash flow they claim to have relied upon, and yet they knew that Wheeling did.

7. Moreover, the parties' actual business arrangement betrays the fact that the MN/NB Railways did extend MMA credit. One of the benefits to participating in the ISS is that "originating" railroads are obligated to pay "receiving" railroads regardless of whether the

³ Since the filing of the Objection and the Response, the Trustee and MN/NB Railways have submitted to this Court the *Stipulations with Regard to Trustee's Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company Limited* [D.E. 1877] (the "Stipulation"). As set forth in the Stipulation, the MN/NB Railways have agreed to withdraw the Duplicate Claims. *See Stip.*, ¶ 1. The Trustee reserves all rights with respect to the Duplicate Claims should they not be timely withdrawn.

⁴ That MMA's *gross revenue* exceeded amounts actually paid to Wheeling is wholly irrelevant. *See Resp.*, 12. Indeed, if that were *not* the case, MMA would have been unable to service its secured debt, let alone pay its daily operating expenses.

shipper pays the originating railroad. In this way, the system affords receiving railroads credit risk protection against shippers in exchange for participants taking shipper credit risk when acting as the originating railroad. The MN/NB Railways opted out of the ISS—not, as they assert, because they “lacked resources to take on the responsibilities of a billing railroad.” *See Resp.*, at 9. Indeed, after the Derailment, the MN/NB Railways began billing customers directly. Their purported “lack of resources” excuse belied, the only logical reason for the MN/NB Railways to have opted out of ISS was to insulate themselves from the risks associated with acting as originating railroad. But in opting out of the risks attendant to ISS participation, the MN/NB Railways also opted out of the risk mitigation they would have enjoyed when acting as receiving railroads. The MN/NB Railways thus made the business decision to rely on MMA to remit the proceeds that the MN/NB Railways would have received directly through the ISS had they participated. In so doing, the MN/NB Railways necessarily took on MMA credit risk: *first*, the MN/NB Railways lacked dominion over MMA’s cash, and the receivables ultimately to be remitted to the MN/NB Railways were commingled with the rest of MMA’s receivables; and *second*, MMA could use the cash to pay other operating expenses in advance of paying the MN/NB Railways, and often did. The MN/NB Railways thus simply stood with other general unsecured creditor of MMA in terms of priority of payment.⁵

8. It may be true that the MN/NB Railways tried to mitigate the risk they took in extending MMA credit by arranging with their affiliate, the Irving Paper Companies (as defined in the Response), to withhold payment on MMA receivables until MMA agreed to pay the MN/NB Railways. Indeed, based on the deposition testimony of Karl Hansen, the evidence will show that those withheld payments acted, from a credit perspective, as “collateral” for the terms

⁵ In addition, by opting out of ISS, the MN/NB Railways knowingly placed themselves behind other receiving railroads in priority of payment—those receiving railroads who participated in ISS would receive their ISS charges before any was remitted to MMA, which remittance had to occur before any amount could be remitted to the MN/NB Railways.

of what the MN/NB Railways viewed as a secured credit relationship. *See* Trans., Dep. of K. Hansen (Nov, 19, 2015) (attached as Exhibit A, the “Hansen Dep. Tr.”), at 26:21-27:16 (answering in the affirmative the question: “So in essence, the amounts owed by the three Irving companies acted as collateral for the amounts that were owed by [] MMA to the [MN/NB Railways]?”). That credit risk mitigation tactic worked well for the MN/NB Railways while the Irving Paper Companies’ receivables were a meaningful component of MMA’s revenue. But when oil traffic increased, the proceeds MMA owed the MN/NB Railways for hauling oil surpassed the magnitude of the Irving Paper Companies’ receivables. Left with insufficient “collateral,” the MN/NB Railways were left—at best— with an undersecured credit relationship. *See* Hansen Dep. Tr. at 38:11-39:6 (answering in the affirmative to the question: “[Y]ou just didn’t have enough collateral to offset against the amounts that were owed?”). And like other similarly situated unsecured creditors who had extended credit terms to MMA, the MN/NB Railways were left with a claim against the estate on the Petition Date.

9. Both because the MN/NB Railways could not have reasonably relied solely on an encumbered cash flow and as demonstrated by the MN/NB Railways’ business relationship with MMA, the obligations underlying the Asserted 1171(b) Claims were incurred in connection with the MN/NB Railways’ extension of credit to MMA, and not in reliance on MMA’s cash flow. Indeed, because the MN/NB Railways relied on the collateral provided by the triangular setoff arrangement with their commonly controlled affiliates to secure payment, they did not rely on any aspect of MMA’s financial circumstances, much less its cash flow. This fact alone is sufficient to preclude the Asserted 1171(b) Claims’ entitlement to priority status under Bankruptcy Code section 1171(b).

B. The MN/NB Railways Cannot Establish That They Provided Goods or Services to the Debtor

10. In addition, the MN/NB Railways assert that the Asserted 1171(b) Claims arise from “freight *services* provided to the Debtor in connection with interline rail shipments,” Resp. at 2 (emphasis added). But as the MN/NB Railways have acknowledged, that is incorrect:

[o]ther than (i) \$1,952.27 claimed by NBSR for repair of cars owned or leased by MMA, and (ii) \$5,146.38 claimed by MNR for repair of cars owned or leased by MMA and inspection services provided by MNR, *the claims of the MN/NB Railways, if any, arose out of the actions described in paragraph 4 below.*

Stipulation, ¶ 2 (emphasis added; capitalized terms as defined in the Stipulation). Paragraph 4 of the Stipulation provides, in pertinent part:

By agreement with the MN/NB Railways, *MMA acted as the billing railroad when either MNR or NBSR originated traffic and interchanged with MMA, as well as when MMA originated traffic and interchanged with either of the MN/NB Railways*, because neither of the MN/NB Railways participated in ISS. *MMA also collected from the ISS freight revenue attributable to freight services provided by the MN/NB Railways in connection with shipments originated by other carriers that were interchanged by such carriers with MMA, and by MMA with the MN/NB Railways.*

Stipulation, ¶ 4. Accordingly, the Asserted 1171(b) Claims originate from MMA’s collection of receivables from customers or the ISS when (a) MMA originated a shipment that passed over the MN/NB Railways’ tracks, (b) the MN/NB Railways originated a shipment that passed over MMA’s tracks, or (c) a third party railroad originated a shipment that passed over the MN/NB Railways’ and/or MMA’s tracks.

11. This “interchange” (i.e. permission, for a charge, to pass over one’s tracks) is simply not a good or a service. The paradigms of goods and services include supplies (such as fuel), equipment (such as locomotive parts) and improvements (such as mechanics’ repair services). See Matter of B & W Enters., Inc., 19 B.R. 421, 424 (Bankr. D. Idaho 1982) (explaining the “six month rule” as a “principle [that] allowed a court to authorize . . . payment

of certain unsecured debts for labor, supplies, equipment or improvements from post-receivership earnings”). In this interchange system, the MN/NB Railways were simply adhering to applicable law, which required them to permit other railroads to pass over their tracks for a fee, and MMA collected fees incurred by the MN/NB Railways and remitted such fees to them. *See* Stip., ¶ 4. In this way, the MN/NB Railways were in no different a position with respect to MMA than the interline participant was to the debtor in Boston & Maine, even as described by the MN/NB Railways in the Response:

[T]he interlining railroads argued first that *all of the unpaid per diem charges that had accumulated since 1953 were entitled to priority because the Interstate Commerce Act required them to interline freight with the Boston & Maine*, and the refusal to accord priority status to their claims would deny them just and reasonable compensation for the compelled loan of freight cars to the debtor. *The First Circuit found that this was essentially the same argument made by the interlining railroads in Boston & Maine I and rejected it.*

See Response, at 6 (citing In re Boston & Maine Corp., 634 F. 2d 1359, 1362 (1st Cir. 1980)) (emphasis added). There is no meaningful legal distinction between “interline” claims accruing on account of legally mandated car or locomotive leasing, which the First Circuit determined *per se* are not entitled to section 1171(b) priority status, and “interchange” claims accruing on account of legally mandated track leasing. And “Congress, in enacting the Bankruptcy Code, expressly rejected a proposal that debtor railroads be required to pay interline balances[,] stating that *to do so would distort the central bankruptcy principle of equality of treatment of unsecured creditors.*” In re McLean Indus., Inc., 103 B.R. 424, 426-27 (Bankr. S.D.N.Y. 1989) (emphasis added and internal citations omitted). Thus, the Asserted 1171(b) Claims are *per se* not entitled to 1171(b) priority status, but in any event fail the test for “six month claims” because interchange charges are not goods or services provided to the Debtor.

C. **The MN/NB Railways Cannot Establish That the Interchange Charges Were Necessary Operating Expenses**

12. Finally, the interchange charges underlying the Asserted 1171(b) Claims were not necessary to MMA's operation. To merit priority status under Bankruptcy Code section 1171(b), the obligation underlying a claim must be necessary for the railroad's operation, Boston & Maine, 634 F.2d at 1378—*i.e.* something without which the railroad could not operate. But MMA *could* have operated absent incurring interchange charges to the MN/NB Railways: it could simply have chosen another route to its destination. The Asserted 1171(b) Claims thus also fail the “necessity” test for meriting priority status under section 1171(b).

CONCLUSION

WHEREFORE, for the reasons set forth herein and in the Objection, the Trustee requests that the Court enter an order: (i) sustaining the Objection; (ii) disallowing the Asserted 1171(b) Claims and allowing such claims only as general unsecured claims against the Debtor (subject to the rights reserved in the Objection); and (iii) granting such other and further relief as may be just.

Dated: November 20, 2015

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

By his attorneys:

/s/ Lindsay K. Zahradka

Sam Anderson
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

IN RE:)
MONTREAL MAINE & ATLANTIC) Chapter 11
RAILWAY, LTD.,) Case No. 13-10670
Debtor.)

DEPOSITION of KARL HANSEN, taken pursuant to agreement, at the law offices of Bernstein Shur, at 100 Middle Street, Portland, Maine, on November 19, 2015, commencing at 4:07 p.m., before Claudette G. Mason, RMR, CRR, a Notary Public in and for the State of Maine.

APPEARANCES:

For New Brunswick Southern Railway Company, Limited, and Maine Northern Railway Company:

ALAN R. LEPENE, ESQ.

For the Debtor, Montreal, Maine & Atlantic Railway, Ltd.:

ROBERT J. KEACH, ESQ.
LINDSAY K. ZAHRADKA, ESQ.

Also Present: Frederick Caruso

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(Deposition Exhibit No. 1 was marked.)
KARL HANSEN, having been duly sworn by the Notary Public, was examined and deposed as follows:
EXAMINATION
BY MR. KEACH:
Q. Good afternoon, Mr. Hansen.
A. Hi there.
Q. My name is Bob Keach, as you probably know. I'm the Trustee for Montreal, Maine & Atlantic Railway, Limited. My firm is also counsel for the Trustee.
And this is a deposition in connection with the Trustee's objections to claims of two entities, New Brunswick Southern Railway Company, Limited, and Maine Northern Railway Company.
Let me first ask you by whom are you employed?
A. **J.D. Irving, Limited.**
Q. And what is J.D. Irving, Limited's relationship to New Brunswick Southern Railway Company, Limited?
A. **They own it.**
Q. J.D. Irving, Limited, is --
A. **Is the parent company.**

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Deponent: KARL HANSEN

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1 Q. -- the parent company?
2 A. **Yes.**
3 Q. 100 percent of the stock of New Brunswick Southern?
4 A. **Yes.**
5 Q. And is J.D. Irving, Limited, also the parent of Maine Northern Railway Company?
6 A. **Yes.**
7 Q. 100 percent of the stock?
8 A. **Yes.**
9 Q. Are you otherwise an officer of either New Brunswick Southern or Maine Northern?
10 A. **Yes.**
11 Q. Are you otherwise an officer of either New Brunswick Southern or Maine Northern?
12 A. **Well, I don't know. I don't classify myself as an officer.**
13 Q. Okay. Are you employed by other of the railways?
14 A. **No. I'm employed by J.D. Irving.**
15 Q. Okay. In connection with your -- well, let me back up for a second.
What's your title with J.D. Irving, Limited?
16 A. **I'm the general manager of corporate credit and finance for J.D. Irving, Limited.**
17 Q. And just generally speaking, would you describe the -- your tasks as the general manager of corporate credit and finance of J.D. Irving?
What is it that you do for them specifically?

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1 **A. I set all the credit terms for all of the Irving**
2 **companies. I set all the policy. All the people**
3 **that are involved in the granting of credit and**
4 **the collections all report to me for all of the**
5 **Irving companies. So basically that's what I do.**
6 **Q.** Just so that we're clear, because all of the
7 Irving companies encompasses a lot of companies;
8 and I know that there appear to be three silos of
9 Irving companies --
10 **A. Yes.**
11 **Q.** -- and I want to make sure that we stay in the
12 right silo.
13 **A. Okay.**
14 **Q.** When you say the Irving companies, I assume
15 you're referring to J.D. Irving, Limited.
16 Correct?
17 **A. Yes.**
18 **Q.** New Brunswick Southern Railway?
19 **A. Yes.**
20 **Q.** Maine Northern Railway?
21 **A. Yes.**
22 **Q.** Irving Pulp and Paper, Limited?
23 **A. Yes.**
24 **Q.** Irving Paper, Limited?
25 **A. Yes.**

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1 deposition taken?
2 **A. Once.**
3 **Q.** Okay. So you understand a little bit about the
4 process?
5 Yes?
6 **A. Yes.**
7 **Q.** Okay. Just so we'll understand how this is going
8 to go, I'm going to ask you a series of
9 questions. You are under oath, of course. I'm
10 going to suggest that when I ask you a question,
11 you pause for a second before you answer it just
12 to make sure I'm done. And then you answer my
13 question. That will make sure this woman next to
14 us gets a very clear record. If we talk over
15 each other, that won't happen.
16 **A. Okay.**
17 **Q.** Can we operate on that understanding?
18 **A. Certainly.**
19 **Q.** I'm going to, as I said, ask you a series of
20 questions. If at any point in time you don't
21 understand one of my questions or you want me to
22 clarify it, please ask me to do so. If I
23 don't -- if you don't ask me to clarify it or ask
24 me to restate it, we're going to operate on the
25 presumption that you understand the question.

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1 **Q.** Am I leaving anybody out of that particular silo?
2 Are there others that --
3 **A. Oh, there are numerous other companies; but**
4 **you're on the right path.**
5 **Q.** Do you -- do your duties encompass any work for
6 Irving Oil?
7 **A. No. Separate company.**
8 **Q.** Okay. Let's just start -- now that we have kind
9 of gotten the preliminaries out of the way, let
10 me just start with a few ground rules.
11 **A. Sure.**
12 **Q.** First, let me ask you; have you had your
13 deposition taken before?
14 **A. Yes.**
15 **Q.** Okay. How long ago was that?
16 THE DEPONENT: With you fellows. How
17 long ago was that?
18 **A. It was down in Bangor.**
19 **Q.** Within the last year, two years?
20 **A. I don't know.**
21 THE DEPONENT: Do you --
22 MR. LEPENE: No. Go ahead. Just answer
23 to the best of your knowledge.
24 **A. Within the last two years.**
25 **Q.** Roughly how many times have you had your

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1 Can we operate on that basis?
2 **A. Yes.**
3 **Q.** Similarly, if you don't hear the question clearly
4 and you need to have me restate it, speak up. If
5 I don't hear from you in that respect, we're
6 going to operate on the understanding that you
7 have heard it correctly.
8 **A. Correct.**
9 **Q.** So we can operate on that basis as well?
10 **A. Yes.**
11 **Q.** Your attorney, who is a very capable attorney,
12 will object from time to time to the form of my
13 questions, notwithstanding my effort to make them
14 perfect. Unless he instructs you not to answer,
15 you understand that you have to answer that
16 question. Correct?
17 **A. That is correct.**
18 **Q.** Okay. And let me just ask you if you're feeling
19 okay today?
20 **A. Yeah.**
21 **Q.** Physically, I mean? Are you feeling well?
22 **A. Yes.**
23 **Q.** I know you're in a deposition, so it's not the
24 best thing in the world. But --
25 **A. No, I'm fine.**

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1 Q. Are you on any medication of any kind?
 2 A. **Just cholesterol --**
 3 Q. Okay.
 4 A. **-- stuff.**
 5 Q. I sympathize.
 6 A. **Yes.**
 7 Q. But nothing that's affecting your ability to hear
 8 questions, think clearly?
 9 A. **Absolutely not.**
 10 Q. Okay. Thank you.
 11 All right. Mr. Hansen, I'm going to show you
 12 what we have marked as Hansen Exhibit 1. And
 13 with this -- one more ground rule. With this and
 14 all other documents I put in front of you, please
 15 take as much time as you need to look at the
 16 document. I'm generally going to ask you to
 17 identify the document, and I'm going to ask you a
 18 series of questions about it. So please take as
 19 much time as you need because when you start
 20 answering questions about a document, we're
 21 going to presume that you have had enough time to
 22 read it and understand it. Can we operate on
 23 that basis?
 24 A. **Correct.**
 25 Q. Okay. Can you identify Hansen Exhibit 1 for the
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1 A. **We were providing the hauling of -- of their**
 2 **freight on our rail lines. We interconnected**
 3 **with them at various junctions along the way.**
 4 **And this \$1.5 million represents moneys that are**
 5 **owed to our railway company as a result of moving**
 6 **that freight.**
 7 Q. All right. And just so that I'm clear, these
 8 were MMA trains moving over tracks owned by
 9 NBSR?
 10 A. **They were their cars, our engine. When they hit**
 11 **our rail line, then our -- our engine picks up**
 12 **their cars and delivers it through our rail**
 13 **lines.**
 14 Q. Until you get to the end of your rail lines?
 15 A. **Right.**
 16 Q. And then --
 17 A. **It's either at the customer or another railway.**
 18 Q. All right. So if your -- if the customer wasn't
 19 on your rail lines as a destination, your
 20 locomotives brought MMA's cars to the end of your
 21 tracks; and then there would be another
 22 interchange. Correct?
 23 A. **Right. If that was the case, yes.**
 24 Q. Or it would be the customer?
 25 A. **Yes.**
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1 record?
 2 A. **Yes. It's a -- it's a declaration of myself,**
 3 **Karl Hansen.**
 4 Q. Okay. And you understand -- you used the word
 5 declaration, which is the title of the document.
 6 You understand this was a document that you
 7 signed under oath. Correct?
 8 A. **That is correct.**
 9 Q. I'm going to ask you to turn to paragraph 8,
 10 which is on page 4.
 11 A. **Paragraph 8. Seven -- oh, here, 8. Okay.**
 12 Q. And just go to the last sentence in paragraph 8.
 13 Do you see that; it begins with "Of the total
 14 amount"?
 15 A. **Of the total amount -- yes.**
 16 Q. So it says here, "The total amount of NBSR's
 17 claim against MMA as set forth in its Proof of
 18 Claim, \$1,561,623.14 is owed for freight services
 19 provided to MMA within six months prior to the
 20 commencement of MMA's bankruptcy in connection
 21 with the oil shipments." Do you see that?
 22 A. **Yes.**
 23 Q. Let me start with what do you mean there when you
 24 say freight services? What services did NBSR
 25 provide to MMA?
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1 Q. Okay. So other than the use of your locomotives
 2 and the travel over your track, what other
 3 services did you provide?
 4 A. **None that I'm aware of.**
 5 Q. Okay. Was it always the case that your
 6 locomotives were used, or was there a situation
 7 where MMA locomotives would pull MMA cars over
 8 your track?
 9 A. **That I can't answer. I don't know.**
 10 Q. But of the 1,561,623.14 that's mentioned in
 11 paragraph 8, all of that is for those two
 12 services you just mentioned?
 13 A. **Yes.**
 14 Q. With respect to -- with respect to the amounts
 15 owed to Maine Northern or alleged to be owed to
 16 Maine Northern, were those for the same kind of
 17 services?
 18 MR. LEPENE: Are you referring to
 19 something in the declaration?
 20 MR. KEACH: No. I'm just asking him
 21 generally what he remembers.
 22 A. **I -- I'm not equipped to answer that question.**
 23 Q. Okay.
 24 MR. KEACH: Would you mark that.
 25 (Deposition Exhibit No. 2 was marked.)
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1 BY MR. KEACH:
2 **Q.** Here, Mr. Hansen. I'll give you your own copy.
3 **A. Okay.**
4 **Q.** Mr. Hansen, I'm going to show you what we have
5 marked as Hansen Exhibit 2 and ask if you can
6 identify that for the record.
7 **A. It looks like it's a Proof of Claim submitted**
8 **by --**
9 **Q.** I think your answer is on the first page.
10 **A. Is it?**
11 **Q.** Third -- fourth box down.
12 **A. Right. Submitted by Maine Northern Railway**
13 **Company, Limited.**
14 **Q.** And with respect to the question I just asked
15 you -- and I'll ask it again so that it's
16 clear -- can you look at the Proof of Claim and
17 just see what the claim is for?
18 MR. LEPENE: Do you want to refer him to
19 a specific section of the Proof of Claim?
20 MR. KEACH: Not just yet, but I'll get
21 there if we need to. Thank you.
22 MR. LEPENE: Mr. Hansen, if you want to
23 just take your time and review --
24 BY MR. KEACH:
25 **Q.** Yes. And please take your time.
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1 refers to?
2 **A. No, I do not.**
3 **Q.** Okay. Do you know if it refers to just rolling
4 over your track?
5 **A. I have no idea.**
6 **Q.** Okay. And then there's a category called
7 services related to rail line inspections. Do
8 you know what that is?
9 **A. I do not.**
10 **Q.** Do you know whether or not you ever performed any
11 rail line inspections for MMA?
12 **A. I wouldn't know that.**
13 (Deposition Exhibit No. 3 was marked.)
14 BY MR. KEACH:
15 **Q.** And, again, Mr. Hansen, I'm going to show you
16 what we have marked for identification as Hansen
17 Exhibit A -- 3, excuse me.
18 **A. Yes.**
19 **Q.** And, again, as your counsel wisely instructed
20 you, I want you to take as much time as you need
21 to to look this over so that, one, you can
22 identify it and, two, I can ask you a series of
23 questions about it.
24 And you let me know when you're ready.
25 **A. Okay.**
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1 MR. LEPENE: Review each page of the
2 Proof of Claim before answering that. I'm
3 not sure you have looked at each page.
4 **A. Well, first of all, I want to know -- I forget**
5 **what the question was. What's the question?**
6 **Q.** Well, let me start -- let me take this a little
7 bit at a time. Why don't you go to attachment A.
8 **A. Attachment A.**
9 **Q.** Yes. Which is page 4 of 7, if you go by the
10 stamp at the top.
11 **A. Okay.**
12 **Q.** Okay. And it says the basis of this claim is
13 three categories of things. Right?
14 The first is freight services provided to the
15 Debtor -- that would be MMA -- in connection with
16 interline rail shipments. Were those the kinds
17 of services that you just described when you were
18 referring to your declaration?
19 **A. That is correct.**
20 **Q.** Okay. And if you look at the third category, it
21 says amounts owed to Creditor -- that would be
22 you -- for use of trackage rights pursuant to a
23 Trackage Rights Agreement, Millinocket and
24 Madawaska, Maine, dated June 1, 2011. Right?
25 Do you know what use of trackage rights
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1 **Q.** Looking at the first page of Exhibit 3, it's the
2 box numbered 2 about the middle of the page,
3 where it says Basis For Claim, do you see that?
4 **A. The box No. 2, Basis For Claim, yes.**
5 **Q.** Okay. Do you see that?
6 It says, "Freight services provided to the
7 Debtor in connection with interline rail
8 shipments." Do you see that?
9 **A. Yes.**
10 **Q.** And, again, are those rail shipments the same two
11 kinds of services you described, use of
12 locomotives to the pull the cars over your lines
13 and travel over your lines?
14 **A. To my knowledge, yes.**
15 **Q.** And there are no other services to your
16 knowledge?
17 **A. Not to my knowledge.**
18 **Q.** Mr. Hansen, do you know if either Maine Northern
19 or New Brunswick Southern have the right to
20 refuse another railroad who wanted to travel over
21 their track to another destination?
22 **A. I would have no idea of that.**
23 **Q.** You don't know whether or not you had the legal
24 right to stop somebody from using your track?
25 **A. I have no knowledge of that.**
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1 Q. Who within your organization would be
 2 knowledgeable about that?
 3 A. **The general manager of NB Southern Railways, Ian**
 4 **Simpson.**
 5 Q. Okay. Who else within your organization would
 6 know that to your knowledge?
 7 A. **More than likely our lawyers.**
 8 Q. So outside of your lawyers and Mr. Simpson, is
 9 there anybody else?
 10 A. **There may be. I don't know.**
 11 Q. I'm not going to depose Mr. Lepene tonight.
 12 A. **Yes.**
 13 **I really don't know.**
 14 Q. Okay.
 15 (Deposition Exhibit No. 4 was marked.)
 16 BY MR. KEACH:
 17 Q. Mr. Hansen, I'm going to show you what we have
 18 marked for identification as Hansen Exhibit 4.
 19 And it's a document of some considerable length,
 20 so I would ask you to take your time; and you let
 21 me know when you're ready to answer questions
 22 about it.
 23 MR. LEPENE: Do you want him to read the
 24 whole document?
 25 MR. KEACH: I want him to look at it
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1 A. **Yes.**
 2 Q. And is there any relationship between Eastern
 3 Maine and New Brunswick?
 4 A. **They're sister companies.**
 5 Q. Is Eastern Maine Railway still known as Eastern
 6 Maine Railway?
 7 A. **Yes.**
 8 Q. So Eastern Maine Railway is also owned 100
 9 percent by Irving?
 10 A. **Yes.**
 11 Q. And with respect to the credit terms between
 12 Montreal, Maine & Atlantic and either Eastern or
 13 New Brunswick Southern Railway Company --
 14 A. **Yes.**
 15 Q. -- do you understand that this document governs
 16 those terms?
 17 A. **That is correct.**
 18 Q. I'm going to show you again -- and you can grab
 19 Exhibit 3 again.
 20 A. **Okay.**
 21 Q. And I'm going to ask you to turn to page 5 of 6.
 22 A. **Okay.**
 23 Q. And under No. -- do you see there's some text
 24 under the No. ??
 25 A. **Yes.**
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1 enough that he's familiar with it enough to
 2 answer questions. So if he needs to read the
 3 whole document, I have all night.
 4 MR. LEPENE: Take your time, Karl.
 5 A. **Okay.**
 6 Q. Let me just first ask if you have seen this
 7 document before?
 8 A. **I have seen the first document here up until**
 9 **page -- page 8, 9. The next one I'm not familiar**
 10 **with.**
 11 Q. So the commercial -- the document labeled
 12 Commercial Agreement up to the point where it
 13 says Exhibit A, you have seen that document?
 14 A. **Yes.**
 15 Q. You haven't seen the rest of it?
 16 A. **Correct.**
 17 Q. Do you understand that this was among the
 18 documents that governed the relationship between
 19 Montreal, Maine & Atlantic Railway and New
 20 Brunswick Southern Railway Company?
 21 A. **That's correct.**
 22 Q. And one of the other parties here is Eastern
 23 Maine Railway. Do you see that?
 24 A. **Yes.**
 25 Q. Are you familiar with that entity?
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1 Q. And there is a reference to the Commercial
 2 Agreement dated January 9, 2003. Do you see
 3 that?
 4 Next to the number 1.
 5 A. **Under 1 up there, yes.**
 6 Q. And is that this agreement, i.e., Exhibit 4?
 7 A. **That's correct.**
 8 Q. Okay. And then there are five other documents
 9 listed under that with -- next to those little
 10 dots. Correct?
 11 A. **Correct.**
 12 Q. And they are the Interchange Agreement, which
 13 appears to be Exhibit A to Exhibit No. 4; is that
 14 correct?
 15 A. **Exhibit A, yes, okay.**
 16 Q. You -- is there any reason for you to believe
 17 that isn't the same Interchange Agreement that's
 18 referred to in Exhibit 3?
 19 A. **No. I presume it would be the same, yes.**
 20 Q. And then the next page after -- after the
 21 Interchange Agreement is a document called
 22 Exhibit B, NBSR/MMA haulage rates. Do you see
 23 that?
 24 It's that one you just passed.
 25 A. **This thing?**
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1 Q. Yes.

2 A. **Okay. I see it.**

3 Q. Does it say, Exhibit B, NBSR/MMA haulage rates?

4 A. **Yes.**

5 Q. Okay. Is that the same as the EMR/NBS haulage

6 rates that's referred to on the Proof of Claim,

7 Exhibit 3?

8 A. **I would say so, yes.**

9 Q. And then the next -- if you will flip one page,

10 do you see a document called Blocking Agreement?

11 A. **Yes.**

12 Q. Is that the same agreement that's referred to in

13 the Proof of Claim?

14 A. **I would say so.**

15 Q. And then there's a Rate Agreements form. I think

16 it's Exhibit D on that document. It looks like

17 it's installed sideways.

18 And do you assume that that's the same Rate

19 Agreements form that's referred to in the Proof

20 of Claim?

21 A. **It's blank. Is that --**

22 Q. Go back to the next page. It says -- yes, it's

23 blank; but I think it's just a form. It says,

24 Contract and Rate Quotation Documentation &

25 Approval?

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1 Q. Do you see that?

2 A. **Yes.**

3 Q. Is that your understanding of the credit terms?

4 A. **Yes.**

5 Q. Are you familiar with there being any other

6 credit terms anywhere else that govern the

7 relationship?

8 MR. LEPENE: Are you asking -- are you

9 asking at this particular time when this

10 agreement was executed or whether something

11 was entered into subsequently?

12 Could you just clarify it in terms of

13 time frame.

14 MR. KEACH: Sure.

15 I assume that's an objection to form.

16 Right?

17 MR. LEPENE: Yes.

18 BY MR. KEACH:

19 Q. The -- let's just start was that your

20 understanding of the credit terms prevailing at

21 the time this document was entered into, that 21

22 days credit?

23 A. **I don't know how to answer that.**

24 Q. Truthfully, I hope.

25 A. **Well --**

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1 A. **Okay.**

2 Q. Have you seen that document before?

3 A. **No.**

4 Q. Is that a document that you're familiar with the

5 use of?

6 A. **No.**

7 Q. Have you ever seen this document in a completed

8 form anywhere?

9 A. **No.**

10 Q. Flip to the next page, and then there is a

11 reference to contracts and Rate Agreements. Do

12 you know what that refers to?

13 A. **Where is that?**

14 Q. On the Proof of Claim, the next dot.

15 A. **Okay. I have no idea what that is.**

16 Q. Okay. Going back to Exhibit 4 -- that one,

17 yes -- if you go to -- let's just flip forward.

18 In Exhibit A, and go to page 6, paragraph 13.

19 A. **Of Exhibit A?**

20 Q. Yes.

21 A. **Page 6. Paragraph 13. Yes.**

22 Q. It says, "All payments called for under this

23 agreement shall be made by either party within 21

24 days after receipt of bills therefore."

25 A. **Yes.**

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1 MR. LEPENE: Of course.

2 A. **-- naturally.**

3 **I was aware that the terms of this contract**

4 **said 21 day terms.**

5 Q. Okay.

6 A. **My concern was one of credit risk. I was not**

7 **prepared to take credit risk on MMA. So --**

8 Q. I understand. It's better if you just answer the

9 questions that I'm asking.

10 A. **I understand the document says credit terms of 21**

11 **days. I understand that.**

12 Q. And you understood that to be the prevailing

13 document. Correct?

14 A. **Yes.**

15 Q. Okay. Was there a time when the credit terms

16 changed?

17 A. **Yes.**

18 Q. All right. When was that?

19 A. **Immediately after -- at the commencement of**

20 **business with MMA, I made it clear to everybody,**

21 **our side and their side, that I was not prepared**

22 **to take a credit risk with the railway. So**

23 **that's when we entered into an agreement with MMA**

24 **where we would do what I call swaps.**

25 Q. Okay. And do you recall when that was

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1 specifically?

2 **A. Yes. That was in January of 2003.**

3 **Q.** Is there a -- is there a writing somewhere that

4 sets forth the agreement to do what you referred

5 to as the swaps?

6 **A. We have e-mails exchanging back and forth in**

7 **reference to the arrangement.**

8 **Q.** And other than those e-mails, are you aware of

9 any other writings anywhere that set forth those

10 credit terms?

11 **A. I'm not aware of any other other than the**

12 **e-mails.**

13 **Q.** Okay. Describe for me this arrangement you're

14 referring to that you called the swaps.

15 **A. Three of our companies, Irving Paper, Irving Pulp**

16 **and Paper, J.D. Irving Sawmills, were hiring MMA**

17 **to move our products for sale. So these three**

18 **Irving companies continually owed MMA for freight**

19 **services. At the same time, NB Southern was**

20 **hauling that freight along our rail lines. So**

21 **MMA would owe them money for that haulage. So I**

22 **had Irving Paper, Irving Pulp and Paper, and J.D.**

23 **Irving Sawmills give me the money that was owed**

24 **to MMA, and I released that money to MMA for them**

25 **releasing the money to NB Southern that they owed**

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1 **A. That's correct.**

2 MR. LEPENE: You can answer.

3 BY MR. KEACH:

4 **Q.** He can object as to form.

5 **A. Yes.**

6 **Q.** Your answer is yes?

7 **A. Yes. That's what I was doing. I was ensuring**

8 **that I had collateral in the event something**

9 **happened that I -- yes.**

10 **Q.** Okay. And if MMA didn't pay you, you would have

11 just taken that collateral?

12 **A. Yes.**

13 MR. LEPENE: Objection as to form.

14 BY MR. KEACH:

15 **Q.** Like a bank?

16 **A. Yes.**

17 (Discussion off the record.)

18 BY MR. KEACH:

19 **Q.** Now, in your declaration, Mr. Hansen, you

20 described that collateral arrangement worked

21 until such time as MMA began to engage

22 extensively in the hauling of oil. Is that

23 correct?

24 **A. That is correct.**

25 MR. LEPENE: Objection as to form.

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1 **NB Southern.**

2 **Q.** And that's because in your position with the

3 parent, you controlled all of those entities.

4 Correct?

5 **A. That is correct.**

6 **Q.** And what would you have done with the money

7 that was owed by the three Irving companies to

8 MMA if MMA had not turned over to you the money

9 you thought MMA owed the Irving -- the two

10 railways?

11 **A. I wouldn't turn the money over to them.**

12 **Q.** You would have kept the checks?

13 **A. Yes.**

14 **Well, they weren't checks. They were wire**

15 **transfers.**

16 **Q.** But you would have withheld the wires?

17 **A. I would have withheld the wires, yes.**

18 **Q.** And you would have done so until payment was

19 made. Correct?

20 **A. Correct.**

21 **Q.** So in essence the amounts owed by the three

22 Irving companies acted as collateral for the

23 amounts that were owed by the MMA to the two

24 Irving railroads?

MR. LEPENE: Objection as to form.

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1 BY MR. KEACH:

2 **Q.** You can answer.

3 **A. That's correct.**

4 **Q.** And why was it that MMA's extensive hauling of

5 oil affected how the collateral arrangement

6 worked?

7 **A. Well, the transportation of oil, the value of the**

8 **freight was quite high, very excessive. And the**

9 **moneys that they would owe NB Southern at times**

10 **was, like, you know, three, \$400,000 a week.**

11 **Q.** The amount that -- just so we're clear, the

12 amount that MMA owed NB Southern?

13 **A. The amount that MMA would owe NB Southern --**

14 **Q.** Right.

15 **A. -- was three to \$400,000 almost, like, a week.**

16 **And --**

17 **Q.** And these were for the interline services

18 relating to the hauling of the oil?

19 **A. Right.**

20 **Q.** Okay.

21 **A. And they did not have the capacity to pay that.**

22 **And I didn't have the capacity on what we were**

23 **shipping in a normal course of doing business to**

24 **accumulate that kind of money. So obviously we**

25 **were heading for a problem.**

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1 Q. All right. And so -- just so that we understand
 2 the way the oil shipment payments worked, you
 3 understand that with respect to the oil shipments
 4 that MMA hauled, that Canadian Pacific Railway
 5 was the originating railroad. Right?
 6 A. Yes.
 7 Q. And if I -- and we'll talk about what ISS is in a
 8 second. But in ISS terms they were also the
 9 billing railroad. Right?
 10 A. Yes.
 11 Q. Okay. And so when MMA, as one of the receiving
 12 railroads from CP, hauled over your track, MMA
 13 was owed money by CP. Correct?
 14 A. Correct.
 15 Q. Because -- well, let's back up one step. So for
 16 all of those things, for those shipments by --
 17 that originated by CP, CP would have collected
 18 from the eventual customer on that shipment.
 19 Correct?
 20 A. That is correct.
 21 Q. Okay. And often that customer was Irving Oil.
 22 Correct?
 23 A. Could be. I don't know.
 24 Q. Okay. But CP collected that through the
 25 interline system, through the ISS system.

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1 A. Yes. As far as I know.
 2 Q. All right. So when you say that they weren't
 3 able to pay you, what you really mean is you
 4 didn't want to wait for CP to pay MMA before MMA
 5 paid you because you were concerned about the
 6 size of the amount that MMA owed you for those
 7 shipments?
 8 A. I was concerned of the credit risk, and I wasn't
 9 prepared to take the credit risk.
 10 Q. You -- were you worried about Canadian Pacific's
 11 credit?
 12 A. No.
 13 Q. Okay.
 14 A. But they're not my customer.
 15 Q. But you did understand that CP was the one paying
 16 for it. Right?
 17 A. It makes no difference. My customer is MMA.
 18 Q. Okay. Again, let's --
 19 A. They're the ones that owe me the money.
 20 Q. Let's just answer my questions first. Okay?
 21 MR. LEPENE: I think he is answering.
 22 MR. KEACH: Well, actually he's not.
 23 BY MR. KEACH:
 24 Q. But you didn't understand -- did you understand
 25 at the time that the party -- that the party

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1 Correct?
 2 A. Correct.
 3 Q. And when you say that MMA couldn't pay NBSR or
 4 Maine Northern for the interline services related
 5 to those shipments, was that because they were
 6 waiting to get their money from CP through the
 7 interline system?
 8 A. Yeah.
 9 Q. Yes?
 10 A. Yes.
 11 Q. And the payments that CP was making through the
 12 interline system, as far as you know, were timely
 13 in terms of the way that system operates?
 14 A. At that time I didn't know. At that time I
 15 didn't -- never heard tell of ISS --
 16 Q. Okay.
 17 A. -- at that stage.
 18 Q. And we'll get to that in a second.
 19 A. Yes.
 20 Q. But you have no reason to understand that CP
 21 was -- that Canadian Pacific was paying late
 22 under the ISS system?
 23 A. I have no knowledge of that.
 24 Q. As far as you know, they were paying on time.
 25 MMA was getting paid on time. Correct?

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1 collecting from the customer and responsible for
 2 paying money to MMA, which would in turn be paid
 3 to you, was Canadian Pacific?
 4 A. At the time of when all this came up, no; I had
 5 no idea who the players were. All I knew the
 6 players on our side was MMA.
 7 Q. Okay. When did you first become aware that it
 8 was Canadian Pacific that was actually liable for
 9 these payments?
 10 A. Well --
 11 MR. LEPENE: I'm going to object as to
 12 form. Liable for what payments?
 13 MR. KEACH: You can object as to form.
 14 You can't explain why.
 15 A. Well, I would say that CP are not liable for
 16 moneys owed to NB Southern.
 17 Q. When did you become aware that CP was the party
 18 who was liable for the payment to MMA for those
 19 shipments?
 20 A. July of 2012.
 21 Q. Not before?
 22 A. Not before.
 23 Q. Okay. I want to just explore this relationship
 24 with MMA a little bit. MMA was -- participated
 25 in ISS. Correct?

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1 **A. They were participating in what?**
 2 **Q.** They were a participant in ISS, in the interline
 3 system.
 4 **A. Okay.**
 5 **Q.** Right?
 6 **A. That is correct, yes.**
 7 **Q.** What is -- I mean, just for the record, what do
 8 you understand ISS to be?
 9 **A. ISS is a clearing house for receivables, payables**
 10 **between rail lines.**
 11 **Q.** And so to take our oil shipment example -- and
 12 you correct me if I'm wrong -- the way ISS
 13 works -- and let's just assume that the shipment
 14 involved Canadian Pacific, MMA, and NBSR. All
 15 right?
 16 If Canadian Pacific originated -- under the
 17 ISS system, if Canadian Pacific originated the
 18 shipment and was responsible for the shipment to
 19 the customer, right, so they were the carrier on
 20 the through bill of lading so to speak, even
 21 though that train passed over MMA's tracks and
 22 over NBSR's tracks, and there were interchange
 23 services provided by both MMA and NBSR, Canadian
 24 Pacific had the responsibility for paying --
 25 again, assuming you were also a member of ISS,

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1 **then retain what was owed them. They would remit**
 2 **the difference to the ISS, and the ISS were**
 3 **responsible to pay MMA for their share of the**
 4 **line plus NB Southern's share of the line. And**
 5 **NB Southern were to be paid by MMA.**
 6 **Q.** That's because NB Southern wasn't a member of
 7 ISS?
 8 **A. That's correct.**
 9 **Q.** My question asked you to assume that NB Southern
 10 was a member of ISS, but let's just take your
 11 example for a second. Under your example,
 12 what -- who would have been liable to pay MMA if
 13 CP's customer had not paid CP?
 14 **A. Say that again?**
 15 **Q.** Let's assume CP's customer didn't pay them.
 16 **A. Yes.**
 17 **Q.** All right. Would CP still have been liable to
 18 pay MMA under ISS?
 19 **A. Yes.**
 20 **Q.** And if NB Southern had been a member of ISS in
 21 the example I gave you and CP's customer didn't
 22 pay, CP still would have been liable to pay not
 23 only MMA, but MMA and NBSR. Correct?
 24 **A. Correct.**
 25 **Q.** And Maine Northern and New Brunswick Southern

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1 Canadian Pacific had the responsibility for
 2 paying MMA and NBSR. Correct?
 3 **A. Say --**
 4 **Q.** If you had all been members of the ISS, Canadian
 5 Pacific was responsible for paying MMA and NBSR
 6 under the example I just provided. Right?
 7 **A. Well, I don't see it that way.**
 8 **Q.** Okay.
 9 (There was an interruption.)
 10 BY MR. KEACH:
 11 **Q.** So you don't understand that under ISS the
 12 originating carrier is responsible for paying all
 13 of the interline carriers along the way?
 14 **A. The way I understood it, using your example, CP**
 15 **would be the originating carrier. He would**
 16 **transport through his facilities or his trains,**
 17 **his tracks to a certain point. He would then**
 18 **off-load that onto MMA. MMA would pick it up and**
 19 **take it through to where he hooks up to the**
 20 **Irving rail lines. Irving rail lines would pick**
 21 **it up and deliver it to the end customer --**
 22 **Q.** Right.
 23 **A. -- wherever in St. John.**
 24 **Now, payment. The way I understand it is CP**
 25 **would collect from their customer. They would**

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1 Railway were not members of ISS. Correct?
 2 **A. That is correct.**
 3 **Q.** You did not participate in the ISS system?
 4 **A. That is correct.**
 5 **Q.** Okay. Why not?
 6 **A. Well, NB Southern and our other rail lines, a**
 7 **couple of them aren't very big. They're very**
 8 **small. We are not set up administratively to**
 9 **take on that burden of becoming a billing**
 10 **carrier. We just didn't have the -- the**
 11 **administration or the ability to do it. So we**
 12 **never did become part of it.**
 13 **Q.** And you only had to be a billing carrier under
 14 ISS, as I understand it, if you were originating
 15 freight. Right?
 16 **A. Apparently, yes.**
 17 **Q.** Okay. Was -- were your railroads originating
 18 freight?
 19 **A. No.**
 20 **Q.** So you wouldn't have had any burden under ISS;
 21 you would have just collected under it?
 22 **A. Pardon me?**
 23 **Q.** You said you didn't want to take on the burden.
 24 **A. Right.**
 25 **Q.** But if you were never originating freight, what

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1 burden were you worried about?

2 **A. I don't know. I'm not an operational person.**

3 **All I know is we did -- we do not have the**

4 **capacity to become an ISS member.**

5 **Q.** And that's because you didn't want to be a

6 billing railroad; is that correct?

7 **A. Apparently. That's --**

8 **Q.** Well, when you say apparently, do you know or

9 not?

10 **A. I don't really know. All I'm telling you is what**

11 **I have been told over the years as to, you know,**

12 **why we're dealing with certain entities.**

13 **Q.** Who told you the reasons why Maine Northern and

14 New Brunswick Southern did not want to be part of

15 ISS?

16 **A. Ian Simpson --**

17 THE DEPONENT: Is that his name, Ian

18 Simpson?

19 **A. Yes.**

20 **Q.** Did anybody other than Mr. Simpson tell you that?

21 **A. No.**

22 **Q.** Do you know what Rule 11 is in railroad terms?

23 **A. No, I do not.**

24 **Q.** Have you ever heard that term?

25 **A. No, I haven't.**

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1 MR. LEPENE: Objection as to form.

2 BY MR. KEACH:

3 **Q.** Correct?

4 **A. Right.**

5 **Q.** Yes?

6 **A. Yes.**

7 **Q.** What did you do about that?

8 **A. Well, what we did about it was I got ahold of Ian**

9 **Simpson at the railway who was the general**

10 **manager and told him that I was uncomfortable and**

11 **that we could have a problem. He then got ahold**

12 **of the gentleman that ran MMA, and there was an**

13 **agreement between Ian Simpson and this fellow**

14 **that runs MMA that -- this is when this ISS thing**

15 **came up. That's the first time I became aware of**

16 **this ISS system -- that their moneys would be**

17 **paid into this ISS system.**

18 **Q.** Whose money?

19 **A. MMA's money.**

20 **Q.** Okay.

21 **A. And that that money would be released to them**

22 **monthly, usually the first of every month. And**

23 **MMA wanted to know if NB Southern would accept an**

24 **agreement whereby we would continue hauling the**

25 **freight if we were paid immediately after they**

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1 **Q.** Okay. Following the derailment at Lac-Mégantic,

2 did Maine Northern and New Brunswick Southern

3 begin to direct bill customers of the railroad?

4 **A. Not -- I don't know. I can't answer that**

5 **question. I don't know.**

6 **Q.** You don't know whether they did or they didn't?

7 **A. I don't know.**

8 **Q.** You don't know whether they exercised their

9 Rule 11 rights?

10 **A. I have no idea.**

11 **Q.** I want to go back to your -- you were discussing

12 the -- why the collateral system that you put in

13 place was strained by the fact of the oil

14 shipments. And you talked about the fact that

15 the oil shipments created such large freight

16 liabilities that the offsetting amounts that were

17 due MMA from the three Irving companies were not

18 big enough to provide effective collateral for

19 those amounts. Is that correct?

20 MR. LEPENE: Objection as to form.

21 **A. That is correct.**

22 **Q.** All right. So you -- bottom line is as the oil

23 shipments grew, you just didn't have enough

24 collateral to offset against the amounts that

25 were owed?

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1 **were paid by ISS.**

2 **So that scenario was brought to me by Ian**

3 **Simpson. I reviewed it, looked at it. The way I**

4 **understood the way ISS worked, it gave me comfort**

5 **that at least I know they're going to get their**

6 **money and that I was going to get my money**

7 **immediately thereafter. So I agreed to the**

8 **system.**

9 **Q.** Okay. And were you still also doing the check

10 swaps --

11 **A. Yes.**

12 **Q.** -- at the same time?

13 **A. Correct.**

14 **Q.** Now, going back to the -- what you understood

15 about the ISS, NBSR and Maine Northern were still

16 not participants in ISS. Correct?

17 **A. That is correct.**

18 **Q.** Was part of this agreement that MMA would not

19 only collect its own ISS payments, but also the

20 ones that would otherwise have been payable to

21 New Brunswick Southern and Maine Northern?

22 **A. Well, they would -- MMA would collect MMA's**

23 **portion. At the same time as their portion,**

24 **since we were not part of ISS, they would be**

25 **collecting our portion as well.**

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1 **Q.** Right. So to take my example of the CP rail
 2 shipment again, when CP paid into the ISS, MMA
 3 would get their share --
 4 **A. And --**
 5 **Q.** -- and would also get your share?
 6 **A. Correct.**
 7 **Q.** And then they would remit your share to you?
 8 **A. Correct.**
 9 **Q.** Okay. And at the same time you were still doing
 10 the check swap collateral system?
 11 **A. On the normal freight business, yes.**
 12 **Q.** And your understanding was through the
 13 combination of those things, you were
 14 comfortable?
 15 **A. Correct.**
 16 **Q.** Do you know how long it took from the time there
 17 was an oil shipment generating a liability under
 18 the ISS before CP was paying into the system on
 19 account of that shipment? Do you know what the
 20 lag time was?
 21 **A. I do not.**
 22 **Q.** Do you know it could have been as long as 60
 23 days?
 24 **A. I have no knowledge of that. It could have been.**
 25 **I don't know.**

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1 its affiliates that you do credit checks?
 2 **A. That's correct.**
 3 **Q.** Okay. Did you do a credit check with respect to
 4 MMA?
 5 **A. Yes, we did.**
 6 **Q.** All right. Can you describe what you did in
 7 connection with that credit check.
 8 **A. We -- we pulled a Dun & Bradstreet report.**
 9 **Q.** And did you do that once, or did you do that
 10 regularly?
 11 **A. Those come in automatically. Once we pull one,**
 12 **then they automatically come in every so often**
 13 **for updates or whatever.**
 14 **Q.** And did you get the complete Dun & Bradstreet
 15 report, the detailed version?
 16 **A. Yes.**
 17 **Q.** Okay. And the Dun & Bradstreet reports show what
 18 liens are on the assets of particular -- the
 19 party being reported on by Dun & Bradstreet.
 20 Correct?
 21 **A. That's correct.**
 22 **Q.** So you were aware that Wheeling and Lake Erie had
 23 a security interest in the assets of Montreal,
 24 Maine & Atlantic Railway. Correct?
 25 **A. It was on the report. Yes.**

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1 **Q.** But whatever that amount of time was, you were
 2 comfortable because the deal you had was that
 3 when the ISS payments got made, MMA would give
 4 you your share?
 5 **A. Correct.**
 6 **Q.** And on top of it, you had the extra comfort of
 7 your three-way collateral arrangement with your
 8 affiliates; correct?
 9 **A. Correct.**
 10 (Discussion off the record.)
 11 BY MR. KEACH:
 12 **Q.** Okay. Let's -- I'm going to get you out of here
 13 soon. Let's take about a five-minute break --
 14 **A. Okay.**
 15 **Q.** -- and we'll come back.
 16 MR. LEPENE: Sure.
 17 (A short recess was taken.)
 18 BY MR. KEACH:
 19 **Q.** Mr. Hansen, you testified that you were
 20 responsible for all credit and collection
 21 decisions with J.D. Irving; is that correct?
 22 **A. That's right.**
 23 **Q.** Not specific to MMA, but just in terms of general
 24 practice, is it your general practice with
 25 respect to potential customers of J.D. Irving and

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1 **Q.** And you would have been aware of that from the
 2 first time it showed up on the Dun & Bradstreet
 3 report until you stopped doing business with
 4 them. Correct?
 5 **A. It would be on the report, yes.**
 6 **Q.** Okay. Do you recall whether it was on the report
 7 or not?
 8 **A. When I reviewed the report, it was on there.**
 9 **Q.** All right. And the detailed Dun & Bradstreet
 10 report always shows liens on assets; doesn't it?
 11 **A. Pretty much, yes.**
 12 **Q.** Okay. Other than pulling the Dun & Bradstreet
 13 report, did you do anything else in connection
 14 with the credit check?
 15 **A. No. Because as I mentioned earlier, I wasn't --**
 16 **I was not prepared to grant unsecured more or**
 17 **less credit. So I wasn't looking at a Dun & Brad**
 18 **report to grant credit because as far as I was**
 19 **concerned, I was looking at it to see who these**
 20 **people were, how long they had been in business.**
 21 **They were a brand new outfit. Do the people**
 22 **running it know what they're doing?**
 23 **I'm assessing it from that perspective**
 24 **because in my mind I'm not granting credit. I'm**
 25 **going to do business, but it was going to be done**

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1 on a secured basis.

2 Q. Okay. So just so that we're clear --

3 A. Yes.

4 Q. -- you pulled the Dun & Bradstreet report. And

5 under your subscription with Dun & Bradstreet,

6 you get those regularly?

7 A. Correct.

8 Q. Do you know how often?

9 A. It changes.

10 Maybe once -- we get the -- one report; and

11 we may get another one a year later or six months

12 later.

13 It's not every month. It's whenever there

14 happens to be a change.

15 Q. Okay. But you have that set up to get it

16 automatically --

17 A. Yes.

18 Q. -- as changes occur?

19 A. Correct.

20 Q. All right. Other than the Dun & Bradstreet

21 report, did you get any other financial

22 information about MMA, including from MMA itself;

23 or did you just rely on the Dun & Bradstreet?

24 A. Well, no. Like, I knew who MMA were because we

25 were dealing with the company that they bought or

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1

2

3 _____
KARL HANSEN

4 Subscribed and sworn to before me

5 this __ day of _____, 2015.

6

7 _____
Notary Public

8

9 Case Name: In Re: Montreal Maine & Atlantic
Railway, Ltd.

10 Deposition Date: November 19, 2015

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1 went bankrupt.

2 Q. Bangor & Arroostook?

3 A. Right.

4 Q. All right.

5 A. So we knew who they -- who MMA were; and we knew

6 they were new. We were also familiar with the

7 lines that they were going to take over. We also

8 knew that it was going to be a challenge for any

9 railway to operate on those lines and doing the

10 haulage. We also knew that the Irving account

11 would be a massive account for them.

12 So, you know, as far as I'm concerned, if we

13 were going to do business, it was going to be

14 done on a secured basis. And that's the way it

15 was.

16 Q. Okay.

17 MR. KEACH: I'm all set. Thanks.

18 MR. LEPENE: Thank you.

19 THE DEPONENT: Okay.

20 (The deposition was concluded at 5:09 p.m.)

21 - - - - -

22

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25

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1 CERTIFICATE

2 I, Claudette G. Mason, a Notary

3 Public in and for the State of Maine, hereby

4 certify that the within-named deponent was

5 sworn to testify the truth, the whole truth

6 and nothing but the truth, in the

7 aforementioned cause of action.

8 I further certify that this deposition

9 was stenographically reported by me and later

10 reduced to print through Computer-Aided

11 Transcription, and the foregoing is a full

12 and true record of the testimony given by the

13 deponent.

14 I further certify that I am a

15 disinterested person in the event or outcome

16 of the above-named cause of action.

17 IN WITNESS WHEREOF I subscribe my hand

18 this 19th day of November, 2015.

19 Dated at Falmouth, Maine.

20

21 /s/ Claudette G. Mason _____
Claudette G. Mason, RMR, CRR

22 Notary Public

23 My Commission Expires

24 June 9, 2019.

25

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