

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE
NORTHERN RAILWAY COMPANY'S STATUS REPORT AND REQUEST FOR
JUDGMENT IN CONNECTION WITH TRUSTEE'S OBJECTION TO PROOFS OF
CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY
LIMITED AND MAINE NORTHERN RAILWAY COMPANY**

New Brunswick Southern Railway Company Limited ("NBSR") and Maine Northern Railway Company ("MNR," and together with NBSR, the "MN/NB Railways,"), hereby submit the following status report and request for judgment in connection with the ruling (the "Ruling") by the United States Bankruptcy Court for the District of Maine (the "Court") on 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:

1. **Introduction.** Pursuant to the Court's suggestion, following the announcement on February 5, 2016 of the Court's ruling on the Trustee's Objection to the proofs of claim of the MN/NB Railways, counsel for the MN/NB Railways has conferred with the Trustee in an effort to agree upon a proposed order memorializing the Court's Ruling, and the next steps to be taken in this matter. Unfortunately, the parties have been unable to agree upon the form of a proposed order, and as a consequence, each party is submitting its own status report.

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Objection.

2. **Amount of Claims.** Due to, among other things, the pendency of (a) litigation arising from the complaint styled *Wheeling & Lake Erie Railway Company v. Maine Northern Railway Company and New Brunswick Southern Railway Company*, No. 1-1:14-cv-00325-NT (D. Me.) (the “Wheeling/MNNB Litigation”) involving, *inter alia*, alleged rights of Wheeling & Lake Erie Railway Company (“Wheeling”) in amounts the MN/NB Railways owe to MMA, and (b) the Trustee’s adversary proceedings, styled *Robert J. Keach v. Maine Northern Railway Company*, No. 15-01017 (Bankr. D. Me.) and *Robert J. Keach v. New Brunswick Southern Railway Company Limited*, No. 15-01016 (Bankr. D. Me.) (together, the “Trustee’s Adversary Proceedings”), asserting, *inter alia*, alleged preference claims against the MN/NB Railways and implicating Bankruptcy Code section 502(d) with regard to any allowed claim of the MN/NB Railways against MMA, the Trustee has advised the MN/NB Railways that he is not prepared at this time to stipulate to the amounts of the MN/NB Railways’ claims against MMA.

3. **Request for Entry of Order.** In order to memorialize the oral ruling read into the record on February 5, 2016, the MN/NB Railways request that the Court enter judgment in accordance with the form of order attached hereto as Exhibit A.

4. **Next Steps.** The Trustee has advised the MN/NB Railways that he intends to seek leave, in accordance with the Bankruptcy Rules and applicable statutes, to file an interlocutory appeal of such order as may be entered memorializing the Ruling. It is the present intention of the MN/NB Railways not to oppose the Trustee’s motion for leave to file an interlocutory appeal. The MN/NB Railways do not object to a stay of further litigation as to the amount of the Asserted 1171(b) Claims and the Trustee’s Adversary Proceedings pending final disposition of the Trustee’s motion for leave to file an interlocutory appeal.

Dated: February 16, 2016

/s/ Alan R. Lepene

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER REGARDING TRUSTEE'S OBJECTION TO PROOFS OF CLAIM
FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY
LIMITED AND MAINE NORTHERN RAILWAY COMPANY**

This matter having come before the Court on 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 Secured and/or Priority Claims* (the "Objection")² filed by Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd., (the "Debtor") in relation to (a) Proofs of Claim No. No. 242-1 (the "MN Duplicate Claim") and 257-1 ("Claim 257") filed by Maine Northern Railway Company ("MN Railway") and (b) Proofs of Claim No. 243-1 ("NB Duplicate Claim," and together with the MN Duplicate Claim, the "Duplicate Claims") and 259-1 ("Claim 259," and together with Claim 257, the "Asserted 1171(b) Claims") filed by New Brunswick Southern Railway Company Limited ("NB Railway," and together with MN Railway, the "MN/NB Railways"); and after such notice and opportunity for hearing as was required by the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's local rules, and after due consideration of the Objection [D.E. 1826], the Response of the MN/NB Railways to the Trustee's Objection

² Capitalized terms not defined in this Order shall have the meanings ascribed to such terms in the Objection.

[D.E. 1855], the Trustee's Reply [D.E. 1878], the Stipulations of the Trustee and the MN/NB Railways (the "Stipulation") [D.E. 1877], the Post-Trial Briefs filed by each of the parties [D.E. 1911 and 1913], the First Amended Disclosure Statement for the Trustee's Plan of Liquidation dated July 7, 2015 [D.E. 1497], and the testimony and documentary evidence presented at the November 20, 2015 evidentiary hearing held in this matter; and for the reasons set forth on the record by the Court on February 5, 2016, the Court hereby FINDS as follows:

A Pursuant to 28 U.S.C. §§ 157(a) and 1334(b), and Rule 83.6 of the Local Rules of the United States District Court for the District of Maine, this Court has jurisdiction over the Asserted 1171(b) claims, and the Duplicate Claims, and the Trustee's Objection thereto.

B This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court has constitutional authority to enter judgment in this matter..

C Pursuant to the Stipulation and Fed. R. Bankr. P. 7042(b), made applicable to this matter by Fed. R. Bankr. P. 9014(c), the parties agreed that the sole issue to be addressed at the hearing on November 20, 2015, would be whether the Asserted 1171(b) Claims qualify as "six-month" claims entitled to priority under section 1171(b) of the Bankruptcy Code. The parties further agreed that the amount of such claims would be determined at a subsequent hearing, if required.

D The Asserted 1171(b) claims qualify as "six-month" priority claims in accordance with the standard established by the United States Court of Appeals for the First Circuit in *In re Boston & Maine Corp.*, 634 F. 2d 1359 (1st Cir. 1980), *cert denied*, 450 U.S. 982, 101 S. Ct. 1518, 67 L. Ed. 2d 817 (1981), and thus are entitled to priority status under section 1171(b) of the Bankruptcy Code.

E In particular, the testimony and documentary evidence presented at the November 20, 2015 hearing established that:

(a) the Asserted 1171(b) Claims represent current operating expenses that were necessarily incurred by the Debtor in connection with the Debtor's on-going rail operations;

(b) the Asserted 1171(b) Claims were incurred within six months prior to the commencement of the Debtor's chapter 11 case; and

(c) the services that are the subject of the Asserted 1171(b) Claims were provided to the Debtor with the expectation that they would be paid for out of the current operating revenues of the Debtor, and not in reliance on the Debtor's general creditworthiness.

Based upon the foregoing, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Asserted 1171(b) Claims, in such amount as may subsequently be determined pursuant to further proceedings in this Court, are afforded priority status under section 1171(b) of the Bankruptcy Code, and shall be paid in accordance with the provisions of the Order Confirming Trustee's Revised First Amended Plan of Liquidation dated July 15, 2015 and Authorizing and Directing Certain Actions in Connection Therewith [D.E. 1801]. The Trustee's rights to object to the amount of the Asserted 1171(b) Claims are fully reserved. Unless otherwise stipulated and agreed upon by the parties, the amount of the Asserted 1171(b) Claims shall be determined by the Court at a subsequent hearing.

2. The Duplicate Claims shall be withdrawn in their entirety and expunged from the Debtor's claim register.

3. Notwithstanding the minute entry entered by the Court on February 5, 2016 [D.E. 1947], this Order constitutes the Court's final judgment on the matters read into the record on February 5, 2016. The time period within which parties must appeal this Order in accordance with the Bankruptcy Rules thus runs from the date hereof.

Dated: _____, 2016

Honorable Peter G. Cary
Chief Judge, United States Bankruptcy Court
District of Maine

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

CERTIFICATE OF SERVICE

I, Michelle S. Pottle, an employee of Pierce Atwood LLP, being over the age of 18, hereby certify that on the date set forth below I caused copies of the New Brunswick Southern Railway Company Limited and Maine Northern Railway Company's Status Report and Request for Judgment in Connection with Trustee's Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company, to be served upon the parties indicated on the service list attached hereto in the manner described on said service list.

Dated: Portland, Maine
February 16, 2016

/s/ Michelle S. Pottle

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