

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**OBJECTION TO PROOF OF CLAIM FILED BY STATE OF MAINE  
DEPARTMENT OF TRANSPORTATION ON THE BASIS THAT  
SUCH CLAIM WAS RECLASSIFIED AS A CLASS 13 CLAIM UNDER THE PLAN**

Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”),<sup>1</sup> hereby objects (the “Objection”) to Proof of Claim No. 27 (the “Claim”) filed by the State of Maine Department of Transportation (“MDOT”). As set forth below, the Estate Representative objects to the Claim on the basis that such Claim must be disallowed as asserted and reclassified as a general unsecured claim in accordance with the confirmed Plan. In support of this Objection, the Estate Representative states as follows:

**JURISDICTION AND VENUE**

1. The United States District Court for the District of Maine (the “District Court”) has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this chapter 11 case, and, accordingly, this Objection, to this Court.

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<sup>1</sup> In accordance with the *Trustee’s Chapter 11 Plan of Liquidation, dated July 15, 2015 (As Amended on October 8, 2015)* [D.E. 1822] (the “Plan”), upon the Effective Date of the Plan (which occurred on December 22, 2015, *see* D.E. 1927), Robert J. Keach is no longer the chapter 11 trustee of the Debtor’s estate, but is the Estate Representative of the Post-Effective Date Estate (as defined in the Plan). *See* Plan § 6.1(a). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

2. 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 action.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Objection is predicated upon section 502(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Maine (the “Local Rules”).

## **BACKGROUND**

### **A. The Derailment and the Debtor’s Bankruptcy Filing**

5. On July 6, 2013, an unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the “Derailment”). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian Pacific Railway (“CP”) and the Debtor’s wholly owned subsidiary, Montreal Maine & Atlantic Canada Co. (“MMA Canada”), later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

6. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was temporarily halted between Maine and Québec on the MMA Canada line, resulting in the

Debtor losing much of its freight business. These effects of the Derailment caused the Debtor's aggregate gross revenues to fall drastically to approximately \$1 million per month.

7. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the "Case"). Simultaneously, MMA Canada filed for protection under Canada's Companies' Creditors Arrangement Act (Court File No. 450-11-000167-134). On August 21, 2013, the Office of the United States Trustee (the "U.S. Trustee") appointed Robert J. Keach to serve as chapter 11 trustee in the Debtor's Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

**B. The Debtor's Schedules, the Filing of the Claim and Confirmation of the Plan**

8. On September 11, 2013, the Debtor filed its schedule of assets and liabilities and statement of financial affairs [D.E. 216] (collectively, the "Schedules"). The Schedules listed the MDOT as having a contingent, unliquidated and disputed secured claim in the amount of \$1,243,200.00. *See* Schedule D (Creditors Holding Secured Claims), p. 25 of 244.

9. On December 4, 2013, the MDOT filed the Claim pursuant to Bankruptcy Code section 502(a). The Claim asserts a secured claim against the Debtor in the amount of \$603,343.00.

10. On October 8, 2015, the United States Bankruptcy Court for the District of Maine (the "Court") confirmed the Plan [D.E. 1801] (the "Confirmation Order"). The MDOT did not object to confirmation of the Plan, and the Confirmation Order became a Final Order on October 24, 2015. The Plan classified the secured claims of MDOT as Class 3 Claims, and treated those claims as follows:

As a consequence of the Asset Sale, there is no value attributable to the Class 3 Claim. *See* 11 U.S.C. § 506(a). The Holder[] of the Class 3 Claim shall receive a Class 13 Claim in the amount of such deficiency.

See Plan § 4.3(b).

11. Under the Plan, Class 13 Claims are general unsecured claims. See Plan § 3.13.

**RELIEF REQUESTED**

12. By this Objection, the Estate Representative requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 and 3007, and Local Rule 3007-1, (a) sustaining the Objection, (b) disallowing the Claim as asserted and reclassifying the Claim as a general unsecured claim in accordance with the confirmed Plan, and (c) granting such other and further relief as this Court deems just and equitable.

**BASIS FOR RELIEF**

13. Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Bankruptcy Code section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, “shall allow such claim . . . except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor . . . .” 11 U.S.C. § 502(b)(1). The Bankruptcy Code defines a “claim” as a “right to payment,” 11 U.S.C. § 101(5)(A), “usually referring to a right to payment recognized under state law,” In re Hann, 476 B.R. 344, 354 (B.A.P. 1st Cir. 2013), aff’d, 711 F.3d 235 (1st Cir. 2013) (quoting Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co., 549 U.S. 443, 451 (2007)).

14. The MDOT did not object to confirmation of the Plan, which reclassified its asserted secured claim as a Class 13 general unsecured claim. As this Court confirmed that Plan and the Confirmation Order has become a final order, the Confirmation Order is *res judicata* on the priority of the MDOT’s Claim. Pursuant to the Plan, there is no value attributable to any security interest the MDOT may have had, and accordingly, the MDOT has no “right to payment” on account of its asserted secured claim. See Hann, 476 B.R. at 354.

The Estate Representative thus submits that the Claim should be disallowed as asserted and reclassified as a Class 13 general unsecured claim against the Debtor's estate in accordance with the confirmed Plan.

**RESERVATION OF RIGHTS**

15. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Estate Representative's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

**NOTICE**

16. Notice of this Objection was served on the following parties on the date and in the manner set forth in the certificate of service: (a) Debtor's counsel; (b) U.S. Trustee; and (c) MDOT. The Estate Representative submits that no other or further notice need be provided.

*[remainder of page intentionally left blank]*

**CONCLUSION**

**WHEREFORE**, for the reasons set forth herein, the Estate Representative requests that the Court enter an order, substantially in the form annexed hereto, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 and 3007 and Local Rule 3007-1, (i) sustaining this Objection; (ii) disallowing the Claim as asserted and reclassifying it as a general unsecured claim in accordance with the confirmed Plan, and (iii) granting such other and further relief as may be just.

Dated: February 19, 2016

**ROBERT J. KEACH,  
ESTATE REPRESENTATIVE OF THE POST-  
EFFECTIVE DATE ESTATE OF MONTREAL  
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ Sam Anderson

Sam Anderson, Esq.  
Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)  
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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**ORDER SUSTAINING OBJECTION TO PROOF OF CLAIM FILED BY STATE OF  
MAINE DEPARTMENT OF TRANSPORTATION ON THE BASIS THAT SUCH  
CLAIM WAS RECLASSIFIED AS A CLASS 13 CLAIM UNDER THE PLAN**

This matter having come before the Court on the *Objection to Proof of Claim Filed by State of Maine Department of Transportation on the Basis that Such Claim Was Reclassified as a Class 13 Claim Under the Plan* (the “Objection”)<sup>1</sup> filed by Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd., in relation to Proof of Claim No. 27 (the “Claim”) filed by the State of Maine Department of Transportation 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 deliberation and sufficient cause appearing therefore; it is hereby **ORDERED**, **ADJUDGED**, and **DECREEED** that:

1. The Objection is sustained.
2. Claim No. 27 shall be disallowed as asserted and reclassified as a Class 13 general unsecured claim in accordance with the Plan and Confirmation Order.
3. The Estate Representative’s rights to object to the Claim, as reclassified by this Order, on any other grounds are preserved in accordance with the Plan and Confirmation Order.

Dated: \_\_\_\_\_, 2016

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**Honorable Peter J. Cary**  
**Chief Judge, United States Bankruptcy Court**

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Objection.

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**NOTICE OF HEARING**

On February 19, 2016, Robert J. Keach, the estate representative for the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (the "Estate Representative"), filed the *Objection to Proof of Claim Filed by State of Maine Department of Transportation on the Basis that Such Claim was Reclassified as a Class 13 Claim Under the Plan* (the "Objection"). A hearing to consider the Objection has been scheduled for **April 5, 2016 at 9:00 a.m. ET.**

If you wish to respond to the Objection, then **on or before March 21, 2016 at 5:00 p.m. (ET)**, you or your attorney must file with the Court a response to the Objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court and the Estate Representative at:

Alec Leddy, Clerk  
United States Bankruptcy Court for the District of Maine  
202 Harlow Street  
Bangor, Maine 04401

-and-

Sam Anderson, Esq.  
Bernstein, Shur, Sawyer & Nelson, P.A.  
100 Middle Street, PO Box 9729  
Portland, Maine 04101-5029

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court and the Estate Representative will receive it **on or before March 21, 2016 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Objection, which is scheduled to be held on **April 5, 2016 at 9:00 a.m. ET** at the Bankruptcy Court, 537 Congress Street, 2<sup>nd</sup> Floor, Portland, Maine. If no responses are timely filed and served, then the Court may enter a final order sustaining the Objection without any further hearing.

**Your rights may be affected.** You should read these papers carefully and discuss them



with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought, and may enter an order granting the requested relief without further notice or hearing.

Dated: February 19, 2016

**ROBERT J. KEACH**  
**ESTATE REPRESENTATIVE OF THE POST-**  
**EFFECTIVE DATE ESTATE OF MONTREAL**  
**MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ Sam Anderson

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