

**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  
DISCOVER TRANSLATION ON THE BASIS THAT  
SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR AS ASSERTED**

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. 88 (the "Claim") filed by Discover Translation ("Discover"). As set forth below, the Estate Representative objects to the Claim on the basis that such Claim must be disallowed as unenforceable against the Debtor as asserted under the Bankruptcy Code. 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).

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”),<sup>2</sup> 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

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<sup>2</sup> MMA Canada is an unlimited liability company organized under the laws of the Canadian province of Nova Scotia.

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 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 and the Filing of the Claim**

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 Discover as having three contingent, unliquidated and disputed general unsecured claims *against MMA Canada* in the aggregate amount of \$3547.37. *See* Schedule F (Creditors Holding Unsecured Nonpriority Claims), p. 92 of 244.

9. On May 27, 2014, Discover filed Claim 88 pursuant to Bankruptcy Code section 502(a). The Claim asserts a priority claim against the Debtor in the amount of \$11,638.89. The Claim provides no substantiation for its alleged priority status.

**RELIEF REQUESTED**

10. 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 (c) granting such other and further relief as this Court deems just and equitable.

## **BASIS FOR RELIEF**

### **A. The Legal Standard**

11. 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). 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).<sup>3</sup>

12. 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)). Because a “right to payment” constitutes a claim, “the first step in the claims [allowance] process is always to determine whether there *is* a right to payment.” In re Taylor, 289 B.R. 379, 383 (Bankr. N. D. Ind. 2003) (emphasis added). A claim with “no basis in fact or law” must be disallowed. Hann, 476 B.R. at 354.

13. Bankruptcy Rule 3001(c)(1) requires that “when a claim . . . is based on a writing, a copy of the writing shall be filed with the proof of claim.” Fed. R. Bankr. P. 3001(c)(1). Significantly, “[w]hen a claimant fails to comply with the Rule 3001

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<sup>3</sup> 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).

documentation requirements, the claimant is not entitled to prima facie validity of the claim.” In re Residential Capital, LLC, No. 12-12020 (MG), 2013 WL 6227582, at \*5 (Bankr. S.D.N.Y. Nov. 27, 2013) (internal citations omitted).

**B. The Claim is Unenforceable Against the Debtor**

14. Discover has demonstrated no entitlement to priority status or right to payment from the Debtor under applicable law with respect to the Claim, and thus that Claim must be disallowed pursuant to Bankruptcy Code section 502(b)(1).

15. As an initial matter, Discover has failed to carry its burden in establishing entitlement to priority status. While on the face of the Claim Discover indicated that the Claim is entitled to priority status, Discover failed to indicate the applicable paragraph of section 507(a) of the Bankruptcy Code, as required by Official Form 10. And below the empty space where a subsection should have been indicated, the words “only 1 employee” are written. These words have no legal effect, and neither they nor the Claim as a whole can reasonably be molded into a basis for priority status under the Bankruptcy Code. In any event, it is the claimant’s burden to establish its entitlement to priority status—not the Estate Representative’s duty to surmise. *See Trentadue*, 527 B.R. at 332. And Discover has not met that burden.

16. Moreover, the amount set for in the Claim does not comport even with the *disputed* amount set forth in the Schedules,<sup>4</sup> and Discover has not included all the invoices that support the amount asserted in the Claim (rather, a simple chart of amounts alleged to be outstanding is included). As Discover has failed to include documentation evidencing the full amount asserted, *see* Fed. R. Bankr. P. 3001(c)(1) (requiring that “when a claim . . . is based on a writing, a copy of the writing shall be filed with the proof of claim”), Discover has failed to comply with Bankruptcy Rule 3001, and thus, the Claim is not entitled to *prima facie* validity.

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<sup>4</sup> For the avoidance of doubt, the Estate Representative does not concede even the amount set forth in the Schedules, as that amount was scheduled as disputed.

See Residential Capital, 2013 WL 6227582, at \*5. The Claim stripped of *prima facie* validity, Discover has failed to assert a claim that is “enforceable against the debtor” because it cannot prove its “right to payment” under applicable law. See *id.*, Taylor, 289 B.R. at 383 (finding that in assessing whether to allow a claim, the first step is for the court to determine whether there exists a right to payment under applicable non-bankruptcy law). Accordingly, the Claim should be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with “no basis in fact or law” must be disallowed).

### **RESERVATION OF RIGHTS**

17. 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**

18. 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) Discover. The Estate Representative submits that no other or further notice need be provided.

**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 in its entirety, 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

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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 DISCOVER TRANSLATION ON THE BASIS THAT SUCH  
CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

This matter having come before the Court on the *Objection to Proof of Claim Filed by Discover Translation on the Basis that Such Claim is Unenforceable Against the Debtor* (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. (the “Debtor”), in relation to Proof of Claim No. 88 (the “Claim”) filed by the Discover Translation 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. 88 shall be disallowed in its entirety and expunged from the Debtor’s claims register.

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 Discover Translation on the Basis that Such Claim is Unenforceable Against the Debtor as Asserted* (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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