

**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
AETNA LIFE INSURANCE COMPANY ON THE BASIS THAT
SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

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”),¹ hereby objects (the “Objection”) to Proof of Claim No. 240 (the “Claim”) filed by Aetna Life Insurance Company (“Aetna”). 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 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.

¹ 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 Insurance Agreements

5. Prior to the Petition Date, the Debtor and Aetna were party to an Administrative Services Agreement effective January 9, 2003 (the “ASA”) and a Stop Loss Insurance Policy effective January 1, 2006 (the “Stop Loss Policy”). Both the ASA and the Stop Loss Policy (together, the “Insurance Agreements”) terminated effective December 31, 2013.

B. The Derailment and the Debtor’s Bankruptcy Filing

6. 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”),² 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.

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

7. 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.

8. 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].

C. The Debtor's Schedules, the Bar Date Order, the Filing of the Claim and the Assumption of the Contract

9. 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 Aetna as having two unliquidated general unsecured claims in the aggregate amount of \$40,165.39 (the "Scheduled Unsecured Claim"). *See* Schedule F (Creditors Holding Unsecured Nonpriority Claims), p. 56 of 244.

10. On May 19, 2014, Aetna filed Claim 240 pursuant to Bankruptcy Code section 502(a). The Claim asserts a wholly unliquidated claim against the Debtor, and indicated that certain amounts might be entitled to priority or secured status. The Claim facially asserts that

any amounts ultimately determined to be owed would be entitled priority status under Bankruptcy Code section 507(a)(5), and reserves any rights of setoff Aetna may have.

11. In the weeks following the filing of Claim 240 and leading up to the closing of the sale of substantially all the Debtor's assets, MMA remitted to Aetna all amounts owing under the Insurance Agreements. No additional amounts have become due and owing.

12. Claim 240 was never amended to reflect having been fully satisfied.

RELIEF REQUESTED

13. 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 in its entirety, and (c) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

A. The Legal Standard

14. 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).³

15. 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”

³ 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).

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.

B. The Claim is Unenforceable Against the Debtor

16. As an initial matter, Aetna has demonstrated no entitlement to priority status or security interest in the Debtor’s assets under applicable law, and thus that Claim must be disallowed pursuant to Bankruptcy Code section 502(b)(1). In particular, Aetna has failed to carry its burden in establishing entitlement to priority status. While on the face of the Claim Aetna has indicated that the Claim is entitled to priority status, that assertion is not supported in the documentation underlying the Claim, and it is the claimant’s burden to establish its entitlement to priority status. See Trentadue, 527 B.R. at 332.

17. Moreover, Aetna has demonstrated no right to payment from the Debtor under applicable law (in the form of a secured claim, a priority claim, or otherwise), and the Claim must thus be disallowed pursuant to Bankruptcy Code section 502(b)(1). The Claim asserts only a contingent and unliquidated claim. For this reason, Aetna has failed to assert a claim that is “[e]nforceable against the debtor” because it has failed prove its “right to payment” from the Debtor. See 11 U.S.C. § 502(b)(1); Taylor, 289 B.R. at 383.

18. Finally, the Debtor’s books and records reflect a \$0 balance owed to Aetna. Accordingly, the Claim should be disallowed in its entirety.

RESERVATION OF RIGHTS

19. 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

20. 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) Aetna. 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 22, 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 AETNA LIFE INSURANCE COMPANY 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 Aetna Life Insurance Company on the Basis that Such Claim is Unenforceable Against the Debtor* (the “Objection”)¹ 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. 240 (the “Claim”) filed by the Aetna Life Insurance Company 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 DECREED that:

1. The Objection is sustained.
2. Claim No. 240 shall be disallowed in its entirety and expunged from the Debtor’s claims register.

Dated: _____, 2016

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

¹ 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 22, 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 Aetna Life Insurance Company on the Basis that Such Claim is Unenforceable Against the Debtor* (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, 2nd 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 22, 2016

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

By his attorneys:

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