

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**SECOND SET OF STIPULATIONS WITH REGARD TO TRUSTEE'S AMENDED
OBJECTION TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN
RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY**

Robert J. Keach, the estate representative (the "Trustee") of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. ("MMA"), and 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 stipulations (collectively, the "Stipulation") in connection with the *Amended Objection of Estate Representative to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis that Certain of such Claims are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims, in an Inaccurate Amount, and Subject to Disallowance Under Bankruptcy Code Section 502(d)* [D.E. 2313] (the "Amended Objection")¹ and the related contested matter:

A. Evidentiary Stipulations

1. The Trustee and the MN/NB Railways (together, the "Parties") agree that the following exhibits attached hereto shall be admitted into evidence without further authentication,

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Amended Objection or the *Reply in Support of Amended Objection of Estate Representative to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis that Certain of such Claims are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims, in an Inaccurate Amount, and Subject to Disallowance Under Bankruptcy Code Section 502(d)* [D.E. 2351] (the "Reply"), as applicable.

provided that the use of deposition transcripts shall be subject to the provisions of Fed. R. Civ. P.

32(a):

Exhibit	Description
See Schedule A	All exhibits admitted at the November 2015 Hearing
ER 1-26	All exhibits marked and served by the Trustee in accordance with the Amended JPO ²
ER 27	Proof of Claim filed by NBSR in MMA Canada's CCAA ³ case and transmittal letter from Philippe H. Belanger to M. Gilles Robillard, dated June 13, 2014
I 13	Revised First Amended Disclosure Statement for the Trustee's Plan of Liquidation dated July 15, 2015
I 14	Proof of Claim No. 257-1 filed by Maine Northern Railway Company
I 15	Proof of Claim No. 259-1 filed by New Brunswick Southern Railway Company
I 16	Declaration of Fred C. Caruso in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation, dated July 15, 2015, filed on September 17, 2015
I 17	Bankruptcy Schedules filed by Montreal Maine & Atlantic Railway Ltd. in Case No. 13-10670
I 18	Statement of Financial Affairs, and Attached Exhibits, filed by Montreal Maine & Atlantic Railway Ltd. in Case No., 13-10670
I 19	Montreal Maine & Atlantic Corporation Audited Consolidated Financial Statements for the years ended December 31, 2012 and 2011
I 20	Montreal Maine & Atlantic Corporation Consolidated and Consolidating Income Statement for June 2013 Final
I 21	Montreal Maine & Atlantic Corporation Consolidated and Consolidating Income Statement for July 2013 Final
I 28	Open invoices reflecting amounts owed to MMA by NBSR
I 29	Open invoices reflecting amounts owed to MMA by MNR
I 30	Deposition transcript of Fred Caruso, dated November 19, 2015
I 31	Deposition transcript of Fred Caruso, dated March 21, 2017
I 32	Deposition transcript of Robert Keach, dated March 21, 2017

² These exhibits were admitted into evidence without the need for authentication in accordance with the Amended JPO. For the purposes of clarity, they are itemized on Schedule B hereto.

³ "CCAA" means the Canadian Companies' Creditors Arrangement Act.

B. Agreements Related to EMR

2. Eastern Maine Railway Company (“EMR”) is a separate legal entity from NBSR and from MNR.

3. EMR did not (a) file a proof of claim in MMA’s chapter 11 case (or in MMA Canada’s CCAA case) or (b) assign any claims against MMA or MMA Canada to NBSR or MNR. For the avoidance of doubt, the MN/NB Railways maintain that EMR did not have any claims against MMA or MMA Canada. The Trustee disputes that assertion. The Parties reserve all rights with respect to this issue.

4. On August 2, 2013, EMR and NBSR sent separate letters to MMA. Those letters were admitted into evidence at the November 2015 Hearing as Exhibits T and U, respectively (and stipulated to be admitted in any subsequent evidentiary hearing, as set forth above).

5. EMR is not identified on the books of MMA or MMA Canada as a payee to which an account payable is owed for the services covered by the proofs of claim filed by NBSR and MNR in MMA’s chapter 11 case.

6. EMR is not listed as a creditor on Schedules E or F of MMA’s bankruptcy schedules.

C. Agreements Related to MMA Canada’s CCAA Case

7. None of the amounts asserted by NBSR in its proof of claim against MMA Canada in its CCAA case is or was entitled to priority status under applicable Canadian law.

8. In conjunction with the filing of NBSR’s proof of claim against MMA Canada in its CCAA case (the “Canadian Proof of Claim”), Philippe H. Belanger of McCarthy Terrault LLP, NBSR’s Canadian counsel, sent a letter to M. Gilles Robillard of Richter Advisory Group Inc., the Canadian Monitor in the CCAA case, reserving all of NBSR’s rights under the proof of

claim it had filed in MMA's chapter 11 case. Copies of the letter and the Canadian Proof of Claim are attached hereto as Exhibit ER 27.

9. Neither MNR nor EMR filed a proof of claim against MMA Canada in its CCAA case.

D. Amounts Asserted in Claims of the MN/NB Railways

10. Claim 257 (the "MNR Claim") asserts a total claim amount of \$355,101.19.⁴

11. Claim 259 (the "NBSR Claim," and together with the MNR Claim, the "Claims") asserts a total claim amount of \$2,164,471.30.

E. Agreed Amount of Claims Asserted by the MN/NB Railways

i. The MNR Claim

12. Of the \$355,101.19 asserted in the MNR Claim, the Parties agree that (a) \$143,071.70 is owed by MMA to MNR for freight services, and (b) \$1,205.04 is owed by MMA to MNR for car inspection, in each case with respect to services provided during the six (6) month period prior to the Petition Date.

13. MNR asserts that an additional \$22,952.15 of its total claim is attributable to charges for "running rights" that accrued within six (6) months before the Petition Date. MMA disputes MNR's assertion with respect to the charges for "running rights" and the Parties reserve all rights with respect to this issue.

14. Of the total amount asserted in the MNR Claim, the Parties agree that \$187,872.30 was not incurred during the six (6) month period prior to the Petition Date.

⁴ All amounts included in this Stipulation are in USD.

ii. The NBSR Claim

15. Of the \$2,164,471.30 asserted in the NBSR Claim, the Parties agree that (a) \$2,020,719.59 is owed for freight services, and (b) \$1,952.27 is owed for car repairs, in each case with respect to services provided during the six (6) month period prior to the Petition Date.⁵

16. Of the total amount asserted in the NBSR Claim, the Parties agree that \$141,799.44 was not incurred during the six (6) month period prior to the Petition Date.

17. For the avoidance of doubt, the Parties do not agree on whether (a) the obligor for the amounts asserted in the NBSR Claim is MMA or MMA Canada and (b) whether NBSR is the proper creditor to assert the NBSR Claim. The Parties reserve all rights with respect to these issues.

F. Agreed Amounts Owed to MMA by the MN/NB Railways

18. The Parties agree that MNR owes MMA \$265,367.66.

19. The Trustee asserts that MNR owes MMA an additional \$63,080.12. MNR disputes the Trustee's assertion with respect to the additional amount claimed to be due and the Parties reserve all rights with respect to this issue.

20. The Parties agree that NBSR owes MMA \$734.90. The Trustee asserts that NBSR owes MMA an additional \$626.92. NBSR disputes the Trustee's assertion with respect to the additional amount claimed to be due and the Parties reserve all rights with respect to this issue.


⁵ The services provided by NBSR were invoiced in Canadian dollars. The amounts of NBSR's claims set forth in this Stipulation are in U.S. dollars and were converted at a rate of 1 CDN = 0.960284 USD – the conversion rate on the Petition Date (8/7/13).

G. Reservation of Rights

21. In the event that the Trustee prevails in prosecuting the Preference Claims to any extent and in any amount, the Trustee reserves all rights to assert that any portion of the Claims should be disallowed or reduced in accordance with Bankruptcy Code section 502(d).

22. Notwithstanding anything else contained herein, in connection with the contemplated appeal as to the priority of the Claims, the Trustee reserves all rights to argue that any amounts asserted in the Claims are not entitled to priority status under Bankruptcy Code section 1171(b) or otherwise.

Dated: August 15, 2017

/s/ 

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Counsel for New Brunswick Southern Railway Company Limited and Maine Northern Railway Company

Dated: August 15, 2017

/s/ Robert J. Keach

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Counsel for Robert J. Keach, Estate Representative of the Post-Effective Date Estate of Montreal Maine & Atlantic Railroad Ltd.

Dated: _____, 2017

So ORDERED.

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

SCHEDULE A

EXHIBITS ADMITTED AT NOVEMBER 2015 HEARING

A. MN/NB Railways' Exhibits¹

Exhibit	Description
1	Commercial Agreement between MMA and Eastern Maine Railway and New Brunswick Southern Railway Company Limited dated January 9, 2003 (Admitted by Stipulation)
2	E-mail from Joanne Kelter at JD Irving to Brenda Tarr at MMA dated August 10, 2011 re: Swap Details (Admitted by Stipulation)
3	E-mail from Joanne Kelter at JD Irving to Brenda Tarr at MMA dated October 26, 2011 re: Swap Details (Admitted by Stipulation)
4	E-mail from Joanne Kelter at JD Irving to Brenda Tarr at MMA dated February 15, 2012 re: Swap Details (Admitted by Stipulation)
5	E-mail from Robert Grindrod at MMA to Ian Simpson at NBSR dated June 4, 2012 re: Revision of Settlement Terms with Attachment (Admitted by Stipulation)
6	E-mail from Ryan Ellis to Joanne Kelter, dated July 26, 2012, forwarding an e-mail from Don Gardner at MMA to Ryan Ellis at NBSR dated July 26, 2012 re: Oil Movement Invoices (Admitted by Stipulation)
7	E-mail from Joanne Kelter to Don Gardner, dated July 26, 2012, responding to an e-mail from Don Gardner at MMA to Ryan Ellis at NBSR dated July 26, 2012 re: Oil Movement Invoices (Admitted by Stipulation)
8	E-mail from Ryan Ellis to Don Gardner, dated August 30, 2012, responding to an e-mail from Don Gardner to Joanne Kelter at JD Irving, dated August 30, 2012 re: Swap (Admitted by Stipulation)
9	E-mail from Don Gardner to Ian Simpson, dated January 3, 2013, responding to e-mail from Ian Simpson at NBSR to Don Gardner at MMA dated January 3, 2013 re: ISS Crude Payments (Admitted by Stipulation)
10	E-mail from Don Gardner to Ian Simpson and Ryan Ellis, dated January 7, 2013, referencing e-mail exchanges among Messrs. Gardner, Ellis and Simpson on January 4 and 7, 2013 re: November Oil Payment (Admitted by Stipulation)
11	MMA Swap History spreadsheet (Admitted Without Objection)

¹ E-mails identified as Exhibits shall include all e-mails in the e-mail chain contained in the Exhibit.

12	Invoices in Support of the Proof of Claim of New Brunswick Southern Railway Company Limited (Admitted Without Objection)
13	Invoices in Support of the Proof of Claim of Maine Northern Railway Company (Admitted Without Objection)

B. Estate Representative's Exhibits

Exhibit	Description
A.	Wheeling Lake Erie Credit Line
B.	Wheeling Line of Credit Activity 6/15/2011 thru 6/8/2013
C.	Borrowing Base Certificate signed July 23, 2009
D.	Borrowing Base Certificate signed September 14, 2009
E.	Borrowing Base Certificate signed November 23, 2009
F.	Borrowing Base Certificate signed May 3, 2010
G.	Borrowing Base Certificate signed June 1, 2010
H.	Borrowing Base Certificate signed July 20, 2010
I.	Borrowing Base Certificate signed August 1, 2011
J.	Borrowing Base Certificate signed August 2, 2011
K.	Borrowing Base Certificate signed February 20, 2012
L.	Borrowing Base Certificate signed March 26, 2012
M.	Borrowing Base Certificate signed July 16, 2012
N.	Borrowing Base Certificate signed July 12, 2013
O.	Connection Agreement dated January 19, 2013
P.	Dispatching Agreement dated June 15, 2011
Q.	Blocking Agreement dated January 9, 2003
S.	Interchange Agreement at Brownville Junction Yard effective January 9, 2003

T.	Letter from Ian Simpson of Eastern Maine Railway Company to Montreal, Maine & Atlantic Railway Ltd. re: Commercial Agreement – Overdue Payments dated August 2, 2013
U.	Letter from Ian Simpson of New Brunswick Southern Railway Company Limited to Montreal, Maine & Atlantic Railway Ltd. re: Commercial Agreement – Overdue Payments dated August 2, 2013

SCHEDULE B

**LIST OF ESTATE REPRESENTATIVE'S EXHIBITS
ADMITTED IN ACCORDANCE WITH AMENDED JPO**

Exhibit	Description
ER 1	Transfer Pricing Policies
ER 2	Eastern Maine Railway Company 2010 Invoices
ER 3	Eastern Maine Railway Company 2011 Invoices
ER 4	Eastern Maine Railway Company 2012 Invoices
ER 5	Eastern Maine Railway Company 2013 Invoices
ER 6	New Brunswick Southern Railway Company Subsidiaries Charts
ER 7	2010 Eastern Maine Railway Company Federal Tax Return
ER 8	2011 Eastern Maine Railway Company Federal Tax Return
ER 9	2012 Eastern Maine Railway Company Federal Tax Return
ER 10	2013 Eastern Maine Railway Company Federal Tax Return
ER 11	Backup for the "Unbilled FSC" in 2012 and 2013 <ul style="list-style-type: none"> • 60820 Backup • 60821 Backup 1-3
ER 12	KPMG Transfer Pricing Study 2013
ER 13	KPMG Transfer Pricing Study 2014
ER 14	New Brunswick Southern Railway Claims Reconciliation
ER 15	Accounts Receivable Aged Invoice Report, All Open Invoices – Aged as of 12/31/2014, for Montreal, Maine & Atlantic Railway; Division 00 (Misc.)
ER 16	Accounts Receivable Aged Invoice Report, All Open Invoices – Aged as of 12/31/2014, for Montreal, Maine & Atlantic Railway; Division 10 (Freight)
ER 17	Accounts Receivable Aged Invoice Report, All Open Invoices – Aged as of 12/31/2014, for Montreal, Maine & Atlantic Canada

Exhibit	Description
ER 18	Accounts Payable Trial Balance, All Open Invoices as of 12/31/2014, for Montreal, Maine & Atlantic Railway
ER 19	Accounts Payable Trial Balance, All Open Invoices as of 12/31/2014, for Montreal, Maine & Atlantic Canada
ER 20	D. Gardner e-mail chain with Ryan Ellis dated May 3, 2013 re: Cash Swap with attachment
ER 21	Montreal, Maine & Atlantic Railway Ltd. map as of July 2013
ER 22	Deposition Transcript of Karl Hansen dated November 19, 2015
ER 23	Transcript of November 20, 2015 Hearing at U.S. Bankruptcy Court for the District of Maine
ER 24	Deposition Transcript of Karl Hansen dated March 23, 2017
ER 25	Deposition Transcript of Ryan Ellis dated March 23, 2017
ER 26	Deposition Transcript of Ian Simpson dated March 23, 2017