

Kirkpatrick & Lockhart LLP

November 5, 2003

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



1800 Massachusetts Avenue, NW
Suite 200
Washington, DC 20036-1221
202.778.9000
www.kl.com

Edward J. Fishman
202.778.9456
Fax: 202.778.9100
efishman@kl.com

Re:

Finance Docket No. AB-279 (Sub-No. 3) - *209325*
Canadian National Railway Company -- Adverse
Discontinuance -- Line of Montreal, Maine & Atlantic
Railway Ltd. in Aroostook County, Maine

ENTERED
Office of Proceedings

NOV - 2003

Part of
Public Record

Finance Docket No. AB-124 (Sub-No. 2) - *209326*
Waterloo Railway Company -- Adverse Abandonment --
Line of Montreal, Maine & Atlantic Railway Ltd. in
Aroostook County, Maine

Dear Secretary Williams:

On behalf of James E. Howard, Chapter 11 Trustee of the Bangor and Aroostook Railroad Company, Debtor, we hereby submit an original and ten copies of this **Reply To Canadian National Railway Company's Motion To Compel Production Of Documents.**

Should any questions arise regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter.

Respectfully submitted,

Edward J. Fishman

**Attorney for Trustee of Bangor and
Aroostook Railroad Company, et al.**

Enclosures

cc: Parties on Certificate of Service
Maynard Dixon, STB Room 647

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (Sub-No. 3)

CANADIAN NATIONAL RAILWAY COMPANY
--ADVERSE DISCONTINUANCE --
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.
IN AROOSTOOK COUNTY, MAINE

DOCKET NO. AB-124 (Sub-No. 2)

WATERLOO RAILWAY COMPANY
-- ADVERSE ABANDONMENT --
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.
IN AROOSTOOK COUNTY, MAINE

TRUSTEE OF BANGOR AND AROOSTOOK RAILROAD COMPANY'S REPLY TO
CANADIAN NATIONAL RAILWAY COMPANY'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS

Charles H. White, Jr.
Attorney at Law
1200 Britania Lane
Annapolis, MD 21403

ENTERED
Office of Proceedings

NOV - 5 2003

Part of
Public Record

Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue N.W. - 2nd Floor
Washington, DC 20036
(202) 778-9000

**ATTORNEYS FOR TRUSTEE OF BANGOR
AND AROOSTOOK RAILROAD COMPANY,
ET AL.**

Dated: November 5, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (Sub-No. 3)

CANADIAN NATIONAL RAILWAY COMPANY
--ADVERSE DISCONTINUANCE --
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.
IN AROOSTOOK COUNTY, MAINE

DOCKET NO. AB-124 (Sub-No. 2)

WATERLOO RAILWAY COMPANY
-- ADVERSE ABANDONMENT --
LINE OF MONTREAL, MAINE & ATLANTIC RAILWAY LTD.
IN AROOSTOOK COUNTY, MAINE

TRUSTEE OF BANGOR AND AROOSTOOK RAILROAD COMPANY'S REPLY TO
CANADIAN NATIONAL RAILWAY COMPANY'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS

James E. Howard, Chapter 11 Trustee of Bangor and Aroostook Railroad Company, Debtor (the "Trustee"),¹ hereby submits this Reply to the Motion To Compel filed by Canadian National Railway Company ("CN") on October 29, 2003. CN is asking the Board to compel the Trustee to produce a document that the Trustee does not have and did not review in connection with preparation of the Application. Therefore, CN's request for relief with respect to the Trustee should be denied in its entirety.

By letter dated October 22, 2003, CN asked the Trustee to produce a copy of the agreement between Montreal, Maine & Atlantic Railway Ltd. ("MMA") and Canadian Pacific Railway Company ("CP") that is referenced on page 18 of the Trustee's Verified Statement that was submitted as part of the Application. By letter dated October 27,

¹ James E. Howard is acting in his capacity as the Chapter 11 Trustee for the Bangor and Aroostook Railroad Company, Van Buren Bridge Company, Canadian American Railroad Company, Northern Vermont Railway Company and Newport & Richford Railroad Company.

2003, the Trustee informed CN that the Trustee did not review a copy of that document in preparing its Application and therefore is not under any obligation to produce that document to CN.² Nonetheless, CN seeks to compel production of that document on the grounds that it was "heavily relied upon" by the Trustee. See Motion to Compel at 3, 7.

The Trustee cannot produce a document that it does not have and did not review in preparing the Application. The Trustee is not a party to the agreement between MMA and CP that is referenced in his Verified Statement. The Trustee was informed by MMA representatives of the existence of such an agreement, and refers to it once in his 23-page Verified Statement in connection with his explanation of the potential harm to a particular shipper from the continued existence of the CN trackage rights. CN's claim that the Trustee "heavily relied upon" and "commented extensively upon" that agreement (see Motion to Compel at 7) is grossly overstated.

For the foregoing reasons, CN's request for relief with respect to the Trustee should be denied in its entirety.

Respectfully submitted

By:


Charles H. White, Jr.
Attorney at Law
1200 Britania Lane
Annapolis, MD 21403

Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, N.W.
2nd Floor
Washington, DC 20036

² A copy of the Trustee's letter is attached as Exhibit F to the CN Motion to Compel.

(202) 778-9000

**ATTORNEYS FOR TRUSTEE OF BANGOR &
AROOSTOOK RAILROAD COMPANY, ET.
AL.**

Dated: November 5, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2003, a copy of the foregoing

Reply To Canadian National Railway Company's Motion To Compel Production Of

Documents was served by Federal Express upon:

Myles L. Tobin
William C. Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2875

Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, NW
Washington, DC 20004-2401

Charles Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001-1401

Cynthia A. Bergmann
Sean Finn
Canadian National/Illinois Central
455 North Cityfront Plaza Drive
Chicago, IL 60601-5317



Edward J. Fishman
Attorney for Trustee