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October 7, 2003

BY HAND DELIVERY

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



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ENTERED
Office of Proceedings

Re: Finance Docket No. AB-279 (Sub-No. 3)

Canadian National Railway Company -- Adverse
Discontinuance -- Line of Montreal, Maine & Atlantic Railway
Ltd. in Aroostook County, Maine

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

Dear Secretary Williams:

I am enclosing herewith an original and ten copies of the **Public Version** of the **Adverse Application for Discontinuance of Trackage Rights and Abandonment of Easement** ("Application") that was filed yesterday in the above-captioned matter. The enclosed **Public Version** was not included in the filing that was made yesterday. However, copies of the **Public Version** were served last night on all parties on the Certificate of Service. I also am enclosing the diskettes required by 49 C.F.R. § 1104.3(b).

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

PUBLIC VERSION
[REDACTED]

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
OCT - 7 2003
Part of
Public Record

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

**ADVERSE APPLICATION FOR DISCONTINUANCE
OF TRackage RIGHTS AND ABANDONMENT OF EASEMENT**

**VERIFIED STATEMENTS OF JAMES E. HOWARD, FREDERIC W. YOCUM, JR.,
EDWARD A. BURKHARDT, ROBERT C. FINLEY AND JAMES N. HELLER**

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

Dated: October 6, 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, MAINE¹

**ADVERSE APPLICATION FOR DISCONTINUANCE
OF TRackage RIGHTS AND ABANDONMENT OF EASEMENT**

**VERIFIED STATEMENTS OF JAMES E. HOWARD, FREDERIC W. YOCUM, JR.,
EDWARD A. BURKHARDT, ROBERT C. FINLEY, JAMES N. HELLER**

Pursuant to 11 U.S.C. § 1170 and/or 49 U.S.C. § 10903, and 49 C.F.R. § 1152, James E.

Howard, Chapter 11 Trustee of the Bangor and Aroostook Railroad Company, Debtor

(“Trustee”)² hereby files this adverse application (“Application”) for discontinuance of certain

¹ The proceedings in Docket No. AB-279 (Sub-No. 3) and Docket No. AB-124 (Sub-No. 2) were consolidated for concurrent handling. See Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-124 (Sub-No. 2), Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-279 (Sub-No. 3) (STB served October 23, 2002) (“WRC Waiver Decision”) at 1.

² James E. Howard is acting in his capacity as the Chapter 11 Trustee for Bangor and Aroostook Railroad Company (“BAR”), Van Buren Bridge Company (“VBBC”), Canadian American Railroad Company (“CDAC”), Northern Vermont Railway Company (“NVT”) and Newport & Richford Railroad Company (“NRR”). These railroads, along with Quebec Southern Railway, Ltd. (“QSR”), are collectively referred to herein as the “BAR System.” James E. Howard is not the Chapter 11 Trustee of the QSR, which was subject to bankruptcy proceedings in Canada.

Canadian National Railway Company (“CN”) trackage rights and abandonment³ of a certain Waterloo Railway Company (“WRC”) freight easement.

There is a dispute between the Trustee and CN regarding whether the Board has jurisdiction to authorize the proposed discontinuance and abandonment. By motion dated June 3, 2003, the Trustee sought an order from the United States Bankruptcy Court for the District of Maine (“Bankruptcy Court”) pursuant to 11 U.S.C. § 1170 directing the Surface Transportation Board (“Board”) to issue an advisory report to that court regarding the proposed discontinuance and abandonment. By order dated June 30, 2003, the Bankruptcy Court granted CN’s motion to withdraw the reference of the proceeding to the Bankruptcy Court, thereby transmitting the proceeding to the United States District Court for the District of Maine (“District Court”).

As of the date of this Application, the District Court has not ruled on the applicability of 11 U.S.C. § 1170 to this matter. If the District Court determines that 11 U.S.C. § 1170 is applicable, the Board will be required to submit an advisory report to the District Court on the proposed discontinuance and abandonment. The District Court will consider the Board’s advisory report and decide the discontinuance and abandonment case. However, if the District Court determines that 11 U.S.C. § 1170 is inapplicable, the Board will decide the discontinuance and abandonment case under 49 U.S.C. § 10903.

Under either 11 U.S.C. § 1170 or 49 U.S.C. § 10903, the Trustee is required to file an Application with the Board and the Board must determine whether it believes the proposed discontinuance and abandonment is in the public interest. Although the District Court has not

³ Even though the abandonment of the WRC freight easement would not result in a cessation of rail carrier service on, or the removal of any rail or other track material from, the line subject to this Application, the Board has referred to the elimination of the WRC freight easement as an “abandonment.” See contra The Atchison, Topeka and Santa Fe Ry. – Abandonment Exemption – Between Arcadia and Los Angeles, CA, Docket No. AB-52 (Sub-No. 75X) (ICC served December 15, 1993).

rendered its decision on the pending jurisdictional dispute, the Trustee has filed this Application in order to avoid additional delay. Although the Board's role in this proceeding will be either to produce the advisory report contemplated by § 1170 or the final ruling contemplated by § 10903, the content of the Application and the substance of the Board's decision will be the same.

The Trustee respectfully submits that, under either 11 U.S.C. § 1170 or 49 U.S.C. § 10903, the public interest will be served by discontinuance of the CN trackage rights and abandonment of the WRC easement. As more fully set forth herein and in the supporting Verified Statements,⁴ the potential harm to the BAR estate, the new owner of the former BAR System (Montreal, Maine & Atlantic Railway Ltd. or "MMA") and its shippers and the communities it serves from the continued existence of the CN trackage rights and WRC easement substantially outweighs the potential harm to Fraser Papers Inc. ("Fraser") and CN (if any) from discontinuance of the trackage rights and abandonment of the easement.

INTRODUCTION

From at least as far back as 1995 until January of 2003, the BAR System struggled to generate sufficient revenue to cover its operating costs and maintain its infrastructure. On December 4, 2001, the Bankruptcy Court entered an order for relief against BAR under Chapter 11 of the United States Bankruptcy Code. In May of 2002, the other U.S. railroads in the BAR System filed voluntary petitions for relief under Chapter 11. Together, the order for relief against BAR and the voluntary bankruptcy petitions of the other U.S. railroads marked the official failure of the BAR System, but also marked the beginning of a process that is designed to put the BAR System back on a firm foundation. On January 9, 2003 the Trustee sold

⁴ In support of this Application, the Trustee relies on the attached Verified Statements of James E. Howard ("**Howard V.S.**"), Frederic W. Yocum, Jr. ("**Yocum V.S.**"), Edward A. Burkhardt ("**Burkhardt V.S.**"), Robert C. Finley ("**Finley V.S.**") and James Heller ("**Heller V.S.**").

substantially all of the assets of the BAR System to MMA. MMA is attempting a fresh start of operations of the BAR System.

Under the supervision of the Bankruptcy Court, the Trustee took many significant steps to maximize the likelihood of the long-term success of MMA and fulfill his duties to BAR System creditors. The BAR System railroads were relieved of huge amounts of debt and the burdens of many unfavorable contracts. The Trustee's job is not done, however. In March of 2001, in the midst of the most financially tumultuous time for the BAR System, BAR's parent company made a deal with CN the likes of which would never be seen in normal times and which was a huge mistake.

In exchange for \$5 million from CN:

- 1) BAR agreed to move cars of its second biggest customer, Fraser, which owns a paper mill located at Madawaska, Maine (the "Madawaska Mill"), over the former BAR line between the Madawaska Mill and St. Leonard, New Brunswick, for the account of CN under a haulage arrangement ("Junction Settlement Agreement" or "Haulage Agreement").⁵ CN thus gained the ability to set the rate for transportation to and from the Madawaska Mill without any input or concurrence from BAR. CN agreed to pay BAR approximately \$500 for each loaded car hauled for the account of CN on BAR's line, rather than divide the joint line revenue as in the past. The \$500 per car payment was less than 50% of the approximately \$1,065 per car that BAR earned on this traffic just prior to implementation of the contract.
- 2) BAR agreed to grant CN direct commercial access to Fraser pursuant to a trackage rights agreement ("Trackage Rights Agreement"). The Trackage Rights Agreement authorized CN to operate its own trains over the Madawaska Line to serve Fraser in exchange for a payment to BAR of \$200 per car.⁶

⁵ A copy of the Junction Settlement Agreement is attached hereto as **Exhibit C**.

⁶ A copy of the Trackage Rights Agreement is attached hereto as **Exhibit D**. The trackage rights allow CN to serve Fraser on: (1) a rail line formerly owned by BAR and now owned by MMA between approximately M.P. 0.0 at Madawaska, Maine and approximately M.P. 22.72 at Van Buren (Canadian Junction), Maine; and (2) a rail line formerly owned by VBBC and now owned by MMA between approximately M.P. 0.0 at Van Buren, Maine and approximately M.P. 0.31 at the United States – Canadian Border (collectively referred to as the "Madawaska Line"). A map of the Madawaska Line is attached hereto as **Exhibit G**.

and

- 3) BAR agreed to grant CN subsidiary WRC a non-exclusive freight easement over the Madawaska Line that could be used for the same purposes as the Trackage Rights Agreement.⁷

Although the \$5 million from CN allowed BAR to fend off its creditors for a while longer, the March 2001 transaction had an immediate adverse effect on BAR because it deprived BAR of a revenue stream critical to its long-term viability. For the first twelve (12) months under the Junction Settlement Agreement, BAR hauled 3,712 cars of Fraser traffic over the Madawaska Line at a rate of \$503 per car (increased by \$3 from the \$500 base rate in order to cover customs clearance expenses) for a total cash freight operating revenue under the agreement of \$1,867,136.⁸ That is at least \$2,092,677 less revenue than BAR would have earned under the joint rate arrangement previously in place with CN. **Yocum V.S. at 11.** If this Fraser traffic had moved under the Trackage Rights Agreement, BAR would have received \$3,217,413 less revenue than it would have earned under the joint rate arrangement.⁹

The Junction Settlement Agreement continues to shift approximately \$175,000 a month in freight revenue on Fraser traffic from MMA to CN. **Howard V.S. at 10.** The CN trackage rights, thus far unused, give CN the immediate and unilateral right to shift even more freight revenue on Fraser traffic from MMA to CN. **Yocum V.S. at 12.** The Trustee's effort to set things straight for the former BAR System, now owned and operated by MMA, includes as a critical element the rejection of the Junction Settlement Agreement and the elimination of CN's

⁷ A copy of the WRC easement ("Easement") is attached hereto as **Exhibit E.**

⁸ Haulage operations began on April 22, 2001.

⁹ This calculation assumes that BAR would have received a division of \$1066.76 on the joint rate (its 2000 average division), \$503 as its haulage fee under the Junction Settlement Agreement and \$200 as its fee under the Trackage Rights Agreement.

unilateral power to trigger a multi-million dollar per year revenue shift from MMA to CN pursuant to its trackage rights.¹⁰

On October 9, 2002, the Bankruptcy Court approved the sale of substantially all of the assets of the BAR System (including the Madawaska Line) to MMA. See In Re Bangor & Aroostook Railway Company, et al., Case No. 01-11565, Order (1) Approving Asset Purchase Agreement; (2) Authorizing Sale of Assets to Montreal, Maine & Atlantic Railway Ltd.; and (3) Authorizing Assumption and Assignment of Related Agreements (hereinafter referred to as the “Asset Sale Order”), dated October 9, 2002, attached as **Appendix 3 to the Howard V.S.** The Asset Sale Order preserved the Trustee’s right to seek discontinuance of CN’s trackage rights and abandonment of WRC’s freight easement over the Madawaska Line. See Asset Sale Order at 12, 15-16.¹¹

Under 49 U.S.C. § 10903, the Board must decide whether the present or future public convenience and necessity require or permit the proposed discontinuance. Under 11 U.S.C. § 1170, the Board must advise the District Court whether the proposed discontinuance would, in the Board’s opinion, be in the public interest. In assessing the proposed discontinuance under either statutory provision, the Board must weigh the adverse effects on Fraser and CN (if any) from discontinuance of the trackage rights against the adverse effects on the BAR estate, MMA

¹⁰ As explained further herein, the Trustee has sought to reject the Junction Settlement Agreement (which is not subject to Board jurisdiction) and the Trackage Rights Agreement as executory contracts pursuant to provisions of the Bankruptcy Code. However, absent either District Court approval under 11 U.S.C. § 1170 or Board approval under 49 U.S.C. § 10903, the CN trackage rights will survive the rejection of the Trackage Rights Agreement and CN could seek to establish terms and conditions for use of those trackage rights.

¹¹ As explained further herein, the WRC freight easement does not contain any rights apart from those set forth in the Trackage Rights Agreement. Therefore, unless other stated, all references in this Application to the discontinuance of the CN trackage rights should be read to include the abandonment of the WRC freight easement.

and the other shippers and communities that are served by MMA from retention of the trackage rights.¹²

There are very significant potential harms associated with retention of CN's trackage rights:

- 1) CN's unilateral power to trigger a multi-million dollar per year revenue shift from MMA to CN threatens the long-term viability of MMA, because MMA, like BAR before it, is a light density railroad system. **Burkhardt V.S. at 4; Yocum V.S. at 3-5.**
- 2) The foregoing threat to the long-term viability of MMA is a threat to all shippers using the MMA system, including Fraser, and the communities in which they are located. **Burkhardt V.S. at 7; Howard V.S. at 22.**
- 3) MMA most likely will be compelled to abandon the former BAR rail line between Madawaska and Portage ("Madawaska-Portage Line") if the CN trackage rights are retained. Based upon current traffic projections, the abandonment of the Madawaska-Portage Line would cause a reduction in routing options for about 52 shippers and receivers of approximately [] carloads of traffic. **Howard V.S. at 14.**

and

- 4) MMA most likely will be compelled to abandon the former CDAC rail line between Brownville Junction and the U.S./Canada Border ("CDAC Line") if the CN trackage rights are retained. Based upon current traffic projections, the abandonment of the CDAC Line would result in reduced routing options for the about 196 shippers and receivers of approximately [] revenue units (carloads and intermodal containers) of traffic.
- 4) Abandonment of the CDAC Line also would eliminate the shortest rail route between Saint John, New Brunswick and Montreal, Quebec. **Howard V.S. at 15.**¹³

¹² See, e.g., Kansas City Southern Railway Company – Adverse Discontinuance Application – A Line of Arkansas and Missouri Railroad Company, Docket No. AB-103 (Sub-No. 14) (STB served March 23, 1999) (in implementing the statutory standard, the Board considers the relative burden that continuation of service on one hand and cessation of service on the other would have on the involved carrier, line owner, and public).

¹³ MMA could make a very compelling case for the abandonment of the Madawaska-Portage Line and the CDAC Line. Together, these abandonments could save MMA over \$800,000 per year. **Finley V.S. at 2**, and perhaps even more. **Howard V.S. at 12-13.**

There are very significant benefits to MMA and the public associated with discontinuance of CN's trackage rights. The discontinuance would:

- 1) Promote the long term viability of MMA and the continuation of rail service on the entire MMA rail network in northern Maine. **Burkhardt V.S. at 4; Howard V.S. at 2.**
- 2) Preserve current rail routing options for nearly 250 shippers located on or using the MMA system. **Howard V.S. at 17.**¹⁴
- 3) Minimize the need for public investment in rail and highway [- infrastructure in the State of Maine. **See Howard V.S. at 19-20.**
- 4) Prevent the diversion of traffic from rail to truck and the adverse effects that would have on Maine's roads and highways (including an increase in hazardous materials transportation on those roads and highways). **Howard V.S. at 17.**
- 5) Foster equal treatment of creditors and enhance the credibility and fairness of the railroad bankruptcy system in the United States. **Howard V.S. at 6.**

and

- 6) Return \$5 million dollars to the BAR for distribution to creditors in accordance with applicable priority rules. **Howard V.S. at 10.**

On the other side of the equation, Fraser would not be harmed by the discontinuance of the CN trackage rights:¹⁵

- 1) Discontinuance of the CN trackage rights would do nothing other than return Fraser to the multiple transportation options it enjoyed prior to the grant of the CN trackage rights.

¹⁴ In some cases, shippers would go from two routes to one route. In cases where the shippers are dependent on rail transportation and go from two rail routes to one rail route, this would eliminate competition between interline (or "bridge") carriers and give the single remaining railroad significant leverage to increase rates. **Howard V.S. at 17.** Competition between bridge carriers has been a significant benefit to Fraser, **see Heller V.S. at 13, 23-25, 28, 31, 33, 39-40 and 49.** and should be preserved for all shippers on the MMA system who enjoy it today.

¹⁵ Fraser is the only shipper CN may serve with its trackage rights and that WRC may serve with its easement. See Trackage Rights Agreement, attached hereto as **Exhibit D**, at Article 3.

2) Discontinuance of the trackage rights will not cause any deterioration in rail service to Fraser. MMA is providing service to Fraser at Madawaska. Before MMA, BAR provided the service. CN has never served the Madawaska Mill. **Yocum V.S. at 7.** Due to the recent acquisition of the Millinocket and East Millinocket paper mills by Fraser's affiliate, Katahdin Paper Co. LLC ("Katahdin Paper"), MMA has even greater incentives to provide excellent service and competitive routing options to Fraser. **See Burkhardt V.S. at 11.**

3) Fraser enjoys pervasive truck competition on all outbound paper transportation. [
] **Heller V.S. at 6 and 10.**

4) Fraser enjoys robust competition among railroads serving its multiple origins and multiple routings on all inbound commodities delivered to the Madawaska Mill by rail. **Heller V.S. at 28 and 35-36.**

5) [
]

] **Heller V.S. at 18-21 and 46.**

and

6) [
]

] **Heller V.S.**
at 46-49.

For the reasons summarized above and set forth more fully in this Application and its supporting Verified Statements, the potential harm to the BAR estate, MMA and its shippers and communities served by MMA from the retention of the trackage rights far outweighs the potential harm to Fraser and CN, if any, from the discontinuance of the trackage rights. Accordingly, the Board should find that the public interest supports discontinuance of the CN trackage rights.

STATEMENT OF FACTS¹⁶

A. The Trustee's Efforts to Protect The Public Interest

The Trustee has a statutory duty under the Bankruptcy Code of 1978 to protect the public interest in continued rail operations. **Howard V.S. at 2.** Consequently, the Trustee made a sustained effort to sell all or substantially all of the BAR System in its entirety as a means of keeping the system whole and ensuring the continuation of viable rail service in northern Maine. **Howard V.S. at 2.** The Trustee recommended the sale of the BAR System to MMA because MMA was the only prospective buyer that offered to acquire substantially all of the BAR System. **Howard V.S. at 2-3.**

In order to protect the public interest in continued rail service over the former BAR System in northern Maine, the Trustee has a statutory duty to ensure the viability of the MMA system. The Trustee believes that the continued existence of the CN trackage rights and WRC easement threaten the future viability of MMA. Therefore, in order to protect the public interest in viable MMA rail service in northern Maine and to recover \$5 million for the BAR estate, the Trustee filed a motion in the Bankruptcy Court seeking to reject under 11 U.S.C. § 365 the Junction Settlement Agreement, the Trackage Rights Agreement and the WRC easement as executory contracts detrimental to the BAR estate. The Bankruptcy Court indicated that the contracts likely were executory contracts capable of rejection under § 365 of the Bankruptcy Code. However, CN filed a motion seeking a stay of the matter pending a decision by the Board on whether the Trustee could revoke the exemption authority that CN and WRC had obtained in 2001 for the trackage rights and easement. The Bankruptcy Court stayed the proceedings by order dated May 15, 2002.

¹⁶ Application information required by 49 C.F.R. §§ 1152.22 – 1152.24 is attached hereto as **Exhibit A.**

After the Board rejected the Trustee's attempt to revoke the trackage rights and easement exemptions, the Trustee served discovery on CN and Fraser in order to prepare the instant Application.¹⁷ The Trustee did not begin to receive the bulk of that discovery until May 2003 and only recently received supplemental discovery from CN. In addition to the delay associated with the discovery dispute, the Trustee and CN continued to disagree over whether the Board or the Bankruptcy Court has jurisdiction to rule on the merits of the discontinuance.

On May 7, 2003, the Bankruptcy Court lifted the stay and converted the matter to an adversary proceeding. On June 19, 2003, after the Trustee consented to a motion by CN to withdraw the reference to the Bankruptcy Court, the adversary proceeding was transferred to the District Court. The question of whether the Board or the District Court makes the final determination on the proposed discontinuance is still pending before the District Court and is expected to be decided soon.

B. Fraser Papers Inc.

Fraser, based in Stamford, Connecticut, is a subsidiary of Toronto-based Nexfor, Inc. ("Nexfor"). Fraser is an integrated paper company. It operates paper mills in Wisconsin, Maine and New Brunswick. Fraser operates an international distribution center for its paper products in West Chicago, Illinois. Fraser manufactures specialty pulp at a mill in Thurso, Quebec. It owns or manages more than two million acres of forestland, operates an advanced tree nursery in New Brunswick and saw mill operations in Canada and Maine. Nexfor is partially owned by Brascan

¹⁷ On November 14, 2002, the Trustee served document requests and interrogatories on CN and Fraser. CN responded to the Trustee's discovery requests by providing brief responses to three (3) of the interrogatories, but refused to produce a single requested document and objected to the remaining five (5) interrogatories. Fraser never responded to the Trustee's discovery requests. On May 6, 2003, approximately five (5) months after the Trustee had filed motions to compel, the Board required CN and Fraser to respond in part to the Trustee's outstanding discovery requests.

Corporation ("Brascan"), which in April 2003 acquired paper mills in Millinocket and East Millinocket that are located on MMA and that were formerly owned by Great Northern Paper ("Great Northern"). Brascan owns these two mills under the name Katahdin Paper and has contracted with Fraser/Nexfor to manage operations at these mills. **Burkhardt V.S. at 11.**

Fraser is a leading manufacturer of specialized paper grades, such as paper for printing and publishing and specialized paper products such as envelopes. In 1918, Fraser's predecessor constructed a pulp mill at Edmunston, New Brunswick that is located directly across the St. John River from Madawaska. In 1925, Fraser constructed the Madawaska Mill on the BAR system, which at the time had been providing rail service to and from Madawaska for approximately 14 years. BAR provided rail service to the Madawaska Mill for a period of 77 years, service which has continued since January 9, 2003 under MMA. No interruption of service occurred despite BAR's financial difficulties or its bankruptcy. CN has never itself provided direct rail service to the Madawaska Mill. **Yocum V.S. at 7.**

C. Canadian National Railway Company

CN is a very successful and profitable Class I railroad. In 2002, CN's adjusted net income was C\$ 1.052 billion, an eight percent (8%) increase over adjusted net income in 2001. CN's operating income increased by \$90 million, or five percent (5%), to C\$ 1.87 billion. CN revenues for 2002 were C\$ 6.11 billion, an increase of eight percent (8%) over revenues in 2001. Revenue gains were reported in forest products, which jumped from C\$ 1.08 billion in 2001 to C\$ 1.32 billion in 2002, a twenty-two percent (22%) increase. Canadian National Annual Report, 2002, at 31. CN's average freight revenue per route mile reached C\$ 331,000 in 2002, up from C\$ 303,000 in 2001. Canadian National Annual Report, 2002, at 30.

For the quarter ended June 30, 2003, CN's net income was C\$ 244 million. Absent the recent appreciation of the Canadian dollar by 11%, which reduced CN's U.S.-denominated income by approximately C\$ 11 million, CN remains on pace in 2003 to match its total net income from 2002. See Canadian National Quarterly Review, Q2 2003, at 2.

D. The Former BAR System

The BAR System consisted of approximately 849 route miles of rail line in the states of Maine and Vermont and in the provinces of Quebec and New Brunswick. The BAR System provided the shortest rail transportation route between many points in Maine and the Montreal gateway and a critical link in the rail route between Saint John, New Brunswick and Montreal. **Yocum V.S. at 2.** The rail lines of the former BAR System railroads are depicted on **Exhibit B** attached hereto. The BAR System interchanged with CN (St. Leonard, NB; Ste. Rosalie, PQ; St. Jean, PQ), Canadian Pacific Railway Company ("CP") (St. Jean, PQ), Guilford Rail System ("Guilford") (Northern Maine Junction, ME, which is near Bangor, ME), the Eastern Maine Railway and the New Brunswick Southern Railway (Brownville Junction, ME), and the St. Lawrence and Atlantic Railroad (Sherbrooke/Lenoxville, PQ).¹⁸ **Yocum V.S. at 2-3.** Principal commodities included paper, lumber, wood and agricultural products shipped from locations in eastern and northern Maine and inbound chemicals and other products used by paper producers and consumers in Maine. **Yocum V.S. at 3.**

¹⁸ The BAR System also interchanged with the New England Central Railroad Company ("NECR") at White River Junction, VT as a result of operations by NVT. See **Yocum V.S. at 3.** MMA bought that portion of the NVT between the U.S./Canada border at a point north of Richford, VT and Newport, VT. See **Burkhardt V.S. at 1.** The NVT line from Newport south to Wells River, VT was sold by the Trustee to the State of Vermont, which now owns the entire line between Newport and White River Junction, VT. Washington County Railroad Company currently provides freight rail operations over the Newport-White River Junction line.

In 2001, the BAR System operated 7,928 trains in Maine. Of these, 6,914 were on BAR and 1,014 were on CDAC.¹⁹ The BAR System operated slightly fewer trains over those railroads in 2002. Frequency of service varied somewhat by area. The BAR System generally operated on a five day a week schedule, but also operated switchers to the paper mills and through trains on the weekends. A breakdown of the 2001 and 2002 traffic on the BAR System by commodity, carloads, revenue and tonnage is attached as **Appendix 2 to the Yocum V.S.**

The principal concentrations of traffic on the BAR System were from the twin paper mills of Great Northern in Millinocket and East Millinocket, Maine, and the Fraser facility at Madawaska, Maine. **Yocum V.S. at 3.** Together, the Great Northern and Fraser traffic constituted 17,889 carloads out of 66,184 total revenue units on the BAR System in 2001, and 15,598 carloads out of 50,685 total revenue units on the BAR System in 2002.²⁰ **Yocum V.S. at 3-4.**

Yocum Table 1: BAR System Traffic (in carloads)

Year	Fraser and Great Northern Traffic	Total BAR System Traffic
2001	17,889	66,184
2002	15,598	50,685

Great Northern and Fraser were the BAR System's only major on-line customers.²¹ Most of Great Northern's traffic on the BAR System moved from Millinocket south to Brownville Junction and then west over CDAC to interchange with CP in Montreal or vice versa. Other

¹⁹ In the BAR System there were two tariff carriers, BAR and CDAC. BAR operated over the VBBC line. CDAC was the tariff carrier not only for itself, but also for QSR and NVT (which operated over the line owned by NRR). Thus, CDAC had crew starts in Vermont, as well as in Quebec, which are not included in this count. **Yocum V.S. at 3.**

²⁰ Revenue units includes both carloads and intermodal containers.

²¹ The BAR System's third largest customer was Georgia Pacific (formerly Fort James), which moved approximately 4,805 cars in 2002. **Yocum V.S. at 4.**

GNP traffic moved from Millinocket south to the interchange with Guilford at Northern Maine Junction, or north over BAR's line through Portage, Maine to points on the BAR or over the Madawaska Line to interchange with CN at St. Leonard or vice versa. The Great Northern routings are specified in the table below. **Yocum V.S. at 4.**

Yocum Table 2: Great Northern Traffic Routings (in carloads)

Year	Millinocket-Brownville Jct.-CDAC	Millinocket-Northern Maine Jct - Guilford	Millinocket-Madawaska Line - CN	Local Great Northern Traffic
2001	5,566	517	86	5,927
2002	3,678	203	46	3,533

Great Northern filed a voluntary Chapter 11 bankruptcy petition on January 9, 2003, mere hours after MMA acquired the BAR System. **Burkhardt V.S. at 7.** Once one of the largest manufacturers of specialty paper in North America and the largest employer in northern Maine, Great Northern was forced prior to its bankruptcy petition to cease operations. Great Northern accounted for approximately 25 percent of the BAR System's total monthly revenue.²² On March 24, 2003, Brascan was approved as the winning bidder for the mill facilities, and the sale was consummated on April 29, 2003. As previously noted, Brascan also owns a 43 percent share of Nexfor, which in turn operates Fraser as one of its subsidiaries. **See Burkhardt V.S. at 11.**

For several years prior to the sale of the BAR System to MMA, most of the BAR System's Fraser traffic was routed over the Madawaska Line. Some Fraser traffic was routed south to Brownville Junction and then west over CDAC to interchange with CP in Montreal or vice versa. Other traffic moved over the BAR line between Madawaska and Portage, Maine to

²² As described further below, the Great Northern shutdown has had a devastating impact on MMA's financial performance.

points on the BAR System or to BAR's interchange with Guilford at Northern Maine Junction or vice versa. **Yocum V.S. at 5.** The following table sets forth the different routings used for Fraser traffic in 2001 and 2002.

Yocum Table 3: BAR System Traffic To Or From Fraser (in carloads)

Year	Total	Madawaska Line (Madawaska – Van Buren)	CDAC Line	BAR System Local Traffic	Guilford (Northern Maine Junction)
2001	5805	3914	356	823	712
2002	5722	4096	152	865	609

Despite its importance to Fraser for access to CP and Great Northern for access to CN, BAR's line from Madawaska south to Portage, Maine, a distance of approximately 59 route miles, was a light density line. Most of its traffic was bridge traffic. In addition to Fraser and Great Northern traffic, the Madawaska-Portage Line bridged propane (originated at Canadian points), lumber (originated on rail at Van Buren) and liquefied petroleum gas ("LPG"). The only significant on-line traffic was logs that originated at Ft. Kent. **Yocum V.S. at 5.**

On the CDAC Line, approximately 102 miles in length, most of the traffic was overhead traffic. Great Northern and Fraser traffic made up the majority, together with some oriented strand board ("OSB") from manufacturing plants located at Easton and New Limerick, lumber from stations on the BAR (located at Northern Maine Junction, Van Buren, Ashland, Skerry and Portage), and sulfuric acid to Searsport, all on the BAR. **Yocum V.S. at 5.** The CDAC Line had virtually no originated traffic and no terminated traffic.²³ **Yocum V.S. at 5.**

²³ There was a very small amount of lumber transloaded onto the railroad at Jackman, ME.

The BAR System's light density also is revealed from a look at the cost side. System-wide operating costs were such that every carload or intermodal unit needed to recover about \$850 just to cover operating costs. For many years, the BAR System did not even cover its system-wide operating costs and had no money for capital improvements, debt service or other investments, to say nothing of a return on investment. **Yocum V.S. at 5.**

E. Transportation Service To Fraser

1. Service To Fraser

Fraser was a long-standing customer of BAR and is a major customer of MMA. Fraser's Madawaska Mill generates substantial rail traffic, including inbound shipments of raw materials such as clay and specialty chemicals used in the paper manufacturing process and outbound shipments of specialized paper products. **Heller V.S. at 7 and 25-26.**

Fraser requires consistent and reliable rail service. Fraser remained a major customer of BAR throughout the financially tumultuous period between 1995 and the BAR's acquisition by MMA. BAR, recognizing the importance of Fraser's business, consistently provided Fraser with excellent service. Before the haulage arrangement, BAR/CN service to Fraser was provided under a joint rate. Since April 22, 2001, all service to Fraser over the Madawaska Line has been pursuant to the haulage arrangement under the Junction Settlement Agreement. However, the actual train service on the Madawaska Line had been provided by BAR (and now by MMA), rather than CN, for many decades. CN has never provided direct service to Fraser. **Yocum V.S. at 7.**

Today MMA continues to strive to provide Fraser with excellent service. There are two MMA assignments each day that switch the Madawaska Mill in addition to other duties. One of those also makes the CN interchange run to and from St. Leonard, NB six days a week. The

Madawaska Line is a Federal Railroad Administration (“FRA”) Class 2 track, which provides for a running speed of 25 mph. **Burkhardt V.S. at 3.**

2. Fraser’s Rail Transportation Routing Options

Rail traffic to or from Fraser’s Madawaska Mill can move over four different routes:

- MMA’s Madawaska Line between Madawaska and Van Buren to the interchange with CN’s line at St. Leonard, New Brunswick, or vice versa;²⁴
- MMA’s line from Madawaska south through Portage to Brownville Junction for further movement west over the former CDAC line to interchanges with CP or CN near Montreal and other points in Quebec, or vice versa;²⁵
- MMA’s line from Madawaska south through Portage to an interchange with Guilford at Northern Maine Junction (near Bangor), or vice versa; or
- MMA’s line from Madawaska south through Portage to Brownville Junction and interchanges with Eastern Maine Railway and New Brunswick Southern Railway for further movement east to points in New Brunswick, or vice versa.²⁶

Yocum V.S. at 6.

For many years prior to implementation of the haulage arrangement, a substantial portion of Fraser’s Madawaska Mill traffic moved over the CN routing via St. Leonard and the

²⁴ The Madawaska Line is used for routing Fraser traffic only to and from the CN interchange at St. Leonard.

²⁵ This line is the principal route for Fraser traffic interchanged to and from CP.

²⁶ A significant amount of Fraser traffic also moves locally over the Madawaska-Portage Line to Searsport and other points on the MMA System.

Madawaska Line under a joint rate quoted by BAR and CN. **Yocum V.S. at 6.** Since April 22, 2001, all Fraser traffic over the Madawaska Line has been moved under the Junction Settlement Agreement. BAR moved 3,712 carloads of Fraser traffic during the first twelve (12) months of operations under the Junction Settlement Agreement (from April 22, 2001 through April 22, 2002). **Yocum V.S. at 11.** BAR moved an additional 2,913 carloads of Fraser traffic under the Junction Settlement Agreement between April 23, 2002 and December 31, 2002. **Yocum V.S. at 11.** For the first six months of 2003, MMA has moved approximately 1,625 carloads of Fraser traffic under the Junction Settlement Agreement. **Burkhardt V.S. at 3.**

3. Fraser Total Rail Freight Costs

[
].²⁷ **Table 1** summarizes the quantity and freight costs for all Madawaska Mill rail traffic in 2000. [
]

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²⁷ [

43-44.] See Heller V.S. at

Heller Table 1: Fraser Total Rail Traffic 2000

Product/Commodity ²⁸	Cars	Tons (000)	Rail Freight Costs (\$000)	Percentage Rail Freight Costs ²⁹ (%)
[]	[]	[]	[]	[]
[]	[]	[]	[]	[]
[]	[]	[]	[]	[]
[]	[]	[]	[]	[]
[]	[]	[]	[]	[]
[]	[]	[]	[]	[]
[]	[]	[]	[]	[]
Total	[]	[]	[]	[]

F. Events Leading Up To The Grant Of The Trackage Rights In March 2001

The BAR System was put together in a series of highly-leveraged transactions in 1995-96. In January of 1995, CDAC, a newly-formed affiliate of BAR, acquired the CP rail line between Brownville Junction and Lennoxville, Quebec. In March of 1995, Iron Road Railways, Inc. ("Iron Road") acquired BAR and CDAC. In September of 1996, Iron Road acquired NVT, NRR and QSR from CP. Iron Road borrowed from Bank Austria Creditanstalt to acquire BAR and acquired CDAC by assuming the CDAC purchase money loan from the seller, CP. Similarly, the purchase price for the three 1996 acquisitions by Iron Road also was seller-financed. **Yocum V.S. at 8.**

The acquisitions of BAR, CDAC, NVT, NRR and QSR created substantial debt service requirements for Iron Road. Furthermore, Iron Road did not have sufficient working capital for the operations of the acquired railroads. Unfortunately, the operating revenue on the BAR System was not sufficient to make up for the undercapitalization. Thus from 1995 through the

²⁸ Corn starch, titanium dioxide, and talc are received by Fraser on a delivered price basis.
²⁹ This column depicts freight dollars for a particular commodity as a percentage of total freight charges.

sale to MMA, the BAR System railroads were in an almost perpetual state of cash starvation.

Yocum V.S. at 8.

BAR's undercapitalization and significant operating losses in 1995 and 1996 led to very serious financial problems in 1997-99. See Yocum V.S. at 8. A 1999 refinancing of the BAR System as a result of investments by two railroad supply companies (Railcar, Ltd. and Progress Rail Services Corporation) eased the cash crunch temporarily, but did nothing to solve the BAR System's underlying problems. BAR's unaudited Balance Sheet at July 31, 1999 (the month before the refinancing) showed a working capital balance of negative \$29.4 million and a current ratio³⁰ of 0.22 to 1, indicating extreme pressure on liquidity. Five months later (December 31, 1999), the recapitalization allowed the working capital balance to improve somewhat (to a negative \$11.1 million and a current ratio of 0.41 to 1). However, by December 31, 2000, working capital had decreased to negative \$17.4 million and the current ratio had deteriorated to 0.29 to 1, which meant the BAR was almost back to where it was just prior to the 1999 Railcar/Progress refinancing. **Yocum V.S. at 9.**

During BAR's financial struggle from 1995-2000, BAR's operations on the Madawaska Line were an exception to the downward spiral. BAR and CN quoted a joint rate to Fraser. BAR and CN negotiated a division of that joint rate. From 1995 to 2000, BAR received an average of approximately \$1,000 per loaded car for the movement of Fraser traffic to and from St. Leonard and Fraser's mill at Madawaska. The traffic volume, average BAR division per car and BAR revenue for Fraser traffic on the Madawaska Line for the years 1995 through 2000 are set forth in the table below:

³⁰ The current ratio is a standard measure of a company's ability to pay its short-term obligations. It is the ratio of current assets to current liabilities. In calculating the current ratio and the current asset and liability amounts, intercompany amounts have been eliminated.

Yocum Table 5: BAR Volume, BAR Division Per Car and BAR Revenue on Fraser Traffic on Madawaska Line 1995-2000			
Year	Carloads	Average BAR Division Per Car	BAR Operating Revenue
1995	2,282	\$ 964.13	\$2,200,147.00
1996	2,463	\$ 919.75	\$2,265,339.72
1997	2,835	\$ 986.82	\$2,797,629.84
1998	3,158	\$ 963.09	\$3,041,438.42
1999	2,744	\$1,073.57	\$2,945,878.67
2000	3,399	\$1,066.76	\$3,625,917.61
6-year Average	2,814	\$ 995.69	\$2,812,725.21

The financial condition of the BAR System would have been far more distressed during this period if BAR had not earned the joint line revenue from Fraser traffic moving over the Madawaska Line. **Yocum V.S. at 10.** The financial difficulties of the BAR System continued up to and through the grant of the CN trackage rights and the WRC freight easement in early 2001, and the eventual sale to MMA in early 2003. **Yocum V.S. at 9.**

G. The Grant Of The CN Trackage Rights And The WRC Freight Easement

The financial trouble of the BAR System was well known to everyone by the end of 2000, including Fraser. In fact, Austin Durant, Fraser's Vice President of Materials Management, who had responsibility for transportation matters, expressed a concern to BAR that BAR's service to the Fraser mill at Madawaska might be interrupted or shut down as a result of BAR's financial condition. Iron Road and BAR gave him every assurance that service to Fraser

would continue at the same high level and would not be downgraded or shut down. The service to Fraser remained excellent at all times. **Yocum V.S. at 10.**

In early 2001, in order to address BAR's desperate financial situation, Iron Road negotiated three contracts with CN pursuant to which CN paid \$5 million to BAR. In return, CN negotiated the right to receive a greater share of revenue for rail traffic moving to or from the Fraser mill in Madawaska. CN proposed, and Iron Road agreed, that BAR would handle (or "haul") cars between Madawaska and St. Leonard for the account of CN under the Junction Settlement Agreement.

Under that Junction Settlement Agreement, CN would have the ability on its own to set the rate for transportation to and from Madawaska without any input or concurrence from BAR. CN agreed to pay BAR a \$500 fee for each loaded car hauled for the account of CN, rather than set rates jointly and negotiate a division of the joint line revenue as in the past.³¹ The \$500 per car payment was less than 50% of the approximately \$1,065 per car that BAR was earning just prior to the contract. There was no change in any physical operation associated with moving to a haulage arrangement. The only thing that changed was the identity of the railroad in whose account the cars moved. The effect of the Junction Settlement Agreement was to increase CN's revenue on Fraser traffic to the detriment of BAR.

As shown in the table above, BAR's operating revenue from Fraser traffic over the Madawaska Line between 1995 and 2000 was in the range of \$2.2 million to \$3.6 million. For the first twelve months under the haulage arrangement, BAR hauled 3,712 cars at a rate per car of \$503 for a total cash freight operating revenue under the agreement of \$1,867,136. That is at

³¹ The \$500 per car payment is subject to a standard cost adjustment index and a \$3 charge for customs clearance expenses.

least³² \$2,092,677 less revenue than BAR would have earned under the joint rate arrangement.

Yocum V.S. at 11.

In addition to entering into the Junction Settlement Agreement, Iron Road acquiesced to CN's demand that BAR provide trackage rights to permit CN to operate its own trains between Madawaska and St. Leonard if it wished to do so. Thus, the parties entered into a Trackage Rights Agreement, dated March 1, 2001. CN has not commenced operations under the Trackage Rights Agreement.³³

The Trackage Rights Agreement permits CN to run up to two trains in each direction over the Madawaska Line during any 24-hour period for service to Fraser only. The trackage rights can be exercised by CN at any time, in CN's discretion. CN is required to pay MMA \$100 per loaded or empty car (subject to adjustment using the same index as the Junction Settlement Agreement). The Trackage Rights Agreement gives CN the immediate and unilateral right to shift additional revenue on Fraser traffic from MMA to CN.

The negotiations resulting in the Junction Settlement Agreement and the Trackage Rights Agreement were not between two parties with equal bargaining power. **Yocum V.S. at 12.** BAR was on the brink of bankruptcy, was in desperate need of cash and had extremely limited opportunities to raise such cash. In order to stave off bankruptcy, Iron Road gave CN direct

³² The revenue difference could have been higher. In performing the calculation, Mr. Yocum used BAR's average division on Fraser traffic for 2000 (\$1,066.76) to make this calculation, when the actual division might have increased slightly during the period between April 2001 and April 2002. **Yocum V.S. at 11.**

³³ In addition to the Trackage Rights Agreement, CN demanded a freight easement over the Madawaska Line, which was conveyed by BAR to WRC. The freight easement was granted to WRC, because if it had been granted to CN, CN's acquisition of the trackage rights would not have qualified for the Board's class exemption at 49 C.F.R. § 1180.2(d)(2). See Verified Statement of Clifford L. Carson, attached as Tab 1 to the Reply of Canadian National Railway Company and Waterloo Railway Company to Petition to Reopen and Revoke Exemptions, Finance Docket No. 34014 and 34015 (STB filed May 9, 2002) at 4.

commercial access to BAR's second largest customer in exchange for an immediate cash infusion. Although BAR used the \$5 million payment from CN to fend off its creditors for a while longer, see Yocum V.S. at 13, the CN agreements were a debacle for BAR and shifted a significant stream of revenue on Fraser traffic from BAR to CN. **Howard V.S. at 9.**

The Junction Settlement Agreement has allowed CN to increase its own freight revenue on Fraser traffic since April 2001. In addition to this tidy return, CN apparently saw a superb opportunity to gain direct commercial access to Fraser's Madawaska mill by demanding trackage rights. The trackage rights are the clearest indicator of the one-sided nature of this transaction. **Yocum V.S. at 12.** Absent serious financial distress, no railroad manager would ever give up exclusive access to one of its major shippers and the balanced bargaining position between itself and its connecting railroads in division negotiations. The trackage rights and the freight easement were a gross overreach on the part of CN. **Yocum V.S. at 13.**

H. Events After The Grant Of The CN Trackage Rights And WRC Freight Easement

The \$5 million cash infusion eased BAR's cash crunch for a time, but in August of 2001, a group of creditors filed an involuntary bankruptcy petition against BAR. In September of 2001, Rail World, Inc. ("Rail World"), a company controlled by Edward A. Burkhardt, submitted a written expression of interest to buy substantially all of the assets of the BAR System. This expression of interest was reduced to a letter of intent between BAR and Rail World. In October, BAR and an informal committee of creditors entered into a stipulation (approved by the Bankruptcy Court) suspending the bankruptcy proceedings, pending BAR's effort to enter into a definitive purchase agreement with Rail World (and other investors working with Rail World). Despite significant efforts on both sides, BAR and Rail World were not able to enter into an definitive agreement by the deadline in the stipulation. **Yocum V.S. at 13.** On

November 26, 2001, the informal creditors committee filed a notice of default under the stipulation and on December 4, the Bankruptcy Court entered an order of relief against BAR.

Meanwhile, operations in 2001 had produced losses. In 2001, the BAR System had an operating cash deficit of approximately \$10.2 million and a net loss of approximately \$26.6 million.³⁴ In May of 2002, the other four BAR System railroads in the United States (CDAC, VBBC, NRR and NVT) filed voluntary bankruptcy petitions. The BAR System losses continued through 2002. In 2002, the BAR System had an operating cash deficit of approximately \$2.4 million and a net loss of approximately \$9.5 million. **Yocum V.S. at 14.**

If the Fraser traffic moving over the Madawaska Line from April 2001 through December 31, 2002 had moved under the joint rate arrangement and BAR had earned its average division from 2000, then BAR's revenue on such traffic would have been approximately \$7,067,285, which is \$3,734,910 more than the amount BAR actually earned under the Junction Settlement Agreement. **Howard V.S. at 9.** Clearly, operating pursuant to the terms of the Junction Settlement Agreement contributed significantly to the deficit cash flow of the BAR System.³⁵

I. MMA's Acquisition of The BAR System

In January 2002, MMA entered into negotiations with the Trustee to purchase substantially all of the assets of the BAR System. MMA was the only prospective buyer that offered to acquire substantially all of the BAR System. Although there were several other rail operators who expressed interest in portions of the BAR System, it was clear their plans assumed

³⁴ Operating cash deficit is the loss from operating less depreciation and special charges. **Yocum V.S. at 14.**

³⁵ If CN has operated its own trains over the Madawaska Line to serve Fraser under the Trackage Rights Agreement, BAR's approximate revenue would have been only \$1,325,000, which is \$5,742,285 less than it would have realized under the joint rate arrangement. **Howard V.S. at 9.**

a rationalization of the rail network or significant downgrading of service. **Howard V.S. at 3-4.** An agreement between MMA and the Trustee was reached in May, 2002 and amended in July, 2002.³⁶ The Trustee advised the Bankruptcy Court that the sale of the BAR System to MMA was by far the best means of protecting the public interest. **Howard V.S. at 3.** On October 8, 2002, the Bankruptcy Court approved the sale of substantially all of the assets of the BAR System (including the Madawaska Line) to MMA.³⁷

MMA completed its purchase of the BAR System on January 9, 2003. Since that date, MMA has owned and operated the former BAR System. MMA is attempting to rebuild the former BAR System into a viable and competitive railroad. The MMA System is a risky operation from a financial perspective, as BAR's bankruptcy and the effect of the Great Northern shutdown clearly indicate. **Burkhardt V.S. at 4, 11.** MMA's customer base is relatively concentrated, but it also relies on a collection of relatively small shippers for a significant proportion of its revenues. **Burkhardt V.S. at 4.** Historically, BAR (and now MMA) customers, including Fraser, have been directly served by only a single carrier. This situation developed because the relatively high costs and low revenues associated with the customer base would not support the introduction of competitive service. It reflects the market's determination that there is not sufficient traffic from these on-line customers to sustain two-railroad competition. **Burkhardt V.S. at 10.**

MMA's ability to operate its entire system profitably will be greatly enhanced by the removal of onerous arrangements such as the CN trackage rights that contributed to the BAR's bankruptcy. MMA provides rail service throughout the state of Maine, and has enjoyed

³⁶ The parties to the agreement also included QSR and Logistics Management Systems, Inc. ("LMS"), a non-rail carrier subsidiary of BAR that provided warehousing and distribution services.

³⁷ The Trustee sold the remaining portion of the BAR System to the State of Vermont.

substantial support from shippers, on-line communities, and government officials. **Burkhardt V.S. at 11.** For example, the State of Maine has committed \$6,000,000 over three years in matching funds to finance infrastructure upgrading projects. **Burkhardt V.S. at 11.**

MMA now serves Fraser and, with minor exceptions, operates the former BAR System in its entirety. From the perspective of all interested parties, including Fraser, BAR, and CN, MMA service to Fraser's Madawaska Mill subsequent to implementation of the Junction Settlement Agreement has been indistinguishable from BAR service before then. The only change has been the economic effect of the Junction Settlement Agreement on BAR, MMA, and CN. **Yocum V.S. at 14.**

MMA has been operating under the terms of the Junction Settlement Agreement since it acquired the former BAR System. The Junction Settlement Agreement continues to shift revenue on Fraser traffic away from MMA. MMA's financial condition has been further weakened by the bankruptcy and closure of the Great Northern mills at Millinocket and East Millinocket – a development beyond its control. MMA has already taken extraordinary steps to deal with the challenges posed by the CN agreements and the closure of the Great Northern mills. MMA has expanded its initial cost-cutting measures to include reduced salaries, reduced train schedules, reduced yard operations, and the furlough of certain employees. **Burkhardt V.S. at 9.** The recent resumption of paper manufacturing at East Millinocket has staved off disaster,³⁸ but MMA is living on the edge. In the first six months of 2003, MMA incurred operating losses of nearly \$2,000,000. **Burkhardt V.S. at 3.**

³⁸ As described further below, Brascan has resumed limited operations at East Millinocket. The Millinocket mill remains closed.

ARGUMENT

A. Procedural Posture

As of the date of this Application, the District Court has not ruled on the applicability of 11 U.S.C. § 1170 to the proposed discontinuance. Under 11 U.S.C. § 1170, the Board's role is to advise the District Court on whether the discontinuance is in the public interest. See Indiana Hi-Rail Corporation, Debtor – Abandonment – In Putnam and Van Wert Counties, OH, and Adams County, IN, Docket No. AB-336 (Sub-No. 6) (STB served August 21, 1997); see S. Rep. No. 95-989 (1978) reprinted in 1978 U.S.C.C.A.N. 5787, 5798; see also 49 C.F.R. § 1152.26(b). The Board submits an advisory report to the District Court advising whether the discontinuance of the trackage rights is in the public interest. The District Court decides whether to allow the proposed discontinuance.

In the event that the District Court determines that 11 U.S.C. § 1170 is inapplicable, the Board will be responsible for rendering a decision on the proposed discontinuance under 49 U.S.C. § 10903. The Board must decide whether the present or future public convenience and necessity require or permit the proposed discontinuance. See Kansas City Southern Railway Company – Adverse Discontinuance Application – A Line of Arkansas and Missouri Railroad Company, Docket No. AB-103 (Sub-No. 14) (STB served March 23, 1999). The Board's decision on the public interest question does not depend in any way on the fact that MMA is now the operating carrier of the former BAR System. The District Court, when it issues a decision concerning the applicability of Bankruptcy Code § 1170 (which is expected soon), will of necessity determine the effect, if any, of the Bankruptcy Court's October 9, 2002 Asset Sale

Order on the dispute between CN and the Trustee.³⁹ Whether the Board is issuing a report to the District Court under 11 U.S.C. § 1170, or is rendering a decision under 49 U.S.C. § 10903, the public convenience and necessity is the only question germane to these proceedings.

To determine the public interest in this case under either statutory provision, the Board must balance the potential harms to Fraser and CN from discontinuance of the CN trackage rights against the potential harms to the BAR estate, MMA, and shippers and communities served by the MMA system from retention of the trackage rights. See Fore River Railroad Corporation – Discontinuance of Service Exemption – Norfolk County, MA, Docket No. AB-359 (ICC served March 30, 1992) (citing Colorado v. United States, 271 U.S. 153 (1926)).

B. WRC's Easement Has No Purpose Apart From CN's Trackage Rights

The WRC freight easement confers no rights independent of the trackage usage rights set forth in the Trackage Rights Agreement. The easement specifies that WRC may use it only “in accordance with the terms and provisions” of the Trackage Rights Agreement. See Easement, attached hereto as **Exhibit E** at 1. The Trackage Rights Agreement and the WRC freight easement arose from the same transaction and are, according to CN, “inextricably linked.” See Reply of Canadian National Railway Company and Waterloo Railway Company to Petition to Reopen and Revoke Exemptions, Finance Docket Nos. 34014 and 34015 (STB filed May 9, 2002) at 15. The Bankruptcy Court also felt that in the course of the bankruptcy proceedings it

³⁹ The October 9, 2002 Asset Sale Order expressly reserves “all rights and obligations of the parties to the CN Junction Settlement Agreement, the CN Trackage Rights Agreement, and the Waterloo Easement.” Asset Sale Order, attached as **Appendix 3 to the Howard V.S.** at ¶ 27. CN drafted and requested the proposed language, and the Trustee submitted it to the Bankruptcy Court as part of the sale process. To permit the sale to move forward, the parties and the Bankruptcy Court understood that the issues related to discontinuance of the trackage rights and abandonment of the easement would be resolved after the sale of the encumbered Madawaska Line. For these reasons, the Trustee believes, as stated in pleadings presently under District Court advisement, that the District Court will reject the argument CN raised in that forum that the bankruptcy sale somehow impacted the parties’ relative rights.

had been effectively treated as a given that the “[Trackage Rights Agreement and the WRC easement] are tied operationally to one another, and the effect of one is limited by the other, and if one goes away the other, meaning easement, is of no practical effect.” See In Re Bangor & Aroostook Railway Company, et al., Case No. 01-11565, Transcript of Hearing on Motion for Relief From Stay, dated May 7, 2003, at 8, the relevant portion of which is attached hereto as **Exhibit F**.

As the WRC easement does not define or contain any rights aside from those contained in the Trackage Rights Agreement, the Board’s analysis of the public interest effects of discontinuance of the trackage rights will encompass identical issues related to the freight easement. No separate analysis is necessary on the part of the Board to assess the public interest effects of the abandonment of the WRC freight easement, and therefore no separate analysis is presented here in reference solely to the WRC freight easement.

C. Significant Portions of the MMA System Are At Risk If CN’s Trackage Rights Are Not Discontinued

U.S. railroads have had a persistent problem generating sufficient revenue to sustain capital expenditures, maintain an adequate return on net investment and generate cash sufficient to attract funding in the capital markets. Although short line and regional railroads can operate at lower revenue per mile (i.e., lighter density) than Class I railroads, short lines and regionals can do so only by stringent control of costs. **Burkhardt V.S. at 5.**

The BAR System struggled unsuccessfully for many years. A major reason for the revenue insufficiency was that the BAR System was a light density network of rail lines. BAR served two major paper mill complexes, the twin mills of Great Northern at Millinocket and East Millinocket, and the Fraser facility at Madawaska. Except for these locations, BAR had few

other major on-line shippers. **Yocum V.S. at 4.** CDAC had no major concentrations of on-line traffic. **Yocum V.S. at 5.**

The former BAR System's light density is revealed by its very low average revenue per route mile. In 2000, annual revenue per mile on the BAR System was \$53,569 – less than two-thirds that of the average regional railroad and only fifteen percent (15%) that of the average Class I railroad. **Burkhardt V.S. at 5.** Its revenue density in 2001 was \$48,193, with the reduction in revenues on Fraser traffic being an important element in the decline. This was plainly insufficient to achieve financially viable operations, and BAR entered bankruptcy in December 2001. In 2002, annual revenue per mile on the BAR System had dropped to \$44,282. **Burkhardt V.S. at 5.**

The former BAR System's light density also is revealed from a look at the cost side. System-wide operating costs were such that every car or intermodal unit needed to recover about \$850 just to cover operating costs. As Mr. Yocum explains, for years the BAR System did not even cover its system-wide operating costs and had no money for capital improvements, debt service or other investments, to say nothing of a return on investment. **Yocum V.S. at 5.**

As previously noted, smaller rail carriers, such as BAR, and now MMA, can operate at lower revenues per route mile than their larger brethren through stringent control of costs. However, their margin for error is small, and if they do not achieve sufficient revenue densities, they enter into a downward spiral of deferred maintenance, reduced service, and thus diminished utility to shippers. Ultimately, their operations become unsustainable and selective abandonment of unprofitable segments becomes a virtual certainty.

The Trustee, in the course of seeking offers for the sale of the BAR System, emphasized his view that the public interest required finding a buyer that would acquire as much of the

system as possible, and MMA ultimately managed to develop a viable plan for acquisition of the BAR System after careful due diligence, operational planning, financial analysis, and negotiations with the Trustee. In the end, MMA was the only bidder for the BAR System's assets whose business plan assumed operation of the complete network (other than a portion of the former NVR lines). **Burkhardt V.S. at 6.**

MMA's business plan projected that the MMA system would achieve revenue per mile of \$62,064. This assumed that MMA would be able to regain revenues lost because of the Junction Settlement Agreement, regain traffic lost because of the uncertain financial status of BAR, and achieve some modest growth in other areas. **Burkhardt V.S. at 5.** However, through the first six months of 2003, MMA's revenue density on an annualized basis actually dropped to \$33,978. At that rate, MMA operations and investment cannot be sustained, despite the significant cost reductions implemented by MMA.⁴⁰ **Burkhardt V.S. at 6.**

MMA's business plan carried substantial risk. It assumed that MMA could return to the revenue levels that BAR experienced before it entered into the CN agreements and suffered other bankruptcy-related revenue losses. At the time MMA acquired the former BAR System, MMA believed it could have operated the entire system, even allowing for the lost Fraser revenues to the Junction Settlement Agreement. However, there was little room for error. MMA would have been in a precarious position and would have had to consider certain abandonments unless it could successfully increase other traffic. It would have been continually vulnerable to economic downturns or the loss of significant business. **Burkhardt V.S. at 6-7.**⁴¹

⁴⁰ The 2003 figure is based on operations under the Junction Settlement Agreement. MMA's revenue density would fall even lower if CN commenced operations under the Trackage Rights Agreement.

⁴¹ MMA also recognized that, absent major traffic growth, CN's implementation of the Trackage Rights Agreement would have been devastating to the operating plan for the MMA

As a light density railroad, engaged in a constant struggle to generate sufficient revenue to cover its operating costs, make capital expenditures and generate a return on investment, how could BAR make a deal like the one it made with CN? By hindsight, it was a huge mistake. During a dire time, desperate for cash and hoping to forestall creditors from filing an involuntary bankruptcy petition and desperate to buy time to sell the railroad, BAR made an incredibly bad deal with CN. **Yocum V.S. at 12.** CN recognized a superb opportunity to gain direct commercial access to Fraser's Madawaska Mill by demanding and receiving trackage rights in return for a one-time payment of \$5 million. Absent the BAR's critical financial distress, Mr. Yocum believes "no railroad manager would ever give up exclusive access to one of its major shippers and the balanced bargaining position between itself and its connecting railroads in division negotiations." **Yocum V.S. at 12-13.** CN's extraction of the trackage rights from BAR constituted a gross overreach on the part of CN. **Yocum V.S. at 13.**

A failure of the former BAR System or substantial portions thereof under MMA's operation would have a substantial adverse effect on the entire rail transportation system of northern Maine. The former CDAC Line is the shortest rail transportation route between points in north central Maine and the Montreal gateway. The former CDAC Line also is a critical link in the rail route between Saint John, New Brunswick and Montreal. The former BAR main line is the only rail line and the only means of rail access for the large portion of the state of Maine north of Millinocket.⁴² A breakdown of MMA's operation of the former BAR System, whether

system. Consequently, MMA offered significantly less to the Trustee for the BAR System than it would have paid absent the CN agreements, but agreed to pay an additional \$5 million if the Trustee succeeded in eliminating them. **Burkhardt V.S. at 7.**

⁴² Shippers in communities south and east of Millinocket have current or potential access to the New Brunswick Southern Railway on its line between Brownville Junction and Vanceboro, ME and points east. Shippers in communities south and west of Millinocket, on or near the former CDAC Line, would be adversely affected by another breakdown of the BAR System.

sudden or after a more gradual downward spiral of shrinking revenue and reduced investment. would, among other things, eliminate all rail service to shippers in communities on the former BAR main line from Millinocket north to Madawaska (including Oakfield, Squa Pan, Ashland, Portage, Skerry, and Fort Kent), along with the former BAR's branch lines east from Squa Pan to Presque Isle, Easton, Caribou and Limestone.

D. MMA Most Likely Will Be Compelled To Consider Significant Abandonments If CN's Trackage Rights Are Not Discontinued

If CN commenced service to Fraser under the Trackage Rights Agreement, MMA would have little hope of earning revenues adequate to support continued operations, investment and ownership with respect to substantial portions of its system. MMA has done all it can do on the cost side to confront its current challenges (particularly the substantial loss of revenue from the Great Northern shutdown) without undermining its ability to serve its customers. **Burkhardt V.S. at 9.** If MMA is unable to generate sufficient revenues, it will have no choice but to rationalize its system through abandonments. **Burkhardt V.S. at 2.** The most likely candidates for abandonment, the Madawaska-Portage Line and the CDAC Line, serve both Fraser and many other shippers in northern Maine and points beyond. **Howard V.S. at 11-16.** These abandonments would not necessarily ensure the survival of the entire MMA system, but would be the minimum steps necessary to bring revenues and costs into balance on the MMA system if adequate revenues are not obtained. **See Burkhardt V.S. at 9.**

1. Abandonment Of The CDAC Line And The Madawaska Portage Line Would Save MMA At Least \$800,000 Per Year

In the course of analyzing the BAR System, the Trustee identified the two longest segments with the smallest amount of originated and terminated traffic as the most likely abandonment candidates. These segments are the Madawaska-Portage Line between Madawaska (just west of the Fraser paper mill) and Portage and the CDAC Line between

Brownville Junction and the U.S./Canada Border west of Skinner, Maine. While MMA has not prepared a formal analysis of potential abandonments, in the course of evaluating the acquisition of the BAR System it too considered the prospect of operating a smaller system after the abandonment of the CDAC Line and at least some portion of MMA's north-south main line south of Madawaska. **Burkhardt V.S. at 9.**⁴³

The Trustee directed Rail Trac Associates ("Rail Trac") to conduct an independent evaluation of MMA's projected savings from abandonment of just those lines. Rail Trac concluded that if MMA abandoned the CDAC and Madawaska-Portage Lines, it could increase MMA's net income by \$804,934 per year. See Finley V.S. at 2. Although, as is explained below, abandonment of the CDAC and Madawaska-Portage Lines would have a major adverse effect on shippers, MMA's savings from these abandonments would make them very strong abandonment candidates.

The Rail Trac report was based on various conservative assumptions that may underestimate the financial benefits of the two abandonments to MMA. First, the annual savings from abandonment of the Madawaska-Portage Line does not take into account the capital expenditure of approximately \$250,000 for track rehabilitation that will soon be needed to continue operations on that segment. See Finley V.S., Appendix 2, Part I (Avoidable Costs), Exhibit A at 3.⁴⁴ Because these capital expenditures are not included in the calculation of

⁴³ Based on his experience as Trustee in charge of the BAR prior to its bankruptcy, Mr. Howard believes the MMA would be compelled at a minimum to abandon the Madawaska-Portage and CDAC Lines. **Howard V.S. at 11.** The Chairman of MMA, Mr. Burkhardt, agrees that the most likely rationalization strategy would involve abandoning the CDAC Line and at least some portion of the line south of Madawaska. **Burkhardt V.S. at 9.**

⁴⁴ The Rail Trac report accounts for the \$250,000 capital improvement expenditure in its calculation of the subsidy required to continue operating the Madawaska-Portage Line. However, the expenditure was not included in the calculation of the annual savings determination. **Howard V.S. at 12.**

avoidable costs, the Rail Trac study underestimates the resulting cash savings to MMA. **Howard V.S. at 12-13.**

Second, Rail Trac assumes for purposes of its analysis that paper manufacturing operations at the former Great Northern mills at Millinocket and East Millinocket that are now owned by Brascan would resume by June 30, 2003 at moderate levels of production. **See Finley V.S., Appendix 2, Part II (Revenue Forecast) at 2-3.** Although there is reason to hope, based on informal statements, that operations at the Millinocket Mill will restart within the next several months, Brascan has publicly announced that it will not restart operations there until July 2004 at the earliest. MMA also does not know whether the two mills, once they are both back in production, will resume normal levels of paper production and whether those operations will generate historical levels of rail traffic. As of today, the East Millinocket Mill is shipping only a small fraction of the rail traffic that moved historically in connection with the facility.

Burkhardt V.S. at 8. By potentially overstating the anticipated revenue attributable to Brascan traffic on the two routes, the Rail Trac study may have overstated the revenue loss and thereby underestimated the net savings to MMA from the proposed abandonments. **Howard V.S. at 13.**

Third, the Rail Trac report assumes that MMA will be subject to the standard corporate income tax rate of 38%.⁴⁵ It is very likely, given MMA's current financial situation, that MMA will be subject to a lower income tax rate (or no tax) based on anticipated losses from operations in 2003. By using the higher income tax rate for its net loss calculations, the Rail Trac study has underestimated the opportunity costs associated with continued operation of the two routes.

⁴⁵ The report notes that opportunity costs would be higher under a 0% tax rate, but does not use such rate in calculating the net gains to MMA from the abandonment scenarios.

Higher opportunity costs translate into higher net savings to MMA from abandoning the two routes. **Howard V.S. at 13.**

2. Shipper Harm From CDAC And Madawaska-Portage Line Abandonments

The Madawaska-Portage Line is significant to the movement of rail traffic within Aroostook County and to points beyond. Approximately 52 shippers currently move traffic over the Madawaska-Portage Line.⁴⁶ **See Howard V.S., Appendix 5.** For the period July 1, 2003 to June 30, 2004, it is anticipated that approximately [] carloads of originating, terminating and /or overhead traffic will be handled for these shippers over the Madawaska-Portage Line. **Finley V.S., Appendix 2, Part II (Revenue Forecast), Exhibit A.** Significant users of the Madawaska-Portage Line include Irving Woodlands/Irving Forest Products, Fraser Papers, Dead River Co. and Northstar Pulp and Paper.

Traffic volume on the CDAC Line is higher than on the Madawaska-Portage Line. Approximately 196 shippers currently move traffic over the CDAC Line. **See Howard V.S., Appendix 6.** For the period July 1, 2003 to June 30, 2004, it is anticipated that these shippers will generate approximately [] revenue units (carloads and intermodal containers) of originating, terminating and/or overhead traffic over the CDAC Line. **Finley V.S., Appendix 2, Part II (Revenue Forecast), Exhibit A.**⁴⁷ Significant users of the CDAC Line include Kathadin Paper, Daimler-Chrysler ("Chrysler"), Westroc Industries ("Westroc"), LP Corp., GAC

⁴⁶ The numbers for shippers using the Madawaska-Portage Line, CDAC Line or both lines include all shippers and receivers of freight.

⁴⁷ This figure includes carloads moved by Kathadin Paper, assuming that both the Millinocket and East Millinocket paper mills would reopen on or before July 1, 2003 at moderate levels of production. As of the date of this Application, Kathadin Paper has reopened only one mill for production of newsprint, which has moved largely by truck. The other mill remains closed. **Burkhardt V.S. at 8.**

Chemical Corp. (“GAC”), Irvin Paper, Norbord Industries Inc. and JM Huber Corp. **Howard V.S. at 15.**

There are approximately 28 shippers that require use of both the Madawaska-Portage and CDAC Lines for certain traffic moves. **See Howard V.S., Appendix 7.** For the period July 1, 2003 to June 30, 2004, approximately [] carloads of originating, terminating and/or overhead traffic will be moved for these shippers over both lines. **Finley V.S., Appendix 2, Part II (Revenue Forecast), Exhibit A.** Significant users of both the Madawaska-Portage and CDAC Lines include Fraser Papers, JD Irving, Ltd. and Norbord Industries.

The abandonment of the Madawaska-Portage Line and CDAC Line would force a significant number of shippers to lose at least one of their current rail routings. In some cases, shippers would go from two routes to one route. In cases where the shipper is captive to or greatly dependent on rail transportation, such route foreclosure would eliminate competition between intermediate (or “bridge”) carriers and give the single remaining railroad significant leverage to increase rates. Other shippers would find their remaining rail routes very inefficient and they might be forced to divert traffic from rail to truck. In addition to increased transportation costs, diversions from rail to truck would have a serious effect on the highway and roadway transportation network in the State of Maine. **Howard V.S. at 17-18.**

3. Loss of Efficient Rail Routes

Chrysler currently uses a CP-MMA routing for its Atlantic Province vehicle traffic that generally moves eastbound from different origins in the U.S. and Canada toward Saint John, New Brunswick. The CP-MMA routing has been Chrysler’s preferred routing historically and the parties have recently renewed their contract for an additional five-year period. Volumes are significant, with traffic in recent years totaling around [] carloads annually. If the CDAC

Line were abandoned, it would eliminate a major portion of the shortest rail route between Montreal and Saint John, sever Chrysler's preferred routing for vehicles, and force Chrysler to find an alternate rail routing. Without the CDAC route, Chrysler most likely would move most of this vehicle traffic by CP to Montreal, then by CN east to St. Andre Jct., past St. Leonard to Moncton, and then back west to Saint John. This more circuitous CN routing would result in a greatly increased rail distance as well as the need to interchange this CP-originated traffic to CN en-route. Increased rail distances would most likely result in higher rates and longer delivery times. Thus, for Chrysler, abandonment of the CDAC Line would mean degradation in service, increased rate levels, or both. **Howard V.S. at 18.**

Westroc also would lose its preferred route. Westroc currently originates approximately [] carloads of gypsum wallboard each year from McAdam, NB with roughly [] of those cars moving west across the former CDAC route. Westroc's traffic originates on the New Brunswick Southern Railway at McAdam and terminates at points west of Montreal (e.g. Alberta, Ontario) and at points in the northeast (e.g. New York, Connecticut, New Jersey). If the CDAC Line were to be abandoned, Westroc's traffic most likely would continue to move by rail, but would be diverted to a CN or Guilford routing from the Atlantic Province area. As described below, such diversions would be to the detriment of Westroc. **Howard V.S. at 18-19.**

Traffic destined for points west of Montreal most likely would move from McAdam east to CN at Saint John, NB, then northeast to Moncton, NB, west through St. Leonard, NB to St. Andre Jct. and then south to Quebec and Montreal. Traffic destined for points in the northeast most likely would move from McAdam west to Guilford at Mattawamkeag, ME and then south through Bangor and Portland to an interchange with other carriers to move the traffic to points in the northeast. **Howard V.S. at 19.**

At present, approximately half of the Westroc traffic moving by the MMA-CP route is destined for a CP station to the west. While this CP-destination traffic is currently moved by two individual carriers (MMA and CP), they are handling the business using a coordinated marketing and operating agreement, and therefore many of the benefits of a single-line haul are being realized. If the CDAC abandonment were to take place and this traffic were diverted to CN or Guilford, it would result in at least one additional carrier being inserted into Westroc's routings on these shipments. In addition, it would be necessary to haul the shipments a significant additional distance due to the configuration of the alternative carriers' routes. Given the increased distances required for Westroc's CP-bound traffic together with the need to utilize additional rail carriers in the routings, it appears likely that abandonment of the CDAC Line would result in both a degradation of service levels as well as increased rate levels for Westroc on this traffic. **Howard V.S. at 19.**

4. Diversions From Rail to Truck

Other shippers, finding their remaining rail route hopelessly circuitous, might be forced to shift traffic from rail to truck. For example, MMA currently handles approximately [] carloads of paper per year from Fraser's mill in Madawaska over the Madawaska Line to a warehouse facility in Hampden, ME (south of Bangor) where it is distributed to customers by truck. Since the abandonment of the Madawaska-Portage Line would sever the only practical rail route for this traffic, it is likely that the majority of this business would be diverted to a truck-direct movement. Assuming a 3:1 truck/rail ratio for this particular product, this diversion alone would result in an additional [] trucks making trips on approximately 248 miles of Maine's highways each year. These heavy volumes of additional truck traffic would have a negative impact on Maine's highway infrastructure. **Howard V.S. at 19-20.**

If the CDAC Line were to be abandoned, the Moose River Lumber Co. ("Moose River"), a sawmill operation employing approximately 100 people in Jackman, Maine, would no longer have the opportunity to ship products directly from Jackman to their customers by rail. Since the majority of their current rail customers are located over 1,000 miles away, if they are to remain competitive to those markets, Moose River would need to continue to utilize rail. In order to achieve this, Moose River most likely would utilize trucks from Jackman to the nearest rail location, probably Waterville, Maine (on Guilford, approximately 92 miles south of Jackman), where it would transload its products to rail for the long haul. Due to the competitive nature of the lumber industry, it is unlikely that Moose River could pass the additional costs of trucking and transloading on to its customers. Moose River would be forced either to absorb these additional costs or to forego opportunities with certain customers due to insufficient margins. Therefore, abandonment of the CDAC Line would have a negative impact upon Moose River Lumber's business. In addition, assuming a 3.5:1 truck/rail ratio for Moose River's product, the truck diversions would result in approximately [] additional trucks on the Maine roads between Jackman and Waterville. **Howard V.S. at 20.**

5. Hazardous Materials Diversions to Truck

Certain commodities, such as petroleum and other chemicals, are very difficult to transport by means other than rail because of the additional safety precautions that must be applied to each shipment of such commodities. For example, GAC currently uses MMA to ship approximately [] carloads of alum (a corrosive liquid) per year from its facility in Searsport, ME to Fraser's mill in Madawaska. If the Madawaska-Portage Line were abandoned, this traffic would lose its only rail routing. The likely result of this would be GAC shipping the product by truck from Searsport to Madawaska. There would be a significantly higher number of trucks

carrying hazardous material on Maine's highway and roads. Assuming a 4:1 truck/rail ratio for this product, the diversion would result in an additional [] hazmat trucks per year on approximately 269 miles of Maine's roads. **Howard V.S. at 21.**

6. Community Impact

The abandonment of the Madawaska-Portage Line and the CDAC Line would have a negative impact on the economies of many communities in Maine. The following communities are located on or near the Madawaska-Portage Line and will have no rail service if it is abandoned: Portage, Eagle Lake, Fort Kent, Frenchville, and St. Agatha. The following communities are located on or near the CDAC Line and will have no rail service if it is abandoned: Brownville Junction, Greenville Junction and Jackman. Fort Kent, Brownville Junction and Greenville Junction are among the largest communities (by population) in northern and western Maine. Several of these communities are home to local shippers on the Madawaska-Portage and CDAC Lines and the removal of rail access will hinder future economic development efforts in those rural areas. **Howard V.S. at 22-23.**

E. Fraser Will Not Be Adversely Affected By the Discontinuance of the CN Trackage Rights

Under Article 2(a) of the Trackage Rights Agreement, the CN trackage rights are only for CN's receipt or delivery of local traffic from and to Fraser's Madawaska Mill. See Trackage Rights Agreement, attached hereto as **Exhibit D**, at 2. Article 3(a) reinforces the same point. Thus, in determining whether any shippers would be harmed by the discontinuance of the trackage rights, the Board need only focus on the potential harm to Fraser.

1. The Discontinuance of the Trackage Rights Simply Returns Fraser To The Status Quo Prior To March Of 2001

Before the Trackage Rights Agreement, Fraser enjoyed multiple rail transportation routing options, pervasive transportation competition on all inbound materials and outbound products and formidable bargaining power in connection with its multiple transportation options. See Heller V.S. at 10, 28, 45-46 and 47. Fraser's only concern was that a BAR System failure might cause an interruption in or a loss of rail service to the Madawaska Mill. See Yocum V.S. at 10.

BAR never stopped providing excellent service to Fraser, so Fraser's purported concern about an interruption in service or a discontinuance of service is now beside the point. MMA, which is managed and operated under the direction and control of Mr. Burkhardt, a proven success in regional railroad development, will continue the tradition of high-quality rail service to Fraser. Service interruption will not be a concern of Fraser under MMA's ownership and operations. The discontinuance of the CN trackage rights will do nothing other than return Fraser to the place it was in prior to the Trackage Rights Agreement.

2. The Discontinuance Of The Trackage Rights Will Not Cause A Deterioration In Rail Service To Fraser

The discontinuance of the trackage rights would not cause a deterioration in or loss of rail service to or from Fraser's Madawaska Mill. BAR provided service to Fraser at Madawaska from 1925 until January 9, 2003. MMA has provided such service from January 9, 2003 to date. MMA is owned and controlled by people with a proven record of success in freight railroad operations. See Burkhardt V.S. at 4-5 and the attachment thereto. MMA will have every incentive to continue to provide first-rate service to Fraser's Madawaska Mill. **Burkhardt V.S. at 11.**

3. The Discontinuance Of The Trackage Rights Will Not Cause A Reduction In Fraser's Rail Transportation Routing Options

Fraser could be harmed if the discontinuance of the trackage rights reduced competition for inbound and outbound shipments to and from the Madawaska Mill. As discussed below, however, the discontinuance of the trackage rights would not result in the reduction of any of Fraser's multiple routing options.⁴⁸

As noted above, Fraser's rail traffic to or from the Madawaska Mill can move by four different routes. First, Fraser's traffic can move over the Madawaska Line to the CN interchange or vice versa. Prior to April 22, 2001, a substantial amount of Fraser's traffic moved over this route under a joint rate quoted by CN and BAR. Since April 22, 2001, a substantial portion of Fraser's traffic has continued to move over the Madawaska Line, only with BAR and then MMA earning \$500 per loaded car under the Junction Settlement Agreement instead of \$1065 per loaded car. CN thereby effectively increased its revenue by approximately \$565 per car. In 2001, approximately sixty-seven percent (67%) of Fraser's Madawaska Mill traffic moved over this route. See Yocum V.S. at 7.

Second, Fraser traffic to or from the Madawaska Mill can move over the MMA line from Madawaska south to Brownville Junction, and then west to interchange with CP (at St. Jean, Quebec) or CN (St. Rosalie, Quebec or St. Jean, Quebec), or vice versa. In 2001, approximately six percent (6%) of Fraser's traffic to or from the Madawaska Mill moved over this routing to the CP interchange. See Yocum V.S. at 7.

⁴⁸ In fact, the continuation of the trackage rights could foreclose two of Fraser's rail transportation routing options - the CP routing via the CDAC Line and the Guilford routing over the Madawaska-Portage Line. This would leave Fraser with only the CN routing.

Third, traffic from Fraser's Madawaska Mill could move south to MMA's interchange with Guilford at Northern Maine Junction, or vice versa. In 2001, approximately twelve percent (12%) of Fraser's traffic to or from Madawaska moved over this route. **See Yocum V.S. at 7.**

Fourth, Fraser traffic to or from the Madawaska Mill could move over MMA to the interchange with Eastern Maine Railway or the New Brunswick Southern Railway at Brownville Junction and then east to points in New Brunswick or vice versa. Fraser has not used this routing recently but MMA has an active interchange with these railroads at Brownville Junction.

Yocum V.S. at 4.⁴⁹

After discontinuance of the trackage rights, Fraser's rail traffic to or from the Madawaska Mill would still be able to move by each of the four routing options available today. MMA has every practical business incentive to work closely with Fraser to keep Fraser competitive with hundreds of other paper shippers now served by the MMA system. **Burkhardt V.S. at 11.** In addition, Fraser has considerable leverage over MMA given its extensive use of rail service at the Madawaska Mill and the various transportation options at its disposal. **See Heller V.S. at 45.**

4. The Discontinuance of The Trackage Rights Will Not Harm Fraser

The discontinuance of the trackage rights would not result in a material reduction in competition for inbound or outbound shipments to/from the Madawaska Mill. [

] the extent of the possible benefit to Fraser pales in comparison to the large and very likely harms associated with retention of the CN trackage rights. The Trustee

⁴⁹ A significant amount of Fraser traffic also moves locally over the Madawaska-Portage Line to Searsport and other points on the MMA system.

retained James Heller to evaluate whether and to what extent Fraser would be harmed if the CN trackage rights were eliminated.⁵⁰

a. Summary Of Analysis

Outbound Paper. The elimination of the Contracts would not have an adverse effect on Fraser with respect to outbound paper transportation from the Madawaska Mill because of the various forms of competition that would continue unabated. Fraser (and Fraser's consignees) have access to and make use of truck, rail and intermodal transportation:

- Truck transportation, which is pervasive on outbound paper, puts pressure on MMA and all other railroads participating in Fraser's rail transportation of paper to maintain or limit increases in rail effective rates; **Heller V.S. at 10.**
- Interline (or "bridge") rail carriers participating in Fraser's transportation of paper compete with each other to capture that considerable segment of the rail routing; **Heller V.S. at 13 and 21-25.**
- Destination carriers compete with each other and with truckers serving warehouses near the locations of Fraser's consignees to capture a portion of the rail routing. **Heller V.S. at 46.**

⁵⁰ No traffic has yet moved under the Trackage Rights Agreement. Mr. Heller's analysis is based in part upon information on traffic volumes and rates after implementation of the Haulage Agreement (i.e., Junction Settlement Agreement). Mr. Heller explains that the benefits (if any) flowing to Fraser under the Haulage Agreement are a reasonable surrogate for the likely benefits to Fraser (if any) under the Trackage Rights Agreement because, *inter alia*, (i) the Haulage Agreement shifted about \$500 per loaded car from BAR to CN and if CN uses the trackage rights, its additional margin would be something well below the additional \$300 per car in revenue that would transfer from MMA to CN under the Trackage Rights Agreement because CN would incur operating costs (*e.g.*, fuel, power, and crews); and (ii) under the Haulage Agreement CN has already eliminated MMA from the ratemaking process on Fraser traffic. **Heller V.S. at 2-3.**

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Inbound Commodities. [] Fraser has enjoyed robust competition on its multiple clay origins and multiple intermediate clay routings. Norfolk Southern (“NS”) and Georgia Central Railway Company (“GCRY” or “Georgia Central”) compete on the origin; CN and CP compete on the bridge. Paper manufacturers are increasingly using imported clay, which for Fraser means another source of competition on the origin. Paper manufacturers also are increasingly using calcium carbonate as a substitute for clay. All of these factors constrain clay transportation rate increases. None of these factors relate in any way to the Contracts. Fraser will still have the benefit of all of these competitive pressures if the Contracts are terminated. **Heller V.S. at 47-48.**

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] However, MMA is subject to all of the same competitive constraints as the other railroads in the clay routings and therefore will feel pressure to not propose higher rates on CP clay routings. Fraser's considerable leverage over MMA puts particular pressure on MMA to hold the line on clay effective rates. **Heller V.S. at 48.**

On silica, [

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The Haulage Agreement does not affect competition for the transportation of alum. [

] **Heller V.S. at 49.**

The savings, if any, from reduced transportation costs on inbound commodities sold on a delivered price basis (corn starch, titanium dioxide and talc) flow to the suppliers, not Fraser. The suppliers will keep any savings unless the market for the commodity in question requires a cut in the delivered price, in which case the supplier might pass some of the savings on to Fraser. However, in that case, it is the market for the commodity (and not the Haulage Agreement) that

causes the lower delivered price. Thus, termination of the Contracts would not change what Fraser pays for corn starch, titanium dioxide or talc. **Heller V.S. at 49.50**

Therefore, the elimination of the Contracts would have, at most, a minor impact on Fraser's inbound freight costs for clay and silica and no other impact on inbound commodities. **Heller V.S. at 50.**

b. Fraser Outbound Paper

i. Overview of Fraser Outbound Paper Transportation

Fraser's consignees purchase paper⁵² on a delivered price basis. Fraser sets different prices for rail and truck-delivered paper. Before it can set prices on rail-delivered paper, Fraser needs to know its rail transportation costs for each consignee. **Heller V.S. at 7.**

From 1991 through 2002, Fraser has shipped an average of approximately [] of its paper by rail and approximately [] of its paper by truck. **Figure 1** attached hereto shows 2002 outbound paper by destination, by originating mode color coded for rail only, truck only and truck and rail. **Figure 1** shows truck service to the vast majority of destinations and only a few rail only destinations. **Heller V.S. at 10.**

Figure 2 attached hereto shows 2002 rail and truck transportation *costs* on outbound paper by state. **Figure 2** illustrates that in every state where Fraser's consignees use rail transportation, truck transportation is also used. [⁵³

] There are no states where Fraser's consignees use only rail transportation. **Heller V.S. at 10.**

⁵² Fraser ships two types of finished paper products from its Madawaska Mill: printing paper and groundwood paper. Both types of paper are shipped in rolls and the transportation alternatives do not vary significantly between the two types. Therefore, Mr. Heller's analysis treats outbound printing and groundwood paper products as a single commodity.

⁵³ []

Figure 3 attached hereto shows 2002 rail and truck transportation *volumes* on outbound paper by state. Fraser’s consignees have significant volumes of truck transportation in every state where Fraser’s consignees use rail transportation.

Thus, whether measured by destination or on transportation costs or transportation volumes, truck transportation is present everywhere where there is rail transportation. Truck transportation is pervasive. **Heller V.S. at 10.**

ii. **CN Rates on Outbound Paper**

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⁵⁴ The “effective rate” is the rate actually charged after taking into account rebates.

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] **Heller V.S. at 15-16.**

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] **Heller V.S. at 16.**

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] **Heller V.S.**

at 17-18.

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] **Heller V.S. at 18.**

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] **Heller V.S. at 18.**

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] **Heller V.S. at 18-19.**

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(ii) [

]; and/or

(iii) [

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] Heller V.S. at 19.

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] Heller V.S. at 20.

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] Heller V.S. at 20.

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] Heller V.S. at 20-21.

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at 21.

] Heller V.S

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] Heller V.S. at 24-

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c. Fraser Inbound Commodities

In 2000, Fraser's Madawaska Mill received six inbound commodities used in the paper manufacturing process: kaolin clay (in both slurry and bulk forms), silica (sand), alum and three commodities on a delivered price basis (starch, titanium dioxide, and talc).

i. Clay

Kaolin clay is widely used by the paper industry as filler in the manufacturing process. Clay is primarily mined in Georgia, [

] Fraser pays for transportation of the clay, []]. **Heller V.S. at 26.**

Fraser receives clay from multiple origins [] Fraser has numerous routing options available from the two originating railroads.

Table 4 below shows Fraser's clay shipments by volume from 2000 to mid-2003. [

] ⁵⁷ Heller V.S. at 27.

Heller Table 4: Volume of Clay From Multiple Origins (Tons)⁵⁸

	2000		2001		2002		2003 ⁵⁹	
	Volume	%	Volume	%	Volume	%	Volume	%
[]			[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]				
[]			[]	[]			[]	[]
[]	[]	[]	[]	[]			[]	[]
[]								
[]								
Total	[]	[]	[]	[]	[]	[]	[]	[]

(* BAR before January 9, 2003.)

Fraser has enjoyed robust competition on its multiple origins and multiple intermediate routes for clay.

] Heller V.S.

at 28-29.

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Table 5 shows the competition for Fraser's clay traffic from 2001 to mid-2003. [

] ⁶⁰ Heller V.S. at 29-30.

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] Heller V.S. at 29-31.

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] **Heller V.S. at 31.**

Heller Table 5: Clay Competition 2001-2003⁶¹

	2001		2001 Effective Rate		2002		2002 Effective Rate		2003		2003 Effective Rate	
	Slurry	Bulk	Slurry	Bulk	Slurry	Bulk	Slurry	Bulk	Slurry	Bulk	Slurry	Bulk
[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
[]	[]	[]			[]	[]			[]	[]		
[]	[]	[]			[]	[]			[] ⁶²	[]		
[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]	[]
[]	[]	[]			[]	[]			[]	[]		
[]	[]	[]			[]	[]			[]	[]		

Mr. Heller explains that there are at least four competitive forces in the Fraser transportation market that would pressure effective rates to not increase if the Contracts were terminated:

- First, as discussed above, bridge competition would survive termination of the Contracts. **Heller V.S. at 31.**
- Second, in addition to competition on the bridge between [], as shown in **Table 4**, Fraser has used multiple origins for clay. The geographic competition⁶³ from [] originated clay, which can interchange with [], likely induced []. Like

⁶¹ See notes on the corresponding Table in the Heller Verified Statement.

⁶² []

⁶³ []

bridge competition, this geographic competition is independent of the Haulage Agreement, and would survive termination of the Contracts. **Heller V.S. at 32.**

- Third, imported clay represents another type of geographic competition. Paper manufacturers are increasingly using imported clay in place of kaolin clay from Georgia. While the amount of kaolin clay mined from Georgia deposits has declined in the past few years, according to the U.S. Geological Survey, mining has increased in Brazil. Mr. Heller believes that the threat of imported clay has contributed to the competitive behavior of [

].⁶⁴ **Heller V.S. at 32-33.**

- Fourth, paper manufacturers are increasingly using calcium carbonate as a product substitute for kaolin clay. This product competition⁶⁵ - the substitution of calcium carbonate for clay - is a significant competitive threat to rail carriers of kaolin clay. Product competition from calcium carbonate is forecast to continue in the future. **Heller V.S. at 33-35.**

ii. **Silica (Sand)**

Fraser receives silica by rail in covered hoppers, from []. Fraser has received silica from [

] and the routes [] multiple options on the interline carriers.

Table 6 shows Fraser's recent silica volume by origin and routing. [

⁶⁴ Geographic competition (from both origin switching and imported clay) in turn creates further bridge competition for the new routings, and puts significant downward price pressure on all of the railroads participating in the clay routes to the Madawaska Mill.

⁶⁵ Product competition refers to the competition created by substituting one product in place of another. Fraser may be able to use a substitute product in its manufacturing process for a product otherwise delivered by rail to create competition.

] Heller V.S. at 36-37.

Heller Table 6: Volume of Silica Shipments From Multiple Origins (Tons)⁶⁶

	2000		2001		2002		2003(through June 30 th)	
	Volume	%	Volume	%	Volume	%	Volume	%
[]	[]	[]	[]	[]	[]	[]		
[]					[]	[]	[]	[]
[]								
[]							[]	[]
Total	[]	[]	[]	[]	[]	[]	[]	[]

Table 7 shows available data on Fraser’s recent effective rates on silica. [

67

] Heller V.S. at 38.

⁶⁶ See notes on the corresponding Table in the Heller Verified Statement.
⁶⁷ [

]

Heller Table 7: Silica Competition 2001-2003 (\$/ton)⁶⁸

	2001 Effective Rate	2002 [] Effective Rate	2002 [] Effective Rate	2003 [] Effective Rate	2003 [] Effective Rate
[]	[]	[]			
[]			[]	[]	
[]					[] ⁶⁹

[

]

Heller V.S. at 39.

[

70

⁶⁸ See notes on the corresponding Table in the Heller Verified Statement.
⁶⁹ [
⁷⁰ [

[

] **Heller V.S.**

at 39-40.

[

] **Heller V.S. at 40.**

The bridge competition and origin competition pre-date the Haulage Agreement and exists apart from the Haulage Agreement. The equipment and product efficiencies also exist independent of the Haulage Agreement. All of these competitive forces remain in effect even if the Contracts are terminated. **Heller V.S. at 40.**

iii. Alum

Fraser sources its alum from [

] The alum is shipped [] miles

via rail to the Madawaska Mill in tank cars and displaces a prior truck movement from a nearby plant that was shutdown.⁷¹ Mr. Heller explains that the Haulage Agreement does not affect competition for the transportation of alum. All of Fraser's alum traffic is handled by [

⁷¹ Table 8 in the **Heller V.S.** summarizes alum traffic to the Madawaska Mill from 2001 to mid-2003.

] ⁷² Truck

competition has remained a threat to rail rates, [

] Thus, the Haulage Agreement has had no effect on the movement of alum to the Madawaska Mill. **Heller V.S. at 40-41.**

iv. **Delivered Price Commodities**

Corn starch, titanium dioxide and talc all are sold to Fraser on a delivered price basis. In each case, the transportation contract is between the supplier of the commodity and one of the railroads; therefore, savings, if any, from reduced transportation costs flow to the supplier, not Fraser. If the commodity supplier needs to cut its price to win the business from Fraser, the supplier may use part or all of its transportation cost savings to make the new delivered price, but competition on the good in question motivates the lower product price. Any supplier savings passed along to Fraser is wholly independent of the Haulage Agreement. **Heller V.S. at 41-42.**

[] supplies starch to the Madawaska Mill from its facilities in Cedar Rapids, Iowa. [] sets the routings it wants to use and pays the freight. **Heller V.S. at 42.**

[⁷³

] ⁷⁴ arrange and pay for the delivery of titanium dioxide. [

⁷² Mr. Heller attributes the rate [] to truck competition.

⁷³ []

⁷⁴ []

] **Heller V.S. at 42.**

[] supplies talc to Fraser on a delivered price basis. All of the talc originates on []

In 2001, [] shifted volume from [] In response, []

[] exists entirely apart from the Haulage Agreement. []

] **Heller**

V.S. at 42-43.

F. The Public Interest, Including The Interest Of All Shippers On The MMA System, Outweighs The Interest Of Fraser In Preserving The Potential Benefit Of The CN Trackage Rights

Even if Fraser did not have multiple rail route options and pervasive transportation competition before the Trackage Rights Agreement, or even if Fraser could benefit from either the presence or the use of the CN trackage rights, that potential benefit would come at a significant risk to every other shipper on the MMA System. Thus, even if Fraser might benefit from the CN trackage rights in a material way, that benefit would be at the expense and risk of the interest of the public, the other shippers on MMA and, in particular, the shippers that use the CDAC Line and the Madawaska-Portage Line. The abandonment of these lines would force nearly 250 shippers to lose at least one rail routing that is currently used to move their traffic.

Many of these shippers would be forced to divert their traffic from rail to truck, which likely would increase their overall transportation costs and would have an adverse effect on the Maine highway network (both in terms of increased volume and increased hazardous materials transportation). Other shippers would go from two to one rail routing option, thereby giving the remaining railroads significant leverage to increase rates. **Howard V.S. at 16-17.** The potential benefit to Fraser from the existence of the trackage rights is greatly outweighed by the public interest in maintaining MMA's operation of the bulk of the former BAR System.

Fraser is betting that MMA will be able to overcome or live with the loss of revenue arising from the CN trackage rights. Fraser is betting on continued head-to-head competition between interline carriers, CP and CN, for Fraser's traffic. Fraser presumably believes MMA, in partnership with CP, can vigorously and effectively continue to compete against CN for Fraser's rail business. Fraser's bet is a big one. **Howard V.S. at 21.**

If MMA does not earn adequate revenue on the MMA/CN Fraser business traversing the Madawaska Line, it is unlikely that MMA will be able to compete effectively over the CP route as an alternative to CN on the Fraser business. Without adequate revenue on its portion of the CN routing over the Madawaska Line, MMA will be constrained in its ability to maintain the MMA/CP routing as a competitive alternative for such traffic. **Howard V.S. at 21-22.** CN is the only beneficiary in this scenario.

Even if MMA's inadequate revenue on the MMA/CN business does not weaken the entire railroad, Fraser will almost certainly lose routing options. If MMA abandons the former CDAC Line, Fraser will forever lose access to its CP routing. If MMA abandons the Madawaska-Portage Line, Fraser will forever lose access to its Guilford routing. Fraser faces the possibility that it will have no effective competition for its rail transportation business because

CN will have sole access to Fraser's Madawaska Mill. Fraser is betting on the continuation of multiple competitive routes for its traffic. It is far more likely, however, that Fraser will have a strong CN and a weakened MMA, leading to a loss of competitive rail routes if the CN trackage rights and WRC easement are not eliminated. **Howard V.S. at 22.** Once again, CN is the only beneficiary in this scenario.

As noted above, the former Great Northern mills at Millinocket and East Millinocket are now owned by Katahdin Paper and operated by Fraser. If MMA abandons the former CDAC Line, Fraser's sister company, Katahdin Paper, will lose access to CP. In addition, if MMA abandons the Madawaska-Portage Line, Katahdin will lose access to CN. And, of course, if MMA abandons both lines, Katahdin will lose access to CN and CP. **Howard V.S. at 22.**

G. Impact of Discontinuance and Abandonment on CN

CN is a large and highly profitable Class I railroad. CN has already recouped more than the initial \$5 million outlay it made to BAR in exchange for the Junction Settlement Agreement, Trackage Rights Agreement and the WRC easement. **Howard V.S. at 10.** The retention of the CN agreements would provide an ongoing monetary benefit to CN in terms of increased revenues from Fraser traffic moving over the St. Leonard gateway, but that benefit pales in comparison to CN's immense financial strength.

H. Impact of Discontinuance and Abandonment on MMA

MMA, the owner of the Madawaska Line, is a light density railroad operating on significantly lower revenue per route mile and on much narrower margins than Class I railroads. **Burkhardt V.S. at 4-5.** The CN trackage rights seriously threaten MMA's viability because of the underlying fragility of the former BAR System. **Burkhardt V.S. at 4.** The importance of restoring Fraser revenues that have been lost as a result of the Junction Settlement Agreement

and that would be further decreased by the Trackage Rights Agreement has become even greater in light of the Great Northern shutdown and the continuing sluggish performance of the economy in northern Maine and throughout the United States. **Burkhardt V.S. at 8.**

MMA anticipates that the elimination of the CN agreements would allow it to negotiate with CN for a larger share of the revenue than MMA currently receives for Fraser traffic moving over the St. Leonard interchange. This additional revenue would benefit Fraser and other Maine shippers who rely on the MMA System. MMA would be in a stronger position to carry out its business plan by improving operations on its lines between Madawaska and Brownville Jct., and between Brownville Jct. and the Canadian border. Fraser and other MMA shippers use these lines to route traffic via CP and Guilford as alternatives to routings via CN. If MMA can attract more traffic to these lines, it can increase service frequency, to the benefit of Fraser and other MMA shippers. **Burkhardt V.S. at 7.**

The economic impact of the removal of the trackage rights relative to CN's enormous yearly profits would produce barely a blip on CN's financial statements, but the relative impact of the removal of those trackage rights on MMA would be substantial and would greatly enhance MMA's viability to the benefit of Fraser and other MMA shippers.

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Board either (i) issue an advisory report to the District Court under 11 U.S.C. § 1170 recommending the discontinuance of the CN trackage rights and abandonment of the WRC easement or (ii) authorize the discontinuance of the CN trackage rights and abandonment of the WRC easement pursuant to 49 U.S.C. § 10903.

Respectfully submitted.

By:



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

Dated: October 6, 2003

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Required Information For Application
B	Map of the Former BAR System Railroads
C	Junction Settlement Agreement
D	Trackage Rights Agreement
E	Easement
F	Transcript Excerpt from May 7, 2003 Bankruptcy Court Hearing
G	Map of Madawaska Line
H	Draft Federal Register Notice
I	Certificate of Posting, Publication and Service of Notice of Intent
J	Certificate of Service of Application

LIST OF FIGURES

<u>Figure</u>	<u>Description</u>
1	Outbound Paper by Destination – 2002
2	2002 Rail v. Truck Transportation (in U.S. \$)
3	2002 Rail v. Truck Transportation (in tons)

LIST OF VERIFIED STATEMENTS

James E. Howard Verified Statement

Frederic W. Yocum Verified Statement

Edward A. Burkhardt Verified Statement

Robert C. Finley Verified Statement

James Heller Verified Statement

EXHIBIT A

EXHIBIT A

Required Information

General Corporate Information: **49 C.F.R. § 11.52.22(a)(1)- (a)(2)**

The party filing this Application is James E. Howard, Trustee of the BAR, VBBC, CDAC, NVT and NRR (collectively, the "BAR System"). The railroads in the BAR System are common carriers subject to 49 U.S.C. Subtitle IV, chapter 105.

The parties against whom the adverse discontinuance and abandonment is sought are Canadian National Railway Company ("CN") and Waterloo Railway Company ("WRC"), respectively, common carriers subject to 49 U.S.C. Subtitle IV, chapter 105.

Relief Sought: **49 C.F.R. § 1152.22(a)(3)**

In the event that the United States District Court for the District of Maine ("District Court") determines that 11 U.S.C. § 1170 applies to this Application, the Trustee seeks an advisory report under 11 U.S.C. § 1170 to the District Court recommending the discontinuance of CN's trackage rights on the line between Madawaska, Maine and the U.S./Canadian Border ("Madawaska Line") and the abandonment of WRC's freight easement on the Madawaska Line. Should the District Court determine that 11 U.S.C. § 1170 does not apply, the Trustee seeks a Surface Transportation Board ("Board") decision granting the discontinuance and abandonment under 49 U.S.C. § 10903.

Map: **49 C.F.R. § 1152.22(a)(4)**

A detailed map of the Madawaska Line meeting the requirements of the above-referenced section is attached as **Exhibit G** to the Application.

Inclusion on System Narrative Description:

49 C.F.R. § 1152.22(a)(5)

In a decision served September 25, 2002, the Board waived the requirements of this section with respect to the CN trackage rights. Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-279 (Sub-No. 3) (STB served Sept. 25, 2002) (“CN Waiver Decision”) at 6. In a decision served October 23, 2002, the Board waived the requirements of this section with respect to the WRC freight easement. Waterloo Railway Company – Adverse Abandonment -- Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-124 (Sub-No. 2), Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-279 (Sub-No. 3) (STB served Oct. 23, 2002) (“WRC Waiver Decision”) at 1.

Reason for Filing Application:

49 C.F.R. § 1152.22(a)(6)

This Application is being filed pursuant to 11 U.S.C. § 1170 and 49 U.S.C. § 10903. On June 3, 2003, the Trustee moved the United States Bankruptcy Court for the District of Maine (“Bankruptcy Court”) for an order pursuant to 11 U.S.C. § 1170 directing the Board to issue an advisory report. The proceeding has since transferred to the District Court. As previously discussed, should the District Court determine that 11 U.S.C. § 1170 is inapplicable, the Board will render a decision under 49 U.S.C. § 10903. In either case, the proposed discontinuance and abandonment are necessary to ensure the viability of Montreal, Maine & Atlantic Railway Ltd. (“MMA”) and continued service to other shippers on the former BAR System and to protect the interests of the BAR System’s creditors.

Applicant's Representative: 49 C.F.R. § 1152.22(a)(7)

The Trustee's representative is:

Kevin M. Sheys, Esq.
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue, NW
Second Floor
Washington, DC 20036-1221
(202) 778-9000
(202) 778-9100 (fax)

Zip Codes Traversed: 49 C.F.R. § 1152.22(a)(8)

The Madawaska Line traverses United States Postal Service ZIP Codes 04756, 04773, 04746, 04749 and 04785.

Condition of Properties: 49 C.F.R. § 1152.22(b)

The Madawaska Line is maintained by MMA to Class 2 standards as defined in the Federal Railroad Administration's regulations, 49 C.F.R. Part 213. The Madawaska Line has 80 lb. controlled/cooled rail in good condition with very little wear or end batter. Nonetheless, rail ties on the Madawaska Line are in need of some capital expenditure to continue operating at FRA Class 2.

Service Provided: 49 C.F.R. § 1152.22(c)

CN does not provide service pursuant to the trackage rights. WRC does not provide service pursuant to the freight easement.

MMA provides service on the Madawaska Line. MMA moves traffic to or from the Fraser Papers Inc. ("Fraser") paper mill at Madawaska ("Madawaska Mill") over the Madawaska Line under a Haulage Agreement with CN. MMA provides service to Fraser six (6) times per week. MMA provides switching services at the Madawaska Mill seven (7) days per week.

Although there are other customers on the Madawaska Line, no customers other than Fraser could be served under the CN trackage rights or pursuant to the WRC freight easement.

Revenue and Cost Date: 49 C.F.R. § 1152.22(d)

In a decision served September 25, 2002, the Board waived the requirements of this section with respect to the CN trackage rights. CN Waiver Decision at 6. In a decision served October 23, 2002, the Board waived the requirements of this section with respect to the WRC freight easement. WRC Waiver Decision at 3.

Communities On The Line: 49 C.F.R. § 1152.22(e)(1)

Communities on the Madawaska Line from east to west are Van Buren, Lille, Grand Isle, St. David, Fournier and Madawaska. The Madawaska Line does not have a station in each community. The 2000 Census of Population data available for those communities is set forth in the table below:

2000 Census of Population - Maine

<u>Community</u>	<u>Population</u>
Van Buren	2,631
Grand Isle	518
Madawaska	4,534

Rail service has been provided to customers in Van Buren during the last two years. With the possible exception of impacts related to Fraser, no communities on the Madawaska Line could be adversely affected by the discontinuance of the CN trackage rights or abandonment of the WRC freight easement, because neither the CN trackage rights nor the WRC

freight easement permit CN or WRC to provide service to any shipper other than Fraser. As explained in the Application, Fraser would not be harmed by the discontinuance of the CN trackage rights or the abandonment of the WRC freight easement. Accordingly, no communities would be adversely affected by the discontinuance of the CN trackage rights or the abandonment of the WRC freight easement. MMA will continue to provide service over the Madawaska Line after the discontinuance of the trackage rights and abandonment of the easement.

Significant Users: **49 C.F.R. § 1152.22(e)(2)**

The Trackage Rights Agreement permits CN to serve only Fraser at Madawaska. Therefore, Fraser is the only potential user of the service that could be provided by the trackage rights subject to this Application.

The WRC freight easement grants to WRC and its successors and assigns a perpetual, non-exclusive easement for the uses and purposes defined and described in the Trackage Rights Agreement. Since Fraser is the only customer that could be served by the trackage rights under the Trackage Rights Agreement, Fraser is the only potential customer that could be served under the WRC freight easement.

Alternative Sources of Transportation Services: **49 C.F.R. § 1152.22(e)(3)**

If the CN trackage rights are discontinued and the WRC freight easement is abandoned, Fraser will retain the right to route its traffic over the Madawaska Line to the interchange with CN at St. Leonard; over the line from Madawaska south to Brownville Junction and west to Montreal; or over that line south to Bangor to interchange with the Guilford rail system. Fraser also has and will continue to have truck transportation options available for all outbound and most inbound transportation.

Suitability for Other Public Purposes:

49 C.F.R. § 1152.22(e)(4)

Since neither the discontinuance of the CN trackage rights nor the abandonment of the WRC freight easement would result in a cessation of rail service, the Madawaska Line is not suitable for other public purposes.

Environmental and Historic Preservation Data:

49 C.F.R. § 1152.22(f)

This section is not applicable. See 49 C.F.R. § 1105.5(c); Indiana Hi-Rail Corporation – Abandonment Exemption – Between Newton and Browns, IL, Docket No. AB-336 (Sub-No. 4X) (STB served May 3, 1996).

Passenger Service:

49 C.F.R. § 1152.22(g)

This section is not applicable because no passenger service is provided on the Madawaska Line.

Additional Information:

49 C.F.R. § 1152.22(h)

As additional information in support of this Application, the Trustee submits the Application to which this **Exhibit A** is attached, together with the Verified Statements and Exhibits attached thereto or referenced therein.

Draft Federal Register Notice:

49 C.F.R. § 1152.22(i)

A draft *Federal Register* notice of the proposed adverse discontinuance and abandonment, substantially in the form specified in the Board's regulations as modified by the CN Waiver Decision and the WRC Waiver Decision, is attached as **Exhibit H** to this

Application. A computer diskette containing the text of the notice in Wordperfect compatible format is submitted herewith.

Labor Protection: **49 U.S.C. § 10903(b)(2)/11 U.S.C. § 1170(e)**

Under 49 U.S.C. § 10903, the appropriate level of labor protection for the discontinuance of the CN trackage rights and abandonment of the WRC freight easement is that set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979). See Indiana Hi-Rail Corporation – Abandonment Exemption – Between Newton and Browns, IL, Docket No. AB-336 (Sub-No. 4X) (STB served May 3, 1996).

Under 11 U.S.C. § 1170(e), the District Court must require the carrier to establish protective labor conditions at least as protective of the employees as those contained in 49 U.S.C. § 11347 (now contained in 49 U.S.C. § 11326).

Copies; Filing; Check; Bankruptcy: **49 C.F.R. § 1152.24(a)**

An original (that complies with the Board's regulations) and 10 copies of this Application are being filed with the Board. A check for \$1400.00 is being submitted to the Board to cover the applicable filing fee pursuant to 49 C.F.R. § 1002.2(f)(23). This Application also is being filed on the District Court pursuant to 49 C.F.R. § 1152.24(a).

Compliance With Notice of Intent Requirement: **49 C.F.R. § 1152.24(b)**

A certificate that, in compliance with the requirements of 49 C.F.R. § 1152.20, the Trustee has posted, published and served on the appropriate parties a Notice of Intent to seek discontinuance of CN's trackage rights and abandonment of WRC's freight easement on the Madawaska Line is attached as **Exhibit I** to the Application.

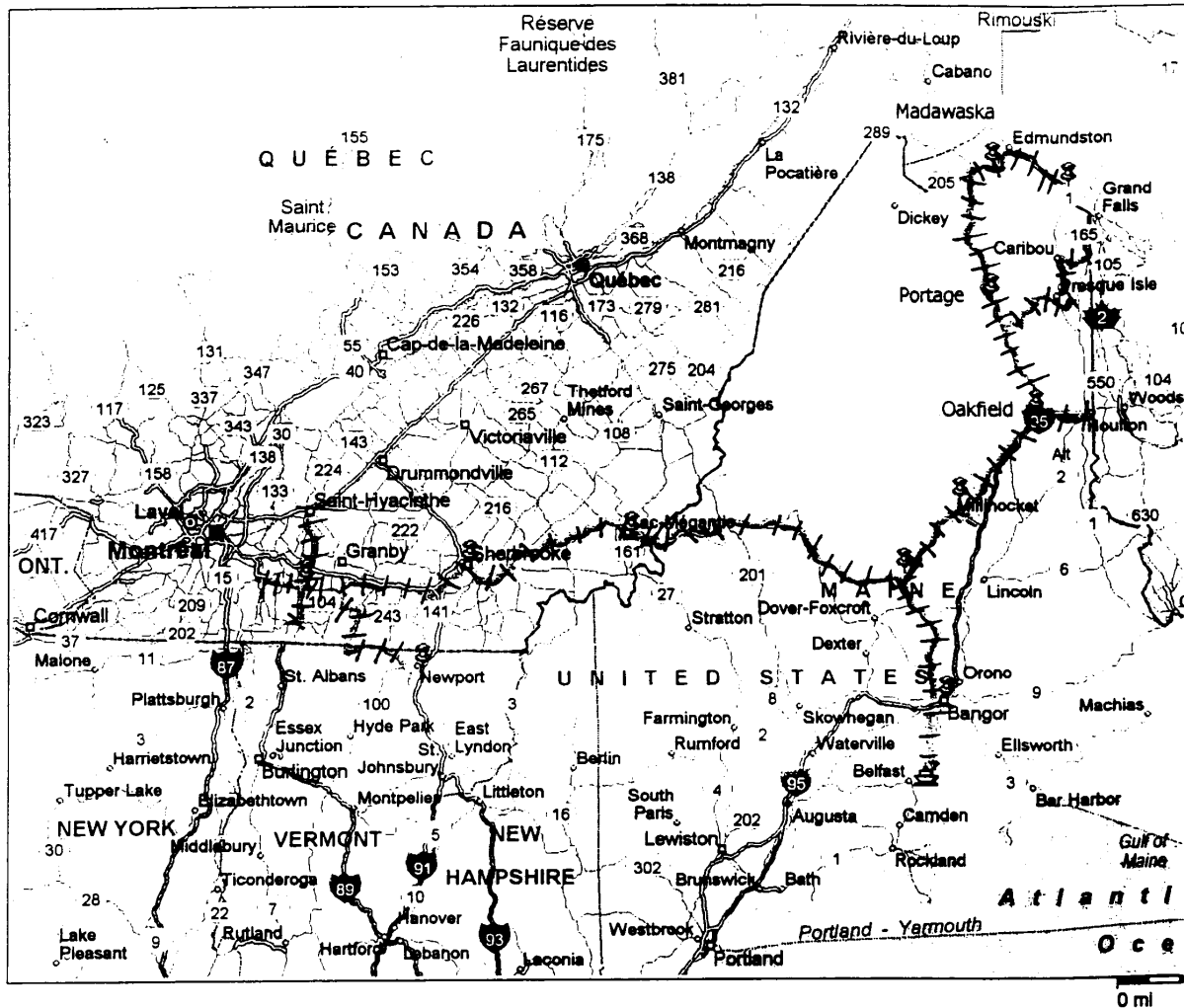
Service Requirements:

49 C.F.R. § 1152.24(c)

The Trustee has served a copy of this Application on the Governor of Maine, the Maine Public Utilities Commission and the Maine Department of Transportation in compliance with the requirements of 49 C.F.R. § 1152.24(c). Copies of the Application also will be made available for inspection at MMA's principal office at 15 Iron Road, Hermon, ME 04401 . A certificate of service to this effect is attached as **Exhibit J** to the Application.

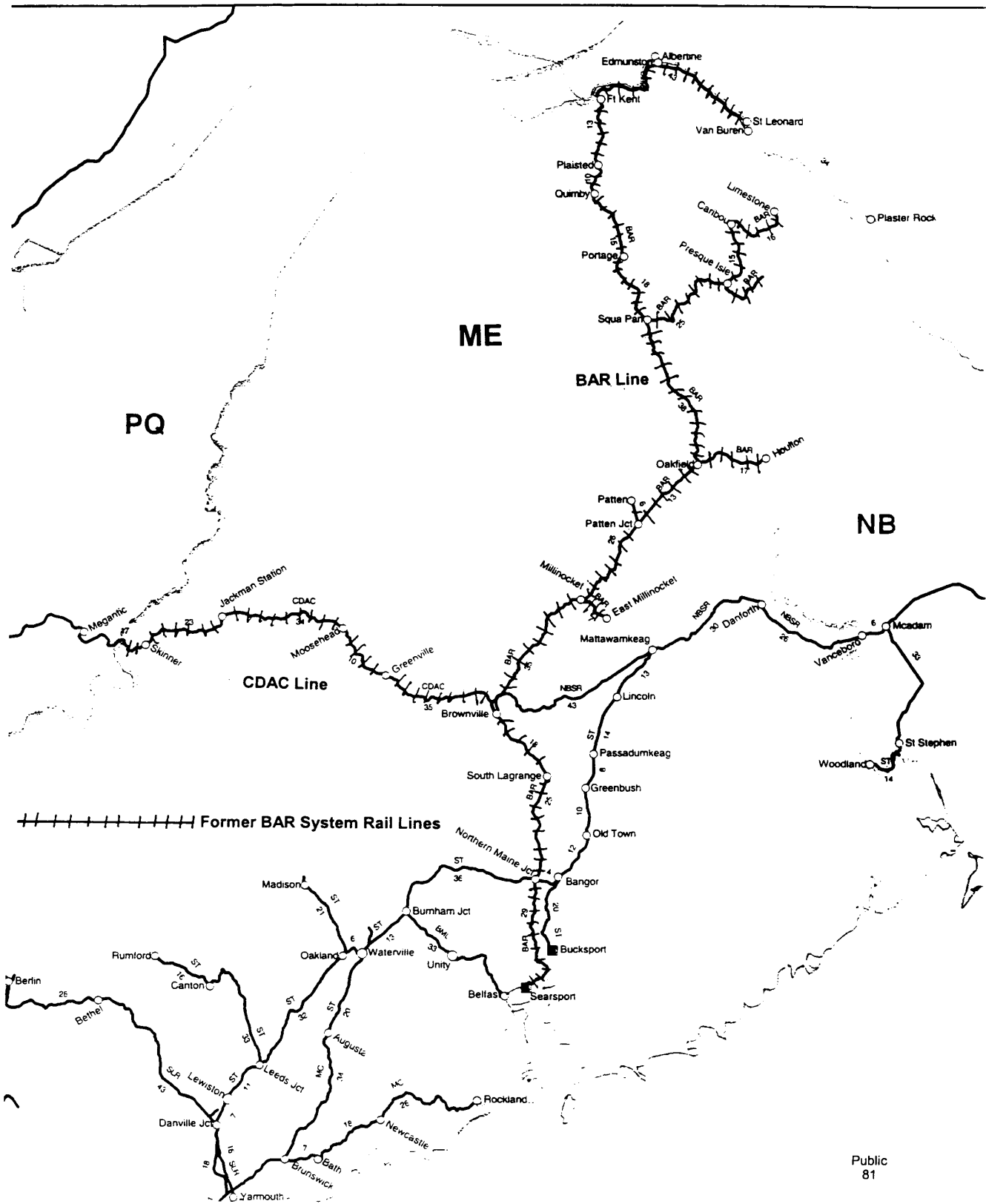
THE FORMER BAR SYSTEM (Map 1)

EXHIBIT B



--- Former BAR System Rail Lines

THE FORMER BAR SYSTEM (Map 2)



THE FORMER BAR SYSTEM (Map 3)

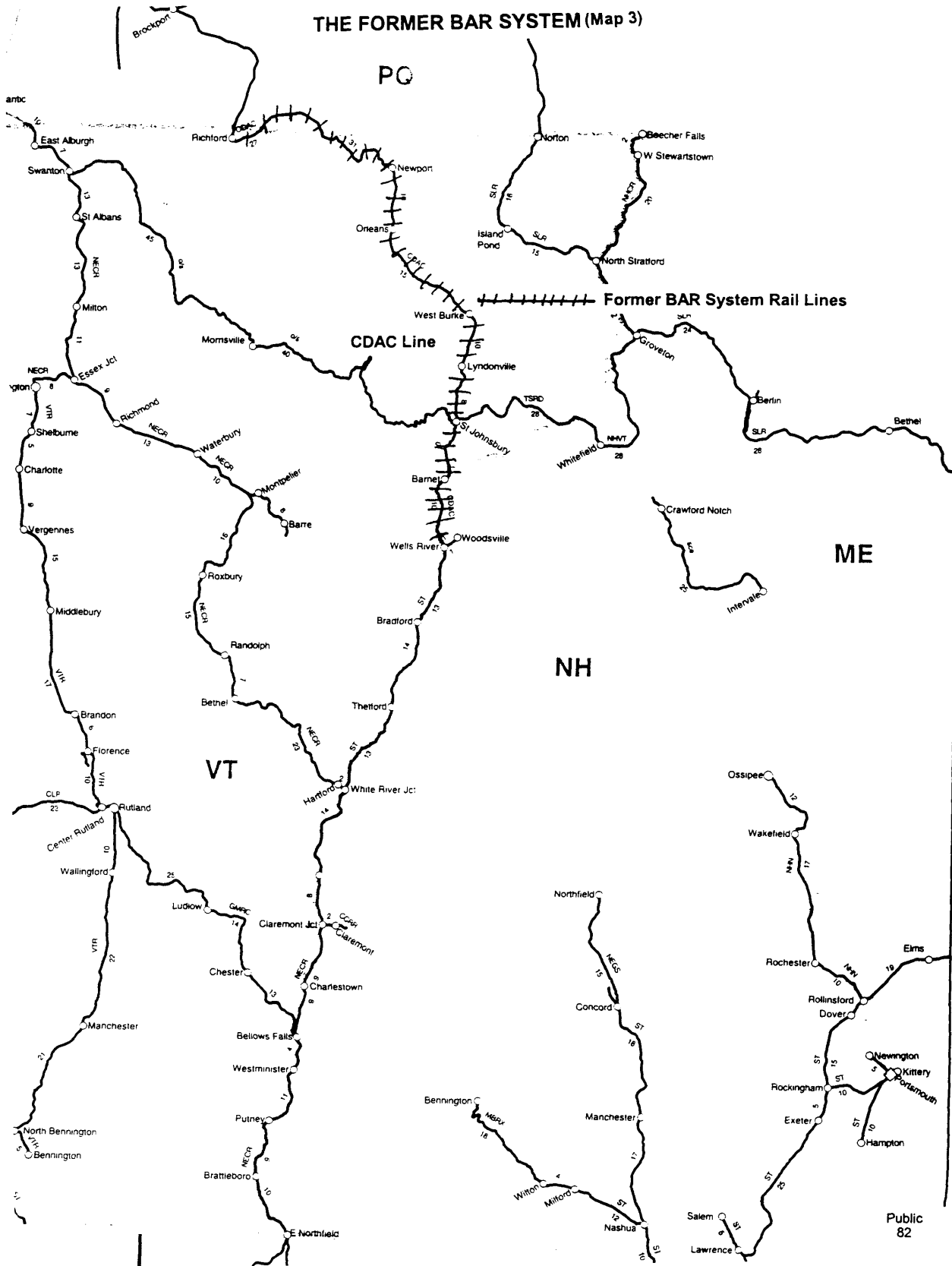


EXHIBIT C

**JUNCTION SETTLEMENT AGREEMENT
St. Leonard, NB to Madawaska, ME**

THIS JUNCTION SETTLEMENT AGREEMENT made as of the first day of March, 2001

BETWEEN:

CANADIAN NATIONAL RAILWAY COMPANY,
incorporated under the laws of Canada

(hereinafter called "CN")

AND

**BANGOR & AROOSTOOK RAILWAY
VAN BUREN BRIDGE COMPANY**
(hereinafter called "BAR")

Wholly owned subsidiaries of

IRON ROAD RAILWAYS INCORPORATED,
incorporated under the laws of the
State of Delaware

WHEREAS CN and BAR have separate property interests in and separately operate over rail lines in New Brunswick and Maine;

WHEREAS CN and BAR desire to improve the overall efficiency of rail transportation to, from and via the CN/BAR interchange in St. Leonard, New Brunswick;

WHEREAS BAR has agreed to provide transportation services for the account of CN for movements from and to Fraser Paper at Madawaska, ME located on the BAR, as specified within the following agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreement hereinafter set out, the parties hereto agree as follows:

1. Definitions and Scope of this Agreement

In this Agreement and the Schedules hereto, unless the context otherwise requires:

- 1.1. "AAR" means the Association of American Railroads;
- 1.2. "Applicable Rules" means the usual rules, regulations and agreements between Class I Railways in Canada covering the interchange of cars and without limitation of the generality of the foregoing, shall include the AAR Car Service Agreement now or hereinafter in effect, the AAR Field Manual of Interchange Rules now or hereinafter in effect, the AAR Office Manual of Interchange Rules now or hereinafter in effect, the AAR Rules Governing the Loading of Commodities now or hereinafter in effect, and any applicable rules and regulations now or hereinafter in force of the NTA or other authority having jurisdiction;
- 1.3. "CN Car" means a loaded or empty freight car irrespective of such car's ownership or markings which is placed on the CN/BAR interchange pursuant to this Agreement and whose loaded route is designated by CN or a customer to be via CN or CN and its connections;
- 1.4. "CN/BAR interchange in St. Leonard" means that interchange, located at Milepoint 194.1 of CN's Napadogan subdivision Milepoint 0.70 of the Van Buren Bridge Company;
- 1.5. "Customer's Facilities" means the teamtrack facility or privately owned or leased siding serving a customer;
- 1.6. "Effective Date" means the date first hereinabove written;
- 1.7. "CTA" means the Canadian Transportation Agency of Canada and any successor of such Agency or to the functions thereof;
- 1.8. "STB" means the Surface Transportation Board and any successor of such Agency or to the functions thereof;

2. Lump sum payment

In consideration of services to be provided under this agreement, CN will pay to Iron Road Railways Inc, as agent for the Bangor & Aroostook Railway, an amount of five million dollars (\$5,000,000) in U.S. funds. This payment is contingent upon:

- The execution of this junction settlement agreement;
- The execution of the St. Leonard to Madawaska trackage rights agreement (attached);
- The execution of the grant of an easement on the property underlying the St. Leonard to Madawaska trackage, and the consent and subordination of the first lien-holder;
- The approval by the Surface Transportation Board of the Notice of Exemption for both the trackage rights and the easement.

The \$ 5 million dollar payment will be made by CN to Iron Road Railways Incorporated, as agent for BAR, via electronic funds transfer, once these contingent conditions have been completed, to CN's sole satisfaction.

1. Haulage services

BAR will provide haulage service for the account of CN between the CN/BAR interchange in St. Leonard, NB and the Fraser Paper mill located on the BAR at Milepoint 0.0 of the Van Buren subdivision in Madawaska, ME;

CN will act as waybill carrier and will be responsible for establishing rates, contracts, routes and divisions.

2. Haulage Fees

BAR will be compensated by CN at a rate of \$500 per loaded car (the "Current Charge"), such rate to be paid in U.S. currency. Reporting shall be made weekly for the period ended at midnight on the prior Friday, and payment shall be made by electronic funds transfer within 72 hours of the receipt of the report (by facsimile or electronic message as the parties may agree) to the account designated in writing by BAR from time to time.

3. Revision of Current Charge

The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of March following the anniversary date to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroad (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wages rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year, and applying that percent to the Current Charge.

By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel) final index figure for 1998; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1999; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) \frac{B-A}{A} = D$$

$(D \times C) + C =$ revised Current Charge effective July 1 of the year being revised.

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organisation discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

At the option of BAR, or CN, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement, the terms of compensation provided in this Agreement will continue in effect until an agreement is concluded. Such failure to conclude an agreement shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled.

4. Equipment and blocking

CN will assume the responsibility for supplying freight cars for movements subject to this agreement. BAR will be entitled to a maximum of 144 hours of per diem reclaim on CN equipment.

BAR shall handle loaded and empty CN Cars, respectively, with the same diligence and speed as they would handle cars for their own account.

CN and BAR will cooperate in car handling matters to fulfill customer needs according to the instructions of customers or the party hereto for whom the service is being performed.

CN and BAR management may arrange to exchange blocking and marshalling services from time to time, by mutual agreement, but are not required to do so under the terms of this agreement.

BAR shall not be obligated to receive empty cars for loading in excess of actual orders received by CN from Fraser.

BAR shall have the right to provide empty equipment for outbound loading if CN is unable to provide enough cars to meet Fraser orders; in such case, cars shall be deemed interchanged to CN upon delivery empty to Fraser.

5. Marketing

Nothing in this Agreement is intended to limit or otherwise minimize competition between the parties. Each party is free to fully market its services in each of the areas described herein to the same extent as existed prior to this Agreement, including but not limited to confidential contract rates, direct customer contracts, competitive pricing and other service agreements. This Agreement is intended solely as a long term private service contract between the parties.

Under this Agreement, CN freight rates will apply to traffic BAR handles on behalf of CN. There will be no additional charges from either party to CN customers as a result of this Agreement, except for the provision of ancillary services (such as intra-plant switching), as are customary within the rail industry.

6. Compliance with Applicable Rules

All cars and lading handled under the terms of this Agreement shall become subject *mutatis mutandis* to the Applicable Rules provided that any benefits from third party agreements covering such cars and lading relative to indemnities, releases and liabilities for death, personal injury or property damage to which CN may be entitled shall be made available to BAR, or to which BAR may be entitled shall be made available to CN, to the extent provided thereunder. All cars received in interchange shall be mechanically acceptable in accordance with the Applicable Rules.

7. Term

This agreement will remain in place for a period of five years, commencing with the effective date of this agreement, and may be renewed for additional five-year terms by mutual consent.

8. Loss and Damage

CN shall be solely responsible for all Loss or Damage to lading in cars in its account.

BAR shall exercise reasonable diligence in the handling of cars under this agreement to accomplish the through movement without undue delay. BAR shall have exclusive control of the management, operation and scheduling of the cars while on BAR's line of railroad. The cars shall be handled by BAR in common with other cars of BAR over the same route and shall receive equal treatment in all respects with the other cars being handled over the same route.

BAR shall be solely responsible for all Loss or Damage to CN equipment while on BAR property

9. Disputes

Any differences which may arise under this Agreement, either as to its construction or respecting its being carried out according to the true intent and meaning thereof or as to the terms upon which it is to be renewed pursuant to Section 8 herein shall, if it cannot be amicably adjusted by the parties hereto, be referred to arbitration under the applicable provisions of the laws of the State of Maine..

10. Liability

BAR shall indemnify and save harmless CN, its subsidiaries, affiliates, officers, employees and agents, from and against any and all liability, claims, losses, damages, costs and expenses (including attorney's fees) for locomotives, cars and lading, all other property of the parties hereto or of any other person or persons, and for death of or injury to any person or persons (including but not limited to employees of BAR and CN) due to any cause whatsoever arising from or growing out of BAR's performance of train operations or any other services pursuant to this agreement. Notwithstanding the foregoing, said indemnification shall not apply to damages caused solely by the willful and wanton misconduct of a CN train crew.

12. Miscellaneous

Mutual Agreement. Wherever this Agreement calls for the mutual agreement of the parties, CN and BAR shall use reasonable and good faith efforts to achieve mutual agreement, provided, however, that the failure for whatever reason to achieve any mutual agreement shall not in any way relieve either party of its obligation under this Agreement nor shall it be grounds for termination of this Agreement.

Entire Agreement. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, representations, prior discussions and preliminary agreements between the parties hereto relating to the subject matter hereof.

Cooperation. Each party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as the other party may reasonably request or as may be reasonably necessary or appropriate to effectuate, consummate or perform any of the terms, provisions or conditions of this Agreement. Each party shall seek and obtain any regulatory approvals, now or at any future time, obtain any regulatory approvals, necessary and required in connection with any transactions contemplated by this Agreement. Each party shall cooperate with the other in making any such regulatory applications.

Successors/Non-assignment. This Agreement shall inure to and bind the successors and assigns of the respective parties hereto, provided, however, that nothing herein shall be construed to permit the sale or assignment of either party's interest or obligations hereunder to any third party. Each party acknowledges that each party's rights under this Agreement are personal and unique. Accordingly, each party acknowledges and covenants that it shall not and may not sell, assign, transfer, pledge or encumber any of its rights or delegate any of its responsibilities or other obligations under the terms of this Agreement without the prior written consent of the other party. Any attempt at such a transfer, assignment, sale, pledge, encumbrance or delegation by either party, without the prior written consent of the other party, shall be void ab initio. Notwithstanding the foregoing, either party may assign its interests under this Agreement to an affiliate, subsidiary or successor of its parent company, provided however, that such assignment shall not relieve such assignor of its obligations or liabilities hereunder; and further provided that nothing in this Article shall preclude BAR from assigning this agreement as part of a sale of all or substantially all of its assets.

Access to Property. Nothing in this agreement confers to CN the right to access the property of BAR, or to provide direct service to the customers of BAR with its own employees.

13. Notices

Except when actual receipt is expressly required by the terms hereof or unless otherwise provided herein, notice is considered given when delivered either by personal delivery, commercial carrier or facsimile transmission to the party or person intended as follows:

Notice to CN:

Canadian National Railway
Eastern Division
MacMillan Yard
1 Administration Road
Concord, Ontario
CANADAL4K 1B9

Attention:

Vice-President – Commercial Development

Notice to BAR:

Bangor & Aroostook Railroad Company
RR 2, Box 45 – Northern Maine Junction
Bangor ME 04401-9602
USA

Attention:

President

Either party may require, by notice given at any time or from time to time, subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both, provided however, that a P.O. Box shall not be considered to be an address for purposes of this Agreement. Notices given before actual receipt of notice of change shall not be invalidated by the change.

Waiver. Any waiver by either party hereto of any breach of any kind or character whatsoever by the other party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement on the part of the other party. No course of dealing or performance between the parties hereto, nor any delay in exercising any rights or remedies hereunder or otherwise, shall operate as a waiver of any of the rights or remedies of either party hereto.

Severability. The provisions of this Agreement are severable and should any provision hereof be void, voidable or unenforceable under any applicable law, such void, voidable or unenforceable provision shall not affect or invalidate any other provisions of this Agreement, which shall continue to govern the relative rights and duties of the parties as

though the void, voidable or unenforceable provision were not a part hereof. In addition, it is the intention and agreement of the parties that all of the terms and conditions hereof be enforced to the fullest extent permitted by law.

Modification. This Agreement may not be modified except by a written instrument duly signed by the parties hereto.

Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and as executed shall constitute one agreement, binding on both parties even though both parties do not sign the same counterpart.

Headings. The headings of sections and subsections used in this Agreement are for convenience only and are not part of its operative language. They shall not be used to affect the construction of any provisions hereof.

Acknowledgment. In executing this Agreement, each party acknowledges that it does not rely on any inducements, promises or representations of the other party or any agent of the other party, other than the terms and conditions specifically set forth in this Agreement.

Construction. This Agreement shall be construed as though both parties had drafted it.

Relationship. The parties hereto do not intend this Agreement or the relationship hereunder to constitute a joint venture, partnership, franchise, agency or employment relationship between them of any kind. The parties hereto agree that they are independent contractors in performing this Agreement and may not bind each other as a result of any action they may take in performing under this Agreement. Under no circumstances shall one party's employees be construed to be employees of the other party, nor shall one party's employees be entitled to participate in the profit sharing, pension or other plans established for the benefit of the other party's employees.

No Third Party Beneficiaries. The representations, warranties, covenants and agreements of the parties set forth in this Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any person not a party hereto.

Governing Law. This Agreement shall be deemed to have been executed in the State of Maine, and shall be interpreted, construed and enforced according to, and governed by, the laws of the State of Maine without giving effect to any conflict of laws provisions. Each party hereby expressly submits itself to the exclusive, personal jurisdiction of the courts situate in the State of Maine, with respect to any and all claims, demands or causes of action asserted or filed by any party in any way relating to, or arising out of, this Agreement or the subject matter hereof.

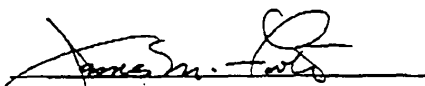
Compliance with Law. Each party shall comply, at its own expense, with the provisions of all laws, regulations, orders, licensing requirements and codes which are applicable to such party, to its performance of this Agreement, or to its status as an employer.

Confidentiality. CN and BAR agree that this Agreement shall be treated as confidential and shall not be disclosed to any third party (other than to a government or regulatory authority entitled to the disclosure thereof by law) except in situations where a valid judicial decision may order this Agreement to be disclosed either in whole or in part. A party submitting this Agreement to such governmental or regulatory authority shall request the governmental or regulatory authority to preserve the confidentiality of the business sensitive portions.

14. IN WITNESS WHEREOF the parties have duly executed and delivered this Agreement as of the date first written above.

CANADIAN NATIONAL RAILWAY COMPANY

By:



James M. Foote
Executive Vice-President
Marketing

BANGOR & AROOSTOOK RAILWAY

By:

VAN BUREN BRIDGE COMPANY

By:

14. IN WITNESS WHEREOF the parties have duly executed and delivered this Agreement as of the date first written above.

CANADIAN NATIONAL RAILWAY COMPANY

By: _____

BANGOR & AROOSTOOK RAILWAY

By: Fred W. Young

VAN BUREN BRIDGE COMPANY

By: Fred W. Young

EXHIBIT D

TRACKAGE RIGHTS AGREEMENT St. Leonard, NB to Madawaska, ME

THIS AGREEMENT, entered into as of this _____ day of March 2001, by and among the Bangor & Aroostook Railway Company and the Van Buren Bridge Company, wholly-owned subsidiaries of Iron Road Railways Incorporated, a Delaware corporation (hereinafter jointly referred to as "BAR"), and CANADIAN NATIONAL RAILWAY COMPANY, a corporation continued under the Canada Business Corporation Act, hereinafter referred to as "CN";

WITNESSETH:

WHEREAS, CN has requested trackage rights over the line of railroad owned by BAR, between Milepost (MP) 0.0 Madawaska, ME to MP 22.72 Canadian Junction, thence over the line of railroad owned by the Van Buren Bridge Company and operated by BAR, from Milepost 0.0 (Canadian Junction) to the point of convergence with CN, located at MP 194.1 (approximately) of CN's Napadogan subdivision, near St. Leonard, NB:

WHEREAS, BAR is agreeable to granting such rights to CN under the following terms and conditions:

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, BAR hereby grants to CN the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of BAR's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "I" (hereinafter referred to as the "Subject Trackage"):

Between Milepost (MP) 0.0 Madawaska, ME to MP 22.72 Canadian Junction, thence over the line of railroad owned by the Van Buren Bridge Company and operated by BAR, from Milepost 0.0 (Canadian Junction) to the point of convergence with CN, located at MP 194.1 (approximately) of CN's Napadogan subdivision, near St. Leonard, NB, a total distance of approximately 25.1 miles.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- (a) CN shall have the right to enter and exit the Subject Trackage only at the connections MP 0.70 at St. Leonard, NB and at MP 0.0, Madawaska subdivision, Madawaska, ME, for the receipt or delivery of local traffic from and to the Fraser / Nexfor facility located in Madawaska, ME. CN shall also have the right of onward movement to Van Buren as may be required exclusively for operating purposes to turn trains.
- (b) CN shall have the right to use the Subject Trackage in either direction.
- (c) CN's use of the Subject Trackage shall be in common with BAR, and any other users of the Subject Trackage, and BAR's right to use of the Subject Trackage shall not be diminished by this Agreement. BAR shall retain the exclusive right to grant to other rail carriers, rights of any nature on the Subject Trackage.
- (d) Except as may otherwise be provided by this Agreement, CN shall not use any part of the Subject Trackage for the purpose of switching, storage, or servicing cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of BAR, preclude the emergency use by CN of such auxiliary tracks as may be designated by BAR for such purposes.
- (e) BAR shall have exclusive control of the management and operation of the Subject Trackage. CN shall not have any claim against BAR for liability of any kind in the event the use of the Subject Trackage by CN is interrupted or delayed at any time from any cause.

ARTICLE 3. RESTRICTIONS ON USE

- (a) The Trackage Rights herein granted are granted for the sole purpose of CN using same for handling of Fraser / Nexfor traffic only.
- (b) CN shall be authorised to operate up to two (2) trains in each direction over the Subject Trackage during any twenty-four (24) hour period.

(d) Except as otherwise provided in Article 11(g) of this Agreement, there shall be no change of CN crews on the Subject Trackage.

(e) The Subject Trackage shall not be used by CN for third party haulage or third party carrier access to, or use of, via lease, trackage rights, haulage or any other operating arrangement. A subsidiary or affiliated company of CN shall not be considered to be a third party for the purposes of this agreement.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

(a) When operating over the Subject Trackage, CN's locomotives and crews will be equipped to communicate with the appropriate BAR dispatcher/operator on radio frequencies normally used by BAR in directing train movements on the Subject Trackage.

(b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision. All control and usage will be subject to the approval of BAR's representative or his designee.

(c) Before CN locomotives enter onto Subject Trackage, CN shall request permission from the appropriate dispatcher/operator or other designated representatives(s). Further, CN shall ascertain that said trackage is clear and shall await confirmation from the appropriate dispatcher/operator(s) or representative that such permission has been issued to allow CN's movements on or over Subject Trackage. Upon completing its operations and clearing Subject Trackage, CN will notify the appropriate dispatcher/operator(s) or designated representative(s) that CN has completed its operations and that its equipment has cleared Subject Trackage. Once CN has notified the appropriate dispatcher/operator(s) or representatives that CN has cleared Subject Trackage, CN shall not reenter the Subject Trackage without again obtaining permission from the appropriate dispatcher/operator(s). CN shall provide and maintain at its expense all communication facilities needed by CN for its operations over the Subject Trackage.

ARTICLE 5. COMPENSATION

(a) For the use of the Subject Trackage, CN shall pay to BAR, the sum of \$100 (U.S. dollars) per loaded or empty car (hereinafter referred to as the "Current Charge").

(b) CN shall pay BAR a sum computed by multiplying: (i) the Current Charge, as may be revised in accordance with Article 6 by (ii) the number of loaded and empty cars moved by CN

with its own crews and power over the Subject Trackage. No charges will be levied for locomotives. With respect to articulated units, the number of cars shall be determined by the MR Car Type Code as defined in the UMLER Specification Manual. The second indicator in the Car Type Code field covering codes "Q" and "5" will be the factor in determining the car count for an articulated unit. For example, MR Car Type code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. (Car count data for articulated units subject to change upon development of technology to separate units by Car Nos.)

(c) BAR shall on or about the tenth day of each month render billing to CN for CN's previous month's use of the Subject Trackage computed in accordance with the terms and conditions of this Agreement.

(d) CN shall furnish to BAR, in care of (contact to be provided.....), at the end of each month, a statement of the number of loaded and empty cars operated over the Subject Trackage during the month. CN shall furnish BAR all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. This procedure will be required at the time the Association of American Railroads (AAR) defines the standard reporting procedure for trackage rights carriers. The minimal data requirements will be determined between BAR and CN.

ARTICLE 6. REVISION OF CURRENT CHARGE

(a) The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of March following the anniversary date to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroad (hereinafter referred to as "AAR"). In making such determination, the final "Material prices, wages rates and supplements combined (excluding fuel): indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year, and applying that percent to the Current Charge.

(b) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1998; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 1999; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) \quad \frac{B-A}{A} = D$$

$$(2) \quad (D \times C) + C = \text{revised Current Charge effective July 1 of the year being revised.}$$

(c) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organisation discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

(d) At the option of BAR, or CN, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement, the terms of compensation provided in this Agreement will continue in effect until an agreement is concluded. Such failure to conclude an agreement shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled.

ARTICLE 7. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made by CN within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties shall be adjusted in the accounts of a subsequent month. The records of the parties, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of two (2) years from the date of billing.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by BAR at the time any work is performed by BAR for CN.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

(a) BAR shall maintain, repair and renew the Subject Trackage at its own expense and with its own supervision and labor. BAR shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but BAR does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. BAR shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CN shall not by reason of failure or neglect on the part of BAR to maintain, repair or renew the Subject Trackage, have or make any claim or demand

against BAR, or its subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by CN resulting from any such failure or neglect.

(b) BAR shall perform, at the expense of CN, such additional maintenance as CN may reasonably require or request.

ARTICLE 9. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

(b) Any additional connections to the Subject Trackage which may be required by CN, for CN's exclusive use, shall be subject to BAR's approval, which shall not be unreasonably withheld (including design) and shall be constructed, maintained, repaired and renewed as follows:

(i) CN or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of CN or others which connect the respective lines of the parties hereto.

(ii) BAR shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of CN, such portions of the tracks located on the right-of-way of BAR which connect the respective lines of the parties hereto. Except as otherwise covered by a separate agreement among the parties to the Agreement, upon termination of this Agreement, BAR may at its option remove portions of trackage and appurtenances located on property of BAR, at the sole cost and expense of CN. The salvage material removed shall be released to CN or, as otherwise agreed upon, BAR will credit CN the current fair market value for said salvage.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) BAR, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgement, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.

(b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate CN's operations beyond that required by BAR to accommodate its operations, BAR shall make such changes in or additions and betterments to the Subject Trackage and construct the additional or altered facilities, and CN shall pay to BAR the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 11. MANAGEMENT AND OPERATIONS

(a) CN shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. CN shall indemnify, protect, defend, and save harmless BAR and BAR and their subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon BAR and BAR and their subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of CN to comply with its obligations in this regard.

(b) CN in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of BAR, and the movement of CN's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of BAR. CN's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by BAR's operating rules and regulations without the prior consent of BAR, which consent shall not be unreasonably withheld. CN shall indemnify, protect, defend, and save harmless BAR and BAR and their subsidiaries and affiliates, and all of their directors, officers, agents and employees from and against all liabilities when attributable to the failure of CN to comply with the provisions of this subsection.

(c) CN shall make such arrangements with BAR as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and CN shall pay to BAR, upon receipt of bills therefor, any cost incurred by BAR in connection with the qualification of such employees of CN, as well as the cost

of pilots furnished by BAR , until such time as such employees are deemed by the appropriate examining officer of BAR to be properly qualified for operation as herein contemplated.

(d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by CN's employees while on the Subject Trackage, CN shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by CN, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to CN's employee or employees required to attend such hearings. BAR shall provide regulations, supplements and safety rules to CN at no cost. After the investigation is concluded, BAR shall promptly furnish CN with two copies of the transcript and a recommendation as to the discipline to be assessed. CN's Transportation Officer shall arrange to assess discipline, subject to receipt of BAR 's recommended discipline, within the applicable time limits. If BAR recommends dismissal, CN reserves the right to change the recommendation to the extent of barring the individual from the Subject Trackage.

(e) BAR shall have the right to exclude from BAR's trackage, any employee of CN, except officers, determined by above, to be in violation of BAR 's rules, regulations, orders, practices, or instructions issued by BAR 's Timetable or otherwise. CN shall release, indemnify, defend, and save harmless BAR and BAR and their subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion. In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules, wherein BAR desire to bar CN's employee from the Subject Trackage pending an investigation by BAR , immediate verbal notification shall be given to the appropriate Transportation Officer of CN so that proper written notice can be issued to the employee.

(e) The trains, locomotives, cars and equipment of CN and BAR as well as any future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(g) CN and BAR intend that there shall be no recrewng of CN trains on the Subject Trackage and CN shall use its best efforts to assure that no such recrewng occurs.

(h) In the event that a train of CN shall be forced to stop on the Subject Trackage, and such stoppage is due to insufficient hours of service remaining among CN's crew and no relief crews are readily available, or due to mechanical failure of CN's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of CN fails to maintain the speed required by BAR on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of CN's trains on the Subject Trackage, BAR shall have the option to furnish motive power or such other assistance (including but not limited to the right to

recrew CN's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and CN shall reimburse BAR for the cost of rendering any such assistance.

(i) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by BAR, and CN shall reimburse BAR for the cost thereof.

(j) In the event BAR and CN agree that BAR should retain employees or provide additional employees for the sole benefit of CN, the parties hereto shall enter into a separate agreement under which CN shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by BAR and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 12. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in CN's trains on the Subject Trackage shall be assumed by CN and reported and paid by it directly to the owners of such cars.

ARTICLE 13. CLEARING OF WRECKS

Whenever CN's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, BAR shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by CN at the time of such wreck, shall be promptly delivered to it.

ARTICLE 14. LIABILITY

The responsibility and liability between the parties for (i) any personal injury or death of any person (including employees of the parties and third persons), (ii) any real or personal property damage of any person (including property of the parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by any of the parties to this Agreement or by third party users, all as described herein, all of which are collectively referred to as a "Loss", will be divided as follows:

- (a) If a Loss results from the use of the Subject Trackage solely by the trains and locomotives of either BAR or CN, then the using party is solely responsible for the Loss, even if caused partially or completely by the other party.
- (b) If a Loss results from the use of the Subject Trackage by the trains and locomotives of two or more parties to this Agreement, then: (i) CN and BAR are each solely responsible for any Loss to their own employees, locomotives and equipment in their own accounts, including lading, and (ii) CN and BAR are equally responsible for any Loss to the Subject Trackage and Loss sustained by third parties, regardless of the proportional responsibility between them as to the cause of the Loss, unless the Loss was caused solely by one party. In that event, the party causing the Loss is solely responsible for the entire Loss.
- (c) If a Loss results from the use of the Subject Trackage by trains and locomotives of both CN and any other third party user of the Subject Trackage not a party to this Agreement, then CN's responsibility for the Loss shall be apportioned in the manner specified in subparagraph (b) with the other third party user being considered BAR for the purpose of determining CN's share of that portion of the Loss which it must assume.
- (d) Whenever any liability, cost, or expense is assumed by or apportioned to a party to this Agreement hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

(e) In every case of death or injury suffered by an employee of a party to this Agreement, when compensation to such employees or employee's dependants is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and a party to this Agreement, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in instalments over a period of time, such party shall not be released from paying any such future instalments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future instalments are to be paid.

(f) For purposes of determining liability, pilots furnished by BAR to CN pursuant to this Agreement shall be considered as the employees of CN while such pilots are on board or getting on or off trains of CN.

(g) For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 (b) (ii), all work performed by BAR shall be deemed performed for the sole benefit of CN, and CN shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of BAR. CN shall protect, indemnify, and save harmless BAR and BAR and their parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which CN is responsible.

(h) If any suit or action shall be brought against a party to this Agreement for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other party, said other party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defence of such suit and shall pay a proportionate part of the judgement and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

(i) In the event of a Loss as set out herein, the parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.

ARTICLE 15. CLAIMS

(a) Except as provided in Subarticle (b) below, all claims, injuries, death, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) CN shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided) or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against a party to this Agreement which is the other party's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, no party shall settle or compromise any claim, demand, suit or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds THIRTY-FIVE THOUSAND DOLLARS (\$35,000).

(f) Each party agrees to indemnify and hold harmless the other party and its subsidiaries and affiliates, and all their respective directors, officers, agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of (i) protection of its own employees under employee protective conditions which may be imposed, and (ii) grievances filed by its own employee arising under its collective bargaining agreements with its employees.

(g) Each party shall assume and hold the other party harmless from all employee claims by its employees predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

(h) It is understood that nothing in this 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

ARTICLE 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of CN to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from BAR, BAR shall have the right at its option, after first giving thirty (30) days written notice thereof by personal delivery, commercial carrier or facsimile transmission, and notwithstanding any waiver by BAR and/or BAR of any prior breach thereof, to terminate this Agreement and CN's use of the Subject Trackage. The exercise of such right by BAR shall not impair BAR's rights under this Agreement or any cause or causes of action it may have against CN for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

(a) Should this Agreement require the prior approval of the Surface Transportation Board (STB), CN at its own cost and expense will initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. BAR shall assist and support efforts of CN to secure any necessary STB approval of this Agreement.

ARTICLE 18. ABANDONMENT OF SUBJECT TRACKAGE

(a) Notwithstanding the provisions of 19 of this Agreement, BAR may abandon the Subject Trackage or any portion thereof, during the term of this Agreement or any renewals thereof, upon giving CN not less than ninety (90) days' notice of BAR's intent to abandon. In the event regulatory authority is required to effect such abandonment, CN will not interfere with BAR's action to seek and to exercise such authority. In the event regulatory authority is required for CN to discontinue its own operations over the Subject Trackage, CN will seek and diligently pursue such regulatory authority at the same time that BAR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as CN may do so in accordance with applicable statutes and regulations, unless CN intends to acquire the Subject Trackage from BAR pursuant to 49 U.S.C. Section 10904 or other similar provision.

(b) CN hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect, to subsidize operations on or to acquire the Subject Trackage. Unless CN or another party acquire the Subject Trackage for continued rail use, CN shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by BAR for abandonment of the Subject Trackage by their aforesaid notice to CN, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of CN's operations is not required, CN shall discontinue its operations hereunder on the date that BAR is authorized to abandon the Subject Trackage. Upon discontinuance of CN's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release any party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 19. TERM

(a) This Agreement shall be effective the date first written above and shall remain in full force for 99 years. In the event of an assignment, sale or other disposition of all or any portion of the Subject Trackage (including an assignment, sale or other disposition of the Subject Trackage to any subsidiary or affiliate of BAR), BAR shall assign its interests in this Agreement to the assignee, purchaser or other transferee of the Subject Trackage involved. Agreement may be terminated at any time by CN upon six (6) months' advance written notice to the other parties.

(b) Termination of this Agreement shall not relieve or release any party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof.

ARTICLE 20. ARBITRATION

- (a) **Disputes:** Any irreconcilable dispute between the parties with respect to this Agreement shall be resolved by submitting it to arbitration pursuant to the provisions of this Article. The decision of the arbitrators shall be final and conclusive upon the parties hereto.
- (b) **Arbitration Procedure:** The claim or controversy shall be submitted to disinterested arbitrators with experience in the field of rail transportation, one of whom shall be appointed by CN, and the other of whom shall be appointed by the other party or parties to this Agreement; the two arbitrators so chosen shall select a third arbitrator. If the arbitrators are unable to agree on the selection of such an arbitrator within thirty (30) days after their appointment, the arbitrators shall then proceed to seek a third arbitrator in accordance with the rules and procedures of the Commercial Arbitration Rules of the American Arbitration Association (AAA) then in effect.
- (c) **Authority of Arbitrators:** The arbitrators shall have no power to change any of the provisions of this Agreement in any respect (nor shall the arbitrator have the power to make an award of reformation) and the jurisdiction of the arbitrators is hereby expressly limited accordingly. The arbitrators shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.
- (d) **Discovery:** The arbitrators shall determine on motion of either party to a dispute whether or to what extent that discovery in the nature of that allowed by the Federal Rules of Civil Procedure (Rule 26-37) will be afforded each party. Any dispute with respect to such discovery shall be settled by the arbitrators.
- (e) **Costs of Arbitration:** Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs, and expense of the arbitrators, if any, shall be borne equally by the parties hereto.

ARTICLE 21. SUCCESSORS AND ASSIGNS

Except as provided by Article 19(a), neither this Agreement nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, except to a controlled subsidiary.

ARTICLE 22. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by personal delivery, commercial carrier or facsimile transmission, or by such other means as the parties may agree, and shall be addressed as follows:

If to BAR :

Bangor & Aroostook Railroad Company
RR 2, Box 45 – Northern Maine Junction
Bangor ME 04401-9602
USA

Attention:

President

If to CN:

Canadian National Railway
Eastern Division
MacMillan Yard
1 Administration Road
Concord, Ontario, L4K 1B9

Attention:

Vice-President – Commercial Development

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 23. GENERAL PROVISIONS

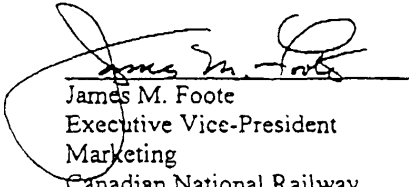
- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against either of the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto.
- (c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- (d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- (e) All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- (f) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (g) This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- (h) Neither party hereto may disclose the provisions of this Agreement to another party, except a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement. During the initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be kept confidential and will not be disclosed by any party.

(i) The terms and articles of this Agreement shall be interpreted and applied as provided within the laws of the State of Maine

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

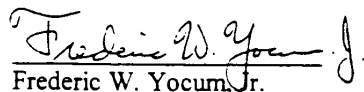
Frederic W. Yocum, Jr.
President
Bangor & Aroostook Railroad Company

Frederic W. Yocum, Jr.
President
Van Buren Bridge Company



James M. Foote
Executive Vice-President
Marketing
Canadian National Railway

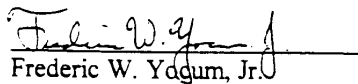
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.



Frederic W. Yocum, Jr.

President

Bangor & Aroostook Railroad Company



Frederic W. Yocum, Jr.

President

Van Buren Bridge Company

E. Hunter Harrison

Executive Vice-President and Chief Operating Officer

Canadian National Railway

EXHIBIT E

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **BANGOR AND AROOSTOOK RAILWAY COMPANY**, a Maine corporation, whose address is Northern Main Junction Park, Rural Route 2, Box 45, Bangor, Maine 04401-9502, and **VAN BUREN BRIDGE COMPANY**, a Maine corporation, whose address is Northern Main Junction Park, Rural Route 2, Box 45, Bangor, Maine 04401-9502, (collectively "Grantor"), for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, does hereby grant unto **WATERLOO RAILWAY COMPANY**, a Delaware corporation, whose address is 455 N. Cityfront Plaza Drive, Chicago, Illinois 60611, ("Grantee"), its successors and assigns, a perpetual, non-exclusive **EASEMENT** for the use and benefit of Grantee, its successors and assigns, for the uses and purposes defined and described in that certain Trackage Rights Agreement dated March __, 2001 by and between Grantor and Canadian National Railway Company ("CN") (the "Trackage Rights Agreement"), over, upon and across the premises described in Exhibit A attached hereto and incorporated herein by reference (the "Easement Area"), situated in the County of Aroostook, State of Maine.

Grantor is the owner in fee simple of the Easement Area, with full right authority to grant this Easement. Grantor shall indemnify, defend and hold harmless Grantee from and against all claims, liability, cost and expense, including attorneys' fees, incurred by Grantee as a result of any defect or insufficiency of Grantor's title or claim of any pre-existing lien or superior rights.

Grantee, for itself, its licensees, successors and assigns, shall have the right to make every use of the Easement Area for Grantee's purposes in accordance with the terms and provisions of the Trackage Rights Agreement. Grantee shall have the right to assign the operating rights hereunder to CN or any subsidiary of CN, to operate over the Easement Area in accordance with the Trackage Rights Agreement..

Grantor shall not make any use of the Easement Area which is inconsistent with the uses and the purposes for which this Easement has been granted.

TO HAVE AND TO HOLD unto Grantee, its successors and assigns for the purposes and upon the terms and conditions specified herein.

This indenture granting an Easement, together with all the covenants contained herein, shall run with the land and shall be binding upon the successors, grantees, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, Grantor has caused this Easement to be duly executed on this 15th day of March, 2000.

GRANTOR:

**BANGOR AND AROOSTOOK RAILWAY
COMPANY, a Maine Corporation**

By: Fredrick W. Green, Jr.
Its: President

**VAN BUREN BRIDGE COMPANY, a Maine
Corporation**

By: Fredrick W. Green, Jr.
Its: President

IN WITNESS WHEREOF, Grantor has caused this Easement to be duly
executed on this 15th day of March, 2000.

GRANTOR:

**BANGOR AND AROOSTOOK RAILWAY
COMPANY**, a Maine Corporation

By: Fred W. Young, Jr.
Its: President

VAN BUREN BRIDGE COMPANY, a Maine
Corporation

By: Fred W. Young, Jr.
Its: President

EXHIBIT F

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

IN RE: BANGOR AND AROOSTOOK) Case No. 01-11565
(11) RAILROAD COMPANY,) Portland,
Maine)
Debtor.) May 7, 2003

TRANSCRIPT OF HEARING ON MOTION FOR RELIEF FROM STAY

BEFORE

THE HONORABLE JAMES B. HAINES

APPEARANCES:

For Trustee James Howard : Roger Clement, Esq.
 Charles White, Esq.
 Kevin Sheys, Esq.

For Montreal, Maine & Atlantic: Robert Keach, Esq.
Railway, LLC, and Montreal M. Rosenthal, Esq.
Maine & Atlantic Canada

For Canadian National Railway : George Marcus, Esq.
Company William Sippel, Esq.
 Cynthia Bergman, Esq.

Court Recorder : Marsha Heath

INDEX OF WITNESSES

WITNESS:	DIRECT	CROSS	REDIRECT
RE CROSS			

No witnesses presented.

INDEX OF EXHIBITS

EXHIBIT	MARKED	ADMITTED
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No exhibits presented.

HEARING COMMENCED (MAY 7, 2003)

THE COURT: Now Bangor & Aroostook.

(PAUSE)

THE COURT: All right. Let start off by getting appearances of everyone who is here on Bangor & Aroostook, and then we'll go forward to address the issues for today. Start on that end, that's fine.

MICHAEL ROSENTHAL, ESQ.: Michael Rosenthal for Montreal, Maine & Atlantic.

CHARLES WHITE, ESQ.: Charles White for the trustee.

KEVIN SHEYS, ESQ.: Kevin Sheys for the trustee.

ROGER CLEMENT, ESQ.: Roger Clement for the trustee.

ROBERT KEACH, ESQ.: Robert Keach for Montreal, Maine & Atlantic.

GEORGE MARCUS, ESQ.: Your Honor, George Marcus for Canadian National, and I'd like to reintroduce the Court to Counsel on my far left, Cynthia Bergman, with Canadian National, and William Sippel with--

WILLIAM SIPPEL, ESQ.: Good morning, your Honor.

THE COURT: Good morning.

MR. MARCUS: --Fletcher & Sippel in Chicago.

THE COURT: All right. Thank you. Now, unless someone's going to jump up and tell me this is all settled, I'll go ahead and just take a shot at where we are and try to get to sort of a practical approach to the issues that are here today. I mean, I know this isn't a model railroad, but model railroads keep coming back to the same spot over and over again, and that's sort of the feeling I got today when I--or the last couple of days when I was looking at the papers that have been on file.

A couple things. First, I understand--and we're here on the motion basically to confront the rejection issues with regard to the trackage agreement, junction agreement and ancillary agreement, also known as the easement, between debtor entities and Canadian National with regard to service of the Fraser Mill. And one of the--sort of as a predicate to this, we discussed these issues about a year ago. The debtor is no longer an operating railroad, it's sold its assets to MM&A, and for that reason, we're in a considerably different factual position than a lot of the cases and authorities that founded the basis for the arguments, at least the trustee's arguments. I

understand the trustee's position that he'd like to get the money and get on with the plan and know what's happening, and I'm sure MM&A's in the same position because it wants to know whether it has to pay the money and it wants to use what it can use and avoid encumbrances on its full use of its assets or duties that it would otherwise seek to avoid and also maximize its revenues down the line. So those all pertain. When first these issues surfaced, we talked about the fact that Canadian National's rights had been obtained through an exemption process on a hurry-up basis through the Service Transportation Board, and it was the trustee's position then that by seeking not exactly a summary process, but a revocation of the exemption could get where they wanted to be with a regulatory authority in short order, and they would--they went ahead and initiated a request for revocation and exemption. That didn't fly, and the Service Transportation Board said you're going to have to file an adverse abandonment proceeding. And apparently the way things work with the Service Transportation Board is you file a notice of intention to do something, then you get discovery, then

you do it. And the trustee's position was, well, we filed our notice of intention to go forward with the adverse abandonment proceeding in November, we filed discovery. We hadn't got--there was contest with regard to discovery. We hadn't gotten the discovery order from the STB, and so we're stymied. And the affidavit filed by Mr. Marcus for Canadian National this morning appended the discovery rulings of the STB. Now, a lot of the argument is about whether or not this Court as the Chapter 11 Court should just forge ahead, deal with these as executory contracts, damn the torpedoes, get it done, go ahead, because this is the reorganization court, it has jurisdiction over executory contracts, and can do that if it chooses, at least unless it's an issue in which 1170 should kick in. 1170 says that the Court can take control and enter orders with regard to abandonments. There's some argument, I know, between the parties as to whether that extends to adverse abandonments or not. But the precursor or the requirement under 1170 as I read it requires the trustee to first initiate the proceeding before the STB, then to come to this Court and ask for an order that requires a

report from the STB within a given amount of time. Now, I'm waiting to be disabused of all these notions by counsel, so I'm--you'll all have an opportunity to be heard here today, but it seems to me that the way is now clear for the trustee to file the adverse abandonment proceeding and then the way will be clear for me to issue an order which requires a report from the Board within a given amount of time, and then rule on the issues. That's--that's what seems to me to be the sensible proposal consistent with the tack we've taken in this matters thus far, rather than to reverse course entirely, pull it all back to the Bankruptcy Court and work on it right now. Particularly where, as here, we are in the liquidation/post-liquidation mode as opposed to the operating/bleeding to death mode that seemed to underlie Congress's concerns about getting these matters before the Bankruptcy Court quickly and comprehensively when circumstances required it. The last thing I'll mention, that just one thing struck me when I was reading the STB's rulings was that--and it has the same sort of procedural background discussion in both these rulings that are--that address separate discovery disputes and

that were each issued yesterday. But my understanding is that we've got the junction agreement, which is a haulage agreement. We have the trackage agreement, which is the agreement which would entitle Canadian National to actually operate its trains over the subject trackage, and we have the ancillary agreement which is an easement to Canadian National basically to do that which the trackage agreement entitles it to do. And I guess there may be--I'd be surprised, but I suppose there may be some concern about whether rejection of the trackage agreement for all practical and impractical purposes vitiates the meaningfulness of the underlying easement, because it appears to me those two are tied operationally one to the other, and the effect of one is limited by the other, and if one goes away, the other, meaning easement, is of no practical effect. And I--there may be argument on that, I don't know, but that seemed to be sort of a given in the past. My understanding, and it has been repeated in the recently-filed pleadings, is that Canadian National has not used the trackage rights at issue but rather has been proceeding under the haulage agreement. That costs the debtor money and it's costing MMA money, and that's

fine, but they got paid for it when they negotiated it. They may not have gotten paid enough, they may not like it, but one line that's in both of these recently delivered rulings from the STB is that haulage agreements aren't subject to its jurisdiction. So we probably could resolve one-third of this today and create more of a problem with regard to the remaining two-thirds by just saying okay, reject the haulage agreement, because that's not an STB matter, it's certainly an executory contract, that's done. But I'm afraid that by exercising the jurisdiction over that executory contract, all I'm going to do is provide an opportunity for tensions to escalate with regard to actual traffic over that line because Canadian National will then go say that it's going to rely on the trackage agreement, and the debtor or its successor is going to say we're refusing to cooperate and coordinate the movement of your trains over our track, and so we'll have a collision figuratively if not literally. So I think I've summed up what, without getting into the complex legal and jurisdictional arguments that underlie some points in the parties' submissions, I think I've summed up where I am on where

things are from here, and I guess my question for the-- oh, we're going to stop a minute for the tape.

(PAUSE)

THE COURT: All right? I guess my question is first for the trustee, who is the moving party today, is why isn't it appropriate now to expect the trustee to initiate the adverse abandonment proceeding before the Surface Transportation Board and then request this Court to enter an order under Section 1170 asking a report within a set amount of time from the STB so that this Court can then go forward and address the bankruptcy issues? Mr. Clement?

MR. CLEMENT: Thank you, your Honor. I think you've done an excellent job of characterizing where the dispute has come and where we are now, and I really don't think I could improve on any of it. I think you've got it, I think you've got it just right in terms of your analysis of where we are. I would--I think, however, going forward it is very important that this Court fold all of these various disputes into one adversary proceeding. And the reason I think that's important is because it's going to be the most efficient way to handle

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2003 MAY 21 AM 9:37

U.S. BANKRUPTCY COURT
PORTLAND, MAINE

1 STATE OF MAINE)

2) ss.

3 CUMBERLAND)

4

5 I, Patricia A. Burrows, transcriber, do
6 certify that the foregoing is a correct transcript
7 from the electronic sound recording of the proceedings
8 in the above-entitled matter.

9

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11


Patricia A. Burrows, Transcriber

Date: May 20, 2002

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EXHIBIT G



EXHIBIT H

SURFACE TRANSPORTATION BOARD

AMENDED NOTICE OF INTENT FOR DISCONTINUANCE OF TRackage RIGHTS AND ABANDONMENT OF FREIGHT EASEMENT

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**

On October 6, 2003, James E. Howard, Chapter 11 Trustee of the Bangor and Aroostook Railroad Company ("Trustee"), filed with the Surface Transportation Board ("Board" or "STB"), Washington, D.C. 20423, an application for authorization for (i) the adverse discontinuance of trackage rights held by Canadian National Railway Company ("CN") and (ii) the adverse abandonment of a freight easement held by Waterloo Railway Company ("WRC" and collectively with CN, where appropriate, "CN"). The Trustee is seeking discontinuance of the CN trackage rights and abandonment of the WRC freight easement on the following lines of railroad: 1) a line between approximately MP 0.0 at Madawaska, Maine and approximately MP 22.72 at Van Buren (Canadian Junction), Maine; and 2) a line between approximately MP 0.0 at Van Buren (Canadian Junction), Maine and approximately MP 0.31 at the United States-Canada Border (the referenced lines are collectively referred to as the "Subject Line"), which traverses United States Postal Service ZIP Codes 04756, 04773, 04746, 04749, and 04785, a distance of

approximately 23 route miles, in Aroostook County, Maine. The Subject Line includes the stations of: Madawaska (MP 0.0); N CL Sign Madawaska (MP 1.25); Saint David (MP 4.20); and Grand Isle (MP 8.66).

On October 8, 2002, the United States Bankruptcy Court for the District of Maine ("Bankruptcy Court") approved the sale of substantially all of the assets of the Bangor and Aroostook System (including the Subject Line) to the Montreal, Maine & Atlantic Railway, Ltd. ("MMA"). See Montreal, Maine & Atlantic Railway LLC – Acquisition & Operation Exemption – Bangor and Aroostook Railroad Company, Canadian American Railroad Company, The Northern Vermont Railroad Company, Inc., Newport & Richford Railroad Company and Van Buren Bridge Company, Finance Docket 34110 (STB served September 19 and 25, 2002). MMA completed its purchase of substantially all of the assets of the Bangor and Aroostook System on January 9, 2003 and became the operating rail carrier on the Subject Line.

An adversary proceeding between the Trustee and CN and WRC was filed in the Bankruptcy Court on May 5, 2003. By motion dated June 3, 2003, the Trustee sought a Bankruptcy Court order pursuant to 11 U.S.C. § 1170 directing the Board to issue an advisory report to the Bankruptcy Court regarding the proposed discontinuance and abandonment. By order dated June 30, 2003, the Bankruptcy Court granted CN's motion to withdraw the reference of the proceeding to the Bankruptcy Court, thereby transmitting the adversary proceeding to the United States District Court for the District of Maine ("District Court"). The District Court has not ruled on whether 11 U.S.C. § 1170 is applicable to the instant case. If the District Court determines that 11 U.S.C. § 1170 is applicable, the Board will be required to submit an advisory report to the District Court pertaining to the proposed discontinuance and abandonment. The District Court will consider the Board's advisory report and decide the discontinuance and

abandonment case. However, if the District Court determines that 11 U.S.C. § 1170 is inapplicable, the Board will decide the discontinuance and abandonment case under 49 U.S.C. § 10903.

Based on information in the Trustee's possession, the Subject Line does not contain federally granted rights-of-way. Any documentation in the Trustee's possession relevant to determining the presence of federally-granted rights-of-way will be made available promptly to those requesting it.

The Trustee is unable to compel the publication by CN or WRC of a system diagram map or system narrative description that shows whether the Subject Line is in category 1. The STB has waived this requirement with respect to this proceeding. See Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-279 (Sub-No. 3) (STB served Sept. 25, 2002); see also Waterloo Railway Company – Adverse Abandonment – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-124 (Sub-No. 2), Canadian National Railway Company – Adverse Discontinuance – Lines of Bangor and Aroostook Railroad Company and Van Buren Bridge Company in Aroostook County, ME, Docket No. AB-279 (Sub-No. 3) (STB served October 23, 2002).

The interests of CN and WRC employees will be protected by conditions established by the District Court of Maine pursuant to 11 U.S.C. § 1170(e) or conditions under 49 U.S.C. § 10903 as set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

The application includes the Trustee's entire case for discontinuance of the CN trackage rights and abandonment of the WRC easement. Any interested person may file with the STB

written comments in support of the application or in opposition to the application or protests concerning the proposed CN trackage rights discontinuance and/or the proposed WRC freight easement abandonment. These filings are due 45 days from the date of filing of the application.

Since MMA will continue to be an operating rail carrier on the Subject Line if the CN trackage rights are discontinued and the WRC freight easement is abandoned, interim trail use would not be appropriate.

Any request for a public use condition must be filed within 45 days from the date of filing of the application. In the application, the Trustee argues that the public use requirements (49 U.S.C. 10905; 49 C.F.R. §1152.28) are not applicable because MMA will continue to be a rail carrier on the Subject Line.

Persons who may oppose the discontinuance of the CN trackage rights and/or abandonment of the WRC freight easement but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should file comments. Persons who may support the discontinuance of the CN trackage rights and/or abandonment of the WRC freight easement but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, also should file comments. Persons interested only in seeking public use conditions should also file comments.

Persons opposing the proposed discontinuance of the CN trackage rights and/or abandonment of the WRC freight easement that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

- (i) Recommended provisions for protection of the interests of employees; and

(ii) A request for a public use condition under 49 U.S.C. 10905.

Parties seeking information concerning the filing of protests should refer to section 1152.25.

Written comments and protests, including all requests for public use conditions, must indicate the proceeding designations AB-279 (Sub-No. 3) and AB-124 (Sub-No. 2) and should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than November 20, 2003. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance/abandonment proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant:

Kevin M. Sheys
Kirkpatrick & Lockhart LLP
1800 Massachusetts Avenue – 2nd Floor
Washington, D.C. 20036
(202) 778-9000

The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in Part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning abandonment procedures may contact the Board or refer to the full abandonment or discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

If required, an environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of

Environmental Analysis. EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on an EA will generally be 30 after its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Date: October __, 2003

By the Board

Vernon A. Williams – Secretary

EXHIBIT I

CERTIFICATION OF COMPLIANCE WITH NOTICE REQUIREMENTS OF 49 C.F.R. § 1152.20

I, Tracie D. Spear, hereby certify as follows:

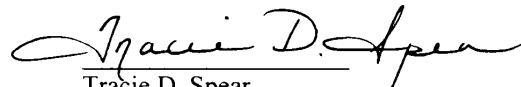
1. An Amended Notice of Intent in the form prescribed in 49 C.F.R. § 1152.21 and as attached hereto was served by certified or first class mail on September 4, 2003 upon each of the parties designated in 49 C.F.R. §§ 1152.20(a)(1) and (2).

2. The Amended Notice of Intent was posted in compliance with 49 C.F.R. § 1152.20(a)(3) at the MMA office located at 15 Iron Road, Hiram, ME, 04401, as indicated in the Amended Notice of Intent. Fraser is the only entity that could be served under the trackage rights subject to the abandonment.

3. The Amended Notice of Intent was published in compliance with 49 C.F.R. § 1152.20(a)(4) in the following newspaper of general circulation for the counties in which the trackage rights to be abandoned is located:

St. John Valley Times
P.O. Box 419
160 Main Street
Madawaska, ME 04756

4. The Amended Notice of Intent was published on September 10, September 17, and September 24, 2003 in the above newspaper(s).


Tracie D. Spear

Date: October 6, 2003

EXHIBIT J

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of October, 2003, a copy of the foregoing

Adverse Application for Discontinuance of Trackage Rights and Abandonment of Easement was served by Federal Express upon:

Governor John E. Baldacci
Office of the Governor
1 State House Station
Augusta, Maine 04333-0001

Maine Public Utilities Commission
242 State Street
18 State House Station
Augusta, Maine 04333-0018

Maine Department of Transportation
16 Statehouse Station
Augusta, Maine 04333

The Honorable George Z. Singal
United States District Court of Maine
156 Federal Street
Portland, Maine 04101

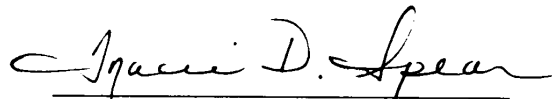
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Thomas J. Litwiler
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Charles Spitulnik
McLeod, Watkinson & Miller
One Massachusetts Avenue, NW
Suite 800
Washington, DC 20001-1401

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

William A. Mullins
David C. Reeves
Baker & Miller PLLC
915 Fifteenth Street, NW
Suite 1000
Washington, DC 20005-2318

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


Tracie D. Spear
Attorney for Trustee

VERIFIED STATEMENT

OF

JAMES E. HOWARD¹

I. INTRODUCTION

My name is James E. Howard. I am the Trustee of the Bangor and Aroostook Railroad Company ("BAR") and of its affiliate railroads, constituting the former BAR System.²

Through counsel, I am filing an application for Surface Transportation Board ("Board") authority for discontinuance of certain Canadian National Railway Company ("CN") trackage rights and abandonment of a certain Waterloo Railway Company ("WRC") freight easement.³

The purposes of this Verified Statement are to: 1) describe the role of the Trustee in the BAR bankruptcy; 2) explain why the CN trackage rights and the WRC easement must be discontinued and abandoned to ensure the viability of the Montreal, Maine & Atlantic Railway Ltd. ("MMA");⁴ and 3) describe the harm to shippers and the public interest in general that is likely to result if the Board does not grant the application and MMA is forced to abandon certain segments of the former BAR System.

¹ A resume summarizing my relevant qualifications and experience is attached hereto as **Appendix 1.**

² The BAR System included, in addition to the BAR, the Canadian American Railroad Company ("CDAC"), the Van Buren Bridge Company ("VBBC"), the Northern Vermont Railway Company ("NVT"), the Newport & Richford Railroad Company ("NRR") and the Quebec Southern Railway ("QSR"). QSR, for which I am not Trustee, was the subject of a case pending under the Bankruptcy and Insolvency Act (Canada) in the Superior Court of Quebec, Canada.

³ The trackage rights and easement in issue are on: (i) the former BAR rail line between Madawaska, ME (BAR M.P. 0.0) and Canadian Junction, ME (BAR M.P. 22.72/VBBC M.P. 0.0) and (ii) the former VBBC rail line between Canadian Junction and the point of connection with CN, near St. Leonard, New Brunswick (CN M.P. 194.1) (the "Madawaska Line").

⁴ The MMA System includes substantially all of the railway operating assets of the BAR System except for a portion of the former NVT south of Newport, Vermont.

II. DUAL ROLE OF THE TRUSTEE

My experience in rail reorganization goes back to the 1970s when I represented the Trustees of Penn Central Transportation Company during the reorganization of Penn Central, which was then the largest corporate reorganization in American history. From the Penn Central experience, I learned that a railroad trustee must be concerned with both protecting creditor interests and protecting the public interest in continued rail operations. The Congressional directive to be ever mindful of the public interest in rail reorganizations was embodied in former Section 77 of the Bankruptcy Act, which was applicable to the Penn Central reorganization. Congress carried the same directive forward in the Bankruptcy Code of 1978, which directs railroad trustees to “consider the public interest in addition to the interests of the debtor, creditors, and equity security holders.” 11 U.S.C. § 1165. As explained below, I have been guided by this Congressional mandate in conducting the BAR System reorganization.

A. ENSURING CONTINUATION OF VIABLE RAIL SERVICE

As Trustee, I have a statutory duty to protect the public interest in continued rail operations. Upon my appointment as Trustee, I continued earlier efforts initiated before the bankruptcy to sell the BAR System. Consideration of the public interest was my foremost concern as the BAR System struggled to maintain sufficient working capital to continue to provide service over its entire network.

My evaluation of prospective buyers was primarily based on whether they would purchase all or substantially all of the BAR System. MMA was the only prospective buyer that offered to acquire substantially all of the BAR System. Although there were several other rail

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operators who expressed interest in portions of the BAR System, it was clear that their plans would result in Balkanization of the rail network or significant downgrading of service.

Preservation and sale of the entire BAR System was a goal shared by government officials and shippers with whom I consulted. The Commissioner of the Maine Department of Transportation was particularly concerned with ensuring the continued operation of the CDAC line between Brownville Junction and points west to Canada and wanted to avoid a situation in which the State might be forced to buy the line. Former BAR System President Fred Yocum and I met with the BAR System's largest customers, including Great Northern Paper ("Great Northern"), Fraser Papers ("Fraser") and J.D. Irving, Limited, and certain Maine elected officials, all of whom expressed the desire that the BAR System survive intact and that service levels not deteriorate.

When we reached an agreement to sell substantially all of the BAR System to MMA, I advised the United States Bankruptcy Court for the District of Maine ("Bankruptcy Court") that the sale to MMA was by far the best means of protecting the public interest.⁵ Specifically, I informed the Bankruptcy Court that the sale to MMA would preserve almost the entire BAR System as an operating railroad and promote the public interest by:

- 1) Continuing the rail service provided by the BAR System, thereby protecting the interests of shippers and others who rely on or benefit from such service;
- 2) Minimizing or eliminating the need for public investment; and

⁵ The remaining portion of the BAR System, the former NVT from Newport, VT south to Wells River, VT was sold to the State of Vermont and is currently operated by Washington County Railroad Company as part of a continuous route from Newport to White River Junction, VT.

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- 3) Avoiding a significant adverse impact on the economies of Maine and Northern New England that would have resulted from a piecemeal disposition or abandonment of the BAR System.

I also advised the Bankruptcy Court that immediate sale of substantially all of the BAR System to MMA would afford creditors the best opportunity for recovery under the circumstances, because the price offered by MMA was in all likelihood greater than the amount that could be realized through any other disposition of the assets. Moreover, immediate sale would stop the accrual of operating losses, since unpaid administrative expenses had steadily accrued and continued to grow. See Trustee's Sale Motion, attached hereto as **Appendix 2**, at ¶ 31.

On October 9, 2002, the Bankruptcy Court approved the sale of substantially all of the assets of the BAR System to MMA.⁶ MMA's willingness to acquire and operate the entire BAR System was a factor that the Bankruptcy Court was obliged to consider in its decision to approve the sale to MMA. MMA completed its purchase of substantially all of the assets of the BAR System on January 9, 2003.

Notwithstanding my objective to preserve the whole BAR System, if the sale to MMA had not occurred at that time, I most likely would have sought authority from the Board to abandon rail service on significant segments of the system. The BAR System was able to conduct operations until January 9, 2003 only by deferring the payment of administrative expenses. This was feasible for a limited period of time, but not indefinitely. Had the sale not occurred when it did, the BAR System would have been unable to sustain operations at then current levels. The combination of the continuing negative cash flow, the March 2001 CN

⁶ See Asset Sale Order, attached hereto as **Appendix 3**.

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transaction and the shut down of Great Northern would have forced us to abandon portions of the BAR System or even to cease operations prior to abandonment due to lack of cash.

The sale to MMA was tantamount to the completion of the first step of a plan of reorganization for the BAR System companies. The sale protected and served the public interest, but additional steps are necessary in order to ensure that the entire reorganized railroad operated by MMA survives on a basis that enables MMA to provide adequate levels of service over the entire system so that the public interest is served and enhanced in the long term and the fruits of this first step in the reorganization of the BAR System are not lost.

MMA plans to continue providing reliable and competitive rail service in Maine. MMA is attempting to rebuild the former BAR System into a viable and competitive railroad. MMA has received the support of shippers, on-line communities and Maine government officials in its effort to revitalize the former BAR System. **See Burkhardt V.S. at 11.**

As described below, the March 2001 transaction gave CN the unilateral ability to reduce BAR's revenue substantially. CN is now able to exercise these rights against MMA, thereby threatening to frustrate MMA's efforts to revitalize and operate the former BAR System. If, however, the CN trackage rights are discontinued and the WRC easement is abandoned, CN will no longer have the unilateral ability to reduce MMA's revenue from movements of Fraser traffic over the Madawaska Line, and MMA will receive revenues that are based on arms length negotiations and presumably at the levels previously earned by BAR. This will greatly enhance MMA's ability to operate profitably, serve its customers and preserve the benefits of the reorganization of the former BAR System.

B. EQUITABLE TREATMENT OF CREDITORS

As Trustee, I also have a statutory duty to protect creditor interests and work toward maximizing the recovery by creditors holding allowed claims against the bankruptcy estates. For purposes of achieving this goal, the guiding principle is parity among creditors in the same class. As described below, termination of CN's trackage rights and WRC's easement is entirely consistent with the rights and remedies available to debtors and trustees under the Bankruptcy Code.

To enable trustees to achieve the goals of maximizing distributions to creditors and equal treatment of creditors, the Bankruptcy Code provides trustees with certain "avoidance powers" and other reorganization tools. For example, 11 U.S.C. § 365 allows bankruptcy trustees to reject burdensome contracts entered into prior to bankruptcy. This right to escape the consequences of a "bad deal" is one of the most fundamental of all bankruptcy rights, and it furthers the larger principle of allowing business enterprises to reorganize, rather than liquidate, in bankruptcy. Similarly, 11 U.S.C. §§ 547, 548, 549, and 550 empower trustees to reverse the effects of -- to "avoid" -- transfers or payments that, if allowed to stand, would have the effect of enabling one creditor to receive better treatment than another in the same class. Bankruptcy trustees also have a duty to use these avoidance powers to further a reorganization of the debtor's business. The proceeds from the avoided transfers are then added to the "pool" of assets that will be distributed to creditors.

I have used and continue to use the avoidance powers and reorganization tools described above in furtherance of the Bankruptcy Code's dual objectives of protecting the public interest and maximizing the amount available for creditors. The bankruptcy reorganization process made it possible for MMA to purchase substantially all of BAR's former rail operations, free and clear

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of liens and unencumbered by claims asserted by over 5,000 creditors totaling over \$100 million. By means of the sale of the BAR System through the bankruptcy process, the BAR System has been reorganized, as described above, and continues to operate in the public interest.

Unfortunately, the reorganization of the BAR System was not without hardship. Many of the estates' creditors have not been paid significant amounts of money because of the financial failure and resulting bankruptcy of the BAR System. Some of these creditors have claims stemming from the rejection of dozens of contracts that were deemed burdensome to the estates. For each contract that was rejected, the other party has lost the benefit of a contract they entered into with the BAR System before the bankruptcy. Each of these parties is entitled to file a claim in bankruptcy for damages caused by the rejection.

From the perspective of the reorganization of the BAR System and the respective rights and duties of trustees and parties to contracts with a debtor generally, the contracts between CN and BAR are no different than any other rejected contract, with one exception. Unlike most rejected contracts that directly affect only the parties to the contracts, the CN contracts are particularly critical, because rejection will not only serve the general purposes of the Bankruptcy Code, but, as demonstrated below, also will further the public interest in continued rail operations by contributing to the viability of the MMA System.

In March 2001, BAR negotiated a series of contracts with CN, and CN paid \$5 million to BAR. CN proposed, and BAR agreed, that BAR would handle (or "haul") Fraser traffic between Madawaska and St. Leonard for the account of CN under a haulage agreement ("Junction Settlement Agreement"). The haulage agreement gave CN the ability to set the rate for transportation on Fraser traffic to and from Madawaska without any input or concurrence from BAR. CN agreed to pay BAR approximately \$500 for each loaded car hauled for the account of

CN, rather than divide the joint line revenue as they had in the past. The \$500 per car payment was less than 50% of the approximately \$1,065 per car that BAR earned in 2000, the last year prior to the contract. The Junction Settlement Agreement produced no physical change in service. The only things that changed were the identity of the railroad in whose account the cars moved and the division of revenue between BAR and CN – BAR earned less and CN earned more.⁷

CN and BAR also entered into a Trackage Rights Agreement dated March 1, 2001.⁸ The Trackage Rights Agreement permits CN to run up to two trains in each direction over the Madawaska Line during any 24-hour period for service to Fraser only. The trackage rights can be exercised by CN at any time, in CN's discretion. CN is required to pay MMA \$100 per loaded or empty car. Accordingly, CN has the unilateral ability to reduce MMA's revenues even more than under the Junction Settlement Agreement.

Under the Bankruptcy Code, the CN contracts are not entitled to any special status. The Trackage Rights Agreement and Junction Settlement Agreement are burdensome to the BAR System and to the viability of MMA as it provides rail service formerly provided by the BAR System. Preventing BAR from ridding itself and the former BAR System of the onerous agreements with CN would be tantamount to elevating CN to a special status, immune from the fundamental precepts of bankruptcy law. Under the Bankruptcy Code, CN should be subject to the same rules as every other party in interest.

Prior to the sale to MMA, the Junction Settlement Agreement reduced the revenue of BAR by approximately \$175,000 per month, or approximately \$2,090,000 per year. During the

⁷ CN and MMA have agreed to maintain this current arrangement pending the effort to discontinue the CN trackage rights and abandon the WRC easement.

⁸ BAR and WRC also entered into an easement agreement, pursuant to which BAR granted a freight easement to WRC over the Madawaska Line.

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period from April 22, 2001 until the end of 2002, when BAR moved approximately 6,625 carloads of Fraser traffic under the Junction Settlement Agreement, revenues were \$3,734,910 less than they would have been if the Junction Settlement Agreement had not been in effect. If CN had operated its own trains over the Madawaska Line under the Trackage Rights Agreement, BAR's revenue would have been only \$1,325,000, which is \$5,742,285 less than it would have realized under the joint rate arrangement.⁹

Throughout this period, the BAR System incurred operating losses and a negative cash flow. It was, therefore, readily apparent that the agreements were not in the interests of the BAR estate and that it was my duty to seek discontinuance of the CN trackage rights and abandonment of the WRC easement.¹⁰ It was not a close call. The Trackage Rights Agreement and the Junction Settlement Agreement were a debacle for BAR, and the effort began in March 2002 to terminate the agreements.

If the trackage rights and easement are discontinued and abandoned, CN will, like many other companies that dealt with BAR, lose the benefit of a bargain it made with BAR prior to BAR's bankruptcy. Such a development is, however, the essence of bankruptcy reorganization. In fact, CN has placed itself in a far better position than other creditors. Under the Junction Settlement Agreement, CN will have collected approximately \$5.4 million in additional revenue as of September 30, 2003, and it continues to collect additional revenue at the rate of

⁹ BAR moved 3,712 cars of such traffic during the April 22, 2001 through April 22, 2002 period and 2,913 cars of such traffic during the remaining portion of 2002. **See Yocum V.S. at 11.** These calculations were done using \$1066.76 as BAR's division of the joint rate, \$503 as BAR's haulage fee under the Junction Settlement Agreement and \$200 as BAR's fee under the Trackage Rights Agreement.

¹⁰ For the reasons explained in the Application, I am requesting either an advisory report from the Board and District Court approval or Board authority to discontinue the CN trackage rights and abandon the WRC freight easement before terminating the Trackage Rights Agreement and the WRC easement.

approximately \$175,000 per month. CN, therefore, appears now to have collected funds in excess of the \$5 million cash outlay it made to BAR prior to the bankruptcy filing, unlike any other creditors of the same class.¹¹

If the CN trackage rights and the WRC easement are terminated, MMA will be obligated to pay to the BAR System's bankruptcy estates a supplemental purchase price of \$5 million.¹² MMA also is required to pay the estates "Earn-Out Payments" as additional consideration for the sale of the debtors' assets.¹³ All other factors being equal, the Earn-Out Payments will clearly be higher if the trackage rights and easement are discontinued and abandoned. Both the \$5 million and the Earn-Out Payments will go to the bankruptcy estates and be distributed to creditors holding allowed claims, according to the distribution provisions of the Bankruptcy Code. Receipt of the \$5 million will in all likelihood result in a dividend for unsecured creditors, while non-receipt will significantly decrease the chances of any dividend, much less a meaningful dividend, to unsecured creditors.

As described above, the Bankruptcy Code mandates that the costs of protecting the public interest not be imposed on only some creditors, while a select few are permitted to recover the full amount or a higher percentage of their claims. The requirements of the Bankruptcy Code and fundamental and long-established bankruptcy and railroad reorganization policies can only be met through discontinuance of the CN trackage rights and abandonment of the WRC

¹¹ CN recovered such funds without incurring any operating expenses because BAR and MMA have provided actual train service on the Madawaska Line.

¹² Asset Purchase Agreement between Trustee, *inter alia*, and MMA, attached hereto as **Appendix 4**, at Section 1.8.

¹³ The Earn-Out provision entitles the estates to receive Earn-Out Payments beginning on March 31, 2004 and continuing each year until 2008. The Earn-Out Payment will be 10% of the amount by which cumulative, actual gross earnings of MMA exceed projected earnings, as defined in Schedule 1.9 of the Asset Purchase Agreement, less Earn-Out Payments made in previous years. For example, if MMA earnings exceed projections by 20% in 2003, the Earn-Out Payment as of March 31, 2004 would be approximately \$300,000.

easement. The result of discontinuance and abandonment will be the promotion of dual goals – (1) protection of the public interest in rail transportation through support of the reorganized BAR System that now comprises the MMA System and (2) evenhanded treatment of and enhanced distributions to all creditors.

III. HARM TO SHIPPERS AND THE PUBLIC INTEREST IN GENERAL

Selling substantially all of the BAR System to MMA was an important step for the reorganization and preservation of the former BAR System. The continued existence of the CN trackage rights and the WRC easement may, however, force MMA to abandon certain segments of the BAR System. Edward A. Burkhardt, the Chairman of the Board of MMA, has stated that if MMA is not relieved of the burden imposed by the CN trackage rights and WRC easement, MMA most likely will be forced to abandon the former CDAC line between Brownville Junction and Canada and some portion of the north-south MMA main line south of Madawaska, effectively reducing the system to two short lines serving the major online paper mills (the Madawaska paper mill of Fraser and the former Great Northern mills, now owned by Fraser's affiliate, Katahdin Paper and operated by Fraser). **Burkhardt V.S. at 9-10.** While such a course of action by MMA would be entirely understandable under the circumstances, and the balance of the interests would favor abandonment, the impact of these abandonments would be detrimental to the interests of shippers, the State of Maine and the public generally.

Precisely what MMA will do awaits the outcome of this proceeding and related proceedings in the District Court. As Trustee, I had a chance to see the former BAR System first hand. Based on my experience, absent elimination of the CN trackage rights and WRC easement, MMA would at a minimum be compelled to abandon line segments where it has little originated or terminated traffic and significant maintenance and operating expenses. The lines in

this category are (i) the former CDAC line between Brownville Junction and points west to Canada (the “CDAC Line”) and (ii) the segment of the former BAR main line between Madawaska and points west and south to Portage, Maine (the “Madawaska-Portage Line”). In fact, during the period prior to the sale to MMA, we considered the possibility of such abandonments in the event that the sale did not close.

To gain a more specific understanding of the impact of abandonment of the CDAC Line and the Madawaska-Portage Line, I directed my counsel to engage Rail Trac Associates (“Rail Trac”) to evaluate MMA’s potential savings from the abandonments and the likely impact on shippers. Rail Trac concluded that abandonment of both the CDAC Line and the Madawaska-Portage Line could result in a net benefit to MMA of over \$800,000 a year. **See Finley V.S. at 2.**

Although I agree with the findings set forth in the Rail Trac study (“Abandonment Report”), it should be noted that their analysis was based on various conservative assumptions that may underestimate the financial benefits of the two abandonments to MMA. First, the annual savings from abandonment of the Madawaska-Portage Line does not take into account a capital expenditure of approximately \$250,000 for track rehabilitation that will soon be needed to continue operations on that segment. **See Finley V.S., Appendix 2, Part I (Avoidable Costs), Exhibit A at 3.**¹⁴ Because these expenditures are not included in the calculation of avoidable costs, the Abandonment Report underestimates the cash savings to MMA.

Second, Rail Trac assumes for purposes of its analysis that paper-manufacturing operations at the former GNP mills at Millinocket and East Millinocket would resume by June

¹⁴ The Abandonment Report accounts for the \$250,000 capital improvement expenditure in its calculation of the subsidy required to continue operating the Madawaska-Portage Line. However, the expenditure was not included in the calculation of the annual savings determination.

30, 2003 at moderate levels of production. See Finley V.S., Appendix 2, Part II (Revenue Forecast) at 2-3. Although there is reason to hope, based upon informal statements, that the new owner of the mills, Brascan, will restart operations at the Millinocket Mill within the next several months, Brascan has publicly announced that it will not restart operations until July, 2004 at the earliest. It is not known whether the two mills, once they are both back in production, will resume normal levels of paper production or whether those operations will generate historical levels of rail traffic. By potentially overstating the anticipated revenue attributable to Brascan traffic on the two routes, the Abandonment Report may have overstated the revenue loss and thereby underestimated the net savings to MMA from the proposed abandonments.

Third, the Abandonment Report assumes that MMA will be subject to the standard corporate income tax rate of 38%.¹⁵ It seems very likely, given my understanding of MMA's current financial situation, that MMA will be subject to a lower income tax rate (or no tax at all) based on anticipated losses from operations in 2003. By using the higher income tax rate or no tax at all for its net loss calculations, the Abandonment Report has underestimated the opportunity costs associated with continued operation of the two routes. Higher opportunity costs translate into higher net savings to MMA from abandoning the two routes.

Whatever the magnitude of the savings to MMA from abandonment, the adverse impact on shippers that would result from MMA's abandonment of the Madawaska-Portage and CDAC Lines would be substantial. This harm is described in the following sections.

A. Madawaska-Portage Line Abandonment

The Madawaska-Portage Line is significant to the movement of rail traffic within

¹⁵ The Abandonment Report notes that opportunity costs would be higher under a 0% tax rate, but does not use such rate in calculating the net gains to MMA from the abandonment scenarios.

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Aroostook County and to points beyond. Approximately 52 shippers currently move traffic over the Madawaska-Portage Line.¹⁶ See List of Shippers on the Madawaska-Portage Line, attached hereto as **Appendix 5**. For the period July 1, 2003 to June 30, 2004, it is anticipated that approximately [] carloads of originating, terminating and/or overhead traffic will be handled for these shippers over the Madawaska-Portage Line. **Finley V.S., Appendix 2, Part II (Revenue Forecast), Exhibit A.** Significant users of the Madawaska-Portage Line include Irving Woodlands/Irving Forest Products, Fraser Papers, Dead River Co. and Northstar Pulp and Paper. **Table I** below summarizes the anticipated carload data for the period July 1, 2003 to June 30, 2004 for these shippers:

TABLE I: SIGNIFICANT USERS OF THE MADAWASKA-PORTAGE LINE

SHIPPER	PROJECTED CARLOADS
Irving Woodlands/Irving Forest Products	[]
Fraser Papers	[]
Dead River Co.	[]
Northstar Pulp and Paper	[]
All Others (47)	[]
TOTAL	[]

B. CDAC Line Abandonment

Traffic volume on the CDAC Line is higher than on the Madawaska-Portage Line. Approximately 196 shippers currently move traffic over the CDAC Line. See List of Shippers on the CDAC Line, attached hereto as **Appendix 6**. For the period July 1, 2003 to June 30, 2004, it is anticipated that these shippers will generate approximately [] revenue units (carloads and intermodal containers) of originating, terminating and/or overhead traffic over the

¹⁶ The numbers for shippers using the Madawaska-Portage Line, CDAC Line or both, include all shippers and receivers of freight.

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CDAC Line. **Finley V.S., Appendix 2, Part II (Revenue Forecast), Exhibit A.** Significant users of the CDAC Line include Katahdin Paper, Daimler-Chrysler, Westroc Industries, LP Corp., GAC Chemical Corp., Irving Paper, Norbord Industries, Inc. and JM Huber Corp. **Table II** below summarizes the anticipated revenue unit data for the period July 1, 2003 to June 30, 2004 for these shippers:

TABLE II: SIGNIFICANT USERS OF THE CDAC LINE

SHIPPER	PROJECTED REVENUE UNITS
Katahdin Paper	[] ¹⁷
Daimler-Chrysler	[]
Westroc Industries	[]
LP Corp.	[]
GAC Chemical Corp.	[]
Irving Paper	[]
Norbord Industries Inc.	[]
JM Huber Corp.	[]
Flakeboard Co.	[]
General Chemical Canada Ltd.	[]
Irving Forest Product Inc.	[]
International Paper	[]
Multibois – Megantic MFG	[]
Maine Potato Growers, Inc.	[]
Gerard Crete @ LMS Lumber Reload	[]
Moose River Lumber Co.	[]
Sprague Energy	[]
All Others (178)	[]

¹⁷ This figure assumes that the Millinocket and East Millinocket paper mills would reopen on or before July 1, 2003 at moderate levels of production. As of the date of the Application, Katahdin Paper has reopened only one mill for production of newsprint, which has moved largely by truck. The other mill remains closed.

TOTAL	
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C. Abandonment of Both Lines

There are approximately 28 shippers that require use of both the Madawaska-Portage and CDAC Lines for certain traffic moves. See List of Shippers on Both the Madawaska-Portage and CDAC Lines, attached hereto as **Appendix 7**. For the period July 1, 2003 to June 30, 2004, it is anticipated that approximately carloads of originating, terminating and/or overhead traffic will be moved for these shippers. **Finley V.S., Appendix 2, Part II (Revenue Forecast), Exhibit A.** Significant users of both the BAR and CDAC Lines include Fraser Papers, JD Irving Ltd. and Norbord Industries. **Table III** below summarizes the anticipated carload data for the period July 1, 2003 to June 30, 2004 for these shippers:

TABLE III: SIGNIFICANT USERS OF BOTH THE MADAWASKA-PORTAGE AND CDAC LINES

SHIPPER	PROJECTED CARLOADS¹⁸
Fraser Papers	
JD Irving Ltd.	
Norbord Industries	
All Others (24)	
TOTAL	

D. Adverse Effects of the Madawaska-Portage Line and CDAC Line Abandonment

The abandonment of the Madawaska-Portage and CDAC Lines would force a significant number of shippers to lose at least one of their current rail routings. In some cases, shippers would go from two or more routes to one route. In cases where the shipper is captive to or

¹⁸ These figures are not included in the carload data summarized above for Madawaska-Portage Line and CDAC Line traffic.

greatly dependent on rail transportation, such route foreclosure would eliminate competition between intermediate (or “bridge”) carriers and give the single remaining railroad significant leverage to increase rates. Other shippers would find their remaining rail routes very inefficient and they might be forced to divert traffic from rail to truck. In addition to increased transportation costs, diversions from rail to truck would have a serious adverse effect on the highway and roadway transportation network in the State of Maine.

1. Loss of Efficient Rail Routes

Daimler-Chrysler (“Chrysler”) currently uses a CP-MMA routing over the CDAC Line for its Atlantic Province vehicle traffic that generally moves eastbound from different origins in the U.S. and Canada toward Saint John, New Brunswick. The CP-MMA routing has been Chrysler’s preferred routing historically and the parties have recently renewed their contract for an additional five-year period. Volumes are significant, with traffic in recent years totaling around [] carloads annually. If the CDAC Line were abandoned, it would eliminate a major portion of the shortest rail route between Montreal and Saint John, sever Chrysler’s preferred routing for vehicles, and force Chrysler to find an alternate rail routing. Without the CDAC route, Chrysler most likely would move most of this vehicle traffic by CP to Montreal, then by CN east to St. Andre Jct., past St. Leonard to Moncton, and then back west to Saint John. This more circuitous CN routing would result in a greatly increased rail distance as well as the need to interchange this CP-originated traffic to CN en-route. Increased rail distances would most likely result in higher rates and longer delivery times. Thus, for Chrysler, abandonment of the CDAC Line would mean a degradation in service, increased rate levels, or both.

Westroc Industries (“Westroc”) also would lose its preferred route. Westroc currently originates approximately [] carloads of gypsum wallboard each year from McAdam, NB

with roughly [] of those cars moving west across the former CDAC route. Westroc's traffic originates on the New Brunswick Southern Railway at McAdam and terminates at points west of Montreal (e.g. Alberta, Ontario) and at points in the northeast (e.g. New York, Connecticut, New Jersey). If the CDAC Line were to be abandoned, Westroc's traffic most likely would continue to move by rail, but would be diverted to a CN or Guilford routing from the Atlantic Province area. As described below, such diversions would be to the detriment of Westroc.

Traffic destined for points west of Montreal most likely would move from McAdam east to CN at Saint John, NB, then northeast to Moncton, NB, west through St. Leonard to St. Andre Junction and then south to Quebec and Montreal. Traffic destined for points in the northeast most likely would move from McAdam west to Guilford at Mattawamkeag, ME and then south through Bangor and Portland to an interchange with other carriers to move the Westroc traffic to points in the northeast.

At present, approximately half of the Westroc traffic moving by the MMA-CP route is destined for a CP station to the west. While this CP-destination traffic is currently moved by two individual carriers (MMA and CP), they are handling the business using a coordinated marketing and operating agreement, and therefore many of the benefits of a single-line haul are being realized. If the CDAC abandonment were to take place and this traffic were diverted to CN or Guilford, it would result in at least one additional carrier being inserted into Westroc's routings on these shipments. In addition, it would be necessary to haul the shipments a significant additional distance due to the configuration of the alternative carriers' routes. Given the increased distances required for Westroc's CP-bound traffic together with the need to utilize additional rail carriers in the routings, it appears likely that a CDAC Line abandonment would

result in both a degradation of service levels as well as increased rate levels for Westroc on this traffic.

2. Diversions From Rail to Truck

Other shippers, finding their remaining rail route hopelessly circuitous, might be forced to shift traffic to truck. For example, MMA currently handles approximately [] carloads of paper per year from Fraser's mill in Madawaska over the Madawaska-Portage Line to an MMA warehouse facility in Hampden, ME (south of Bangor) where it is distributed to customers by truck. Since the abandonment of the Madawaska-Portage Line would sever the only practical rail route for this traffic, it is likely that the majority of this business would be diverted to a truck-direct movement. Assuming a 3:1 truck/rail ratio for this particular product, this diversion alone would result in an additional [] trucks making trips on approximately 248 miles of Maine's highways each year. These heavy volumes of additional truck traffic would have a negative impact on Maine's highway infrastructure.

If the CDAC Line were to be abandoned, the Moose River Lumber Co. ("Moose River"), a sawmill operation employing approximately 100 people in Jackman, ME, would no longer have the opportunity to ship products directly from Jackman to their customers by rail. Since the majority of their current rail customers are located over 1,000 miles away, if they are to remain competitive to those markets, Moose River would need to continue to utilize rail. In order to achieve this, Moose River most likely would utilize trucks from Jackman to the nearest rail location, probably Waterville, ME (on Guilford, approximately 92 miles south of Jackman), where it would transload its products to rail for the long haul. Due to the competitive nature of the lumber industry, it is unlikely that Moose River could pass the additional costs of trucking and transloading on to its customers. Moose River would be forced either to absorb these

additional costs, or, to forego opportunities with certain customers due to insufficient margins. Therefore, abandonment of the CDAC Line would have a negative impact upon Moose River's business. In addition, assuming a 3.5:1 truck/rail ratio for Moose River's product, the truck diversions would result in approximately [] additional trucks on the Maine roads between Jackman and Waterville.

3. Hazardous Materials Diversions to Truck

Certain commodities, such as petroleum and other chemicals, are very difficult to transport by means other than rail because of the additional safety precautions that must be applied to each shipment of such commodities. For example, GAC Chemical Corp. ("GAC") currently uses MMA to ship approximately [] carloads of alum (a corrosive liquid) per year from its facility in Searsport, ME to Fraser's mill in Madawaska. If the Madawaska-Portage Line were abandoned, this traffic would lose its only rail routing. The likely result of this would be GAC shipping the product by truck from Searsport to Madawaska. There would be a significantly higher number of trucks carrying hazardous material on Maine's highway and roads. Assuming a 4:1 truck/rail ratio for this product, the diversion would result in an additional [] trucks per year carrying hazardous materials on approximately 269 miles of Maine's roads.

E. Adverse Effects on Fraser

Based upon Fraser's position thus far in opposition to termination of the CN trackage rights, Fraser is undoubtedly betting that MMA will be able to overcome or live with the loss of revenue arising from the CN trackage rights. Fraser is betting on continued head-to-head competition between bridge carriers, CP and CN, for Fraser's traffic. Fraser presumably believes

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MMA, in partnership with CP, can vigorously and effectively continue to compete against CN for Fraser's rail business. Fraser's bet is a big one.

If MMA does not earn adequate revenue on the MMA/CN Fraser business traversing the Madawaska Line, it is unlikely that MMA will be able to compete effectively over the CP route as an alternative to CN on the Fraser business. If MMA is not earning adequate revenue on its portion of the CN routing over the Madawaska Line, MMA will be constrained in its ability to maintain the MMA/CP routing as a competitive alternative for available traffic.

Even if MMA's inadequate revenue on the MMA/CN business does not weaken the entire railroad, Fraser will almost certainly lose routing options. If MMA abandons the former CDAC Line, Fraser will forever lose access to its CP routing. If MMA abandons the Madawaska-Portage Line, Fraser will forever lose access to its Guilford routing. Fraser faces the possibility that it will have no effective competition for its rail transportation business because CN will have sole access to Fraser's Madawaska mill. While Fraser is betting on the continuation of multiple competitive rail routes for its traffic, it is far more likely that Fraser will have a strong CN and a weakened MMA, leading to a loss of competitive rail routes if the CN trackage rights and WRC easement are not eliminated.

As noted above, the former Great Northern mills at Millinocket and East Millinocket are now owned by Katahdin Paper and operated by Fraser. If MMA abandons the former CDAC Line, Fraser's sister company, Katahdin Paper, will lose access to CP. In addition, if MMA abandons the Madawaska-Portage Line, Katahdin will lose access to CN. And, of course, if MMA abandons both lines, Katahdin will lose access to CN and CP.

F. Community Impact

Abandonment of the Madawaska-Portage Line and the CDAC Line would have a negative impact on the economies of many communities in Maine. The following communities are located on or near the Madawaska-Portage Line and will have no rail service if it is abandoned: Portage, Eagle Lake, Fort Kent, Frenchville, and St. Agatha. The following communities are located on or near the CDAC Line and will have no rail service if it is abandoned: Brownville Junction, Greenville Junction and Jackman. Fort Kent, Brownville Junction and Greenville Junction are among the largest communities (by population) in northern Maine. Several of these communities are home to local shippers on the Madawaska-Portage and CDAC Lines and the removal of rail access will hinder future economic development efforts in those rural areas.

G. Canadian National Revenue

Of course, the ultimate beneficiary of a weak or Balkanized MMA is CN. If MMA is unable to earn adequate revenue on Fraser business moving over the Madawaska Line, CN will dominate rail service, to the detriment of MMA and CP and all of the customers they serve in the region. If MMA abandons the Madawaska-Portage Line, CN will have sole access to Fraser, all other shippers originating or terminating traffic on the Madawaska Line and all other shippers using the Madawaska-Portage Line to traverse northern Maine. In one sense, this would complete the story for CN. First, it came in and gained direct access to BAR's second biggest customer in exchange for the comparative pittance of \$5 million. Then, it would await the failure or Balkanization of MMA and become the sole outlet for the other shippers on the MMA remnant in northern Maine.

Thus, CN has an obvious economic motivation to resist the termination of its trackage rights and the WRC easement. This motivation underscores the need to evaluate this proceeding for what it really is – a dispute about money. This proceeding is clearly not about rail transportation issues or competitive service to Fraser, as CN would have the Board believe, and CN should not be mistaken for the guardian of the public interest, as it tries to portray itself. The best evidence that continuation of the CN trackage rights serves no valid transportation purpose is the fact that Fraser's rail rates are essentially the same today as they were prior to execution of the CN contracts.

IV. CONCLUSION

As the chapter 11 Trustee of the railroads comprising the BAR System, I have a statutory duty to protect the public interest in continued rail operations of that system. I believe that it is in the public interest to preserve the former BAR System intact by ensuring the viability of the MMA System. The best way to accomplish this goal is to relieve MMA of the burden of the CN trackage rights and the WRC easement. If I am unsuccessful in securing court approval or Board authority to discontinue the trackage rights and abandon the easement, MMA most likely will be forced to abandon the Madawaska-Portage Line and the CDAC Line. These abandonments would force a significant number of shippers to lose at least one of their current rail routings. Some shippers would be forced to divert traffic from rail to truck. In addition, Fraser would lose the CP and Guilford routings for its Madawaska Mill traffic and would essentially become captive to the CN routing. The discontinuance of the CN trackage rights and abandonment of the WRC easement is the most practical means of ensuring both continued rail operations over the entire MMA System and the least amount of harm to shippers (including Fraser) and communities in Northern Maine.

LIST OF APPENDICES

Appendix 1 - Resume of James E. Howard

Appendix 2 - Trustee's Sale Motion

Appendix 3 - Asset Sale Order

Appendix 4 - Asset Purchase Agreement between Trustee, *inter alia*, and MMA

Appendix 5 - List of Shippers on Madawaska-Portage Line

Appendix 6 - List of Shippers on CDAC Line

Appendix 7 - List of Shippers on Both Madawaska-Portage and CDAC Lines

APPENDIX 1 TO HOWARD V.S.

James E. Howard

James E. Howard LLC
One Thompson Square
Suite 201
Charlestown, MA 02129
(617) 886-9322
(617) 886-9324
jehoward@worldnet.att.net

James E. Howard has been engaged in the practice of law and business consulting activities as James E. Howard LLC since July, 1996. Prior to that time he was a partner in the Pittsburgh and Boston offices of Kirkpatrick & Lockhart. Mr. Howard has concentrated his legal practice in two principal areas - rail transportation and bankruptcy/work out/restructuring matters. He also does commercial litigation and transactional work. Since 1996, he has also provided consulting services from time to time in conjunction with Mercer Management Consulting, Inc. and other transportation consultants.

During the 1970s, Mr. Howard represented the Trustees of Penn Central Transportation Company, which became the principal component of Conrail. Mr. Howard worked closely with the Trustees and management and was involved in all aspects of the rail operations of Penn Central, including obtaining approximately \$300 million in federal subsidies for Penn Central's operations and negotiating and implementing a plan of reorganization.

Mr. Howard represented Guilford Transportation Industries in connection with its acquisition of three railroads - Boston and Maine, Maine Central, and Delaware and Hudson. He successfully handled the proceedings before the Interstate Commerce Commission and the Court of Appeals for approval of the acquisitions, which created a system that operated between Maine and Buffalo and between Montreal and Washington, D.C.

Professional Experience

Representative transactions and cases in which Mr. Howard has been involved include the following:

Rail Regulatory and Transactional

- Represented the Trustees of Penn Central Transportation Company in the then largest corporate reorganization in history.
- Counsel for Guilford Transportation Industries in connection with the acquisition of the stock of Boston and Maine Railroad, Maine Central Railroad, and Delaware and Hudson Railway, the financial restructuring of D&H, and obtaining approval of the

transactions by the Interstate Commerce Commission.

- Represented Kiamichi Railroad in connection with its acquisition by StatesRail.
- Represented Bangor & Aroostock Railroad in its opposition before the ICC to the attempt by Canadian Pacific to abandon its line in Maine and the subsequent purchase of the line by BAR and approval by the ICC.
- Counsel for the Coalition of Northeastern Governors in the proceedings before the Surface Transportation Board for approval of the acquisition of Conrail by NS and CSX.
- Representation of various rail carriers, including Providence and Worcester Railroad, Massachusetts Central, Arkansas and Missouri Railroad, Maine Coast Railroad, Bay Colony Railroad, and Seminole Gulf Railroad before the ICC and STB in proceedings relating to acquisitions, leases, operating agreements, trackage rights, and abandonment.
- Counsel to various railroads and financial institutions, including BTM Capital and Massachusetts Central Railroad, for purposes of the negotiation of equipment leases.
- Represented various clients for purposes of the negotiation and drafting of rail transportation contracts, leases, operating agreements, trackage rights agreements, and other instruments.
- Counseled clients concerning coverage under the Railroad Retirement Act.

Rail Litigation and Arbitration

- Obtained a decision (affirmed on appeal) in favor of Ametek, a plastics processor, in a demurrage dispute with several Class I rail carriers.
- Secured an injunction in favor of Bay Colony against the U.S. Army Corps of Engineers in a dispute involving a rail bridge.
- Represented Massachusetts Central successfully in several contract disputes and other matters.
- Defended Penn Central in an arbitration proceeding in which the Federal Railroad Administration sought to recover \$30 million.
- Represented Seminole Gulf in a dispute with an abutting property owner.

- Represented Boston and Maine in various litigation and arbitration matters with Amtrak and Central Vermont Railway.
- Represented Montana Western Railway in an arbitration with a Class I carrier.
- Represented Bay State Transit in litigation against Massachusetts Bay Transportation Authority for breach of a commuter rail contract.

Bankruptcy and Reorganization

- Represented the Trustees of Penn Central during the successful reorganization of PCTC, including the resolution of claims involving 15 lessor companies that were also in bankruptcy and 15 other lessors that were not.
- Served as the Chapter 11 Trustee of Boston Publishing Company, a catalog sales company.
- Acted as counsel for the official unsecured creditors committees in several Chapter 11 cases, including George Caldwell Company and Crafts Precision Industries.
- Represented secured and unsecured creditors in numerous Chapter 11 cases.
- Successfully obtained relief from the automatic stay on behalf of secured creditors in several cases.
- Obtained a judgment on behalf of a secured creditor against owners of a debtor in an adversary proceeding trial in the bankruptcy court.

Non-Rail Commercial Litigation

- Defended Federal Express in litigation brought by a lessor.
- Obtained judgments in a U.S. District Court against guarantors of debt.
- Represented a beneficiary of a letter of credit in a dispute with the issuer bank.
- Brought suit on behalf of an agent for a commission that a financial institution refused to pay.
- Defended a household goods mover against a claim by a shipper, successfully involving the Carmack Amendment to preempt state claims.

- Sued an insurance company to recover on credit insurance on behalf of the former Bank of New England.

Other Transactional Matters

- Represented a European company in an effort to make an equity investment in an American company providing transportation services.
- Counsel for Rounder Records in its acquisition of the assets of Flying Fish Records.
- Represented the licensee of a new mass transit technology in the acquisition of rights to develop the technology in Asia and sublicensing such technology.
- Counsel to the American subsidiary of a French transportation company in connection with entry into the American commuter rail and passenger rail markets.

Consulting and Counseling

- Advised the government of South Africa on the privatization of its commuter rail system.
- Worked with the government of Hong Kong in its effort to privatize the subway system through a stock offering.
- Provided workout and restructuring advice to numerous companies.
- Represented various companies in connection with efforts to sell or purchase assets or stock.
- Provided on-going advice to CONEG on rail issues, including intercity passenger service matters.

Professional Affiliations

James E. Howard LLC, Member (Boston, MA 1996-present)

Founded private practice firm with concentrations in transportation and reorganization

Kirkpatrick & Lockhart, Partner (Boston, MA 1984-1996)

Founded and acted as managing partner of Boston office of a Pittsburgh-based national law firm

Kirkpatrick & Lockhart, Partner (Pittsburgh, PA 1981-1984)

Private Practice, Sole Practitioner (Philadelphia, PA 1980-1981)

Penn Central Transportation Company, Attorney for Trustees (Philadelphia, PA 1971-1980)

Montgomery, McCracken, Walker & Rhoads, Associate (Philadelphia, PA 1969-1971)

Education

University of Pennsylvania Law School (LL.B., 1969) Yale University (B.A., 1966)

Bar Association Memberships and Professional Activities

American Bar Association	Massachusetts Bar Association
Boston Bar Association	Transportation Lawyers Association
Association for Transportation Law, Logistics and Policy	New England Railroad Club
American Shortline and Regional Railroad Association	American Bankruptcy Institute

Court Admissions

United States District Court for the Eastern District of Pennsylvania and the District of Massachusetts	United States Supreme Court
United States Court of Appeals for the First, Second, Third, Seven and District of Columbia Circuits	Commonwealth of Massachusetts
	Commonwealth of Pennsylvania

APPENDIX 2 TO HOWARD V.S.

Hearing Date: October 8, 2002

Hearing Time: 2:00 P.M.

Location: Portland, Maine

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re	)	
	)	
BANGOR & AROOSTOOK RAILROAD COMPANY, ¹	)	Chapter 11
	)	Case No. 01-11565
	)	
Debtor.	)	(Jointly Administered)
	)	

MOTION OF TRUSTEE AND LOGISTICS MANAGEMENT SYSTEMS, INC.,
DEBTOR-IN-POSSESSION, PURSUANT TO SECTIONS 105, 363, 365, AND
1146 OF THE BANKRUPTCY CODE FOR AN ORDER (1) APPROVING ASSET
PURCHASE AGREEMENT; (2) AUTHORIZING SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, FREE AND
CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, PURSUANT
TO ASSET PURCHASE AGREEMENT; AND
(3) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF RELATED
AGREEMENTS AND EXECUTORY CONTRACTS

NOTICE: YOUR RIGHTS MAY BE AFFECTED BY THIS SALE MOTION. ANY
OBJECTIONS TO THE RELIEF REQUESTED HEREIN MUST BE FILED AND SERVED
IN THE MANNER DESCRIBED IN THE NOTICE ACCOMPANYING THIS SALE
MOTION (THE "NOTICE") NO LATER THAN SEPTEMBER 26, 2002 AT 4:30 P.M. (the
"Objection Deadline").

Logistics Management Systems, Inc., Debtor-in-Possession ("LMS"), and James E.
Howard, Esq., the duly appointed trustee ("Trustee") in the Chapter 11 cases of Bangor and
Aroostook Railroad ("BAR"). Canadian American Railroad Company ("CDAC"), Newport and

¹ The following entities are also debtors: Canadian American Railroad Company, Chapter 11 Case No. 02-10858. Logistics Management Systems, Inc., Chapter 11 Case No. 02-10864, Newport and Richford Railroad Company, Chapter 11 Case No. 02-10856, The Northern Vermont Railroad Company Incorporated, Chapter 11 Case No. 02-10857, and Van Buren Bridge Company, Chapter 11 Case No. 02-10865. The bankruptcy cases of these affiliate estates may be referred to herein as the "Affiliate Cases".

Richford Railroad Company ("N&R"), Northern Vermont Railway Company ("NVT"), and Van Buren Bridge Company ("VBB") (LMS, BAŘ, CDAC, N&R, NVT & VBB may be collectively referred to herein as the "Debtors" and the Trustee and LMS may be referred to as the "Trustee"), jointly seek approval for the sale of substantially all of the assets of the Bangor & Aroostook System² as an operating railroad to a single buyer. The Trustee has entered into an Asset Purchase Agreement with Montreal, Maine and Atlantic Railway, LLC and Montreal, Maine & Atlantic Canada Co. (collectively, "MMA") as purchasers, which will acquire the System unless another entity presents a higher or better offer. The Code and long-established Supreme Court precedent require that any sale of a railroad in reorganization must accord with the "public interest" in continuous, uninterrupted rail service.

The base amount of the purchase price under the Agreement is \$50 million. The base price, which is subject to adjustment upward is, in the judgment of the Trustee, the best price obtainable for the assets in the circumstances. Other potential dispositions or reorganizations of the assets of the System are unlikely to result in as much value to the estates. Consequently, sale of the System pursuant to the Agreement is in the best interests of creditors.

Prompt approval and implementation of the Agreement is critical in view of the financial condition of the System. Operations through 2002 have continued to produce losses both on a cash basis and on a fully accrued, net income basis. In these circumstances, the System does not have the ability to continue to provide service indefinitely. Extraordinary expenditures, such as expenses related to a derailment or severe winter, or shortfalls in revenue, such as might result from the shutdown of a large customer, could threaten rail operations. Continuing losses from

² Capitalized terms in this introductory summary are defined below.

operations also contribute to a decline in value of the System. Consequently, a System sale as promptly as possible will serve both the public interest and the interest of creditors.

The Trustee, by and through his undersigned counsel, submits this motion ("Sale Motion"), pursuant to Sections 105, 363, 365 and 1146(c) of the Bankruptcy Code, Rule 6004 of the Federal Rules of Bankruptcy Procedure and Local Rule 6004-1, requesting entry of an order (1) approving an Asset Purchase Agreement dated as of July 24, 2002 (the "Agreement", attached hereto as Exhibit A)³ by and among the Trustee, LMS and Litwin Boyadjian Inc., Trustee to the proposal of Quebec Southern Railway Company, Ltd. ("QSR") (the Trustee and LMS and QSR are referred to collectively as "Sellers") and MMA as purchasers; (2) authorizing the sale of substantially all assets of the estates of the Debtors free and clear of all liens, pledges, claims, interests, and security interests with all such liens, pledges, claims, interests and security interests attaching to the proceeds of sale to the extent not otherwise provided for herein and to the extent valid, allowable and enforceable; and (3) authorizing the assumption and assignment of certain related executory contracts. In support of the relief sought in this Sale Motion, the Trustee states:

I. JURISDICTIONAL STATEMENT

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1334(b) and 1409(a) and the standing order of the United States District Court for the District of Maine dated August 1, 1984, pursuant to which all cases filed in Maine under Title 11 are automatically referred to this Court. This is a core proceeding. The Court has jurisdiction to enter a final order

³ The schedules and exhibits to the Agreement have been submitted to the Court, but have not been served on any party. Any interested party may obtain a copy of these voluminous documents on PACER or by contacting Roger A. Clement, Jr., counsel to the Trustee, at the address indicated at the end of this Sale Motion.

on this Sale Motion pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O).

II. PROCEDURAL HISTORY

2. On or about August 15, 2001 (the "Petition Date"), an involuntary Chapter 11 bankruptcy case was filed for Bangor & Aroostook Railroad Company (the "Debtor").

3. On or about December 4, 2001, this Court entered an order for relief against BAR under Chapter 11 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq.

4. On December 28, 2001, the U.S. Trustee appointed the Trustee as trustee of BAR pursuant to 11 U.S.C. §1163.

5. On May 14, 2002, CDAC, N&R, and NVT filed voluntary petitions for relief under chapter 11 of the Code. On May 15, 2002, LMS and VBB filed voluntary petitions for relief under chapter 11 of the Code, in the United States Bankruptcy Court for the District of Maine. Pursuant to §§1107(a) and 1108 of the Code, LMS, which is not a railroad, is managing its assets and property as debtor-in-possession. Because LMS is a wholly owned subsidiary of BAR, effective control of LMS as debtor-in-possession resides with the Trustee. VBB is also a wholly owned subsidiary of BAR.

6. CDAC, N&R, NVT and VBB are railroads subject to sections 1161 et seq. of the Code, and initially proceeded as debtors-in-possession pending the appointment of a trustee under section 1163 of the Code. On May 21, 2002, the Court entered an Order authorizing CDAC, N&R, NVT and VBB to conduct business operations in the ordinary course pending appointment of a chapter 11 railroad trustee. On May 31, 2002, the U.S. Trustee appointed James E. Howard as Trustee of CDAC, N&R, NVT and VBB.

III. RAILROAD OPERATIONS

A. RECENT HISTORY: CREATION AND OPERATION OF THE SYSTEM

7. Until 1995, BAR operated as independent railroad. In January, 1995 BAR acquired CDAC from Canadian Pacific Railway ("CP"), which at the time of acquisition was seeking authority to abandon the line. Iron Road Railways Incorporated ("IRR") owns all of the stock (either directly or through intermediate subsidiaries) of BAR, CDAC, NVT, N&R, and QSR. IRR acquired BAR and CDAC in March, 1995. In September, 1996, IRR purchased the assets of NVT, N&R and QSR from CP. All of the acquisitions from CP were owner financed, which is an indication that CP was eager to discontinue operation of and liquidate these lines.

8. As the separate railroads were acquired, they were integrated into one railroad system (the "BAR System" or the "Svstem"). From the outset, the System generally incurred operating losses. In 1999, IRR undertook a complex refinancing which is described in more detail below. The 1999 refinancing did not solve the System's problems. The System has continued to show poor financial results, and revenues have decreased. Moreover, the pulp and paper industry, which is one of the principal industries served by the System, has been in a decline in recent years.

B. CURRENT OPERATIONS AND FINANCIAL CONDITION

9. The BAR System currently has approximately 357 employees and operates 853 miles of line in Maine, Vermont, Quebec and New Brunswick. LMS provides logistic support services to entities comprising the System and others. As a whole, the System provides:

- (a) the shortest rail transportation route between Maine and Montreal and a critical rail artery between Saint John, New Brunswick and Montreal;

(b) strategic links to the Canadian Pacific Railroad, the Canadian National Railroad, and Guilford Rail System and beyond to the North American rail system;

(c) outlets for major producers of paper, lumber, wood and agricultural products in eastern and northern Maine; and

(d) in-bound transportation for chemicals and other products used by paper producers and consumers in Maine.

The System is a substantial component of the transportation system of Northern Maine, Northern New England, Quebec and New Brunswick.

10. The System continues to be operated as an integrated unit, comprised of 5 railroads and eight separate companies. It is integrated for purposes of operations, finance, treasury and administration. BAR provides various services and oversight for the other four railroads. CDAC, NVT, and QSR are incapable of operating on their own without additional resources. The System, and in particular BAR, has more employees than are necessary to operate efficiently, but the Debtors have no short-term ability to correct the situation. For these and other reasons, it is not feasible to attempt to operate portions of the System on a stand alone basis.

11. The consolidated proposed uses of cash for the System through December 31, 2002, which was attached to the Order dated April 1, 2002 authorizing the use of cash collateral, projects a cash deficit of approximately \$3.5 million. The Debtors' internally prepared consolidated budgeted income statement for the System for 2002 projects a \$4.3 million loss from operations and a net loss of \$9.8 million. For the 7 months ended July 31, 2002, the loss from operations was \$1.8 million and the net loss was \$4.8 million.

12. Operations have continued in 2002 at the same levels as prior years only by means of deferring payment of certain administrative expenses, which erodes the value of the estate to the detriment of creditors. The current uncertainty makes it difficult to retain or to enter into long-term relationships with customers, which is reflected in decreased revenues.

13. Continued operations on the current basis (insufficient cash to meet all expenses) would likely lead to the curtailment of services, including less frequent service to certain customers, cut-backs on maintenance expenditures, or abandonment of certain branches.

14. In September, 2001, Rail World, Inc. ("Rail World"), an affiliate of MMA, submitted a written expression of interest to purchase substantially all of the System assets. This expression of interest was reduced to a letter of intent by and among BAR, on the one hand, and Rail World, Wheeling Corporation and certain of their affiliates on the other.

15. As of October 16, 2001, BAR and certain creditors entered into a stipulation, which was approved by the Court, suspending the involuntary Chapter 11 proceedings. The order provided for an informal committee of creditors and required that BAR enter into a purchase and sale agreement with Rail World by November 20, 2001. On November 26, 2001, no agreement having been signed, the committee filed a notice of default. Consequently, the Court entered an Order for relief as of December 4, 2001 and negotiations for the proposed sale to the Rail World buyers were suspended.

16. Immediately upon his appointment in January 2002, the Trustee renewed the efforts to sell the System to Rail World's affiliate MMA, the only prospective buyer that had pursued an offer to acquire the System. In addition, the Trustee has discussed the sale of the System with, and provided information to, other prospective buyers, including three groups that

had earlier expressed an interest in purchasing the System or parts of the System. While continuing negotiations with MMA, the Trustee has advised other prospective purchasers of these negotiations, provided information and due diligence opportunities to them, and invited them to make offers for the System.

C. NEED FOR PROMPT SALE

17. Sale of the entire System pursuant to the Asset Purchase Agreement is the only means of protecting the public interest, while affording creditors the best opportunity for recovery under the circumstances. The sale price of approximately \$50,000,000 is fair based on theories of valuation applicable to rail transactions and compared to the value which could be recovered under any other option. The \$50 million sale price is, of course, subject to higher and better offers, and the Trustee is proposing a sale process that will ensure that all other prospective purchasers will have an opportunity to bid for the assets. Sale as proposed in the Agreement and in the Trustee's motion for approval of bid procedures can be consummated more quickly than any other disposition of the Debtors' assets, thereby mitigating the problems of continued operations under the current circumstances.

18. It is essential that the Sale be consummated as soon as possible. Unpaid administrative expenses have steadily accrued since the Petition Date and continue to grow. If the assets comprising a substantial portion of the System are not sold pursuant to the sale process proposed by the Trustee then the System's ability to operate indefinitely as presently structured is questionable. Without sufficient cash from operations or borrowing, the Debtors may be forced to curtail services significantly. The Debtors' business depends heavily on the continued good will, loyalty and use of the System's services by shippers. The operation of the System is also

dependent on the continued willingness of suppliers to provide goods and services and on the efforts, and continued loyalty of the Debtors' employees. Unless the sale of the Assets is consummated in the near term, it is unlikely that the Debtors will be able to continue to enjoy the goodwill, support and continued relationships of shippers, suppliers and employees that are critical to the continued operation of the System.

19. A prompt sale under the Agreement is desirable because of mounting administrative costs, the risk that the value of the System will erode, and the risk that the Debtors will not be able to operate the System without a major cash infusion.

IV. SUMMARY OF THE AGREEMENT

20. Under the Agreement, a copy of which is annexed as "Exhibit A," MMA has agreed to acquire substantially all of the Estates' assets for continued operation of the System. A summary of key parts of the Agreement is set forth below. This summary is not intended to alter or modify the express terms of the Agreement. In the event of any inconsistency between the description of any term of the APA contained in this Motion and the APA itself, the APA shall govern.

21. Assets. The Agreement provides for the sale of the Assets comprising the entire System except for the tank farm owned by the BAR at Mack Point, Searsport, Maine, the NVT line south of Newport, Vermont, accounts receivable, cash at closing, certain specific railcars, a small amount of scrap rail material, and real estate that MMA elects to reject.

22. Assumption of Liabilities. MMA will assume no liabilities of the Sellers except the following obligations, which are more fully identified in §1.3(a) of the Agreement:

- (a) owing to the State of Maine under past and present agreements for track improvement;
- (b) arising under Canadian labor contracts, if any;
- (c) arising on or after the "Closing Date" (defined in this Sale Motion in the same manner as it is defined in paragraph 1.6 of the Agreement) under certain agreements transferred or assigned to the Buyer ("Assigned Contracts");
- (d) arising on or after the Closing Date relating to the Real Property (as defined in the Agreement), including without limitation obligations arising under assigned leases, easements, and crossing agreements; and
- (e) arising under Section 365(b)(1)(A), (B), or (C) in order to effectuate the assumption and assignment of the Assigned Contracts, subject to certain terms and conditions specified in the Agreement.

23. **Purchase Price.** The base purchase price for the Assets under the Agreement (the "Purchase Price") is Fifty Million Dollars (\$50,000,000.00). The base price will be decreased by a credit for (a) a receivable held by Rail World Locomotive Leasing LLC ("RWLL"), an affiliate of MMA, from CDAC under a locomotive lease, which as of August 31, 2002 would be approximately \$477,620, and (b) MMA's assumption of certain liabilities to Canadian employees, estimated to be approximately \$500,000 to \$1,000,000, depending on the amount of wages and other employee claims owed at the time of closing, pursuant to Section 1.3(a) of the Agreement. Subject to certain conditions being met, i.e. the base price will be increased by a Supplemental Purchase Price of Five Million Dollars (\$5,000,000.00), and the Earn Out Payments, both of which are defined in the Agreement and summarized as follows:

(a) Supplemental Purchase Price. If the Trustee successfully terminates the rights of Canadian National Railway Company to operate over the BAR line serving Fraser Paper at Madawaska, MMA will pay a supplemental purchase price of \$5,000,000.

(b) Earn-Out. As additional consideration to the Sellers for the Assets, the MMA will pay, on March 31 of each year commencing in 2004 and ending in 2008, an "Earn-Out Payment." The Earn-Out Payment will be 10% of the amount by which cumulative, actual gross earnings of MMA exceed projected earnings, as defined in Schedule 1.9 of the Agreement, less Earn-Out Payments made in previous years. If, for example, MMA earnings exceed projections by 20% in 2003, the Earn-Out Payment as of March 31, 2004 would be approximately \$311,982.

24. **The obligation of MMA to consummate the transaction is subject to certain conditions, including the following:**

(a) The Court shall have entered the Sale Order attached to the Agreement as Exhibit A in substantially the same form as Exhibit A, and the Sale Order shall not have been vacated, stayed, amended, reversed or modified, or subject to timely appeal.

(b) The QSR Sale Order shall have been obtained and the time to appeal such QSR Sale Order shall have expired.

(c) Schemes of Arrangement authorizing and approving the sale by CDAC of its assets in the Province of Quebec, and VBB of its assets in the Province of New Brunswick, in each case all in accordance with the Agreement, shall have been approved by the Federal Court of Canada and the time to appeal such decisions shall have expired.

(d) The Purchaser's Assumptions (as defined in the Agreement) shall be true and correct, except for matters which are not materially adverse to the assets, liabilities, financial condition, results of operations or business of the Sellers, taken as a whole, or matters which could reasonably have been discovered by MMA prior to MMA's acceptance of the Schedules.

(e) MMA's acquisition and operating exemption from Section 10901 of the Interstate Commerce Act (49 U.S.C. § 10901) relating to its acquisition and operation of the Assets shall have become effective and the transactions contemplated by the Agreement shall not require any payments for employee protective conditions in the United States.

(f) All necessary approvals from Canadian federal and provincial governmental authorities or bodies shall have been obtained and shall be in full force and effect, including, without limitation, all necessary approvals under the Investment Canada Act, and all necessary Certificates of Fitness.

(g) Financing. Unless previously waived, MMA shall have received a commitment for at least Fifty-Five Million Dollars (\$55,000,000) in debt and/or equity financing.

(h) Secured Creditors. The Sellers shall have resolved the issues arising out of the financing arrangements of Bank Austria and Progress (both as defined infra) in a manner satisfactory to MMA such that the MMA is able to acquire the Assets from the Sellers free and clear of such arrangements.

25. The obligations of the Sellers to consummate the transaction are subject to certain conditions, including the following:

(a) The Court shall have entered the Sale Order approving the Agreement and the transactions contemplated thereby, in form and substance satisfactory to the Sellers, and the order (i) shall not have been vacated, stayed, amended, reversed or modified, and (ii) shall apply to all of the United States Sellers or there shall be one or more other similar orders, satisfactory to the Sellers, with respect to any of the United States Sellers not covered by the Sale Order, which shall not have been vacated, stayed, amended, reversed or modified.

(b) The representations and warranties of MMA contained in the Agreement shall be true and correct in all material respects, except for changes (1) resulting from activities which may have taken place after the date of the Agreement and which are permitted or contemplated by the Agreement; or (2) have been entered into in the ordinary course of business.

(c) MMA shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with by them on or prior to the Closing Date.

(d) MMA shall be ready, willing and able to deliver to Sellers (i) the portion of the Purchase Price due at Closing; (ii) assignment and assumption agreements and other documents reasonably requested by Sellers; and (iii) the Office Lease (relating to MMA's lease of office space at Hermon, Maine).

(e) Secured Creditors. The Sellers shall have resolved the issues arising out of the financing arrangements of Bank Austria and Progress (both as defined infra) in a manner satisfactory to Sellers such that Sellers are able to convey the Assets to MMA free and clear of such arrangements.

26. The Agreement may be terminated and the transactions contemplated therein may be abandoned prior to Closing, as follows:

(a) Bv Mutual Consent. Upon the mutual written consent of Sellers and MMA;

(b) Bv MMA, if:

(i) MMA timely and properly rejects the Schedules to the Agreement within 30 days of their receipt of such schedules;

(ii) MMA identifies, through continuing due diligence, facts or conditions (a) that could not reasonably have been discovered earlier and that render the Purchasers' Assumptions untrue in one or more respects with the result that MMA's ability to obtain financing is impaired or (b) that could reasonably be expected to materially adversely affect the Assets;

(iii) at any time after December 30, 2002, any of the conditions set forth in Section 4.1 of the APA shall not have been waived by MMA or fully satisfied;

(iv) a material violation or breach by the Sellers has rendered the satisfaction of any condition of MMA impossible and MMA is not in material violation of their agreements, representations or warranties contained in the Agreement; provided that such violation or breach shall not have been waived or

cured within 15 days following receipt by the Sellers of written notice from MMA;

(v) court orders approving the Sale and sale and bidding procedures have not been obtained, or have been vacated, reversed, stayed, or modified or amended in a manner materially adverse to MMA; or

(vi) another offer is accepted and approved by the Court, or a plan of reorganization is filed which does not provide for the Sale of the Assets to MMA.

(c) **By the Sellers, if:**

(i) at any time after December 30, 2002, any of the conditions set forth in Section 4.2 of the Agreement have not been waived by Sellers or fully satisfied;

(ii) a material violation or breach by MMA has rendered the satisfaction of any condition of the Sellers impossible and the Sellers are not in material violation of their agreements, representations or warranties contained in the Agreement; provided that such violation or breach shall not have been waived or cured within 15 days following receipt by MMA of written notice of same from the Sellers;

(iii) another offer is accepted by the Sellers in accordance with the Bid Procedures, and is approved by the Court, in which event the Agreement shall be deemed, without further action, to have been automatically terminated by the Sellers on the date of the approval by the Court.

27. The Agreement is subject to other offers in accordance with the Bid

Procedures attached to the Agreement as Exhibit B.⁴

28. Break-Up Fee. In the event that a higher or better offer is approved by the Bankruptcy Court, Sellers shall pay a break-up fee (the "Break-Up Fee") to MMA, all as more fully set forth in the Agreement, as modified by the Court's order approving the Break-Up Fee dated August 13, 2002 ("Break-Up Fee Order"). No Break-Up Fee is payable if MMA does not waive the financing contingency. The Break-Up Fee, as more fully described in the Agreement and Break-Up Fee Order, is equal to the sum of:

(a) \$1,000,000; plus

(b) the receivable amounts then owing by CDAC to RWLL which would be approximately \$477,620 as of August 31, 2002; plus

(c) MMA's costs paid for publication of the Publication Notice (as defined in the Agreement).

29. The Assets shall be sold "AS IS", "WHERE IS" and "WITH ALL DEFECTS."

30. Closing. The closing ("Closing") shall occur within thirty days following receipt of the final approval of the sale from the Court and any applicable Canadian equivalent, or on such other date as may be mutually agreed by the parties.

⁴ The Sellers have filed a motion to approve the Bid Procedures.

V. SALE IS IN THE BEST INTEREST OF THE DEBTORS' ESTATES AND WILL BEST PROMOTE AND PRESERVE THE PUBLIC INTEREST

31. As demonstrated below, the sale of the Assets pursuant to the Asset Purchase agreement will preserve virtually the entire System as an operating railroad and will thereby promote the public interest by (1) protecting the interests of shippers and others who rely on the transportation services provided by the System; (2) minimizing or eliminating the need for public investment; and (3) avoiding a significant adverse impact on the economies of Maine and Northern New England

32. Any sale or reorganization of the System must be structured to satisfy the public interest test. The "public interest" has long been defined as the interest of the public in continuous, uninterrupted rail service. Reconstruction Finance Corp. v. Denver & R.G.W.R. Co., 328 U.S. 495, 509 (1946). Continental Ill. Nat. Bank & Trust Co. v. Chicago, Rock Island Pac. Ry., 194 U.S. 648 (1935). The public interest test requires bankrupt railroads to continue to operate to the maximum extent possible in order to serve the interests of customers and the public generally. Continued rail operations are justified even if the railroad is losing money and its value is eroding to the detriment of creditors, at least for some period of time. A sale or reorganization that preserves rail service but does not necessarily maximize the distribution to creditors is nonetheless permissible in order to satisfy the public interest test. In re Delaware & H. R. Co., 124 B.R. 169 (D. Del. 1991).

33. Early in the development of railroads in the United States, the public interest, although critical, was not adequately protected: railroads facing financial ruin were precluded from filing bankruptcy and instead had to rely on equity receiverships, which were cumbersome

and costly, and inadequately addressed the public's interest in preserving viable railroads. Ecker v. Western Pacific R. Corp., 318 U.S. 448, 469 (1943). To remedy this problem, and in response to the Great Depression's impact on railroads, Congress mandated consideration of the public interest in section 77 of the Bankruptcy Act. Id. Under the Act, a railroad plan could be confirmed only upon a showing that it was compatible with the "public interest." A plan could not simply take into account the interests of creditors; it had to ensure to the maximum extent possible that rail operations would continue in order to serve the public interest.

34. When Congress enacted the Code in 1978, it codified the historic public interest requirements in Code section 1165, which requires the Court and the Trustee to "consider the public interest in addition to the interests of the debtor, creditors, and equity security holders." 11 U.S.C. §1165. Whenever the sale of an operating railroad is to be implemented, both the Court and the Trustee must consider the public interest. In re Delaware & H. R. Co., 124 B.R. 169, 174-176 (D. Del. 1991).

35. Courts have declined to view the rights of creditors in railroad bankruptcies as "paramount," in view of the "overriding public interest in the continuation of rail transportation services." Penn Cent. Tr. Co. v. Nat'l City Bank of Cleveland, Ohio, 315 F. Supp. 1281, 1283 (E.D. Pa. 1970). This "overriding interest" has led other courts to apply section 1165 to permit pre-confirmation sales of substantially all of the operating assets of a railroad due to the public's interest in the continuation of rail services, even where a liquidation would potentially have generated a higher price. In re Delaware & H. R. Co., 124 B.R. 169 (D. Del. 1991). Similarly, in In re Penn Cent. Tr. Co., 352 F. Supp. 1117, 1118 (E.D. Pa. 1973), the district court overruled creditor objections to the Trustee's plan to sell a debtor railroad's real estate and use the proceeds

for operations, concluding that the Trustees' public interest obligations essentially outweighed conflicting creditor interests. *Id.* at 1119 (citations omitted).⁵

36. In this case, there can be no doubt that preserving the System as a going concern as proposed in the Agreement will best serve the public interest. The System is critical to the economic life of Northern Maine, Vermont, New Brunswick and Quebec. As stated in a letter dated June 21, 2002 from Maine Department of Transportation Commissioner John Melrose to the Trustee, a copy of which is attached hereto as **Exhibit B**:

The System provides critical transportation to the northern half of the State. Loss of any portion of that system will cause economic hardship to industries large and small that provide important economic activity and jobs to northern Maine. The forest products industry and the agriculture industry, two key economic components in Northern Maine, are best served by having multiple transportation options for the movement of inbound and outbound traffic. Loss of any portion of the System will limit those transportation options and make industries served by BAR less competitive in the global marketplace.

Approval of the Asset Purchase Agreement will enhance the significant public policy and public interest goals of reorganization under Code sections 1161 through 1174: the preservation of rail service through the sale of the System as an integrated operating railroad. The Agreement is the result of a long and complicated negotiation process that began prior to these bankruptcy cases. In the Trustee's business judgment the proposed sale process -- entry into the Agreement with MMA but allowing higher or better offers -- will result in the highest price for the sale of the entire System. In these circumstances, any potential objections by creditors cannot be allowed to frustrate the longstanding public policy mandate now codified in section 1165.

⁵ See also *In re Chicago, Rock Island Pac. Ry.*, 545 F.2d 1087, 1090-91 (7th Cir. 1976) (affirming approval of trustee's issuance of certificates to procure funding to undertake repairs and maintenance and enter into new leases for locomotives despite impact of additional debt on creditors).

VI. SALE WILL ALSO SATISFY THE LIONEL TEST

37. Section 363 of the Bankruptcy Code authorizes a debtor to sell assets of the estate outside the ordinary course of business free and clear of liens, claims and encumbrances. Sales of substantially all of the Debtor's assets outside of a plan of reorganization may be authorized, especially when there is an articulated business justification. See Official Committee of Unsecured Creditors of the LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 975 F.2d 141, 144 (2d Cir. 1992); Committee of Equity Security Holders v. Lionel Com. (In re Lionel Com.), 722 F.2d 1063 (2d Cir. 1983 (hereinafter, "Lionel")); Matter of Circus Time, Inc., 5 B.R. 1 (Bankr. D. Me. 1979); Matter of Dearles Castle Enterprises, Inc., 12 B.R. 127 (Bankr. D. Mass. 1981).

38. In Lionel the court listed the factors that should be considered in evaluating a sale of all or substantially all of a debtor's assets pursuant to section 363: (a) the proportionate value of the assets relative to the estate as a whole; (b) the amount of elapsed time since the filing; (c) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (d) the effect of the proposed disposition on future plans of reorganization; (e) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (f) which of the alternatives of use, sale or lease is envisioned; and (g) whether the asset is increasing or decreasing in value.

39. When the assets are subject to rapid deterioration in value or condition, courts have approved significant asset sales prior to the confirmation of a plan. See In re Chateaugay Corp., 973 F.2d 141 (delay in sale risked a lower price in the future); In re Pure Penn Petroleum Co., 188 F.2d 851 (2d Cir. 1951); In re V. Loewer's Gambrinus Brewery Co., 141 F.2d 747 (2d

Cir. 1944); In re Weatherly Frozen Food Group, Inc., 149 B.R. 480 (Bankr. N.D. Ohio 1992) (sale approved because debtor did not have funds to repair or maintain manufacturing equipment to meet inspections).

40. The Lionel test is clearly satisfied here. First, it is not likely that any plan that would reorganize or sell the operating System will be proposed and confirmed in the near future. A sale as proposed by the Trustee and LMS will reduce assets of the estates to cash, thereby preventing the erosion of value and further accrual of administrative expenses. Indeed, selling the Assets under section 363 will enhance the prospects for a confirmable plan of liquidation and distribution.

41. Second, as set forth in the discussion of alternative dispositions and values, in Section VII below, the proposed Purchase Price of approximately \$50 million is above or within the range of the other amounts which might be realized through any other approach. The Auction process provided for in the Agreement and this Sale Motion will also further market-test the value of the Assets to be sold.

42. Finally, perhaps the most important of the Lionel factors is satisfied here: the going-concern value of the System as an operating railroad continues to decline. See Lionel, 722 F.2d at 1071. Since late 2001, the going-concern value of the System has declined and it continues to decline due to continued operating losses and the uncertainty concerning the railroad's future. Customers are choosing not to take the perceived risks and incur any costs of continuing long-term business relationships with the Debtors. As evidence of the decline in value, the price MMA was willing to pay diminished by \$12 million -- from \$62 million to \$50 million -- between late 2001 and the execution of the Agreement on July 24, 2002. Unless a sale

is approved, it is highly likely that going concern value will continue to deteriorate. A prompt sale will maximize the going concern value of the Assets.

43. In short, where, as here, emergency circumstances exist and a good business opportunity is presently available, approval of the Sale would be warranted even if none of the other Lionel “factors” were present, which they are here. See, e.g., Lionel, 722 F.2d at 1069 (discussing In re Sire Plan, Inc., 332 F.2d 497 (2d Cir. 1964)). Both the Lionel standard and the more-stringent exigency standard that pre-dates Lionel are satisfied here.

44. Even if none of the Lionel factors were present in this case, a pre-confirmation sale is warranted in this railroad reorganization case. In railroad reorganizations, the reasons to permit pre-confirmation sales of substantially all of the operating assets of a railroad outside of a plan are even more compelling than in non-railroad cases. Indeed, courts in railroad cases have permitted section 363 sales of substantially all assets for continued operation, even where a liquidation for non-rail use might have generated significantly more value for creditors. In re Delaware & H. R. Co., 124 B.R. 169 (D. Del. 1991) (“Delaware & Hudson”). As the district court in Delaware & Hudson explained, railroad bankruptcies are significantly different than other Chapter 11 cases. Id. at 179. Liquidation of the entire railroad was not a viable option for the Trustee because “it would not be consistent with the public interest.” Id. at 178. Distinguishing non-railroad section 363 cases, the district court therefore affirmed the bankruptcy court’s determination that the Trustee’s decision to sell the railroad as a going concern rather than liquidate was a proper exercise of reasonable business judgment, and affirmed the bankruptcy court’s 363 order approving the sale for \$25 million, even though liquidation in that case might have garnered between \$67 and \$80 million. Id. at 178-179.

45. For all of the foregoing reasons, selling the System as proposed in this Sale Motion will provide the best possible means both of protecting the public interest and preserving the value of the estate for creditors. As demonstrated below, the dual interests of the public and creditors will not be sufficiently protected either by liquidating the railroad for scrap or by selling discrete operating lines in multiple transactions and abandoning other portions. The Trustee's decision to sell the Assets under the terms of the Agreement therefore constitutes a proper exercise of his business judgment within the scope of the test articulated in Lionel.

VII. ALTERNATIVES TO PROPOSED SALE DO NOT FURTHER THE PUBLIC INTEREST AND SERVE THE INTEREST OF CREDITORS TO THE SAME EXTENT AS THE AGREEMENT

A. INTRODUCTION

46. Theoretically, there are several alternatives to the sale of the System pursuant to the Asset Purchase Agreement: (1) an income-based reorganization; (2) separate sales of discrete operating rail lines and abandonment of the remaining lines for scrap value; or (3) abandonment of the entire System. The Trustee evaluated these options in light of several criteria, including the following: (1) the "public interest" in continuous, uninterrupted rail service; (2) potential creditor dividend; (3) the time within which the alternative strategy could be implemented; and (4) the uncertainty that the desired result could be achieved within an acceptable time frame. The Trustee has determined that a sale as proposed in the Agreement will best satisfy all criteria.

B. INCOME-BASED REORGANIZATION

47. Notwithstanding heroic efforts over the last several years by the Debtors' management, System operations continue to be unprofitable. Based on the Debtors' records and schedules, and/or proofs of claim filed in the cases, the System had as of June 30, 2002 (i) Section 507(a)(1) administrative claims in excess of \$12 million;⁶ (ii) Section 507(a)(2) "gap" priority claims of approximately \$4 million; (iii) alleged secured claims in excess of \$75 million; and (iv) unsecured claims of \$63 million or more. For the reasons outlined below, an income-based or "boot strap" reorganization does not appear to be feasible.

48. Although the Debtors have implemented extensive cost-cutting measures, significant additional savings cannot be achieved, at least in the near-term. The System has more employees than it needs, but change can be achieved only by means of collective bargaining pursuant to the Railway Labor Act. Such a process would almost certainly take longer than the Debtors could survive. Even if the Debtors survived, it is far from clear that the process would create a positive result for the Debtors. Previous attempts to renegotiate labor agreements were unsuccessful.

49. Even if the Debtors were able to continue to operate after stripping the secured debt down to the value of the collateral, a reorganized company would likely be left with too much debt in light of projected revenues and expenses. Access to additional capital would be necessary but difficult to achieve.

50. Because all of the companies in the System appear to be jointly and severally liable for the primary secured debt, it does not appear feasible to reorganize BAR alone and sell or abandon the rest of the system. Even assuming that BAR could be reorganized separately, it is

not clear that other portions of the system could be abandoned over the opposition of shippers and governmental authorities.⁷

C. PARTIAL SALE/PARTIAL ABANDONMENT

51. It would be theoretically possible to sell portions of the System to multiple purchasers for continued rail operations and to abandon other portions. Such an approach, however, does not serve the public interest well and is fraught with obstacles, such as regulatory, logistic, timing and coordination problems. Furthermore, the present value of the proceeds that would be realized from a piecemeal approach is likely to be less than from consummation of the Agreement.

52. It would be feasible to sell BAR as an operating railroad on a stand alone basis. Offers on a going concern basis are also likely for the QSR between Montreal and Lennoxville and for certain branch lines of QSR. In addition, there would probably be interest in continued operation of Northern Vermont north of Newport and CDAC between Lennoxville and Megantic near the Quebec-Maine border. It is unlikely, due primarily to the low density of traffic, that

⁶ This amount is projected to grow to approximately \$15.4 million by December 31, 2002.

⁷ For example, CP encountered intense opposition to its request to abandon the line which is now CDAC. Protests were filed by: Atlantic Provinces Transportation Commission; Bangor and Aroostook Railroad Company; City of Bangor, ME; City of St. John, New Brunswick, Canada; Georgia-Pacific Corporation (Georgia-Pacific); Maine Central Railroad Company and Springfield Terminal Railway Company; Province of New Brunswick, Canada; St. John Port Corporation; State of Maine, Department of Transportation; and TRAINRIDERS/Northeast; U.S. Senator William S. Cohen; U.S. Senator George M. Mitchell; Representative Olympia J. Snowe; American Automobile Association, Maine Chapter; Baileyville, Maine Town Council; Calais, Maine City Council; Eastern Maine Development Corporation; Eka Nobel Canada Inc.; Fraser Paper Limited; Fundy Region Development Commission Inc.; Hewins Travel Consultants, Inc.; Irving Group of Companies; Maine Better Transportation Association; Maine Chamber of Commerce and Industry; Maine Department of Economic and Community Development; Maine Highway Users Conference; Maine State Legislature, Washington County Delegation; Ministère des Transports, Gouvernement du Québec; MRG Inc./DownEast Rail; Paper Industry Information Office; Penobscot Valley Council of Governments; Railway Labor Executives' Association; United Transportation Union, Washington County Maine Commissioners; and twenty (20) additional individuals. Canadian Pacific Ltd. -- Line Between Skinner and Vanceboro, ME, 1993 WL 283616 (1993).

there would be any buyer interested in operating CDAC between Brownville and Megantic (or even Brownville and Lennoxville) or other portions of QSR and NVT.

53. Sale of portions of the System for continued rail operation by multiple buyers and abandonment of other portions would not be in the public interest. In particular, termination of the CDAC line west of Brownville would eliminate an important alternative route which is currently available for any customer located on BAR. The State of Maine has consistently expressed its concern that CDAC not be abandoned.

54. A piecemeal sale of parts of the System (rather than the whole as an integrated unit) would likely result in the shutdown of the parts that are not sold for continuing rail operation due to the integrated nature of the operation of the System. It would also be difficult, if not impossible, to coordinate sales of various rail sections to different buyers so as to avoid a disruption of services. Pending such sales, the Debtors would continue to incur significant costs to continue operation of the unsold portions in order to preserve value pending consummation of all closings. The joint and several nature of the obligations of the Debtors to the senior secured creditors would further complicate any attempt to sell the System in pieces. Moreover, even assuming that the Trustee were able to locate buyers willing to pay an adequate price for discrete sections of the System, and further assuming that the Trustee were successful in timing all closings in a manner to prevent interruption of rail services, it would be difficult to eliminate the risk that one or more purchasers might fail to close, thereby causing a major disruption in rail service.

55. Although certain prospective buyers expressed an interest in 2001 in purchasing certain discrete operating rail lines, selling the System in pieces would also entail abandoning

other portions. As described below in the abandonment section, the process of obtaining STB authority to abandon would be time consuming and the outcome is not entirely predictable. If authority were obtained, it may be difficult to sell large segments of abandoned rights of way that lie in remote areas, or to find buyers ready, willing and able to pay a price high enough for any net gain to be realized after factoring in sale and administrative costs.

56. The option of selling the System in discrete parts assumes that (1) sales could occur over time, in a non-distress situation; (2) the Debtors would have the ability to liquidate the Debtors' rail lines, despite STB and other regulatory requirements necessitating continued rail operations; (3) ready, willing and able buyers exist not only for discrete portions of the Debtors' operating rail lines, but for all assets that would be abandoned; (4) sufficient funding exists to cover operating costs pending all closings; and (5) closings could be timely consummated and coordinated so as to avoid a major disruption of rail services.

57. In 2001, the Debtors solicited offers to purchase the System as a whole or in parts. Several non-binding expressions of interest were received indicating the possibility of a sale of BAR and QSR on a stand alone basis. No offers were received for CDAC, NVT or VBB. Based upon these expressions of interest, and based on other transactions involving railroads with similar revenues and characteristics, the aggregate purchase price for BAR and QSR as going concern railroads may have been in the range of \$28 million to \$45 million. This range would be lower today because of the same factors which have adversely affected the value of the System as a whole over the last year.

58. The abandonment of CDAC and NVT through the prosecution of regulatory proceedings in the United States and Canada would take many months, as to CDAC in particular,

and would likely be aggressively protested.⁸ If abandonment authority were eventually obtained, the net liquidation value of the properties would be in the range of \$44,855,000 to \$56,347,500. Such value would only be realized over a period of years as rail, ties and real estate could be sold.

59. Given the numerous major assumptions or impediments and the range of estimated values, there is no reasonable assurance or even likelihood that proceeding with the sale/abandonment option described above would yield compensation with an aggregate present value in excess of the \$50 million Purchase Price. Exposing the System to the risks outlined above would be contrary to the public interest in preserving uninterrupted rail operations.

D. ABANDONMENT OF SYSTEM (SALE FOR NON RAIL USES)

60. Many factors preclude exercise of the abandonment option. First, were the Trustee to seek abandonment of all operating lines, the public interest would not be served at all. Second, the process of abandoning a rail line is very onerous. Pursuant to 49 U.S.C. §10903, a rail carrier must obtain STB authority in order to abandon a line. In abandonment proceedings where opposition is anticipated, railroads file an abandonment application. The process for filing an abandonment application is governed by 49 CFR Subpart C. In addition to various pre-filing requirements, the abandonment application must comply with the very detailed content requirements of 49 C.F.R. § 1152.22. Once the abandonment application is filed, interested parties have 45 days to file written protests or comments to the application and the applicant then has 15 days to respond to such protests or comments. The STB has up to 110 days from the date the abandonment application is filed to issue a decision on the merits. Even after the STB issues a decision, interested parties have up to 10 days to file offers of financial assistance, which may invoke additional procedures that can delay the overall abandonment process. See 49 C.F.R. §

⁸ See supra footnote 6.

1152.26. Interested parties also may file other pleadings that may further delay the abandonment process. Third, the results of an abandonment case are unpredictable. Rail carriers have the burden of proof and therefore it is not infrequent that a rail carrier loses an abandonment case. See, e.g., South Orient Railroad Company, Ltd. - Abandonment and Discontinuance of Trackage Rights - Between San Angelo and Presidio, TX, STB Docket No. AB-545 (STB served Oct. 6, 1998); see also Boston and Maine Corporation - Abandonment and Discontinuance of Service - In Middlesex County, MA, Docket No. AB-32 (Sub-No. 74) (STB served Sept. 10, 1996). Fourth, even if a rail carrier is ultimately successful, the abandonment process is long, often lasting many months or even over a year. See, e.g., Georgia Southern Division, South Carolina Central Railroad—Abandonment Exemption - Between Preston and Omaha, GA, Docket No. AB-385 (Sub-No. 2X) (STB served July 25, 1996) (abandonment process took approximately 19 months); see also Union Pacific Railroad Company--Abandonment--Wallace Branch, Id, Docket No. Ab-33 (Sub-No. 70) (ICC served Dec. 2, 1992) (abandonment process took approximately 14 months). Finally, even assuming that abandonment authority could be obtained, net liquidation value ("NLV") is difficult to predict for all of the reasons set forth below.

61. For purposes of analyzing NLV, the Debtors' assets consist of (1) approximately 853 route miles and underlying real estate, most of which includes rail, ties, and other track material; (2) various parcels of real property and buildings used for stations, rail yards, and other railroad-related purposes; and (3) various equipment which does not include any rolling stock.

62. The rail ties and other track material were valued in August 1999 at approximately \$32.5 million in connection with a refinancing and recapitalization transaction involving Bank Austria and Progress (both as defined infra).

63. The Debtors estimate the net liquidation value ("NLV") of the assets of the System within the range of \$44,855,000 to \$56,347,500. The actual NLV range may be lower, however, when consideration is given to the estimate of time it would take to dismantle an 800 mile system. By industry guidelines, such a dismantling would require at least 18 months. If all material were not pre-sold, this time frame could have a beneficial or adverse effect, depending entirely on difficult to predict market swings. Further, the addition of an 800-mile system of materials being fed into the supply chain could potentially depress or hold down market prices. In sum, the sale process proposed by the Trustee will likely permit the estates to recover significantly more -- or at a minimum, within the same range of values -- than would be realized by the estates in an abandonment scenario, much sooner, and with relatively little or no risk as compared with all other potential alternatives.

VIII. CLAIMS ASSERTED AGAINST ASSETS AND APPLICATION OF PURCHASE PRICE

64. **Liens, Claims, & Interests.** The creditors of the Debtors claiming to hold security interests of some value, and their asserted priority, to the best of the Trustee's knowledge,⁹ may be summarized as follows:¹⁰

(a) **Real Estate Tax, Sewer, and Water Liens.** Many local taxing authorities claim liens for unpaid taxes, sewer and water charges against the Debtors' real

⁹ The information summarized in this Sale Motion and accompanying exhibits is the result of the Trustee's good faith efforts, but due to the complexity of this case, that information may contain inaccuracies and/or omissions. The Trustee seeks entry of an order pursuant to 11 U.S.C. §363(f) approving the Sale of the Assets free and clear of all liens, claims, and interests whether or not specifically identified herein.

¹⁰ None of the information summarized in this Sale Motion and attached exhibits shall constitute an admission for any purpose. The Trustee reserves the right to supplement the information provided at any time and to dispute the claim of any creditor to any interest in any of the Assets to be sold and any property of the Debtors' estates, and to supplement, revise, amend and clarify the Trustee's basis for disputing any claim.

estate. A list of recorded real estate tax and sewer liens is attached hereto as Exhibit C which list is the result of the Trustee's good-faith efforts to identify information currently available to the Trustee concerning real estate tax liens claimed (the "Tax Lien Claims") against the Debtors' Assets. **To the extent any entity asserts real estate tax lien claims against the Debtors' Assets other than those Tax Lien Claims identified on Exhibit C, SUCH ENTITIES MUST RESPOND NO LATER THAN THE OBJECTION DEADLINE IN THE MANNER PROVIDED IN THE NOTICE.**

(b) **Bank Austria Claims:** Bank Austria Creditanstalt Corporate Finance, Inc., Bank Austria Creditanstalt SBIC, Inc., and Creditanstalt Equipment Leasing, Inc. (collectively, "Bank Austria") claim security in substantially all real and personal property of all Debtors in these cases (except the real estate of LMS). The total indebtedness has not been determined by the Court, but Bank Austria has filed proofs of claims alleging secured claims totaling approximately \$36 million. The alleged claims of Bank Austria are more specifically identified on Exhibit D.

(c) **Claims of Progress and Others Against Real and/or Personal Property of Specific Debtors**¹¹ **(Other Than LMS):** Railcar Ltd., Railcar Asset Financing Trust, Progress Metal Reclamation Company, Progress Rail Services Corporation, Railcar Management, Allfirst Financial Center National Association, in its capacity as trustee, and IR Associates LLP (collectively, "Progress") also claim an interest in substantially all the real and personal property of all Debtors (except LMS real property). The total indebtedness has not been determined by the Court, but Progress has filed proofs of

¹¹ As set forth below, neither Bank Austria nor Progress appear to have any perfected security interest in the real property of LMS.

claims alleging secured claims totaling approximately \$33 million. Exhibit E identifies Progress's alleged claims as well as the alleged interests of other entities claiming an interest in real and/or personal property of specific Debtors (other than LMS) that is included among the Assets to be sold.

(d) **Specific Claims (Discrete Personal Property):** The entities listed on Exhibit F are believed to claim an interest in specific and discrete personal property of specific Debtor(s) (other than LMS), that is included among the Assets to be sold.

(e) **Claims Against Property of LMS.** Bank Austria asserts interests in all personal property of LMS by virtue of certain unrecorded documents and the UCC-1 Financing Statement identified in Exhibit D. To the best of the Trustee's knowledge, information and belief, neither Bank Austria nor Progress has any perfected security interest in any real property of LMS or any fixtures affixed to such real property. The presently known claims to interests of LMS's real and personal property are listed on Exhibit G.

65. **Application of Purchase Price.** The net Purchase Price (after adjustments and application of credits to which MMA is entitled under the Agreement) shall in the Trustee's discretion be applied as follows: **first**, to pay at closing such Tax Lien Claims and taxes as the Trustee in his discretion determines to be valid and enforceable (subject to all surcharge claims of the Trustee, which the Trustee hereby preserves and does not waive), and, to the extent not paid at closing, any remaining tax lien claims shall attach to closing proceeds to the same validity, extent and priority existing on the Assets as of the Closing Date; **second**, the balance, if

any, to be held by the Trustee, subject to any liens and encumbrances to the same validity, extent and priority as existed on the Assets as of the Closing Date.

66. As set forth in paragraphs 4.1(n) and 4.2(h) of the Agreement, the Sellers and MMA's obligations to consummate the Sale are subject to resolution of the issues arising out of a complicated set of arrangements among Bank Austria and Progress. **The Trustee further expressly reserves any and all rights to surcharge pursuant to 11 U.S.C. 506(c) and other applicable law.**

67. To the extent valid and enforceable, the Tax Lien Claims constitute first priority secured claims pursuant to, inter alia, 36 M.R.S.A. § 552. The Trustee therefore requests authorization to pay at Closing any Tax Lien Claims that the Trustee in the exercise of his discretion determines to be valid and enforceable and in the best interests of the Debtors' estates, subject to (1) adjustment in amount to reflect accruals, credits and/or prorations determined to be applicable at or prior to Closing; (2) the Trustee's rights to surcharge under 11 U.S.C. §506(c); and (3) the provisions of 11 U.S.C. §§506(d). The Trustee requests that the Order approving this Sale Motion (1) permit the Sale free and clear of any and all tax liens of record pursuant to 11 U.S.C. §363(f) with liens to attach to the proceeds from the sale of the property that was subject to such lien, to the same extent, validity, and priority as the lien had prior to the Closing Date, and with all rights of the Trustee reserved to object to, seek to avoid or otherwise challenge such lien or underlying claim; and (2) require all Tax Lien Claimants to execute any and all necessary documents to complete the Sale, including without limitation any and all quitclaim deeds or releases that may be required to extinguish any interest that such Tax Lien Claimants may have acquired in the Assets whether by operation of law or otherwise.

IX. SALE FREE AND CLEAR OF LIENS, CLAIMS INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363:

68. THE TRUSTEE HEREBY REQUESTS ENTRY OF AN ORDER AUTHORIZING SALE OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, INCLUDING WITHOUT LIMITATION THE LIENS, CLAIMS AND INTERESTS SPECIFICALLY IDENTIFIED ON EXHIBITS C through G (except as otherwise set forth herein), with all valid and enforceable liens, claims, encumbrances and interests to attach to Closing proceeds to the same extent, validity and priority existing as of Closing. The Assets to be sold include real and personal property located in Maine and Vermont in the United States, and Quebec and New Brunswick in Canada, and that documents pertaining to alleged liens, claims or interests may be filed and/or recorded in over 40 state, provincial, county, town, and city filing/recording offices, and the Trustee has made diligent efforts to identify all potential liens, claims and interests asserted against the Assets.

69. The Sale will be free and clear of all liens, claims, interests and encumbrances pursuant to Code section 363(f), with all liens, claims, interests and encumbrances to attach solely to sales proceeds the same extent, validity and priority existing as of the Closing Date. Section 363(f) permits the Trustee to sell the Assets free and clear of the interests of an entity, other than the estate, if one of the following five conditions is met:

- (1) applicable non-bankruptcy law permits sale free and clear of such interest;
- (2) such entity consents;

- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)-(5).

70. In this case, the Assets may be sold free and clear because all entities claiming an interest in the Assets have either (i) consented to the Assets Sale; (ii) claim interests which are in bona fide dispute; and/or (iii) could be compelled in a legal or equitable proceeding to accept money in exchange for the asserted interest. 11 U.S.C. § 363(2), (4), (5).

71. The claims of all allegedly secured creditors are in dispute, for the reasons identified on Exhibits D through G. In addition, the Trustee has the right to seek a surcharge and recovery from the first proceeds of the Assets under Code section 506(c) ahead of all secured claimants, including without limitation the entities identified on Exhibits D through G, and the taxing authorities and municipalities identified on Exhibit C. In short, all claims are in bona fide dispute and may be sold under 11 U.S.C. §363(f)(4), free and clear of all liens, claims, encumbrances, and interests.

72. At the same time, all of the claimants identified on Exhibits C through G could be compelled in a legal or equitable proceeding to accept money in exchange for the asserted interest, which in itself provides ample authority for a sale free and clear. 11 U.S.C. §363(f)(5). See also In re EnvisioNet Computer Services, Inc., 275 B.R. 664, 669 (D. Me. 2002) (Carter, C.J.) (quoting In re Perroncello, 170 B.R. 189, 191 (Bankr.D.Mass.1994) ("Even if a lien creditor

is not fully satisfied from the proceeds of a sale, and even if the creditor objects to the sale, a court may still authorize the sale" under section 363(f)(5)).

73. The Assets may also be sold free and clear for the additional reason that the Purchase Price exceeds the aggregate value of the undisputed liens of all entities other than Bank Austria and Progress. 11 U.S.C. §363(f)(3). "Value" is not defined in Code section 363(f)(3), but courts construe "value" under section 363(f)(3) to have the same meaning as under section 506(a). Under section 506(a), a creditor's claim is a secured claim only "to the extent of the value of such creditor's interest in the estate's interest in such property." 11 U.S.C. §506(a). Consistent with axiomatic rules of statutory construction, courts read sections 363(f)(3) and 506(a) together and interpret "aggregate value" to mean the actual economic value of all liens. In re Beker Indus. Corp., 63 B.R. 474 (Bankr. S.D.N.Y. 1986) rev'd on other grounds, 89 B.R. 336 (S.D.N.Y. 1988).

74. The bankruptcy court in In re Beker applied the "economic value" test to permit sale free and clear under section 363(f) even though the face amount of all liens exceeded the purchase price, because there, as here, the Purchase Price was the best possible obtainable under the circumstances. Id. at 477-78.

75. Several other courts have endorsed this same approach. See, e.g., In re Oneida Lake Development, Inc., 114 B.R. 352 (Bankr. N.D.N.Y. 1990) (construing the term "value" as the value of a creditor's interest in estate's interest in property, rather than the face amount of the lien); Matter of WPRV-TV, Inc., 143 B.R. 315 (D. Puerto Rico 1991) (holding that the "aggregate value" means actual value as determined by the court, not the amount of the liens); In re Milford Group, Inc., 150 B.R. 904 (Bankr. M.D. Pa. 1992) (holding that "aggregate value"

refers to the value of the collateral, rather than the total amount of all debts against the property); In re Collins, 180 B.R. 447 (Bankr. E.D. Va. 1995) (holding that “aggregate value” meant the actual value as determined by the bankruptcy court, not the face amount of the lien). Here, the value of all liens, including the liens of Bank Austria and Progress, does not exceed the value of the Assets, measured by the Purchase Price. Sale free and clear under 11 U.S.C. §363(f)(3) is authorized.

76. For all of the foregoing reasons, the Trustee hereby requests entry of an order pursuant to 11 U.S.C. §363(f) authorizing the Sale of the Assets, free and clear of all liens, pledges, claims, interests, and security interests, including without limitation those liens, pledges, claims, encumbrances, interests and security interests identified on Exhibits C through G, with the proceeds of sale to be distributed as set forth in this Motion or held by the Trustee with such liens to attach to the proceeds to the same extent, validity and priority as of the Closing Date, and with further distribution made only upon further court order.

X. REQUEST FOR ORDER AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS

77. By this Sale Motion, the Trustee requests authority to assume and assign certain executory contracts under the Agreement.

78. In particular, the Agreement provides for the assumption by the Debtors and the assignment to MMA of all executory contracts listed on Schedules 1.1(a)(iv), 1.1(b)(iv), 1.1(c)(iv), 1.1(d)(iv), 1.1(e) and 1.1(f) of the Agreement (as such Schedules may be amended) (collectively the “Assigned Contracts”). A list of the Assigned Contracts is also attached hereto as Exhibits H-1 through H-3. The Trustee also seeks approval to assume and assign to MMA all

those certain contracts and leases identified with the codes "PA" and "M" on Exhibit H-4 attached hereto (the "Assigned Leases"). To the best of the Trustee's knowledge, information and belief, no monetary or non-monetary cure is required for the Trustee to assume and assign validly either the Assigned Contracts identified on Exhibit H-1 or the Assigned Leases on Exhibit H-4. The Assigned Contracts identified on Exhibit H-2 include (1) contracts which require payment by MMA of the specified cure amounts and (2) contracts to be assumed and assigned depending upon the Purchaser's ability to negotiate a cure amount acceptable to MMA and the non-debtor parties to such contracts. Exhibit H-3 identifies several utility companies (the "Utilities") which are each believed to be parties to numerous utility crossing accesses and similar contracts (the "Utility Contracts"). The Utility Contracts pertain to numerous parcels of real estate, only some of which will be conveyed to MMA. To the extent a specific Utility Contract relates to real estate included among the Assets, such Utility Contract will be assumed and assigned at Closing. No cure amount is believed to be necessary for such assumption and assignment. **PARTIES TO ANY ASSIGNED LEASE OR ASSIGNED CONTRACT WHO OBJECT TO THE ASSUMPTION AND/OR ASSIGNMENT OF SUCH CONTRACT MUST FILE ANY OBJECTIONS WITH THE COURT NO LATER THAN THE OBJECTION DEADLINE OF SEPTEMBER 26, 2002. ABSENT SUCH TIMELY FILED OBJECTION, ALL OBJECTION(S) TO ASSUMPTION AND ASSIGNMENT OF THE ASSIGNED CONTRACTS (INCLUDING WITHOUT LIMITATION OBJECTIONS BASED ON CURE AMOUNT(S), ASSIGNABILITY OF CONTRACT, AND/OR MMA'S ABILITY TO PERFORM) WILL BE FOREVER BARRED, AND THE TRUSTEE'S**

**ABILITY TO ASSUME AND/OR ASSIGN THE ASSIGNED CONTRACTS TO MMA
SHALL BE CONCLUSIVELY DETERMINED NO LATER THAN AT THE AUCTION.**

79. Under the Agreement, MMA reserves the right “from time to time prior to Closing (but not after the time within which Sellers can decline to assume such Assigned Contract without additional liability to Sellers) to designate any Assigned Contract as an “Excluded Asset,” in which case no liabilities or obligations arising under any agreement so designated shall be assumed by MMA.

80. The Agreement further contemplates issuance by this Court of an order authorizing the Debtors to assume and assign to MMA pursuant to Section 365 of the Bankruptcy Code any Assigned Contracts subject to this Court’s jurisdiction, free and clear of any encumbrances.

81. Section 365(a) of the Bankruptcy Code provides, in relevant part, “[e]xcept as provided in sections 365 and 366 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the Debtor.” 11 U.S.C. § 365(a). The standard in determining whether an executory contract or unexpired lease should be assumed is the debtor’s “business judgment” that assumption is in its economic best interests. In re Gardner, 831 F.2d 974, 975 (11th Cir. 1987); In re Diamond Mfg., Inc., 164 B.R. 189, 199 (Bankr. S.D. Ga. 1994).

82. Section 365(f)(2) empowers the Trustee to assign an executory contract or unexpired lease of the debtor if

(A) the trustee assumes such contract or lease in accordance with the provisions of [section 365]; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. §365(f)(2).

83. Section 365(b)(1), in turn, further provides:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default,

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

84. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." In re Prime Motor Inns, Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994).

85. Among other things, adequate assurance pursuant to sections 363(b)(1) and (f)(2) may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph-Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

86. The Trustee has determined in the exercise of his discretion and business judgment that the assumption and assignment of the Assigned Contracts will be in the best interests of the Debtors and that MMA has demonstrated the willingness and ability to render performance under the Assigned Leases and Assigned Contracts. As set forth above in paragraph 78 and attached exhibits, nearly all of the Assigned Contracts require no cure amount and in general do not require any future payments by the Debtors (or their assignees). The Agreement provides and contemplates that MMA will cure any defaults of any contracts they seek to assume to the extent any monetary cures are required. To the extent any non-debtor party to any executory contract of the Debtors requires additional information or assurances as to future performance, appropriate information may be obtained from counsel to the Trustee as indicated in the Notice prior to the Objection Deadline. To the extent necessary, further evidence of MMA's ability to perform may be adduced at the Sale Hearing. This procedure, and the Sale Hearing, will provide the Court and other interested parties the opportunity to evaluate the ability of MMA to provide adequate assurance of future performance under the Assigned Contracts, as required by 11 U.S.C. § 365(b)(1)(C) and (f)(2). Therefore, the Court should authorize the Trustee to assume and assign the Assigned Contracts and the Assigned Leases to MMA.

87. The Bid Procedures attached to the Sale Procedures Motion require Qualified Bidders (as defined in the Bid Procedures), prior to being permitted to bid, to provide information satisfactory to the Trustee demonstrating such Qualified Bidders' ability to perform all executory contracts that such Qualified Bidders propose to assume and assign. The Bid Procedures also contain provisions concerning non-debtor parties' ability to obtain adequate assurance of future performance by any Qualified Bidder whose bid is accepted and approved at

the Auction. ANY PARTY WHO OBJECTS FOR ANY REASON (INCLUDING, WITHOUT LIMITATION, BASED ON CURE AMOUNTS, ABILITY TO PERFORM, OR ASSIGNABILITY) TO THE ASSUMPTION AND/OR ASSIGNMENT, AS CONTEMPLATED IN THE MMA AGREEMENT, OF ANY ASSIGNED LEASE OR ASSIGNED CONTRACT (AS THAT TERM IS DEFINED IN PARAGRAPH 1.3(A)(III) OF THE MMA AGREEMENT) MUST FILE SUCH OBJECTION NO LATER THAN SEPTEMBER 26, 2002, PROVIDED, HOWEVER, THAT IF ANY SELLER LATER MOVES TO ASSIGN ANY ASSIGNED CONTRACT OR ASSIGNED LEASE TO AN ENTITY OTHER THAN THE INITIAL BIDDER, THEN THE NON-DEBTOR PARTY TO SUCH CONTRACT OR LEASE SHALL HAVE AN ADDITIONAL OPPORTUNITY TO OBJECT SOLELY BASED ON THE ABILITY OF THE NEW PROPOSED ASSIGNEE TO PERFORM. Interested parties should consult the Sale Procedures Motion and Bid Procedures attached thereto for further detail.

XI. EXEMPTION FROM TRANSFER TAXES

88. The Agreement contemplates the transfer of numerous parcels of real estate (including many small parcels) located in scores of towns, townships, and cities in Maine, Vermont, New Brunswick, and Quebec. In non-bankruptcy matters, transfer taxes would ordinarily be collected by the Registers of Deeds in seven Maine counties, Madawaska County, New Brunswick, and numerous municipal recording offices in Vermont and Quebec. To allocate the purchase price between and among the hundreds of real estate parcels to be conveyed would be an arduous if not impossible task. Calculating, apportioning, and paying such stamp taxes would also impose significant administrative costs and expenses on the Debtors' estates,

diminish the amount of any distribution available to creditors of the estate. Code section 1146(c), which prohibits the taxing of transfer instruments under any law imposing a stamp tax, was enacted to alleviate such burdens. In re Hechinger Investment Company of Delaware, Inc., 254 B.R. 306 (Bankr. D. Del. 2000). Maine law further exempts from transfer tax all "deeds given pursuant to the United States Bankruptcy Code." 36 M.R.S.A. §4641-C(14).

89. The Trustee therefore requests an order pursuant to 11 U.S.C. §1146(c) exempting the sale from any and all transfer and stamp taxes assessed by any government entity, including without limitation the States of Maine and Vermont, Provinces of Quebec and New Brunswick, and any Canadian or American federal or local taxing authority.

XII. NOTICE

90. On or before September 4, 2002, the Trustee intends to serve a copy of (1) this Sale Motion; (2) the Sale Procedures Motion; and (3) all exhibits and proposed orders and other documents accompanying the Sale Motion and Sale Procedures Motion (collectively, the "Pleadings") to (a) the United States Trustee; (b) all counsel who have entered an appearance in these cases; and (c) all parties on the regular service list in these cases (the "Core List").

91. Also on or before September 4, 2002, the Trustee intends to mail a notice of all Pleadings, in substantial conformity with the form of notice attached to the Sale Procedures Motion as Exhibit B (the "Sale Notice"), by ordinary U.S. Mail, postage prepaid, to the last known addresses, if known, of (1) all parties on the Core List; (2) all known creditors of the Debtors' estates; (3) all known parties to leases and executory contracts with any of the Debtors; (4) other parties who have expressed an interest in purchasing the Debtors' assets; (5) all known taxing authorities, including transfer taxing authorities; (6) all parties to the Agreement at the

addresses indicated therein; (7) all parties identified on the Exhibits attached to this Sale Motion; and (8) all parties to the Assigned Contracts and the Assigned Leases.

92. Finally, Movants will cause the Sale Notice to be published in the Bangor Daily News and such other newspaper or publication, if any, as MMA deems appropriate, with the first date of publication to occur prior to September 26, 2002.

93. The Trustee submits that the steps taken constitute adequate service and notice of this Sale Motion and of the transactions contemplated under the Agreement under Sections 363(b) and (f) of the Bankruptcy Code and Rules 2002 (a) (2) and (3) and 6004 (a) and (c) of the Federal Rules of Bankruptcy Procedure. The Trustee and LMS, therefore, respectfully request that the Court find such service and notice to constitute fair, adequate, complete, reasonable and sufficient notice of the matters set forth herein to all parties.

WHEREFORE, James E. Howard, Trustee for the Estates of Bangor & Aroostook Railroad Company, Canadian American Railroad Company, The Northern Vermont Railroad Company Incorporated, Newport and Richford Railroad Company and Van Buren Bridge Company, and Logistics Management Systems, Inc., debtor-in-possession, respectfully request that this honorable Court GRANT all relief requested in the Sale Motion and such further relief as the Court deems just and equitable under the circumstances.

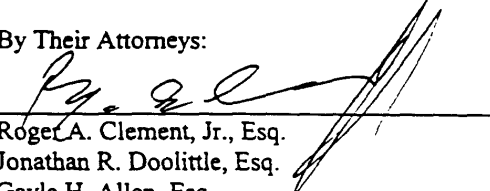
Dated: August 30, 2002

Respectfully submitted,

JAMES E. HOWARD, Trustee for the Estates of
BAR, CDAC, NVT, N&R, and VBB

LOGISTICS MANAGEMENT SYSTEMS, INC.,
DEBTOR-IN-POSSESSION

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re:	:	x	
	:		Chapter 11
BANGOR & AROOSTOOK	:		Case No. 01-11565
RAILROAD COMPANY, <u>et al.</u> , ¹	:		Jointly Administered
	:		
	:		
Debtors.	:		
	:		
	:	x	

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U.S. BANKRUPTCY COURT
PORTLAND, MAINE

**ORDER (1) APPROVING ASSET PURCHASE AGREEMENT;
(2) AUTHORIZING SALE OF ASSETS TO MONTREAL, MAINE
& ATLANTIC RAILWAY LLC; AND (3) AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF RELATED AGREEMENTS**

Upon the motion (the "Motion") of the Trustee of Bangor & Aroostook Railroad Company, the Trustee of Canadian American Railroad Company, the Trustee of The Northern Vermont Railroad Company, the Trustee of Newport and Richford Railroad Company, the Trustee of the Van Buren Bridge Company, (collectively, the "Trustees"), and Logistic Management Systems, Inc., debtor and debtor in possession ("LMS"), for, inter alia, entry of an order pursuant to 11 U.S.C. §§ 105(a), 363, 365 and 1146(c) (1) approving the Asset Purchase Agreement by and between the Trustees, LMS, and Litwin Boyadjian, Inc., Trustee of Quebec Southern Railroad Company, Ltd. (the "QSR Trustee"), as sellers, and Montreal, Maine & Atlantic Railroad LLC ("MM&A") and Montreal,

¹ The following entities are also debtors: Canadian American Railroad Company, Chapter 11 Case No. 02-10858, Logistics Management Systems, Inc., Chapter 11 Case No. 02-10864, Newport and Richford Railroad Company, Chapter 11 Case No. 02-10856, The Northern Vermont Railroad Company Incorporated, Chapter 11 Case No. 02-10857, and Van Buren Bridge Company, Chapter 11 Case No. 02-10865.

Maine & Atlantic Canada, Ltd. ("MMAC," and together with MM&A, the "Purchasers"), as purchasers (including all amendments thereof, and all exhibits, schedules and agreements attached thereto, the "Agreement"²); (2) authorizing the Trustees and LMS to sell to MM&A the BAR Assets, CDAC Assets, the NVT/N&R Assets, and the LMS Assets (collectively, the "Purchased Assets") pursuant to the Agreement; and (3) authorizing the Trustees and LMS (as the case may be) to assume and assign to MM&A the executory contracts provided for in the Agreement (the "Assigned Contracts" and, together with the Purchased Assets, the "Acquired Assets") pursuant to the Agreement; this Court having determined that the relief requested in the Motion is in the best interests of the respective debtors and their estates; and it further appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefore,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction to grant the relief provided for herein pursuant to 28 U.S.C. §§ 157 and 1334, and this matter constitutes a core proceeding within the meaning of 28 U.S.C. 157(b)(2)(A) and (N). Venue of the Chapter 11 cases and the Motion is proper under 28 U.S.C. §§ 1408 and 1409(a).

B. The Trustees and LMS have soundly exercised their business judgment in determining to enter into the Agreement and to sell the Acquired Assets to the Purchasers,

² Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

all pursuant to sections 105(a), and 363(b) and (f), and 365 of the Bankruptcy Code, free and clear of all mortgages, pledges, security interests, liabilities, claims (as defined in the Bankruptcy Code), liens, charges or other encumbrances or restrictions of any kind and all interests but excluding any rights of way of record or easements of record (all of the foregoing collectively, "Encumbrances," and individually, "Encumbrance"). The relief requested in the Motion is in the best interests of the respective debtors and their estates.

C. The Trustees and LMS have full power and authority to execute and deliver the Agreement and all other documents contemplated thereby; no consents or approvals other than those expressly provided for in the Agreement are required for the Trustees and LMS to consummate the transactions contemplated by the Agreement.

D. The Trustees, LMS and their respective advisers have diligently and in good faith marketed the Acquired Assets to secure the highest and best offer or offers therefore. The consideration provided in the Agreement, and the transactions contemplated thereby, represent a fair and reasonable purchase price and constitute the highest or best offer obtainable for the Acquired Assets.

E. The Trustees and LMS have demonstrated good, sufficient, and sound business purpose and justification, and compelling circumstances for the sale of the Acquired Assets pursuant to 11 U.S.C. § 363 prior to, and outside of, a plan of reorganization.

F. After the Motion was filed, the parties to the Agreement entered into the First Amendment to Asset Purchase Agreement to clarify Section 1.8 of the Agreement. As amended, section 1.8 reads as follows:

"1.8 Supplemental Purchase Price. In the event that (1) the Bankruptcy Court enters an order approving the rejection by BAR and VBB of, and extinguishing all

rights of CN to offer rail service by virtue of and over, that certain CN Junction Settlement Agreement and that certain CN Trackage Rights Agreement, each dated as of March 1, 2001, and each among Canadian National Railway Company ("CN"), BAR and VBB, and (2) a court of competent jurisdiction enters an order before January 1, 2005, that either (i) the sale of the BAR Assets is free and clear of that certain Waterloo Easement granted by BAR and VBB to Waterloo Railway Company, dated as of March 15, 2001 (the "Waterloo Easement"), or (ii) the Waterloo Easement is not capable of being exercised following the rejection by BAR of the CN Trackage Rights Agreement; and (3) all of the orders approving such rejection and extinguishment and the Sale Order have become final, nonappealable orders no longer subject to stay or to further judicial or administrative appeal or action (such event being referred to as the "Waterloo Easement Rejection"), then (a) if the Waterloo Easement Rejection occurs prior to Closing, MM&A shall pay to BAR, as a supplemental purchase price at Closing, the sum of \$5 million, and (b) if the Waterloo Easement Rejection occurs after Closing but before January 1, 2005, then within 30 days of such Waterloo Easement Rejection, MM&A shall pay to BAR the sum of \$5 million. All such amounts shall be paid without setoff, offset, or recoupment."

G. The Agreement must be approved promptly in order to preserve the value of the Acquired Assets.

H. Proper, timely, adequate and sufficient notice of the Motion and the hearing thereon has been provided, and no other or further notice of the Motion, the hearing thereon or the entry of this Order is required.

I. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein, and the rights of third parties to submit higher or otherwise better offers for the Acquired Assets, has been afforded to all interested persons and entities.

J. With respect to any and all persons or entities asserting an Encumbrance on the Acquired Assets (i) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (ii) such person or entity has consented to the sale and transfer, license and assignment as applicable, free and clear of its Encumbrance, with such Encumbrance to attach to the proceeds of such sale and transfer, license and assignment, as

applicable; (iii) such Encumbrance is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (iv) such Encumbrance is in bona fide dispute; or (v) such person or entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Encumbrance; so that the conditions of section 363(f) of the Bankruptcy Code have been satisfied.

K. Upon the Closing, the Acquired Assets shall be transferred and assigned to the Purchasers, and shall vest in the Purchasers all right, title and interest in the Acquired Assets, all in accordance with the terms and conditions of the Agreement, free and clear of all Encumbrances, pursuant to sections 105(a), 363(f), and 365 of the Bankruptcy Code.

L. The Closing and the consummation of the transactions contemplated by the Agreement shall not subject the Purchasers to any liability whatsoever with respect to the prepetition operation of the businesses of Bangor & Aroostook Railroad Company, Canadian American Railroad Company, The Northern Vermont Railroad Company, Newport and Richford Railroad Company, Van Buren Bridge Company, and Logistic Management Systems, Inc. (collectively, the "Debtors") or the post-petition operation of the businesses of the Debtors, including, without limitation, by reason of any theory of successor or transferee liability or pursuant to any labor agreements covering the employees or former employees of any of the Debtors.

M. The Agreement was negotiated, proposed and entered into by the Trustees, the QSR Trustee, LMS and the Purchasers without collusion, in good faith and at arm's length. None of the Trustees, LMS, the QSR Trustee, or the Purchasers has engaged in any conduct that would cause or permit the Agreement to be avoided under 11 U.S.C. § 363(n). The Purchasers are not "insiders" or "affiliates" of the respective Debtors (as such

terms are defined in the Bankruptcy Code). The Purchasers are good-faith purchasers under 11 U.S.C. § 363(m) and, as such, are entitled to all of the protections afforded thereby in consummating the transactions contemplated by the Agreement.

N. The consideration to be provided by the Purchasers for the Acquired Assets (i) is fair and reasonable; (ii) is the highest or best offer for the Acquired Assets; and (iii) as to each of the Seller, constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under applicable nonbankruptcy law.

O. The Trustees and LMS (as the case may be) may assume and assign to the Purchasers the Assigned Contracts pursuant to section 365 of the Bankruptcy Code. The assumption and assignment of the Assigned Contracts pursuant to the terms of this order is integral to the Agreement and is in the best interests of the respective Debtors and their estates, and represents the exercise of sound business judgment by the Trustees and LMS.

P. The amounts listed in the schedule filed with the Court (the "Cure Amounts Schedule") reflect cure amounts, which the Trustees and LMS (as the case may be) believe in good faith constitute the sole amounts necessary under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code (each, a "Cure Amount") to cure all monetary defaults and pay all actual pecuniary losses under such Assigned Contracts.

Q. As of the Closing under the Agreement, the Purchasers have provided adequate assurance that they will pay the Cure Amounts for the Assigned Contracts and the Purchasers have provided the non-debtor counterparty to the Assigned Contracts with adequate assurance of future performance and therefore (i) each Assigned Contract shall constitute a valid and existing interest in the property subject to such Assigned Contract; and (ii) no uncured default shall exist under the Assigned Contracts, nor shall there exist

any event or condition which, with the passage of time or the giving of notice, or both, would constitute such a default.

R. Progress Rail Services Corporation ("PRSC"), individually and on behalf of Allfirst Financial Center, National Association, in its capacity as Trustee under Trust Agreement dated as of August 12, 1999 ("Allfirst"), Allfirst, Progress Metal Reclamation Company ("PMRC"), Railcar, Ltd. ("Railcar"), and Railcar Asset Finance Trust ("RAFT"; collectively, the "Progress/Raft Objecting Parties") filed an objection to the Motion dated September 26, 2002 (the "Progress / RAFT Objection"). The Trustee, the Progress / RAFT Objecting Parties and Bank Austria have reached an agreement in principle as to the terms under which the Progress / RAFT Objecting Parties will consent to the proposed sale and transfer of any Allfirst assets into the estate. It is the intent of the Trustee to promptly file an application to seek this Court's approval of that agreement, which will resolve the Progress / RAFT Objection. This Order is contingent upon the withdrawal or subsequent overruling, following notice and hearing, of the Progress / RAFT Objection.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted in its entirety.
2. Except as provided in Paragraph 26 below, all objections to the motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled on the merits.
3. The Agreement, including all of the terms and conditions thereof, is hereby approved in all respects.

4. Pursuant to 11 U.S.C. §§ 363(b) and (f) and 365, the Trustees, LMS and the Debtors are authorized to consummate the transactions contemplated by, pursuant to and in accordance with the terms and conditions of the Agreement.

5. The Trustees and LMS are authorized to execute and deliver, and empowered to fully perform under, consummate and implement, the Agreement, together with all additional instruments and documents that may be necessary or desirable to implement the Agreement, and to take all further actions as may be requested by the Purchasers for the purpose of transferring the Acquired Assets to the Purchasers, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Agreement.

6. In the event that any of the Trustees, LMS or the Debtors fails to transfer, assign or convey any of the Acquired Assets to the Purchasers, and such failure constitutes a breach of the Agreement, and enters into an agreement(s) to transfer, assign or convey any of the Acquired Assets to one or more persons and/or entities other than the Purchasers, the obligations of the Trustees, LMS and the Debtors under the Agreement shall constitute administrative expenses of the estate of the respective Debtors under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code. Except as provided in the preceding sentence, the Trustees, LMS and the Purchasers each reserves its respective rights with respect to any failure of the Trustees, LMS or the Debtors to perform any of their obligations in breach of the Agreement. The Purchasers shall be entitled to satisfy their claims under the Agreement to the extent and in the manner provided for in the Agreement.

7. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Trustees, LMS or the Debtors to sell and transfer the Acquired Assets to the Purchasers in accordance with the terms of this Order and the Agreement.

8. Except as provided in the Agreement, and pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing, the Acquired Assets shall be transferred and assigned to the Purchasers, free and clear of all Encumbrances, arising or accruing prior to the Closing Date or relating to acts occurring prior to the Closing Date (including, without limitation, real property taxes and sales and use tax), with all such Encumbrances, if any, to attach to the proceeds of the transactions contemplated by the Agreement in the same order of priority and with the same validity, force and effect, if any, which they now have as against the Acquired Assets, subject to the rights, claims, defenses and objections, if any, of the respective Debtors and all interested parties with respect to such Encumbrances.

9. Notwithstanding the foregoing, as adequate protection for the interests of Fieldcrest Cannon, Inc. ("Fieldcrest") the Trustee shall deposit from the proceeds of sale the sum of \$1.7 million into a separate, segregated account with any and all liens of Fieldcrest to attach to the funds in such account to the same extent, validity and priority as Fieldcrest's lien had prior to closing, and provided that the Trustee, LMS and Fieldcrest shall have reserved any and all rights, claims, obligations, and defenses, and such funds shall not be distributed without further order of the Court.

10. The Trustees and LMS shall be and hereby are authorized to pay at Closing any Tax Lien Claims (as defined in the Motion) that the Trustees and LMS in the exercise

of their discretion determine to be valid and enforceable and in the best interests of the Debtors' estates. The Trustees and LMS reserve all rights (a) to seek adjustment in amounts due to reflect accruals, credits and/or prorations determined to be applicable at or prior to Closing; (b) to seek surcharge under 11 U.S.C. §506(c); and (c) to challenge any claims under applicable law, including without limitation the provisions of 11 U.S.C. §§506(d), 544 and 551. The purchase and sale of the Acquired Assets shall be free and clear of any and all tax liens of record pursuant to 11 U.S.C. §363(f) with any such liens to attach to the proceeds from the sale of the property that was subject to such lien, to the same extent, validity, and priority as the lien had prior to the Closing Date, and with all rights of the Trustees and LMS reserved to object to, seek to avoid, surcharge, or otherwise challenge such lien or underlying claim, the merits of such objections and challenges to be determined only pursuant to further Court order. All Tax Lien Claimants (as defined in the Motion) shall be and hereby are ORDERED to execute and deliver any and all necessary documents to complete the purchase and sale of the Acquired Assets, including without limitation any and all quitclaim deeds or releases that may be required to extinguish any Encumbrance that such Tax Lien Claimants may have acquired in the Assets whether by operation of law or otherwise.

11. Effective upon the Closing, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding, against the Purchasers or their respective successors and assigns with respect to any Encumbrance. Without limiting the generality of the foregoing, the Purchasers shall

have no liability for any claim (as defined in Bankruptcy Code § 101(5)) against the Trustees, the Debtors or their respective directors, officers or shareholders.

12. Except as expressly provided in the Agreement, the consummation of the Agreement shall not subject the Purchasers to any liability whatsoever with respect to the prepetition operation of the businesses of the Debtors or the post-petition operation of the businesses of the Debtors, including, without limitation, by reason of any theory of successor or transferee liability or pursuant to any labor agreements covering the employees or former employees of any of the Debtors.

13. If any person or entity that has filed a financing statement or other documents or agreements evidencing Encumbrances on the Acquired Assets shall not have delivered to the Trustees and LMS (as the case may be) prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to such Acquired Assets, the Purchasers are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to such Acquired Assets. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Acquired Assets free and clear of Encumbrances shall be self-executing, and notwithstanding the failure of the Purchasers, the Trustees, LMS or any other party to execute, file or obtain releases, termination statements, assignments, consents or other instruments to effectuate, consummate and/or implement the provisions hereof or the Agreement with respect to the sale and assignment of the Acquired Assets, all Encumbrances on the Acquired Assets shall be deemed to be divested, terminated and discharged.

14. The Trustees and LMS (as the case may be) are hereby authorized, pursuant to section 365 of the Bankruptcy Code, to assume and assign to the Purchasers the Assigned Contracts free and clear of all Encumbrances and in accordance with the terms and conditions of the Agreement.

15. On or before the Closing Date, counsel to the Purchasers shall furnish to counsel to the Trustees and LMS a written list of all of the Assigned Contracts that the Purchasers wish to assume (the "Designated Assigned Contracts"). On or within 10 days after the Closing Date, the Trustees or LMS shall, without further order of the Court, assume and assign to the Purchasers the Designated Assigned Contracts. On or before the 20th day after the Closing Date the Trustees shall file with the Court and serve on each non-debtor party to the Designated Assigned Contracts a listing of each of the Designated Assigned Contracts that was assumed and assigned. All Designated Assigned Contracts that the trustees or LMS actually assume shall be deemed assumed and assigned as of the Closing Date. Nothing herein shall be construed as (i) a rejection of any lease or contract not assumed, (ii) requiring the Trustees or LMS to assume and assign to the Purchasers any of the Assigned Contracts, or (iii) prohibiting the Trustees or LMS from seeking court approval to assume, assume and assign, or reject leases or executory contracts other than the Designated Assigned Contracts. Notwithstanding anything contained in the Sale Motion or the Sale Order to the contrary, with respect to those Assigned Contracts between any of the Debtors and Canadian Pacific Railway Limited ("CPR"), the Trustees and the LMS shall assume and assign to MMA only such Assigned Contracts as shall be agreed upon between CPR and MMA prior to Closing (collectively, the "CPR Assigned Contracts"), and the Trustee and LMS are hereby directed to conform the list of

Designated Assigned Contracts to include the CPR Assigned Contracts and to exclude any other executory contracts or unexpired leases between any of the Debtors and CPR.

16. On or before the Closing Date and as provided in the Agreement, the respective Purchasers shall pay the Cure Amounts due, if any, on the Designated Assigned Contracts and the CPR Assigned Contracts as set forth on the Cure Amounts Schedule. Other than the Cure Amount relating to each Assigned Contract, there are no other amounts due on any of the Assigned Contracts required to be paid and no other action needs to be taken with respect to any of the Assigned Contracts in order to assume the Assigned Contracts under sections 365(b) and 365(f)(2) of the Bankruptcy Code.

17. The consideration provided by the Purchasers for the Acquired Assets under the Agreement is fair and reasonable, and the result of open and competitive bidding, and may not be avoided under section 363(n) of the Bankruptcy Code.

18. This Court retains jurisdiction to enforce and implement the terms and provisions of the Agreement, all amendments thereto, any waivers and consents thereunder, and any agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction (a) to compel delivery of the Acquired Assets to the Purchasers; (b) to resolve any disputes arising under or related to the Agreement, except as otherwise provided therein; and (c) to interpret, implement, and enforce the provisions of this Order.

19. The transactions contemplated by the Agreement are undertaken by the Purchasers, in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the sale to the Purchasers,

unless such authorization is duly stayed pending such appeal. The Purchasers are good-faith purchasers, and are entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

20. The terms and provisions of the Agreement and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Trustees, LMS, the Debtors and their respective affiliates, their respective estates, the Purchasers and their respective affiliates, and the successors and assigns of each of the foregoing, and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any Chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

21. The failure specifically to include any particular provisions of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Agreement be authorized and approved in its entirety.

22. The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms of the Agreement, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the estates of the respective Debtors.

23. The automatic stay provisions of section 362 of the Bankruptcy Code are lifted and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order. The Trustees, LMS and the Debtors irrevocably waive any right to seek any modification of this Order without the prior written

consent of the Purchasers, and no such consent shall be implied by any other action, inaction or acquiescence by the Purchasers.

24. The provisions of Fed. R. Bankr. P. 6004(g) and 6006(d) staying the effectiveness of this Order for 10 days are hereby waived, and, subject to Paragraph 26 below, this Order shall be effective, and the parties may consummate the transactions contemplated by the Agreement, immediately upon entry.

25. Nothing contained in any plan of reorganization or liquidation confirmed in these cases or the order confirming any plan of reorganization or liquidation shall conflict with or derogate from the provisions of this Order. Further, the provisions of this Order, and any actions taken pursuant hereto, shall survive the entry of an order which may be entered confirming any plan of reorganization or liquidation for the respective Debtors or converting of the Debtors' cases from Chapter 11 to cases under Chapter 7 of the Bankruptcy Code.

26. The transfers of the Acquired Assets pursuant to the Agreement are transfers pursuant to section 1146(c) of the Bankruptcy Code, and accordingly shall not be taxed under and shall be exempt from any law imposing a stamp tax or a sale, transfer, or any other similar or related tax assessed or imposed by any government entity or unit, including without limitation the States of Maine and Vermont, the Provinces of Quebec and New Brunswick, and any other Canadian and/or American federal or local taxing authority.

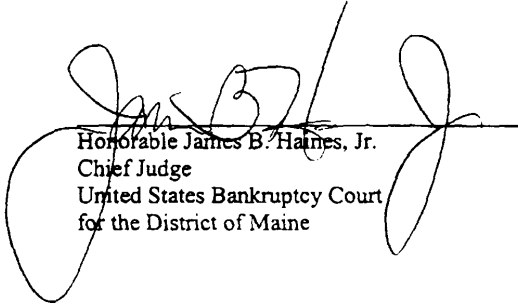
27. Notwithstanding anything to the contrary in this Order or the Agreement, all rights and obligations of the parties to the CN Junction Settlement Agreement, the CN

Trackage Rights Agreement, and the Waterloo Easement are reserved subject to further ruling by this Court or any other court of competent jurisdiction.

28. Notwithstanding any other provision of this Order, this Order shall be effective only upon filing by the Progress / RAFT Objecting Parties of a withdrawal of the Progress /RAFT Objection or entry of a subsequent Order of this Court, following notice and hearing, overruling the Progress/Raft Objection. All objections, matters, denial, issues, and defenses of the Progress / RAFT Objecting Parties asserted in the Progress / RAFT Objection shall be preserved unimpaired by the entry of this Order unless and until the Progress / RAFT Objection is withdrawn or a subsequent Order of this Court, following notice and hearing, overruling the Progress/Raft Objection.

29. The provisions of this Order are non-severable and mutually dependent.

Dated: October 9, 2002



Honorable James B. Haines, Jr.
Chief Judge
United States Bankruptcy Court
for the District of Maine

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APPENDIX 4 TO HOWARD V.S.

ASSET PURCHASE AGREEMENT

between

JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF BANGOR &
AROOSTOOK RAILROAD COMPANY,

JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF CANADIAN
AMERICAN RAILROAD COMPANY,

LITWIN BOYADJIAN INC., TRUSTEE TO THE PROPOSAL OF
QUEBEC SOUTHERN RAILWAY COMPANY, LTD.

JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF THE
NORTHERN VERMONT RAILROAD COMPANY,

JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF NEWPORT AND
RICHFORD RAILROAD COMPANY,

LOGISTIC MANAGEMENT SYSTEMS, INC., DEBTOR-IN-POSSESSION

and

JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF VAN BUREN
BRIDGE COMPANY,

as Sellers,

and

MONTREAL, MAINE & ATLANTIC RAILWAY LLC

and

MONTREAL, MAINE & ATLANTIC CANADA CO.,

as Purchasers

Dated: July 24, 2002

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of July 24, 2002, between JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF BANGOR & AROOSTOOK RAILROAD COMPANY, a Maine corporation ("BAR"), JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF CANADIAN AMERICAN RAILROAD COMPANY, a Maine corporation ("CDAC"), LITWIN BOYADJIAN INC., TRUSTEE TO THE PROPOSAL OF QUEBEC SOUTHERN RAILWAY COMPANY, LTD., a Quebec company, ("QSR"); JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF THE NORTHERN VERMONT RAILROAD COMPANY INCORPORATED, a Delaware corporation ("NVT"), JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF NEWPORT AND RICHFORD RAILROAD COMPANY, a Vermont corporation ("N&R"), LOGISTIC MANAGEMENT SYSTEMS, INC., Debtor-In-Possession, a Maine corporation ("LMS"), and JAMES E. HOWARD, AS CHAPTER 11 TRUSTEE FOR THE ESTATE OF VAN BUREN BRIDGE COMPANY, a Maine corporation ("VBB") (BAR, CDAC, QSR, NVT, N&R, LMS and VBB being referred to collectively herein as "Sellers" and each individually as a "Seller"), MONTREAL, MAINE & ATLANTIC RAILWAY LLC, a Delaware limited liability company ("MM&A"), and MONTREAL, MAINE & ATLANTIC CANADA CO., a Nova Scotia unlimited liability company ("MMAC" and, together with MM&A, "Purchasers");

WITNESSETH:

WHEREAS, BAR, CDAC, NVT, N&R, QSR, and VBB own fee and leasehold interests in, or otherwise own, certain railroad and related assets located in Maine, Vermont, Quebec and New Brunswick, and LMS owns certain warehousing and transloading assets in Maine and Quebec; and

WHEREAS, certain creditors of BAR have filed involuntary petitions (the "Petitions") for relief commencing a case (the "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), filed as Case No. 01-11565 in the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court"); and

WHEREAS, On May 14, 2002, CDAC filed with the Bankruptcy Court a voluntary petition for relief commencing Chapter 11 Case No. 02-10858, NVT filed with the Bankruptcy Court a voluntary petition for relief commencing Chapter 11 case No. 02-10857, and N&R filed with the Bankruptcy Court a voluntary petition for relief commencing Chapter 11 case No. 02-10856;

WHEREAS, on May 15, 2002, LMS filed with the Bankruptcy Court a voluntary petition for relief commencing Chapter 11 Case No. 02-10864 and VBB filed with the Bankruptcy Court a voluntary petition for relief commencing Chapter 11 case No. 02-110865; and

WHEREAS, QSR has filed a proposal (the "QSR Proposal") under the Bankruptcy and Insolvency Act (Canada) (the "BIA"), which has been accepted by a statutory majority of its creditors, and which has been ratified by the court; and

WHEREAS, Sellers desire to sell to MM&A, and MM&A desires to purchase from Sellers, certain assets located in the United States and Canada, tangible and intangible, associated with the business of Sellers, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363 and 365 of the Bankruptcy Code; and

WHEREAS, QSR and CDAC desire to sell to MMAC, and MMAC desires to purchase from QSR and CDAC, certain assets located in Canada, tangible and intangible, associated with the businesses of QSR and CDAC, all in the manner and subject to the terms and conditions set forth herein and in accordance, in the case of QSR, with the BIA, in the case of CDAC, with the Canadian Transportation Act (the "CTA"); and

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement and of the representations, warranties, conditions, agreements and promises contained herein and other good and valuable consideration, the parties hereby agree as follows:

ARTICLE I PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale. Subject to the terms and conditions set forth herein, and subject to the court and regulatory approvals specified in Sections 4.1 and 4.2, on the Closing Date (as defined in Section 1.6), each Seller shall sell and deliver to Purchasers, and Purchasers shall purchase from such Seller, the assets specified below (the "Assets"), free and clear of any liens, claims, encumbrances or interests except as specifically permitted herein.

(a) Sale by QSR. Subject to the QSR Proposal, as the same may be amended, and the approval of the inspectors to the QSR Proposal to proceed to a sale of its assets in the manner set forth in this Agreement, all in accordance with the BIA, QSR shall sell and deliver (y) to MM&A the Canadian loop trackage (MP 32.63 to MP 43.32) on the Brookport -Newport line (the "Brookport - Newport Line"), and (z) to MMAC all of the following, in each case excluding the QSR Excluded Assets (as defined in Section 1.2(e)) (collectively, the "QSR Assets"):

(i) All installed track, ties and other track materials on the QSR Line (as defined below), including the right to use all track, ties and other track materials on those portions of the QSR Line that are not owned by QSR.

(ii) All ownership, leasehold and other rights and interests in and to the full width of the operating right of way and other real property described as QSR's in Schedule 1.1(a)(ii) (the "QSR Line"), conferring the right to conduct normal railroad operations along the QSR Line.

(iii) All freight cars, locomotives and work equipment and other chattels (vehicles, computers, tools, etc.) owned by QSR.

(iv) All contract rights of QSR described in Schedule 1.1(a)(iv) (as such Schedule may be amended in accordance with Section 1.3(a)(iii)), franchises, trademarks, intangibles and rights of use, except for those indicated on Schedule 1.1(a)(iv) as non-transferable.

(v) All ownership, leasehold and other rights and interests in and to all bridges, improvements, stations, shops, service facilities, signals, communication towers, and every other type of property used by QSR in railroad operations on the QSR Line.

(vi) All inventory of QSR.

(vii) All security deposits, prepayments, and similar items paid by QSR in connection with the QSR Assets, other than those described in Schedule 1.1(a)(vii).

(viii) The agreements that generate income streams from property rentals, crossing licenses and easements, utility crossings, and like items on the QSR Line, and any renewals thereof.

(ix) The names "Quebec Southern Railway," "Chemin de Fer Quebec Sud" and any other names confusingly similar thereto.

(x) All warranty, indemnification and similar rights of QSR under any agreement relating to the QSR Assets, to the extent transferable.

(xi) All maps, plans, title deeds, documents, and other books and records of QSR relating to the ownership and operation of QSR's railroad and railroad-related assets.

(b) Sale by BAR. BAR shall sell and deliver to MM&A all of the following, in each case excluding the BAR Excluded Assets (as defined in Section 1.2(a)) (collectively, the "BAR Assets"):

(i) All installed track, ties and other track materials on the BAR Line (as defined below), including the right to use all track, ties and other track materials on those portions of the BAR Line that are not owned by BAR.

(ii) All ownership, leasehold and other rights and interests in and to the full width of the operating right of way and other real property described as BAR's in Schedule 1.1(a)(ii) (the "BAR Line"), conferring the right to conduct normal railroad operations along the BAR Line. With respect to any BAR Excluded Assets that abut the operating right of way, the width of the operating right of way transferred shall not be less than 100 feet, except as agreed in writing by BAR and MM&A.

(iii) All freight cars, locomotives and work equipment and other chattels (vehicles, computers, tools, etc.) owned by BAR.

(iv) All contract rights of BAR described in Schedule 1.1(b)(iv) (as such Schedule may be amended in accordance with Section 1.3(a)(iii)), franchises, trademarks, intangibles and rights of use, except for those indicated on Schedule 1.1(b)(iv) as non-transferable.

(v) All ownership, leasehold and other rights and interests in and to all bridges, improvements, stations, shops, service facilities, signals, communication towers, and every other type of property used by BAR in railroad operations on the BAR Line.

(vi) All inventory of BAR.

(vii) All rights of BAR under that certain AT&T fibre optic license dated May 17, 1993 (the "AT&T License"), and any extension, renewal or replacement thereof.

(viii) All security deposits, prepayments, and similar items paid by BAR in connection with the BAR Assets, other than those described in Schedule 1.1(b)(viii), to the extent not relating to the BAR Excluded Assets.

(ix) The agreements that generate income streams from property rentals, crossing licenses and easements, utility crossings, and like items on the BAR Line, and any renewals thereof, to the extent not relating to the BAR Excluded Assets.

(x) All warranty, indemnification and similar rights of BAR under any agreement relating to the BAR Assets, to the extent transferable.

(xi) The name "Bangor & Aroostook Railroad," and any other names confusingly similar thereto.

(xii) All maps, plans, title deeds, documents, and other books and records of BAR relating to the ownership and operation of BAR's railroad and railroad-related assets, to the extent not relating to the BAR Excluded Assets.

(c) Sale by CDAC. CDAC shall sell and deliver to Purchasers all of the following, in each case excluding the CDAC Excluded Assets (as defined in Section 1.2(b)) (collectively, the "CDAC Assets"):

(i) All installed track, ties and other track materials on the CDAC Line (as defined below), including the right to use all track, ties and other track materials on those portions of the CDAC Line that are not owned by CDAC.

(ii) All ownership, leasehold and other rights and interests in and to the full width of the operating right of way and other real property described as CDAC's in Schedule 1.1(a)(ii) (the "CDAC Line"), conferring the right to conduct normal railroad operations along the CDAC Line. With respect to any CDAC Excluded Assets that abut the operating right of way, the width of the operating right of way transferred shall not be less than 100 feet, except as otherwise agreed.

(iii) All freight cars, locomotives and work equipment and other chattels (vehicles, computers, tools, etc.) owned by CDAC.

(iv) All contract rights of CDAC described in Schedule 1.1(c)(iv) (as such Schedule may be amended in accordance with Section 1.3(a)(iii)), franchises, trademarks,

intangibles and rights of use, except for those indicated on Schedule 1.1(c)(iv) as non-transferable.

(v) All ownership, leasehold and other rights and interests in and to all bridges, improvements, stations, shops, service facilities, signals, communication towers, and every other type of property used by CDAC in its railroad operations on the CDAC Line.

(vi) All inventory of CDAC.

(vii) The agreements that generate income streams from property rentals, crossing licenses and easements, utility crossings, and like items on the CDAC Line, and any renewals thereof, to the extent not relating to the CDAC Excluded Assets.

(viii) All warranty, indemnification and similar rights of CDAC under any agreement relating to the CDAC Assets, to the extent transferable.

(ix) The name "Canadian American Railroad," and any other names confusingly similar thereto; and

(x) All maps, plans, title deeds, documents, and other books and records of CDAC relating to the ownership and operation of CDAC's railroad and railroad-related assets, to the extent not relating to the CDAC Excluded Assets.

CDAC shall sell those CDAC Assets located in, or relating primarily to operations in, the United States (as identified by MM&A and MMAC) to MM&A, and shall sell those CDAC Assets located in, or relating primarily to operations in, Canada (as identified by MM&A and MMAC) to MMAC.

(d) Sale by NVT and N&R. NVT and N&R shall sell and deliver to MM&A all of the following, in each case excluding the NVT/N&R Excluded Assets (as defined in Section 1.2(c)) (collectively, the "NVT/N&R Assets"):

(i) All installed track, ties and other track materials on the NVT/N&R Line (as defined below), including the right to use all track, ties and other track materials on those portions of the NVT/N&R Line that are not owned by NVT or N&R.

(ii) The full width of the operating right of way extending from M.P. 2.0 of the Lyndonville Subdivision northward to the Canadian border at M.P. 43.32 of the Newport Subdivision, and between the Canadian border crossings at M.P. 32.63 and M.P. 26.25 of the Newport Subdivision, and all ownership, leasehold, and other rights and interests in and to real property (including without limitation the Newport yard and shop facilities), reserving for the owner or operator of NVT southwards from MP 2.0 to MP 64.0 of the Lyndonville Subdivision the perpetual right to interchange traffic with MM&A, or any successor to MM&A, at Newport Yard and on the real property in Maine indicated on Schedule 1.1(d)(ii) (collectively, the "NVT/N&R Line") conferring the right to conduct normal railroad operations along the NVT/N&R Line. With respect to any NVT/N&R Excluded Assets that abut the operating right of way, the width of the operating right of way transferred shall not be less than 100 feet, except as otherwise agreed.

(iii) All freight cars, locomotives and work equipment and other chattels (vehicles, computers, tools, etc.) owned by NVT and N&R.

(iv) All contract rights of NVT and N&R described in Schedule 1.1(d)(iv) (as such Schedule may be amended in accordance with Section 1.3(a)(iii)), franchises, trademarks, intangibles and rights of use, except for those indicated on Schedule 1.1(d)(iv) as non-transferable.

(v) All ownership, leasehold and other rights and interests in and to all bridges, improvements, stations, shops, service facilities, signals, communication towers, and every other type of property used by NVT or N&R in railroad operations on the NVT/N&R Line.

(vi) All inventory of NVT and N&R.

(vii) The agreements that generate income streams from property rentals, crossing licenses and easements, utility crossings, and like items on the NVT/N&R Line, and any renewals thereof, to the extent not related to the NVT/N&R Excluded Assets.

(viii) All warranty, indemnification and similar rights of NVT and N&R under any agreement relating to the NVT/N&R Assets, to the extent transferable.

(ix) The names "The Northern Vermont Railroad Company" and "Newport and Richford Railroad Company" and any other names confusingly similar thereto.

(x) All maps, plans, title deeds, documents, and other books and records of NVT and N&R relating to the ownership and operation of NVT and N&R's railroad and railroad-related assets, to the extent not related to the NVT/N&R Excluded Assets.

(e) Sale by LMS. LMS shall sell and deliver to MM&A all assets of LMS, including all contract rights of LMS described in Schedule 1.1(e) (as such Schedule may be amended in accordance with Section 1.3(a)(iii)), other than the LMS Excluded Assets (the "LMS Assets").

(f) Sale by VBB. VBB shall sell and deliver to MM&A all assets of VBB, including all contract rights of VBB described in Schedule 1.1(f) (as such Schedule may be amended in accordance with Section 1.3(a)(iii)), excluding the VBB Excluded Assets (as defined in Section 1.2(e)) (collectively, the "VBB Assets").

(g) Inclusion Among Assets. Without limitation of the foregoing, the Assets shall include all track, ties and other track materials, rights and property previously transferred by any Seller to Allfirst Financial Center, National Association, a national association, not in its individual capacity, but solely as Trustee (the "Trust") under a Trust Agreement dated August 12, 1999 (as amended from time to time, the "Trust Agreement").

1.2 Excluded Assets. The Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) The following assets of BAR (the "BAR Excluded Assets"):

(i) The general office building in Bangor (Hermon) Maine, together with any real estate and appurtenances relating thereto and any fixtures thereon;

(ii) Mack Point Tank Farm, which is currently the subject of negotiations for a purchase agreement by and between BAR and the State of Maine as more particularly described in Schedule 1.2(a)(ii), together with any appurtenant rights and easements;

(iii) All right of way, real property, track, ties and other track materials located on the Fort Fairfield branch as such branch is more particularly described in a Purchase and Sale Agreement by and between BAR and Fort Fairfield Development Corporation No. 5 dated on or about May 17, 2001 (the "Fort Fairfield Branch");

(iv) The ownership, leasehold, and other interests in real property listed on Schedule 1.2(a)(iv);

(v) The income streams from crossing licenses and easements, utility crossings, and like items listed on Schedule 1.2(a)(v), and any renewals thereof;

(vi) Passenger cars;

(vii) Leasehold interests in personal property;

(viii) The domain name ironroad.com;

(ix) All pension plan assets, including any pension plan trusts;

(x) All scrap iron which on the date of this Agreement is stockpiled and held at the Borque scrap yard in Sherbrooke, Quebec; and

(xi) Cash, cash equivalents and accounts receivable.

(b) The following assets of CDAC (the "CDAC Excluded Assets"):

(i) The ownership, leasehold, and other interests in real property listed on Schedule 1.2(b)(i);

(ii) The income streams from crossing licenses and easements, utility crossings, and like items listed on Schedule 1.2(b)(ii), and any renewals thereof;

(iii) Passenger cars;

(iv) Leasehold interests in personal property;

(v) All scrap iron which on the date of this Agreement is stockpiled and held at the Borque scrap yard in Sherbrooke, Quebec; and

(vi) Cash, cash equivalents and accounts receivable.

(c) The following assets of NVT and N&R (the "NVT/N&R Excluded Assets"):

(i) The ownership, leasehold, and other interests in real property listed on Schedule 1.2(c)(i),

(ii) The income streams from crossing licenses and easements, utility crossings, and like items listed on Schedule 1.2(c)(ii), and any renewals thereof;

(iii) Passenger cars;

(iv) The operating right-of-way extending southwards from M.P. 2.0 to end of tracks at M.P. 64.0 of the Lyndonville Subdivision;

(v) Leasehold interests in rolling stock and personal property;

(vi) Cash, cash equivalents and accounts receivable; and

(vii) Lease with the State of Vermont relating to the operating right of way from White River Junction to Wells River and the operating rights and easements set forth on Schedule 1.2(c)(vii).

(d) Interests of LMS pursuant to a conditional sale agreement in two "piggy packers" located in Montreal, Quebec and cash, cash equivalents and accounts receivable (the "LMS Excluded Assets").

(e) Cash, cash equivalents and accounts receivable of QSR (the "QSR Excluded Assets") and VBB (the "VBB Excluded Assets").

(f) Rights, claims or defenses that any Seller has against any other Seller or any third party arising under contracts other than the Assigned Contracts, or under the Assigned Contracts to the extent that they do not relate to obligations assumed by Purchasers.

1.3 Assignment and Assumption of Liabilities.

(a) Assumed Liabilities. Purchasers shall assume from Sellers the liabilities described below (the "Assumed Liabilities"):

(i) MM&A shall assume the loans, contingent repayment, and all other obligations owing to the State of Maine by BAR or CDAC in connection with track and branch line improvement grants more particularly described in Schedule 1.3(a)(i);

(ii) MM&A shall assume the obligations of CDAC and QSR with respect to periods from and after the Closing under Canadian labor contracts, if any, and shall indemnify CDAC and QSR from and against any such assumed obligations.

(iii) MM&A or MM&A shall assume all obligations of Sellers arising on or after the Closing Date under agreements transferred or assigned to Purchasers and listed on

Schedules 1.1(a)(iv), 1.1(b)(iv), 1.1(c)(iv), 1.1(d)(iv), 1.1(e) and 1.1(f) (as such Schedules may be amended, such agreements are collectively referred to herein as the "Assigned Contracts"); provided, that each such Schedule may be amended by Purchasers (A) during the 20 day period following the date hereof to add contracts to such Schedules, and (B) from time to time prior to Closing (but not after the time within which Sellers can decline to assume such Assigned Contract without additional liability to Sellers) to designate any Assigned Contract as an Excluded Asset (and no liabilities or obligations arising under any agreement so designated shall be assumed by Purchasers).

(iv) MM&A or MMAC shall assume all obligations of Sellers arising on or after the Closing Date relating to the Real Property (as defined in Section 2.1(i)), including without limitation obligations arising under leases, easements, crossing agreements, and the like.

(v) Subject to Section 1.3(a)(iii), any amounts payable pursuant to Section 365(b)(1)(A), (B) or (C) of the Bankruptcy Code in order to effectuate, pursuant to the Bankruptcy Code, the assumption by Sellers and assignment to Purchasers of the Assigned Contracts.

(vi) MMAC shall assume and pay at Closing, in the amounts and to the payees specified to MMAC in writing by Sellers not later than two business days prior to the Closing Date, (a) to each Canadian employee of QSR, CDAC and VBB, an amount equal to such employee's accrued unpaid wages, and vacation, and all other fringe benefits, and wage related amounts (together with a payment to the relevant regulatory authorities of any related withholding or similar amounts), to the extent that such amounts, if unpaid, would result in personal liability to the officers or directors of QSR, CDAC or VBB, and (b) to any Canadian taxing authority or governmental agency for accrued and unpaid taxes of QSR, CDAC, and VBB, to the extent that such amounts, if unpaid, would result in personal liability to the officers or directors of QSR, CDAC or VBB. Any amount so paid shall be credited toward, and the total of such amounts shall not exceed, the Purchase Price.

(b) No Other Liabilities Assumed. Except for the Assumed Liabilities, neither Purchaser shall assume any liability or obligation of any Seller, and each Seller shall remain fully liable and responsible for its liabilities and obligations that are not Assumed Liabilities (collectively, the "Retained Liabilities"). Without limitation of the foregoing, Purchasers and Sellers agree for purposes of clarity that the following liabilities and obligations are not assumed by Purchasers:

(i) Any obligations of Sellers to their employees for compensation (including salary, bonuses, vacation and sick leave), benefits (including insurance and pensions), or severance pay associated with their employment by Sellers or the termination of that employment, including any liabilities under COBRA, the WARN Act, any employment benefit plan of any Seller, or any employment agreement, consulting agreement, severance arrangement, change in control agreement, or other similar agreement to which any Seller is a party;

(ii) Any obligations of Sellers under any labor agreements covering United States employees;

(iii) Indebtedness for borrowed money or accounts payable of any Seller;

(iv) Obligations under leasehold agreements for rolling stock, supply commitments, and car supply agreements;

(v) (A) all federal, state, local, foreign and other taxes, levies, fees, imposts, duties, governmental fees and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto), whether or not imposed on a Seller, including, without limitation, taxes imposed on, or measured by, income, franchise, profits, gross income or gross receipts, and also ad valorem, value added, sales, use, service, real or personal property, capital stock, stock transfer, license, payroll, withholding, employment, social security, workers' compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, environmental, transfer and gains taxes and customs duties ("Taxes"), and including, without limitation, Taxes attributable to a Seller being a member of an affiliated group or other group filing on a combined or unitary basis and any liability arising from a Seller being a party to a Tax sharing or indemnity agreement relating to the Assets, including the sale thereof, for all periods ending on or before the Closing Date, including the Pre-Closing portion of the period beginning before but ending after the Closing Date (provided, however, that each party shall remain responsible for its share of any transfer taxes relating to the transfer of the Assets in accordance with Section 3.9), and (B) any and all liabilities and obligations of each Seller or any affiliate thereof for Taxes (including, without limitation, Taxes attributable to a Seller being a member of an affiliated group or other group filing on a combined or unitary basis and any liability arising from a Seller being a party to a Tax sharing or indemnity agreement);

(vi) The obligations of LMS under any mortgage relating to Real Property or any obligations secured thereby;

(vii) Sellers' professional fees and expenses for its advisors, including without limitation, advisors retained pursuant to an order of the Bankruptcy Court;

(viii) the costs incurred and expenses paid or payable by any Seller or any of its Affiliates in connection with the administration of the QSR Proposal, the Arrangement, the Chapter 11 Case, or any other bankruptcy, regulatory or similar proceeding involving any Seller or any of its Affiliates (the "Proceedings") including (a) obligations to pay professionals' fees and expenses in connection with the Proceedings (including fees of attorneys, accountants, investment bankers, financial advisors, and consultants retained by Sellers or any of their Affiliates, the creditors' committee or any pre-petition lenders, and any compensation for making a substantial contribution to the Proceedings), and reimbursement of any expenses incurred by BAR or any of its Affiliates prior to the Closing Date in connection therewith (including any obligations to pay any holdback of any such fees and expenses), (b) fees and expenses payable to the United States trustee under Section 1930 of Title 28, United States Code, and (c) expenses of members of any official creditors' committee; and

(ix) Except as otherwise expressly provided herein, any obligations arising prior to the Closing Date under any assumed contract, lease or agreement.

1.4 Deposit.

(a) Within five business days of the full execution and delivery of this Agreement, Purchasers shall deliver to Verrill & Dana, LLP, as escrow agent, the sum of Five Hundred Thousand Dollars (\$500,000) (the "Initial Deposit"), and on or before each of August 23, 2002 and September 23, 2002, Purchasers shall deliver to Verrill & Dana, LLP, as escrow agent, an additional sum of Five Hundred Thousand Dollars (\$500,000) (collectively, the "Additional Deposit"). All such amounts, together with any interest and earnings thereon (collectively, the "Deposit"), shall at Closing be credited as a partial payment of the Purchase Price payable at the Closing. The Deposit shall, at all times prior to its release or return in accordance with the terms of this Agreement, be held by Verrill & Dana, LLP in escrow in a segregated interest bearing account and in accordance with the terms of this Agreement, and, except for interest collected on the Deposit, no other money or funds shall be commingled in such account.

(b) In the event that (i) the Closing does not occur or this Agreement is terminated as a result of any Sellers' breach or default of any of their obligations hereunder, or as a result of any other action, inaction or other failure or inability to perform on the part of any Seller, (ii) Purchasers terminate this Agreement pursuant to Section 6.2(b), or (iii) Sellers terminate this Agreement pursuant to Section 6.2(c)(i) or 6.2(c)(ii), then the Deposit shall be returned immediately and in full to Purchasers. If for any other reason this Agreement is terminated, the Deposit shall be delivered to Sellers. Delivery of the Deposit to Sellers in accordance with the foregoing shall constitute full compensation of any and all losses and expenses incurred by Sellers, and as such shall constitute liquidated damages and not a penalty.

1.5 Purchase Price. The purchase price for the Assets (the "Purchase Price") shall consist of (a) contribution by Purchasers to Sellers of the receivable then held by Rail World Locomotive Leasing LLC ("RWLL") from CDAC under a certain locomotive lease agreement between RWLL as assignee of National Railroad Passenger Corporation (Amtrak) and CDAC dated July 27, 1998 (the amount of which, as of the closing date, is referred to herein as the "Receivable Amount," and which amount would be approximately \$404,000 as of May 23, 2002), (b) cash in the amount of (x) fifty million Dollars (\$50,000,000) minus (y) the Receivable Amount and minus (z) the amount paid at Closing pursuant to Section 1.3(a)(vi), and (c) the supplemental purchase price described in Section 1.8 and the Earn-Out Payments referred to in Section 1.9, if applicable. The portions of the Purchase Price referred to in clauses (a) and (b) shall be paid by Purchasers at Closing, and the portion of the Purchase Price referred to in clause (c) shall be paid by Purchasers in accordance with Sections 1.8 and 1.9, respectively, in each case to such account or accounts on behalf of one or more Sellers as Sellers may specify in writing to Purchasers no later than two business days prior to the Closing (or, with respect to any amount paid under Sections 1.8 or 1.9, within two business days prior to the date such payment is due). Except as otherwise specified herein, the term "Dollars" or "\$" as used in this Agreement refers to United States Dollars.

1.6 Closing. The closing ("Closing") shall occur within sixty days following receipt of the final approval of the sale of the Assets to Purchasers in accordance with this Agreement from the Bankruptcy Court and any applicable Canadian equivalent, or on such other date as may be mutually agreed by the parties, at the offices of Verrill & Dana, LLP, One Portland Square,

Portland, Maine, or such other place as Sellers and Purchasers shall agree, and shall be effective as of 11:59 p.m. Portland, Maine time on the date of Closing (the "Closing Date"). The parties shall use commercially reasonable efforts to consummate the Closing as soon as reasonably practicable following the date (which date shall be on or prior to December 30, 2002) on which Purchasers are able to close on financing sufficient to consummate the transactions contemplated hereunder.

1.7 Allocation of Purchase Price. The Purchase Price shall be allocated in accordance with Schedule 1.7 to real property and other Assets for which transfer or conveyance Tax is determined in accordance with their value, but only to the extent necessary for such purpose. In addition to the amounts paid to or for the benefit of QSR under Section 1.3(a)(iv) of this Agreement, \$750,000 of the Purchase Price shall be allocated at Closing to Assets of QSR, as such amount may be increased or decreased by the QSR Payment Adjustment. The "QSR Payment Adjustment" shall be an increase, to the extent that the aggregate of the following items is greater than \$750,000, or a decrease, to the extent that the aggregate of the following items is less than \$750,000: (i) the amount of liabilities that must be paid under Canadian law in order to allow the sale, free and clear of all liens, claims and other encumbrances, of the Assets of QSR, and (ii) the amount paid by QSR for trustee fees and related professional fees and expenses in administering the QSR insolvency proceeding, and (iii) the full amount of "Employee Claims" as defined in the QSR Proposal, and (iv) the amount necessary to pay to the holders of unsecured claims (including the claims of any of the other Sellers, but excluding the claims of Bank Austria, Allfirst Financial Trust or its trustee, or any of the Progress entities) which are accepted by QSR in the QSR Proposal a dividend approximately equal to the weighted average percentage dividend paid to the holders of allowed unsecured claims in the bankruptcy cases of BAR, CDAC, NVT and N&R in the aggregate (calculated after the payment of the QSR Payment Adjustment by QSR to the other Sellers, if any). The \$750,000 shall be distributed at Closing to Litwin Boyadjian Inc., as trustee to the Proposal for Quebec Southern Railway Company, Ltd., for distribution in the case being administered by it. The QSR Payment Adjustment shall be paid by the other Sellers to QSR, if the QSR Payment Adjustment is an increase, and shall be paid by QSR to the other Sellers, if the QSR Payment Adjustment is a decrease. The amount due in connection with the QSR Payment Adjustment shall be calculated and paid at the time of each distribution to the unsecured creditors of the Sellers other than QSR. Any other Canadian liabilities shall be dealt with by Sellers after the Closing. Each of the parties reserves its respective rights to allocate the Purchase Price for all other purposes. Pending the Payment Adjustment, QSR shall hold said \$750,000 in an interest bearing escrow account and shall not distribute or pay any amounts therefrom other than amounts set forth in items (i), (ii), and (iii) above, and other than as authorized by James E. Howard in his capacity as Chapter 11 Trustee of BAR, it being the intention of the Sellers that the applicable portion of said \$750,000 be paid to the unsecured creditors of QSR simultaneous with distributions to unsecured creditors of the estates of the other Sellers.

1.8 Supplemental Purchase Price. In the event that both (i) the Bankruptcy Court enters an order approving the rejection by BAR and VBB of, and extinguishing all rights of CN to offer rail service by virtue of and over, that certain CN Junction Settlement Agreement and that certain CN Trackage Rights Agreement, each dated as of March 1, 2001, and each among Canadian National Railway Company ("CN"), BAR and VBB, and (ii) the Sale Order (as hereafter defined) orders that either (A) the BAR Assets are to be sold free and clear of that

certain Waterloo Easement granted by BAR and VBB to Waterloo Railway Company, dated as of March 15, 2001 (the "Waterloo Easement"), or (B) the Waterloo Easement is not capable of being exercised following the rejection by BAR of the CN Trackage Rights Agreement, and provided that each of the order approving such rejection and extinguishment and the Sale Order have become final, nonappealable orders no longer subject to stay or to further judicial or administrative appeal or action (such event being referred to as the "Waterloo Easement Rejection"), then (a) if the Waterloo Easement Rejection occurs prior to Closing, MM&A shall pay to BAR, as a supplemental purchase price at Closing, the sum of \$5 million, and (b) if the Waterloo Easement Rejection occurs after Closing but before January 1, 2005, then within 30 days of such Waterloo Easement Rejection, MM&A shall pay to BAR the sum of \$5 million. All such amounts shall be paid without setoff, offset, or recoupment.

1.9 Earn-Out.

(a) As additional consideration to Sellers for the Assets, Purchasers shall, except as otherwise provided in Section 1.9(b), pay to Sellers or their successors or designees (allocated among them in such manner as Sellers shall direct at each Payment Date), on March 31 of each year commencing in 2004 and ending in 2008 (each such date being a "Payment Date"), an "Earn-Out Payment" calculated in accordance with this Section 1.9; provided, however, that in the event that Purchasers sell or otherwise transfer ownership of all or substantially all of the Assets to an unaffiliated third party, Purchasers shall make a final payment at the closing of such transfer in an amount equal to the aggregate Earn-Out Payments to the Sellers that would have been due for periods from and after the date of such transfer of ownership or sale if the Purchasers had not made such transfer and projecting Purchaser's performance for such post-transfer time period using a straight-line "least squares" regression to fit all Earn-Out Payments made prior to the date of such transfer, discounted to present value at the time of payment; provided, however, that if only one data point for the pre-transfer period is available, Earnings shall be projected to increase at the rate of increase reflected (but not necessarily to the levels specified) on Schedule 1.9. In the event that Purchasers sell or otherwise transfer ownership of all or substantially all of the Assets to an affiliate, then the provisions of this Section 1.9 shall survive and shall be assumed in writing by such affiliate, with appropriate adjustments (e.g., earnings arising out of any business operations or other assets of such affiliate would be excluded from the calculation of Earnings). The Earn-Out Payment payable on each Payment Date shall be equal to (i) Ten Percent (10%) of the difference between (x) cumulative actual Earnings (as defined below) of Purchasers for the period commencing January 1, 2003, and ending on the December 31 immediately preceding such Payment Date, and (y) the specified cumulative Earnings of Purchasers for such period on Schedule 1.9 (the "Specified Earnings"), less (ii) the total of all Earn-Out Payments made by Purchasers pursuant hereto prior to such Payment Date. For purposes of this Section 1.9, "Earnings" for a period shall mean earnings of Purchasers before interest, taxes, depreciation and amortization for such period, as shown in the combined audited financial statements of Purchasers, which shall be compiled in accordance with GAAP and in accordance with the methodology underlying the Specified Earnings. In calculating Earnings, (1) any earnings arising out of any business operations acquired by Purchasers subsequent to the Closing that are materially separate from the Assets shall be excluded from the calculation of Earnings, and (2) the \$5 million supplemental purchase price paid in accordance with Section 1.8 (if applicable) shall not be subtracted from Earnings. All such amounts shall be paid without setoff, offset, or recoupment.

(b) To the extent that Purchasers' banking covenants allow Purchasers to distribute cash to members or shareholders (other than with respect to tax distributions and other than distributions from one Purchaser to another), Purchasers will use the cash that may under those covenants be distributed to members or shareholders (other than with respect to tax distributions or distributions from one Purchaser to another) ("Distributable Cash Flow") to make the payment of any Earn-Out Payment that has been earned and has not yet been paid, and shall not make any distributions to members or shareholders (other than with respect to tax distributions or distributions from one Purchaser to another) until all Earn-Out Payments that have been earned and not yet paid have been paid in full. Distributable Cash Flow shall be determined so that payments to members or shareholders (other than with respect to tax distributions or distributions from one Purchaser to another) for a year shall be made only after determining the amount, if any, of any Earn-Out Payment that is due for such year. To the extent that the foregoing is insufficient to satisfy Purchasers' obligations to pay Earn-Out Payments, then, notwithstanding the provisions of Section 1.9(a), Purchasers may defer payment of any and all Earn-Out Payments hereunder until Distributable Cash Flow is available to make such payments. Each such deferred payment shall accrue simple interest at an annual rate of Ten Percent (10%) commencing on the Payment Date on which such Earn-Out Payment would otherwise have been made. Notwithstanding any such deferral, all Earn-Out Payments, together with interest accrued thereon, shall be due in full on the final Payment Date.

(c) On or before each Payment Date, the Purchasers shall provide Sellers with a copy of Purchasers' audited financial statements and calculations showing how such Earn-Out Payment was calculated. In the event of any dispute regarding the amount of the Earn-Out Payment, Purchasers' shall have an obligation to provide access on a confidential basis to all back-up information which is reasonably requested by a Seller to allow the Seller and its professionals to ascertain the details of the Purchasers' earnings.

(d) Any successor or assignee of any Seller, including without limitation a trust established for the benefit of creditors, shall be entitled to collect the Earn-Out Payment and enforce the rights of Sellers under this Section 1.9.

ARTICLE II PURCHASERS' ASSUMPTIONS and REPRESENTATIONS AND WARRANTIES

2.1 Purchasers' Assumptions. Sellers acknowledge that Purchasers are not interested in consummating the transactions described herein if they are not able to satisfy themselves that the following assumptions are true in all material respects, subject to the exceptions which are noted in the schedules delivered by Sellers to Purchasers and accepted by Purchasers pursuant to Section 3.6(a) (the "Schedules"). Subject to the provisions of Section 6.7, Sellers hereby represent and warrant to Purchasers as to the matters set forth in Sections 2.1(b) and 2.1(p), but do not make any representation or warranty as to any of Purchasers' other assumptions hereunder. At Closing, Purchasers will be acquiring the Assets on an "as is," "where is" and "with all defects" basis.

(a) Organization. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, as indicated on Schedule 2.1(a). Each Seller has full corporate power to execute and deliver this Agreement and to

perform its obligations hereunder, to own, lease and operate its properties, and to carry on its business as now being conducted. Each such party is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is necessary because of the property owned, leased or operated by it or because of the nature of its business as now being conducted, which jurisdictions are indicated on Schedule 2.1(a).

(b) Authority and Binding Agreement. This Agreement has been duly authorized, executed and delivered by each United States Seller and, subject to the approval of the Bankruptcy Court, is the valid and binding obligation of such United States Seller. This Agreement has been duly authorized, executed and delivered by QSR and, subject to the approval of the relevant bankruptcy court, is the valid and binding obligation of QSR. This Agreement is enforceable against each Seller in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Conflicts; Consents. Neither the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Sellers nor compliance by any such party with any of the provisions hereof (as well as all other instruments, agreements, certificates or other documents contemplated hereby) will (i) conflict with or result in a breach of, or require any consent or approval under, the charter, by-laws, or other constitutive documents, as applicable, of such party, except for any such conflict, breach or requirement with respect to which requisite waivers, consents or approvals shall be obtained before the Closing (which waivers, consents and approvals are set forth in Schedule 2.1(c)), (ii) conflict with or result in a default (or give rise to any right of termination, cancellation, acceleration, or modification), or require any consent or approval, under any of the provisions of any contract, agreement or other instrument to which such party is a party, except for consents and approvals that are set forth in Schedule 2.1(c), (iii) to the best of Sellers' knowledge violate any law, statute, rule, regulation or order, (iv) violate any writ, injunction or decree applicable to such party or the properties or assets of such party, or (iv) result in the creation or imposition of any security interests, liens, pledges, charges, escrows, options, rights of first refusal, mortgages, indentures, security agreements or other encumbrances (each, a "Claim," and collectively, "Claims") on any of the Assets, in each case in any manner that could reasonably be expected to delay or prevent the Closing or the consummation of the transactions contemplated hereunder or prevent Purchasers from receiving good and marketable title to the Assets, free and clear of any Claims. Except as set forth in Schedule 2.1(c), no consent or approval by, or any notification of or filing with, any governmental authority or body is required in connection with the execution, delivery and performance by such party of this Agreement or the consummation of the transactions contemplated hereby.

(d) Financial Information. The following financial statements (the "Financial Statements") and financial schedule are attached hereto as Schedule 2.1(d):

(i) The consolidated internally prepared balance sheets of Iron Road Railways, Inc. ("IRR") (including all of the Sellers) (the "Consolidated Group") at December 31, 2001, December 31, 2000 and December 31, 1999, and the related statements of income and cash flows for the twelve months ended December 31, 2001, December 31, 2000, and December 31, 1999;

(ii) The schedules and statements of financial affairs filed by BAR with the Bankruptcy Court; and

(iii) The internally prepared combined balance sheet of the Sellers dated April 30, 2002.

(e) Absence of Change. Except as set forth in Schedule 2.1(e), since December 31, 2001 such party has been operated in the ordinary course, and there has not been:

(i) any damage, destruction or loss (whether or not covered by insurance) affecting any asset or property of such party that is material to the conduct of its business;

(ii) any liquidation, winding up, merger or consolidation involving any Seller;

(iii) any payment or commitment by such party to pay any severance or termination payment to any employee or consultant of such party other than existing commitments disclosed in the Schedules or commitments or payments in the ordinary course of business which do not, in the aggregate, exceed \$50,000;

(iv) any strike, slowdown or demand for recognition by a labor organization by or with respect to any of the employees of any Seller;

(v) any transaction entered into by such party with any stockholder of IRR or any of his, her or its affiliates (other than such party); or

(vi) any agreement, whether in writing or otherwise, to take any of the actions specified in the foregoing items (i) through (v).

(f) Assets, Personal Property and Related Matters. Except as set forth on Schedule 2.1(f), Sellers will deliver to Purchasers at Closing good record title to, or a valid leasehold interest in, as applicable, all of the Assets, in each case free and clear of all Claims other than (i) liens for current Taxes, payments of which are not yet delinquent or that are being contested in good faith by appropriate proceedings set forth in Schedule 2.1(f), (ii) liens in respect of pledges or deposits under worker's compensation laws or similar legislation, carriers', warehousemen's, mechanics', laborers' and materialmen's and similar liens, if the obligations secured by such liens are not then delinquent or are being contested in good faith by appropriate proceedings, and (iii) any matters expressly identified on the Schedules hereto. Any real property included among the Assets shall be insurable by a reputable title insurance company, at Purchasers' sole cost and expense, subject only to the terms of the title insurance policy and exceptions identified on the Schedules hereto and exceptions that, in the aggregate, do not have a material adverse effect on the Assets or on the Purchasers' ability to operate the Assets substantially as they had been operated by Sellers. The Assets are suitable for the purposes for which they are now being used and, together with the Excluded Assets, constitute all of the properties, assets, interests and rights (not including employees or non-transferable governmental or regulatory approvals) necessary to continue to operate the respective businesses of Sellers consistent with current practice. Schedule 2.1(f) contains a true and complete list of all

locomotives, rolling stock, and other material equipment included in the Assets. All track included in the Assets has been maintained in accordance with all applicable safety and other regulatory requirements in all material respects.

(g) Owned and Leased Real Property.

(i) Attached hereto as Schedule 2.1(g) is a true and complete list of all real estate and real property rights (whether in the form of ownership or leasehold rights) held by Sellers and included in the Assets (the "Real Property"), including the nature of such party's ownership interest therein.

(ii) The Real Property includes the major rail yards and other operating facilities identified on Schedule 2.1(g) and the uninterrupted railroad rights-of-way over the routes identified on Schedule 2.1(g), sufficient to permit continuous railroad operations by Purchasers along those routes following Closing. All railroad tracks used by such party as part of such uninterrupted railroad right-of-way are located within the boundaries of the Real Property.

(iii) Except as set forth on Schedule 2.1(g), none of the Real Property (including yards, locomotive facilities or other similar properties) material to rail operations include leaseholds, easements or other interests that terminate or are terminable by third parties in less than fifteen (15) years from the date hereof except for any real property that could be condemned at an aggregate cost for all such property interests of less than \$100,000.

(iv) With respect to the Real Property that is leased, except as set forth in Schedule 2.1(g), the applicable Seller is in compliance with such leases in all material respects.

(v) The Real Property includes sufficient rights in its rights of way and other real property interests to allow the operation of a railroad and appurtenant facilities without material interference.

(h) Intellectual Property. Schedule 2.1(h) sets forth all (i) patents, patent applications, patent disclosures, inventions; (ii) trademarks, service marks, trade names, logos and corporate names and registrations and applications for registration and applications for registration thereof, together with all of the goodwill associated therewith; (iii) registered copyrights; (iv) computer software (other than general commercial software), data, data bases and documentation thereof; and (v) domain names and URLs used by Sellers in the course of their businesses or being transferred by such party to Purchasers hereunder, other than Excluded Assets. Except as set forth on Schedule 2.1(h), Sellers are not currently infringing upon any intellectual property rights of any other Person and no other Person is infringing upon, or challenging the validity of, the intellectual property rights set forth on Schedule 2.1(h).

(i) Agreements. Sellers have filed with the Bankruptcy Court or other appropriate court and delivered to Purchasers a true, complete and correct schedule of all executory contracts to which any Seller is a party. Sellers have provided Purchasers and their representatives with access to a true, complete and correct copy of each such contract.

(j) Litigation. Except as set forth on Schedule 2.1(j), there are no pending lawsuits, actions, Claims or legal or administrative or arbitration proceedings against or relating to the Assets and no such investigations are pending and no such lawsuits, actions, Claims, investigations or proceedings are threatened, whether at law or in equity, or before or by any Federal, state, local, foreign or other governmental department commission, board, bureau, agency or instrumentality which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the Assets or Purchasers' use thereof. Except as set forth on Schedule 2.1(j), there are no judgments, decrees, injunctions or orders of any court, governmental department, commission, board, bureau, agency, instrumentality or arbitrator against or relating to the Assets which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the Assets or Purchasers' use thereof.

(k) Environmental Regulations. Except as set forth on Schedule 2.1(k) and in the materials listed on said Schedule, Sellers are in compliance with all applicable United States or Canadian federal, state, provincial and local environmental laws and statutes, rules, regulations, orders, writs, injunctions and decrees (collectively, "Environmental Laws") in all material respects. Except as set forth on Schedule 2.1(k), no Seller has received notice of any failure to comply with such laws or regulations which could result in a material adverse effect on the Assets. Schedule 2.1(k) sets forth all material United States and Canadian federal, state, provincial and local governmental licenses and permits issued under Environmental Laws necessary to conduct businesses of such party as presently being conducted. Except as set forth on Schedule 2.1(k) and in the materials listed on said Schedule, there are no conditions existing on any real property owned or leased by such party that give rise to any material violation of any Environmental Law. As used herein, (A) "Hazardous Substances" means (1) any "hazardous substance," as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") or a comparable Canadian or other law or regulation, (2) any "hazardous waste," as defined by the Resource Conservation and Recovery Act ("RCRA") or a comparable Canadian or other law or regulation or (3) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance including asbestos, buried contaminants, regulated chemicals, flammable explosives, radioactive materials, polychlorinated biphenyls, petroleum and petroleum products the release of which into the environment or human exposure to which is regulated by any applicable Environmental Laws of any applicable governmental authority relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended and as in effect as of the date hereof. Issues arising under Environmental Laws are addressed solely in this Section and not, for example, under Section 2.1(m) hereof.

(l) Governmental Regulations. Except as set forth on Schedule 2.1(l), no United States or Canadian federal, state, provincial and local governmental licenses or permits necessary to Sellers to conduct their respective businesses as presently being conducted have been suspended or revoked at any time within the three years prior to the date of this Agreement.

(m) Prepayments. Except as indicated on Schedule 2.1(m), and except for revenue billed for freight moving in the ordinary course of business, Sellers have not received any prepayment for services to be performed or goods to be delivered by Purchasers after the Closing Date.

(n) Inventory. Since the date of the physical inventory conducted by Sellers in 1999, the results of which have been provided to Purchasers, Sellers have maintained and have not sold or otherwise disposed of any material items of inventory other than in the ordinary course of business consistent with past practice.

(o) Brokers. No agent, broker, investment banker or any other Person acting on behalf of or under the authority of Sellers is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with any of the transactions contemplated hereby.

(p) All Assets Transferred. The Assets, together with the Excluded Assets (including locomotive and rolling stock leases) include all of the assets, properties, licenses, contracts, and other rights (not including employees or non-transferable governmental or regulatory approvals) used by Sellers to conduct rail common carrier freight service on the rail lines currently operated by them in the manner currently conducted by Sellers.

2.2 Representations and Warranties by Purchasers. Subject to the provisions of Section 6.7, Purchasers represent and warrant to Sellers, as of the date hereof and again at and as of the Closing Date, as follows:

(a) Organization, Standing and Power. MM&A is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. MMAC is an unlimited liability company duly organized, validly existing and in good standing under the laws of the Province of Nova Scotia. Each Purchaser is qualified to do business in each jurisdiction necessary to consummate the transactions contemplated hereby and perform its obligations hereunder except where the failure to be so qualified would not have a material adverse effect on the same. Each Purchaser has full organizational power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to own, lease and operate its properties and to carry on its business as now being conducted.

(b) Authority; Binding Agreement. This Agreement has been duly authorized, executed and delivered by each Purchaser and, subject to the approval of the Bankruptcy Court and as required under the BIA, is the valid and binding obligation of each Purchaser, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(c) Conflicts; Consents. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor compliance by either Purchaser with any of the provisions hereof (as well as all other instruments, agreements, certificates or other documents contemplated hereby) will (i) conflict with or result in a breach of, or require any consent or approval under, the certificate of formation or operating agreement of either Purchaser, (ii) conflict with or result in a default (or give rise to any right of termination, cancellation, acceleration or modification) under, or require any consent or approval under, any of the provisions of any note, bond, lease, mortgage, indenture, license, franchise, permit, agreement or other instrument or obligation to which either Purchaser is a party, or by which either Purchaser or its properties or assets, may be bound or affected, except for such

conflict, breach or default as to which requisite waivers or consents shall be obtained before the Closing or (iii) violate any law, statute, rule, regulation, order, writ, injunction or decree applicable to either Purchaser or its properties or assets. Except as set forth in Schedule 2.2(c), no consent or approval by, or any notification of or filing with, any governmental authority or body is required in connection with the execution, delivery and performance by either Purchaser of this Agreement or the consummation of the transactions contemplated hereby.

(d) Brokers. No agent, broker, investment banker or other Person acting on behalf of either Purchaser or under the authority of either Purchaser is or will be entitled to any broker's or finder's fee or any other commission or similar fee directly or indirectly from any of the Sellers in connection with any of the transactions contemplated hereby.

(e) Status of Purchasers. Neither Purchaser is a rail carrier for purposes of 49 U.S.C. § 10901.

ARTICLE III ADDITIONAL AGREEMENTS

3.1 Bankruptcy Actions.

(a) On or before July 26, 2002, the Sellers shall file a motion with the Bankruptcy Court (the "Bid Protection Motion") for approval of the Break-Up Fee as provided for in this Agreement, in form and substance reasonably acceptable to Purchasers and Sellers. Sellers shall use commercially reasonable efforts to obtain an order of the Bankruptcy Court granting the Bid Protection Motion and approving the Break-Up Fee as provided for in this Agreement (the "Bid Protection Order") as promptly as reasonably permitted under the Bankruptcy Code and Rules.

(b) On or before August 31, 2002, Sellers shall file a motion with the Bankruptcy Court (the "Sale Motion") for the approval of this Agreement. Sellers shall use their commercially reasonable efforts to obtain an order granting the Sale Motion, approving this Agreement, approving the sale of the Assets (other than the QSR Assets) and the assignment and assumption of the Assigned Contracts under this Agreement free and clear of all Claims and interests (the "Sale Order") within 30 days after the filing of the Sale Motion, which order shall be substantially in the form attached hereto as Exhibit A.

(c) The Canadian Bankruptcy Court has entered an order (the "QSR Sale Order") ratifying the QSR Proposal. Within the shortest commercially reasonable time following the entry of the QSR Sale Order and the expiration of the appeal period, Sellers shall use their commercially reasonable efforts to obtain from the inspectors to the QSR Proposal their (i) approval of the present Agreement, (ii) their ratification and authorization of the execution and delivery of the present Agreement by Litwin Boyadjian Inc. (in its capacity as trustee to the QSR Proposal) and (iii) the authorization for the sale by QSR of the QSR Assets in accordance with the provisions of the present Agreement (the "QSR Sale Approval").

(d) CDAC, NVT, N&R, VBB and LMS shall each use commercially reasonable efforts to cause their respective bankruptcy cases to be administratively consolidated with the Bankruptcy Case.

(e) Each Seller shall promptly provide Purchasers with drafts of the Bid Protection Motion, the Sale Motion, the QSR Sale Motion, and any similar motion to be filed with Federal Court of Canada. Sellers shall provide Purchasers with a reasonable opportunity to review and comment on such documents in advance of their service and filing.

(f) Sellers shall comply (or obtain an order from a competent court waiving compliance) with all applicable laws and regulations, including, without limitation, requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, in connection with obtaining approval of the Bid Protection Motion, the Sale Motion, the QSR Sale Motion, any similar motion by any other Seller, and the sale of the Assets under this Agreement.

(g) In addition, notice of the Sale Motion and the hearing thereon and the objection deadline shall be given by BAR by publication of a notice (the "Publication Notice") in the Bangor Daily News and such other newspaper or publication, if any, as Purchasers deem appropriate. Any such Publication Notice published other than in the Bangor Daily News shall be published at Purchasers' expense; provided that Purchasers' aggregate reasonable expenses incurred in connection with such Publication Notice, up to a maximum of \$10,000, in any publication other than the Bangor Daily News shall be credited as a partial payment of the Purchase Price payable at the Closing. Such Publication Notice shall be in form and substance reasonably satisfactory to Purchasers.

(h) Pursuant to Section 106 and following of the Canadian Transportation Act (the "CTA"), CDAC and VBB shall file Schemes of Arrangement in respect of each of CDAC and VBB authorizing the sale by CDAC and VBB, respectively, of the the CDAC Assets and VBB Assets situated in Canada (collectively, the "Arrangement"). CDAC and VBB shall use commercially reasonable efforts to (i) obtain approval of the Arrangement and (ii) obtain homologation of the Arrangement by the Federal Court of Canada, both as required by the relevant provisions of the CTA (the "Arrangement Approval").

(i) QSR shall comply with all requirements under the BIA in connection with the approval of the QSR Proposal for the sale of its assets under this Agreement.

3.2 Compliance With Bidding Procedures; Maintenance of Confidentiality.

(a) Sellers shall solicit offers for the sale of the Assets only to the extent of and as provided by bidding procedures established or approved by the Bankruptcy Court consistent with Exhibit B hereto (the "Bidding Procedures").

(b) Each Seller shall provide or make available to Purchasers any non-public material information that it has provided to any third party in accordance with the Bidding Procedures that has not previously been made available to Purchasers.

(c) Sellers shall not release any Person from, or waive any provisions of, any confidentiality agreement entered into in accordance with the Bidding Procedures.

(d) Sellers shall use commercially reasonable efforts to maintain the confidentiality of non-public information in the disclosure schedules hereto. In the event any person seeks to obtain such non-public information without complying with the Bidding

Procedures, Sellers shall use commercially reasonable efforts to seek and obtain a protective order with respect thereto.

3.3 Expenses. Each party hereto shall bear its own costs and expenses incurred in connection with the transactions contemplated by this Agreement; provided, however, that Purchasers shall be entitled to the Break-Up Fee in accordance with the provisions of Section 3.8 hereof.

3.4 Conduct of Business. From the date hereof until the earlier of the termination of this Agreement or the Closing Date, except as expressly permitted by this Agreement or as permitted or required by the Bankruptcy Court (or the Canadian equivalent) or except with Purchasers' prior written consent, which shall not be unreasonably withheld or delayed, Sellers shall operate their respective businesses in the ordinary course of business so long as the funds are available to do so. Sellers shall not transfer or otherwise dispose of any Assets outside of the ordinary course of business consistent with past practice.

3.5 Further Assurances. Each of the parties hereto agrees to use all commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations, to consummate and make effective the transactions contemplated by this Agreement as expeditiously as practicable and to ensure that the conditions set forth in Article IV hereof are satisfied, insofar as such matters are within the control of such party. In case at any time after the Closing Date any further action is necessary or desirable to carry out the purposes of this Agreement, each of the parties to this Agreement shall take or cause to be taken all such action, to the extent commercially reasonable, including the execution and delivery of such further instruments and documents, as may be reasonably requested by another party for such purposes or otherwise to complete or perfect the transactions contemplated hereby; provided, however, that no party shall be required to take any action or execute and deliver any document that increases or extends its liability beyond that set forth herein. Without limitation of the foregoing, Sellers shall execute and deliver such affidavits and other documents as may reasonably be requested (including affidavits relating to Sellers' operations and the continuity thereof) by Purchasers and/or Purchasers' title insurers for purposes of obtaining a title insurance policy satisfactory to Purchasers.

3.6 Delivery of Schedules; Access and Information.

(a) As soon as reasonably possible, and in any event on or before August 1, 2002, Sellers shall deliver to Purchasers full and complete Schedules. Purchasers and Sellers may thereupon engage in discussions with respect thereto, including proposed or requested changes or corrections to the Schedules. Within 30 days after their receipt of the complete Schedules, Purchasers shall have the right, at their sole option and discretion to (i) reject the Schedules and terminate this Agreement, without any further liability hereunder, or (ii) accept the Schedules (subject to any changes or modifications that may have been agreed upon by Sellers and Purchasers), in which case such Schedules shall thereupon be deemed to constitute a part of this Agreement with the same force and effect as if originally attached hereto. Failure by Purchasers to give written notice of rejection of the Schedules within the 30-day period specified above shall constitute acceptance by Purchasers of such Schedules.

3.8 Break-Up Fee.

(a) Sellers shall promptly seek an order of the Bankruptcy Court approving the Break-Up Fee specified in Section 6.3. If such an order in form and substance reasonably acceptable to Purchasers is not entered by the Bankruptcy Court on or before August 12, 2002, then Purchasers shall have the right to terminate this Agreement without penalty or liability, and in such event Purchasers shall be entitled to the immediate and full return of the Deposit.

(b) This Agreement is subject to higher or better offers, in accordance with the Bidding Procedures and Section 6.3. In the event of circumstances that trigger the payment of the Break-up Fee, the Deposit shall be immediately returned to Purchaser.

3.9 Tax Matters and Covenants.

(a) Each Seller shall cause to be included in its income Tax Returns for all periods (or portions thereof) ending on or before the Closing Date (a "Pre-Closing Tax Period") all Tax items arising during such periods (or portions thereof). Purchasers shall not be responsible for any Taxes which are Retained Liabilities. Each Purchaser will cause to be included in its Tax Returns for all periods (or portions thereof) beginning after the Closing Date (a "Post-Closing Tax Period") all Tax items relating to the Assets during such periods (or portions thereof). As used in this Agreement, "Tax Return" means returns, reports, information statements and other documentation (including any additional or supporting materials) filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax and shall include any amended returns required as a result of examination adjustments made by the Internal Revenue Service or other Tax authority.

(b) Each Seller shall cause the provisions of any Tax sharing or indemnity agreement between Seller and any of its affiliates to be terminated on or before the Closing Date.

(c) All transfer, documentary, sales, use, stamp, registration, and other similar Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the transactions contemplated hereby, other than income Taxes, shall be paid one-half by the applicable Purchaser and one-half by the applicable Seller. Each party shall file, to the extent required by applicable law, all necessary Tax Returns and other documentation with respect to all such transfer or sales and use Taxes. The parties shall cooperate with each other to minimize the amount of such transfer or sales and use Taxes.

3.10 Notice of Developments. Sellers shall give prompt written notice to Purchasers of any material development affecting the assets, liabilities, business, financial condition, operations or results of operations of Sellers, and each party hereto shall give prompt written notice to the others of any material development adversely affecting the ability of any such party to consummate the transactions contemplated hereby.

3.11 Employees. Except as may otherwise be required by the Canadian Collective Labour Agreement, Purchasers shall not be obligated hereby to offer employment to any or all employees of Sellers, except that in hiring new employees, MM&A shall, for the twelve months following the Closing, to the extent that persons were employees of a Seller immediately prior to

Closing and are qualified for such positions, give preference to those persons in hiring over other applicants, subject to applicable law.

3.12 Bulk Sales Laws. Purchasers hereby waive compliance by Sellers, in connection with the transactions contemplated hereby, with the provisions of any applicable bulk sales law.

3.13 Collection of Accounts Receivable. Except to the extent the Sellers are precluded from agreeing to the following by any provision of the Bankruptcy Code or any Order of the Bankruptcy Court:

(a) (i) During the period from the Closing Date through the six-month anniversary of the Closing Date (the "Collection Period"), Purchasers shall use commercially reasonable efforts, as Sellers' agent, to collect the Accounts Receivable from customers for freight and related charges and to process switching revenue due from other carriers in the usual and ordinary course of business and in accordance with customary practices, which may include referral to a collection agency. ISS Settlements shall be processed in accordance with subsection (ii) below. All other accounts receivable, including but not limited to mechanical car repairs, miscellaneous receivables, claims for loss and damage and car hire will be collected by the Sellers. Purchasers shall make credit, sales and other appropriate personnel available to assist Sellers in such collection efforts. Notwithstanding the foregoing, Purchasers shall not be required to institute legal proceedings, whether on behalf of any Seller or otherwise, to enforce the collection of any Accounts Receivable. Purchasers shall not adjust any Accounts Receivable or grant credit without the applicable Seller's written consent, and Purchasers shall not pledge, secure or otherwise encumber such Accounts Receivable or the proceeds therefrom. On or before the fifth business day following each of the fifteenth day and the last day of each calendar month during the Collection Period (and on or before the fifth business day following the end of the Collection Period), Purchasers shall remit to BAR, on behalf of the Sellers, all amounts collected with respect to the Accounts Receivable during the half-month period (or such final, shorter period at the end of the Collection Period) ended prior to such remittance date, less any collection costs incurred by Purchaser in the ordinary course with respect to the collection of those Accounts Receivable. On or before the fifteenth business day following the end of each calendar month during the Collection Period (and on or before the fifteenth business day following the end of the Collection Period), Purchasers shall furnish BAR, on behalf of the Sellers, with a report of all amounts collected with respect to the Accounts Receivable during the prior calendar month (or such final, shorter period at the end of the Collection Period).

(ii) During the period from the Closing Date through the first anniversary of the Closing Date (the "ISS Period"), Purchasers shall use commercially reasonable efforts, as Sellers' agent, to process Interline Settlement System ("ISS") settlements for the accounts of and in the name of Sellers. Purchasers shall make credit, rating, and other personnel familiar with the ISS process to accomplish such processing of settlements. Sellers shall be responsible for the costs of any RMI or other charges for services associated with its ISS process. Notwithstanding any of the foregoing, Purchasers shall not be required to institute legal proceedings, whether on behalf of any Seller or otherwise, to enforce the collection of any ISS receivables. Purchasers shall not adjust any ISS item resulting in a negative adjustment to the account of Sellers without the applicable Seller's written consent, and the Purchasers shall not pledge, secure or otherwise encumber any such ISS items or the proceeds therefrom. On or

before the last day of each calendar month during the ISS Period, Purchasers shall notify any Seller which is a net debtor to the ISS clearing of the amount due and such Seller shall remit the amount of its debt directly to the ISS. Any Seller which is a creditor in the ISS clearing will receive funds from the ISS directly to its bank account in accordance with ISS rules and past practice. Purchasers will furnish to BAR, on behalf of Sellers, all applicable accounting and reports of ISS activity, including status reports of accounts during the month when requested and in any event before the fifteenth business day following the end of each calendar month during the ISS Period (and on or before the fifteenth business day following the end of the ISS Period).

(b) Any payments received by Purchasers during the Collection Period from the Person that is an account debtor with respect to any account listed on Schedule 3.13(b) shall be applied as specified by the account debtor. If the payment is not specific as to application, payments will be applied first against such account, unless and to the extent that the account is disputed by the account debtor. Purchasers shall incur no liability to any Seller for any uncollected account. Prior to the end of the Collection Period, neither any Seller nor any agent of any Seller shall make any direct solicitation of the account debtors for payment.

(c) During the Collection Period, Sellers shall have the right to collect, at their own expense and after written notice to Purchasers, any unpaid Accounts Receivable that are over 120 days past due.

(d) At the end of the Collection Period, Purchasers shall return to BAR, on behalf of the Sellers, all files concerning the collection or attempts to collect the Accounts Receivable, and Purchaser's responsibility for the collection of Accounts Receivable shall cease. After the end of the Collection Period, Sellers shall have the right, at their own expense, to endeavor to collect unpaid Accounts Receivable.

3.14 Post-Closing Access and Information. Sellers acknowledge and agree that from and after the Closing Date, Purchasers will be entitled to possession of all documents, books, records, agreements, and financial data of any sort relating to the Assets, which shall be maintained at the chief executive office of Purchasers; provided, however, that Sellers, at their sole cost and expense and upon reasonable notice to Purchasers, shall be entitled to reasonable access to, and to make copies of, such books and records as necessary for auditing, Tax or litigation purposes, or in connection with any bankruptcy or similar proceedings, or to the extent they relate to assets retained by Sellers, and Purchasers shall maintain such books, records and material financial data for a period of at least three (3) years. Furthermore, Purchasers agree that they shall give the Sellers the option of taking possession of any or all of such materials, at the end of such three-year period, to the extent that Purchasers have decided to destroy or throw away such materials. The Purchasers also agree to make their accounting and record-keeping personnel available to the Sellers at reasonable times during normal business hours, in exchange for reimbursement of the costs associated with such employee's time, to the extent requested by Sellers in connection with their access to and use of such materials.

3.15 Litigation Support. In the event and for so long as any party actively is contesting or defending against any charge, complaint, action, suit, proceeding, hearing, investigation, Claim or demand in connection with (i) any transaction contemplated under this Agreement or

(ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or before the Closing Date involving any Seller, each of the other parties will cooperate with it and its counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as shall be reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party.

3.16 Vermont Interchange. From and after the Closing Purchasers agree to grant NVT or its successor owner or operator of the rail right of way south of Newport all necessary and reasonable interchange rights at Newport.

3.17 Office Lease. The general office building in Bangor (Hermon) Maine shall be leased to MM&A at Closing for a term of two years, unless earlier terminated on six months' written notice, on a total net basis (including any necessary capital repairs), with no services or activities required by landlord, for a rental which is the greater of (i) fair market value or (ii) an amount sufficient to service the debt service (i.e., principal plus interest) of the existing mortgage or, if approved by MM&A in writing, a similar replacement mortgage with debt service payments that are no greater than those under the existing mortgage (the "Office Lease"). The form of lease shall expressly include a provision allowing the Sellers, without charge, to have the use of two offices within the premises, which shall be maintained under the Sellers' control, and the use of common areas such as bathrooms and kitchens.

3.18 Assigned Contracts. Prior to Closing, Sellers shall obtain an order of the Bankruptcy Court or, with respect to Assigned Contracts under their jurisdiction, any equivalent Canadian court of competent jurisdiction, authorizing the Sellers to assume and assign the Assigned Contracts to Purchasers pursuant to Section 365 of the Bankruptcy Code (or any applicable Canadian equivalent) free and clear of any encumbrances, provided that Purchasers shall be responsible for the payment of any amounts due in connection therewith. Sellers shall use best efforts to obtain the consent of any third party to the assignment of any Assigned Contract (by the provisions thereof or by applicable law) necessary for such assignment. If, by the 60th day following the Closing Date and after using best efforts to obtain such consent, Sellers are unable to obtain any such consent, then such Assigned Contracts shall not be assigned and transferred to Purchasers (and shall be deemed Excluded Assets) and Purchasers shall not assume any liabilities or obligations with respect thereto.

ARTICLE IV CLOSING CONDITIONS

4.1 Conditions to Obligations of Purchasers. The obligations of Purchasers to perform enter into the Closing are subject to the satisfaction, at or prior to the Closing, of the following conditions, unless waived by Purchaser:

(a) CDAC, NVT, N&R and VBB Bankruptcy Petitions. The bankruptcy cases of CDAC, NVT, N&R and VBB shall have been administratively consolidated with the Bankruptcy Case.

(b) Sale Order. The Bankruptcy Court shall have entered the Sale Order with respect to each Seller other than QSR (the "US Sellers") (collectively, the "US Sale Order") in substantially the form attached hereto as Exhibit A. The US Sale Order shall not have been vacated, stayed, amended, reversed or modified, and shall not be subject to timely appeal. The US Sale Order shall contain (or be accompanied by) findings of fact and conclusions of law by the Bankruptcy Court that, among other things, find and conclude that (y) the transactions contemplated hereby are in good faith and otherwise satisfy the provisions of Sections 363 and 365, including Section 363(m) of the Bankruptcy Code and (z) that the US Sellers have complied with all applicable notice requirements with respect to the transactions contemplated by this Agreement. The US Sale Order shall provide and declare that all right, title and interest of US Sellers under each of the contracts included within the Assets shall, upon Closing, be transferred and assigned to and fully and irrevocably vest in MM&A and remain in full force and effect. The US Sale Order or other Order shall also declare and include or be accompanied by findings of fact and conclusions of law of the Bankruptcy Court which, among other things, shall determine and declare: (a) that each such contract is in full force and effect and is an executory contract of the applicable Seller under Section 365 of the Bankruptcy Code; (b) that Sellers may assume each such contract in accordance with Section 365 of the Bankruptcy Code; (c) that Sellers may assign each such contract in accordance with Section 363 and 365 of the Bankruptcy Code and any provisions in any contract that prohibit or condition the assignment of such contract constitute unenforceable anti-assignment provisions which are void and of no force and effect; (d) that all other requirements and conditions under Section 363 and 365 of the Bankruptcy Code for the assumption by Sellers and assignment to MM&A of each such contract have been satisfied; (e) that upon Closing, in accordance with Section 363 and 365 of the Bankruptcy Code, MM&A shall be fully and irrevocably vested in all right, title and interest of each such contract and that following the Closing, each such contract shall remain in full force and effect; (f) that the assignments of each such contract are in good faith under Section 363(b) and (m) of the Bankruptcy Code; and (g) that US Sellers gave due and proper notice of such assumption and assignment to each landlord, licensor, sublicensee and other non-debtor party under each such contract as well as to any sublicensees, subtenants and landlords. The US Sale Order and any related findings of fact and conclusions of law with respect to the matters set forth in this Section 4.1(b) shall be in form and substance reasonably satisfactory to the Purchasers. All liabilities and costs required to cure as required by Section 365 of the Bankruptcy Code shall be the sole responsibility of Purchasers.

(c) QSR Sale Approval. The QSR Sale Approval shall have been obtained and all requirements under the BIA in connection with the sale of QSR's Assets shall have been complied with.

(d) Arrangement Approval. The Arrangement Approval shall have been obtained and the delay to appeal such decision shall have expired.

(e) Pending Actions. No action, suit or proceeding (including any proceeding over which the Bankruptcy Court has jurisdiction under 28 U.S.C. sec. 157(b) and (c)) brought by any Governmental Entity shall be pending to enjoin, restrain or prohibit the transactions contemplated hereby, or that would be reasonably likely to prevent or make illegal the transactions contemplated hereby.

(f) Purchasers' Assumptions; Sellers' Performance. Purchasers' Assumptions shall be true and correct in all respects, except for matters (i) which are not, in the aggregate, materially adverse to the assets, liabilities, financial condition, results of operations or business of Sellers, taken as a whole, or (ii) which could reasonably have been discovered by Purchasers prior to the date on which the Schedules are accepted by Purchasers. Each Seller shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with by it on or prior to the Closing Date.

(g) Releases. Sellers shall have delivered to Purchasers releases of all Tax Liens, all in form and substance reasonably satisfactory to Purchasers, or, with respect to United States federal, state and local Tax Liens, Sellers and Purchasers shall have agreed upon a portion of the Purchase Price to be held in escrow for satisfaction of such Tax Liens in accordance with Section 1.9. Sellers shall have delivered to Purchasers any releases by secured creditors of Sellers necessary to deliver good title to the Assets free and clear of their security interests. In the event that any Tax Liens have resulted in the transfer of title to any Real Property to any municipality or other governmental entity, Sellers shall have obtained a deed from such municipality or other entity reconveying such Real Property to Sellers.

(h) Deliveries by Seller. Sellers shall be ready, willing and able to deliver to Purchasers the items specified in Section 4.3(a).

(i) Legal Bar. No injunction or orders issued by a court of competent jurisdiction that prohibits the consummation of the transactions contemplated herein shall be in effect.

(j) Regulatory Exemption. MM&A's acquisition and operating exemption from Section 10901 of the Interstate Commerce Act (49 U.S.C. § 10901) relating to its acquisition and operation of the Assets shall have become effective pursuant to 49 C.F.R. § 1150.35, and the transactions contemplated hereby shall not require any payments for employee protective conditions in the United States.

(k) Canadian Approvals. All necessary approvals from Canadian federal and provincial governmental authorities or bodies shall have been obtained and shall be in full force and effect, including, without limitation, all necessary approvals under the Investment Canada Act, and all necessary Certificates of Fitness.

(l) Requisite Consents. Sellers shall have received and delivered to Purchasers all necessary consents to the assumption and assignment to Purchasers of each of the contracts and agreements listed on Schedule 4.1(l).

(m) Financing. Purchasers shall have received at least Fifty-Five Million Dollars (\$55,000,000) in debt and/or equity financing.

(n) Secured Creditors. The bulk of the Assets are subject to a complicated set of arrangements involving, among others, Allfirst Financial Center, N.A., as Trustee, Progress Rail Services Corp., Progress Metal Reclamation Company, Bank Austria Creditanstalt Corporate Finance, Inc., and Bank Austria Creditanstalt SBIC, Inc. Purchasers' obligations hereunder are subject to Sellers' ability to resolve the issues arising out of such arrangements in a

manner satisfactory to Purchasers such that Purchasers are able to acquire the Assets from the Sellers free and clear of such arrangements.

4.2 Conditions to Obligations of Sellers. The obligations of Sellers to enter into the Closing are subject to the satisfaction, at or prior to the Closing, of the following conditions, unless waived by Seller:

(a) US Sale Order. The Bankruptcy Court shall have entered in the Bankruptcy Case the US Sale Order (together with any related findings of fact or conclusions of law) approving this Agreement and the transactions contemplated hereby, and satisfactory in form and substance to BAR. The US Sale Order shall not have been vacated, stayed, amended, reversed or modified. The US Sale Order shall apply to all of the United States Sellers or there shall be one or more other similar orders, satisfactory to the Sellers, with respect to any of the United States Sellers not covered by the US Sale Order, which shall not have been vacated, stayed, amended, reversed or modified.

(b) Pending Actions. No action, suit proceeding (including any proceeding over which the Bankruptcy Court has jurisdiction) brought by any Governmental Entity shall be pending to enjoin, restrain or prohibit the transactions contemplated hereby, or that would be reasonably likely to prevent or make illegal the transactions contemplated hereby.

(c) Covenants, Representations and Warranties. The representations and warranties of Purchasers contained herein shall be true and correct in all material respects as of the date hereof and again at and as of the Closing Date, except for any changes resulting from activities or transactions which may have taken place after the date hereof and which are permitted or contemplated by this Agreement or which have been entered into in the ordinary course of business and except to the extent that such representations and warranties are expressly made as of another specified date and, as to such representation, the same shall be true as of such specified date. Purchasers shall have performed and complied in all material respects with all covenants and agreements required to be performed or complied with by it on or prior to the Closing Date.

(d) Deliveries by Purchasers. Purchasers shall be ready, willing and able to deliver to Sellers the items specified in Section 4.3(b).

(e) Legal Bar. No injunction or orders issued by a court of competent jurisdiction that prohibits the consummation of the transactions contemplated herein shall be in effect.

(f) Regulatory Exemption. MM&A's acquisition and operating exemption from Section 10901 of the Interstate Commerce Act (49 U.S.C. § 10901) relating to its acquisition and operation of the Assets shall have become effective pursuant to 49 C.F.R. § 1150.35, and the transactions contemplated hereby shall not require any payments for employee protective conditions in the United States.

(g) Canadian Approvals. All necessary approvals from Canadian Federal and Provincial governmental authorities or bodies, including, without limitation, the QSR Sale Order, the QSR Sale Approval and the Arrangement Approval, all necessary approvals under the

Investment Canada Act, and all necessary Certificates of Fitness, shall have been obtained, shall be in full force and effect, and shall be in form and substance satisfactory to all Sellers. In addition, the portion of the Purchase Price that must be allocated at Closing to Canadian liabilities shall not exceed the amount set forth in Section 1.7.

(h) Secured Creditors. The bulk of the Assets are subject to a complicated set of arrangements involving, among others, Allfirst Financial Center, N.A., as Trustee, Progress Rail Services Corp., Progress Metal Reclamation Company, Bank Austria Creditanstalt Corporate Finance, Inc., and Bank Austria Creditanstalt SBIC, Inc. Sellers' obligations hereunder are subject to Sellers' ability to resolve the issues arising out of such arrangements in a manner satisfactory to Sellers such that Sellers are able to convey the Assets to Purchasers free and clear of such arrangements.

4.3 Deliveries at Closing.

(a) Deliveries by Sellers. At the Closing, Sellers shall deliver or cause the delivery of the following to Purchasers:

(i) Conveyance Documents. Release bills of sale, assignment and assumption agreements, trustees deeds, and other documents reasonably requested by Purchasers in order to effectively convey to Purchaser the Assets in accordance with the terms hereof, in form and substance to the reasonable satisfaction of Purchasers, executed by the appropriate Sellers.

(ii) Keys, Computer Codes, Etc. All keys to the Sellers' offices and other premises and properties being sold or leased to Purchasers hereunder, all computer access codes and passwords for computer programs or systems being sold or leased to Purchasers hereunder and any other property in the possession of Sellers and being sold or leased to Purchasers hereunder, provided, however, that the Sellers shall retain a set of keys with respect to any premises for which it is landlord.

(iii) Office Lease. The Office Lease, in form reasonably acceptable to MM&A and BAR, executed by BAR.

(iv) Tax Certificates. (A) A certificate, in form and substance satisfactory to Purchasers, duly executed and acknowledged, certifying any facts that would exempt the transactions contemplated hereunder from withholding pursuant to the provisions of the Foreign Investment in Real Property Tax Act, and (B) any Tax clearance certificates required by applicable law.

(b) Deliveries by Purchasers. At the Closing, Purchasers shall deliver the following to Sellers:

(i) Purchase Price. The portion of the Purchase Price that is due at Closing, less the Deposit (which shall be released from escrow and delivered to Sellers) and Purchasers' aggregate expenses incurred in connection with the Publication Notice, payable by wire transfer of immediately available funds to one or more bank accounts as specified by

Sellers. Such bank accounts shall be designated by Sellers in writing not later than two business days prior to the Closing Date.

(ii) Conveyance Documents. Assignment and assumption agreements and other documents reasonably requested by Sellers in order to effectuate Purchasers' assumption of the Assumed Liabilities, in form and substance to the reasonable satisfaction of Sellers, executed by Purchasers.

(iii) Office Lease. The Office Lease, in form reasonably acceptable to MM&A and BAR, executed by MM&A.

ARTICLE V WAIVER OF DAMAGES

5.1 Waiver of Damages. No party shall be liable to any other for any indirect, special, incidental or consequential damages, including, but not limited to, lost profits, which arises from or relates in any way to this Agreement, even if the parties have knowledge of the possibility of such damages.

ARTICLE VI MISCELLANEOUS

6.1 Entire Agreement. This Agreement and the Schedules and Exhibits, together with the confidentiality agreement previously executed and delivered by Purchasers, contain the entire agreement among the parties with respect to the transactions contemplated by this Agreement and supersede all prior agreements or understandings among the parties.

6.2 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(a) Mutual Consent. Upon the mutual written consent of Sellers and Purchasers.

(b) By Purchasers.

(i) By Purchasers, in accordance with Section 3.6(a) or Section 3.6(b);

(ii) by Purchasers, at any time after December 30, 2002, if any of the conditions provided for in Section 4.1 shall not have been waived in writing by Purchasers or fully satisfied prior to such date;

(iii) by Purchasers, in the event of a material violation or breach by any Seller of its agreements contained in this Agreement that has rendered the satisfaction of any condition to the obligations of Purchasers impossible, and Purchasers are not in material violation or breach of their agreements, representations or warranties contained in this Agreement; *provided* that such violation or breach shall not have been waived or cured within fifteen (15) days following receipt by Sellers of written notice of such breach from Purchasers;

(iv) by Purchasers, if the Bid Protection Order is not filed with the Bankruptcy Court on or before July 26, 2002, or if, after being filed, is not entered within 21 days after the filing of the Bid Protection Motion;

(v) by Purchasers, at any time after the Bid Protection Order is entered if such order is vacated, reversed or stayed, or is modified or amended in a manner materially adverse to the Purchasers;

(vi) by Purchasers, if the Sale Motion is not filed with the Bankruptcy Court on or before August 31, 2002;

(vii) by Purchasers, if an order is entered by the Bankruptcy Court approving the Bidding Procedures and at any time thereafter such order is vacated, reversed or stayed, or is modified or amended in a manner materially adverse to the Purchasers;

(viii) by Purchasers, in the event another offer is accepted by the Sellers in accordance with the Bidding Procedures, and is approved by the Bankruptcy Court; or

(ix) by Purchasers, if the QSR Proposal shall not have been homologated by the Superior Court of Quebec sitting in bankruptcy, or the Arrangement shall not have been approved by the Federal Court of Canada, or in either case the delay to appeal from such decision shall not have expired, or if the QSR Sale Approval shall not have been obtained, on or prior to December 30, 2002.

(c) By Sellers.

(i) By Sellers, at any time after December 30, 2002, if any of the conditions provided for in Section 4.2 shall not have been waived in writing by Sellers or fully satisfied prior to such date;

(ii) By Sellers, in the event another offer is accepted by the Sellers in accordance with the Bidding Procedures, and is approved by the Bankruptcy Court; or

(iii) By Sellers, in the event of a material violation or breach by any Purchaser of its agreements, representations or warranties contained in this Agreement that has rendered the satisfaction of any condition to the obligations of Sellers impossible, and Sellers are not in material violation or breach of their agreements contained in this Agreement; provided, that such violation or breach shall not have been waived or cured within fifteen (15) days following receipt by Purchasers of written notice of such breach from Sellers.

(d) Effect of Termination. In the event of termination of this Agreement pursuant to this Section 6.2, written notice thereof shall forthwith be given to the other parties, and all further obligations of the parties hereunder shall immediately and without further action terminate, except that the obligations set forth in Sections 1.4 and 6.3 and the last sentence of this Section 6.2(d) shall survive in full force and effect; provided, however, that if this Agreement is terminated by a party because of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies for breach of contract or otherwise, including, without limitation, damages relating thereto, shall also survive such

termination unimpaired, subject to the waiver of damages set forth in Section 5.1 hereof. If this Agreement is terminated as provided herein each party will redeliver all documents, work papers and other material of any other party relating to the transactions contemplated hereby, whether obtained before or after the execution hereof to the party furnishing the same, except as provided in Section 3.6(c) of this Agreement and shall abide by the terms of any confidentiality agreement relating thereto.

6.3 Break-Up Fee. This Agreement is subject to other offers solely in accordance with the Bidding Procedures. In the event that a higher or better offer is approved by the Bankruptcy Court, then, subject to the final sentence of this Section 6.3, Sellers shall pay to Purchasers a break-up fee equal to the sum of (i) \$1,000,000, (ii) the Receivable Amount, and (iii) all amounts paid by Purchasers pursuant to Section 3.1(g) for publication of the Publication Notice (collectively, the "Break-Up Fee") by wire transfer of immediately available funds on the completion of the sale to such higher or better offeror. The Break-Up Fee shall constitute an administrative expense under Sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and shall be Purchasers' sole remedy for such termination. In the event of circumstances that trigger the payment of the Break-Up Fee, the Deposit shall be immediately returned to Purchasers. If Sellers have not received Purchasers' written waiver of Purchasers' rights under Section 4.1(m) on or before the date that is one day prior to the Qualifying Bid Deadline, then Sellers' obligation to pay the Break-Up Fee to Purchasers under this Section 6.3 shall be of no further force or effect; provided, that, for the avoidance of doubt, this sentence shall not affect Purchasers' right to receive the Deposit in the event of circumstances that would otherwise trigger the payment of the Break-Up Fee. Upon payment of the Break-Up Fee, Purchasers shall cause CDAC's obligations underlying the Receivable Amount to be discharged.

6.4 Descriptive Headings; Certain Interpretations.

(a) Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

(b) Except as otherwise expressly provided in this Agreement, the following rules of interpretation apply to this Agreement: (i) the singular includes the plural and the plural includes the singular; (ii) "or" and "either" are not exclusive and "include" and "including" is not limiting; (iii) a reference to any agreement or other contract includes schedules and exhibits thereto and permitted supplements and amendments thereof; (iv) a reference to a law includes any amendment or modification to such law and any rules or regulations issued thereunder; (v) a reference to a Person includes its permitted successors and assigns; and (vi) a reference in this Agreement to an Article, Section, Exhibit or Schedule is to the Article, Section, Exhibit or Schedule of this Agreement.

6.5 Notices. All notices, requests and other communications to any party hereunder shall be in writing and sufficient if delivered personally or sent by facsimile transmission (with confirmation of receipt) or by overnight delivery service maintaining records of receipt, addressed as follows:

If to Purchasers, to:

Montreal, Maine & Atlantic Railway LLC
8600 West Bryn Mawr Avenue, Suite 500N
Chicago, IL 60631-3579
Attn: Michael E. Cutler, Esq.
Facsimile: 773-714-9483

If to Sellers, to:

James E. Howard, Trustee
One Thompson Square
Suite 201
Charlestown, MA 02129
Facsimile: 617-886-9324

And to

Noubar Boyadjian
1 Place Ville Marie, Suite 2720
Montreal, Quebec
Canada H3B 4G4
Facsimile: 514-875-0598

with a copy, which shall not constitute notice, to:

Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Attn: Edward Burkhardt
Facsimile: 202-662-6291

with a copy, which shall not constitute notice, to:

Verrill & Dana, LLP
P.O. Box 586
One Portland Square
Portland, ME 04112-0586
Attn: Roger A. Clement, Esq.
Facsimile: 207-774-7499

And to

Kugler Kandestin
1 Place Ville Marie, Suite 2101
Montreal, Quebec
Canada H3B 2C6
Attn: Gerald Kandestin
Facsimile: 514-875-8424

or to such other address or telecopy number as the party to whom notice is to be given may have furnished to the other parties in writing in accordance herewith. Each such notice, request or communication shall be effective when received at the address specified in this Section 6.5.

6.6 Counterparts, Facsimile Transmission. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument. Signatures sent to the other parties by facsimile transmission shall be binding as evidence of acceptance of the terms hereof by such signatory party.

6.7 Survival. All representations and warranties in Article II shall terminate upon, and shall not survive, the Closing. All the provisions of this Agreement that contemplate performance after the Closing shall survive the Closing.

6.8 Benefits of Agreement. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement is for the sole benefit of the parties hereto and not for the benefit of any third party.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

SELLERS:

BANGOR & AROOSTOOK RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: James E. Howard
James E. Howard
Chapter 11 Trustee

CANADIAN AMERICAN RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: James E. Howard
James E. Howard
Chapter 11 Trustee

LITWIN BOYADJIAN INC, in its capacity as
TRUSTEE TO THE PROPOSAL OF
QUEBEC SOUTHERN RAILWAY COMPANY, LTD.,

Per: _____
NOUBAR BOYADJIAN

NEWPORT AND RICHFORD RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: James E. Howard
James E. Howard
Chapter 11 Trustee

NORTHERN VERMONT RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: James E. Howard
James E. Howard
Chapter 11 Trustee

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

SELLERS:

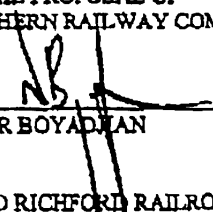
BANGOR & AROOSTOOK RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: _____
James E. Howard
Chapter 11 Trustee

CANADIAN AMERICAN RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: _____
James E. Howard
Chapter 11 Trustee

LITWIN BOYADJIAN INC, in its capacity as
TRUSTEE TO THE PROPOSAL OF
QUEBEC SOUTHERN RAILWAY COMPANY, LTD.,

Per:  _____
NOUBAR BOYADJIAN

NEWPORT AND RICHFORD RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: _____
James E. Howard
Chapter 11 Trustee

NORTHERN VERMONT RAILROAD COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: _____
James E. Howard
Chapter 11 Trustee

LOGISTICS MANAGEMENT SYSTEMS, INC.,
Debtor-In-Possession

By: James E Howard
Name:
Title:

VAN BUREN BRIDGE COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: _____
Name:
Chapter 11 Trustee

PURCHASERS:

MONTREAL, MAINE & ATLANTIC RAILWAY LLC

By: Edward Brunner
Name:
Title: President

MONTREAL, MAINE & ATLANTIC CANADA CO.

By: Edward Brunner
Name:
Title: President

LOGISTICS MANAGEMENT SYSTEMS, INC.,
Debtor-In-Possession

By: James E. Howard
Name: JAMES E. HOWARD
Title: AUTHORIZED AGENT

VAN BUREN BRIDGE COMPANY,
Debtor under Chapter 11 of the U.S. Bankruptcy Code

By: James E. Howard
Name: James E. Howard
Title: Chapter 11 Trustee

PURCHASERS:

MONTREAL, MAINE & ATLANTIC RAILWAY LLC

By: _____
Name: _____
Title: _____

MONTREAL, MAINE & ATLANTIC CANADA CO.

By: _____
Name: _____
Title: _____

6.9 Amendments and Waivers. No modification, amendment or waiver, of any provision of, or consent required by, this Agreement, nor any consent to any departure herefrom, shall be effective unless it is in writing and signed by the parties hereto and, in the case of Sellers, approved by the Bankruptcy Court (or the Canadian equivalent). Such modification, amendment, waiver or consent shall be effective only in the specific instance and for the purpose for which given.

6.10 Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by any party hereto without the prior written consent of the other parties hereto, provided that Purchasers may assign all or part of their rights and obligations hereunder to any Person directly or indirectly controlled by Purchasers, provided that no such assignment shall, without the consent of Sellers, relieve either Purchaser of its obligations hereunder.

6.11 Governing Law. The rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Maine, without regard to its conflict of laws principles.

6.12 Remedies Cumulative. Except s otherwise specifically provided herein, the remedies of the parties under this Agreement are cumulative and shall not exclude any other remedies to which any party may be lawfully entitled.

6.13 Bankruptcy Court Jurisdiction. The Bankruptcy Court (and, with respect to matters governed by Canadian law, the applicable Canadian equivalent) shall have jurisdiction with respect to any issues arising between the parties and relating to the terms or provisions of this Agreement or the consummation of the transactions contemplated hereunder.

6.14 English Language. This Agreement and all related documents have been drawn up in English at the express wish of the parties hereto. La présente entente et tous les documents s'y rattachent sont rédigés en anglais selon la volonté expresse des parties aux présentes.

[Signature Pages Follow]

LIST OF SCHEDULES AND EXHIBITS

Schedule 1.1(a)(ii)	Transferred Operating Rights of Way and Real Property
Schedule 1.1(a)(iv)	QSR Contract Rights
Schedule 1.1(a)(vii)	Excluded QSR Security Deposits
Schedule 1.1(b)(iv)	BAR Contract Rights
Schedule 1.1(b)(vii)	Excluded BAR Security Deposits
Schedule 1.1(c)(iv)	CDAC Contract Rights
Schedule 1.1(d)(ii)	Transferred Operating Rights of Way and Real Property in Maine
Schedule 1.1(d)(iv)	NVT/N&R Contract Rights
Schedule 1.1(e)	LMS Contract Rights
Schedule 1.1(f)	VBB Contract Rights
Schedule 1.2(a)(ii)	Mack Point Tank Farm Negotiations
Schedule 1.2(a)(iv)	BAR Excluded Real Property
Schedule 1.2(a)(v)	BAR Excluded Income Streams
Schedule 1.2(b)(i)	CDAC Excluded Real Property
Schedule 1.2(b)(ii)	CDAC Excluded Income Streams
Schedule 1.2(c)(i)	NVT/N&R Excluded Real Property
Schedule 1.2(c)(ii)	NVT/N&R Excluded Income Streams
Schedule 1.2(c)(vii)	NVT/N&R Excluded Operating Rights/Easements
Schedule 1.3(a)(i)	Assumed Repayment Obligations
Schedule 1.7	Purchase Price Allocation
Schedule 1.9	Specified Earnings
Schedule 2.1(a)	Organization
Schedule 2.1(c)	Seller Consents
Schedule 2.1(d)	Financial Statements
Schedule 2.1(e)	Absence of Change
Schedule 2.1(f)	Personal Property
Schedule 2.1(g)	Real Property
Schedule 2.1(h)	Intellectual Property
Schedule 2.1(j)	Litigation
Schedule 2.1(k)	Environmental
Schedule 2.1(l)	Governmental Regulations
Schedule 2.1(m)	Prepayments
Schedule 2.2(c)	Purchaser Consents
Schedule 3.13(b)	Account Debtors
Schedule 4.1(l)	Requisite Consents
Exhibit A	Form of Sale Order
Exhibit B	Bidding Procedures

APPENDIX 5 TO HOWARD V.S.

SHIPPERS ON MADAWASKA-PORTAGE LINE

AMERICAN INT'L FOREST PRODUCTS
BORDEN INC
BP CANADA ENERGY RESOURCES
BROWN PRINTING CO
CONOCOPHILLIPS CANADA LIMITED
DEAD RIVER CO
DO IT BEST CORP
ENGELHARD CORP
EXXONMOBIL CANADA LTD
FRASER PAPER LTD
FRY COMMUNICATIONS
GENERAL ALUM CORP
GEORGIA PACIFIC
HANSEN MUELLER
HOME DEPOT
IDAHO TIMBER
IMERYS KAOLIN INC
INTERNWAXES
IRVING FOREST PRODUCT INC
IRVING WOODLANDS
J D IRVING LTD
JM HUBER CORPORATION
KANZAKI SPECIALTY PAPERS INC
KINETIC RESOURCES
L P CORP
LEW RIOUX
LMS
LP WOODLAND
LUMBERMAN MERCHANDISING CORP
MAINE POTATO GROWERS INC
MAINE PROPANE INC
MAPLE LEAF DISTRIBUTION
MENARD CASHWAY LUMBER DIV
MERCHANTS DISTRIBUTION SERVICE
MFP OF OREGON
MSR FOREST PRODUCTS LLC
NORBORD INDUSTRIES INC.
NORTHSTAR PULP & PAPER
PETRO-CANADA
PINE TREE PROPANE
QUAD GRAPHICS INC
QUEBECOR WORLD
R R DONNELLEY & SONS CO
SEABOARD INT'L FOREST PROD INC

SHELL CANADA
STOCK BUILDING SUPPLY
TERRA INTERNATIONAL CANADA
THE CAROLINA PLUM
TRANSCON EXPRESS
ULTRAMAR
WILLIAM BROS LUMBER COMPANY
WOODPERFECT LTD.

SHIPPERS ON CDAC LINE

SHIPPER NAME

84 LUMBER CO.
A E STALEY MFG CO
A&M SUPPLY
AETNA PLYWOOD INC
AKRON WAREHOUSE
ALL BC WAREHOUSING INC
AMERICAN COLOR GRAPHICS INC
AMERICAN INT'LL FOREST PRODUCT
ANGLO AMERICAN CEDAR PRODUCTS
ARCHER DANIELS MIDLAND
AT & N LUMBER
AVON FOODS INC.
B&D INDUSTRIES LLC
BAYER CORPORATION
BAYMAG
BEDROOM DEPOT LTD
BELLEVUE BUILDERS
BETHEL MILLS INC
BIRMINGHAM INTERNATIONAL FORES
BLUE EAGLE CORPORATION
BMA/ACE LUMBER
BOIS AISE DE MONTREAL INC.
BOISE BUILDING SOLUTIONS
BOISE CASCADE
BPB CANADA INC
BROWN PRINTING CO
BUCKEYE PACIFIC
BUTLER LUMBER
C H DEXTER CO
CAD RAILWAY SERVICE INC
CANADA BREAD COMPANY LTD
CANADA FIBERS LTD
CANADA MALTING CO
CANAMERA FOODS
CARGILL ANIMAL NUTRITION
CAVENDISH FARMS
CEDAR CREEK
CENEX HARVEST STATES
CHEMICAL PRODUCTS CORP
CHEMTRADE LOGISTICS INC
CITY LUMBER
COCKRELL DIST.SYSTEMS CENTRAL
COLUMBIA FOREST PRODS
CONNORS BROTHERS

CONTRACT LUMBER
CO-OP ATLANTIC
CURTIS LUMBER BALL/SPA
DAIMLER CHRYSLER
DAVID JOSEPH COMPANY
DO IT BEST CORP
DOW CHEMICAL CO
DRADER MANUFACTURING INDUSTRIE
E D BESSEY & SON
EIGHTY FOUR LUMBER
EKA NOBEL CANADA, INC
ENAP, INC.
ENGELHARD CORP
FAIRWAY LUMBER COMPANY, INC.
FALCON LUMBER LTD
FEDERATED COOPERATIVES LTD
FELDMAN LUMBER
FINCH PRUYN & CO
FLAGGS INC.
FLAKEBOARD CO
FOREST PANEL
FORMATIONS INC
FORTERM LTD
FRASER PAPER LTD
FRY COMMUNICATIONS
G E RAILCAR
GAC CHEMICAL CORP
GENERAL CHEMICAL CANADA LTD
GEORGIA PACIFIC
GEORGIAN BAY WETWOOD
GERARD CRETE @ LMS LUMBER REL.
GOODFELLOW INC
GREAT LAKES FOREST PRODUCTS
HARTFORD COURANT
HOME DEPOT
HOME HARDWARE
IDAHO TIMBER
IMERYS KAOLIN INC
INDUSTRIAL METAL RECYCLE
INTERNATIONAL PAPER
INTERNATIONAL POTTER DISTILLIN
IRVING FOREST PRODUCT INC
IRVING OIL
IRVING PULP & PAPER
IRVING TISSUE
J D IRVING LTD
J M HUBER CORP
KANZAKI SPECIALTY PAPERS INC

KATAHDIN PAPER COMPANY
KEYWELL LLC
KOPPERS INDUSTRIES INC
KRUGER INCORPORATED
LONDON LUMBER
LCOA
LIGHTHOUSE LUMBER WHOLESALERS
LMS
LOUISIANA PACIFIC CORP
LP ENGINEERED WOOD PRODUCTS LT
LUMBERMAN MERCHANDISING CORP
LUMBERMANS ASSOCIATES
MAIERS TRANSPORT
MAINE POTATO GROWERS INC
MAPLE LEAF DISTRIBUTION
MASONITE INT.(MOBILE PREFINISH
MATTHEWS & FIELDS LUMBER
MCCAIN FOODS
MEADWESTVACO CORP
MEGANTIC MFG
MENARD CASHWAY
MERCHANTS DISTRIBUTION SERVICE
METRO CANADA LOGISTICS
MFP OF OREGON
MJB - HMH (AL)
MJB-PANEL CUT LLC
MOORE'S
MOOSE RIVER LUMBER CO
MOSINEE CONVERTED PRODUCTS
MSR FOREST PRODUCTS LLC
MULTIBOIS
NATIONAL LUMBER CO
NATIONAL STARCH
NBSR
NEW BRUNSWICK LIQUOR CORP
NEXFOR/FRASER NH LLC
NORAMPAC INC
NORBORD INDUSTRIES INC
NORFALCO SALES INC
NORSKE SKOG CANADA USA INC
NORTH AMERICAN FOREST PRODUCTS
O-I CANADA CORP
OMNOVA SOLUTIONS INC
OMYA, INC.
OVERWAITEA FOODS
P P G CANADA INC
PANEL PROCESSING INC
PANELS SERVICES &COMPONENTS

PATRICK INDUSTRIES
PELTZ GROUP
PHILLIPS SERVICES
PLY-TRIM, INC
PLYWOOD SPECIALTIES
PREMIER MALT PRODUCTS
PRODUITS FST TEMBEC INC
QUABOAG TRANSFER
QUAD GRAPHICS INC
QUEBECOR PRINTING
R R DONNELLEY & SONS CO
RAYNER & RINN-SCOTT INC.
RECOCHEM INC
RICE LUMBER
RICHMOND INT'L FOREST PRODUCTS
ROBERT WEED PLYWOOD CORP
ROCHESTER LUMBER
ROHM & HAAS COMPANY
ROPER BROTHERS
RUBICON INC
SANFORD AND HAWLELY INC
SAXONVILLE LUMBER
SCHENKER PACIFIC LOGISTIC
SEABOARD INT'L FOREST PROD INC
SEVEN D WHOLESALE
SHEA BROTHERS LUMBER HANDLING
SHERWOOD LUMBER
SOUTH-EAST LUMBER CO.
SPECIALIZED EQUIPMENT RENTAL
SPECTRUM SUPPLY CHAIN SOLUTION
SPRAGUE ENERGY
ST. ANNE-NACKAWIC PULP COMPANY
STARK FOREST PRODUCTS
STOCK BUILDING SUPPLY
STROBER-GENERAL BUILDINGS
TAIGA FOREST PRODUCTS LTD
TAMPA INT'L FOREST PRODUCTS
TATER MEAL INC
TEAMWOOD TRADERS LTD.
TEMBEC INDUSTRIES IN
THE CAROLINA PLUM
THE LUMBERYARD RELOAD
TOWSEND BROTHERS
TRANSCO RAILWAY PRODUCTS
TRI COUNTY BUILDING SUPPILES
TROPICAL SHIPPING OF CANADA
UNIVERSAL FOREST PRODUCTS
VAN DE HOGAN GROUP INC

VANTAGE PANEL PRODUCTS LTD
VERTIS
WESTROC INDUSTRIES
WEYERHAEUSER COMPANY LTD
WIENER, CROWLEY & ST. JOHN INC
WILLIAM BROS LUMBER COMPANY
WILLIAM MORSE LUMBER
WOODPERFECT LTD.

LIST OF SHIPPER ON BOTH MADAWASKA-PORTAGE AND CDAC LINES

AMERICAN INT'L FOREST PRODUCTS
BROWN PRINTING CO
DO IT BEST CORP
ENGELHARD CORP
FRASER PAPER LTD
FRY COMMUNICATIONS
GEORGIA PACIFIC
HOME DEPOT
IDAHO TIMBER
IMERYS KAOLIN INC
J D IRVING LTD
JM HUBER CORPORATION
KANZAKI SPECIALTY PAPERS INC
LUMBERMAN MERCHANDISING CORP
MAPLE LEAF DISTRIBUTION
MENARD CASHWAY LUMBER DIV
MERCHANTS DISTRIBUTION SERVICE
MFP OF OREGON
MSR FOREST PRODUCTS LLC
NORBORD INDUSTRIES INC.
QUAD GRAPHICS INC
QUEBECOR WORLD
R R DONNELLEY & SONS CO
SEABOARD INT'L FOREST PROD INC
STOCK BUILDING SUPPLY
THE CAROLINA PLUM
WILLIAM BROS LUMBER COMPANY
WOODPERFECT LTD.

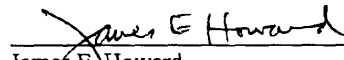
VERIFICATION

COMMONWEALTH OF MASSACHUSETTS)

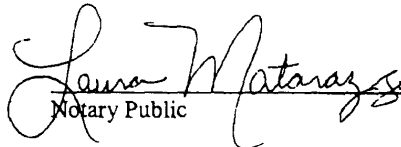
) SS

COUNTY OF SUFFOLK)

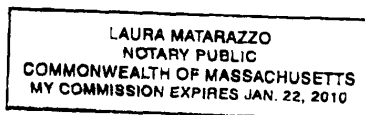
James E. Howard, being duly sworn, deposes and says that he is the Trustee of the Bangor and Aroostook Railroad Company and the other railroads within the BAR System as defined in the foregoing statement, and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct to the best of his knowledge, information and belief.


James E. Howard

Subscribed and sworn to before by James E. Howard this 3 day of October, 2003.


Notary Public

My Commission Expires:



VERIFIED STATEMENT

OF

FREDERIC W. YOCUM, JR.

My name is Frederic W. Yocum, Jr. I am Vice-Chairman of Montreal, Maine & Atlantic Railway Ltd. ("MMA"). Prior to my current position, I was the President and a Director of the Bangor & Aroostook Railroad Company ("BAR") and its affiliated railroads (collectively, the "BAR System").¹

The Trustee has filed an application for the discontinuance of the trackage rights of Canadian National Railway Company ("CN") and the abandonment of the related freight easement of Waterloo Railway Company ("WRC").² The purpose of this Verified Statement is to give the Surface Transportation Board ("Board") information regarding the former BAR System, BAR's service to Fraser Papers Inc. ("Fraser") and the events leading up to and following BAR's grant of trackage rights to CN (and the related grant of the freight easement to WRC) in March of 2001.

My Professional Background and Experience

I have 36 years of experience in the railroad industry, including several tours of duty

¹ The BAR System included, in addition to BAR, Canadian American Railroad Company ("CDAC"), Van Buren Bridge Company ("VBBC"), Northern Vermont Railway Company ("NVT"), Newport & Richford Railroad Company ("NRR") and Quebec Southern Railway, Ltd. ("QSR"). The stock of the BAR System railroads was held by Iron Road Railways, Inc. ("Iron Road"). BAR, VBBC, CDAC, NVT and NRR are in bankruptcy. QSR was the subject of bankruptcy proceedings in Canada.

² The trackage rights and easement in issue are on (i) the former BAR rail line between Madawaska, ME (BAR M.P. 0.0) and Canadian Junction, ME (BAR M.P. 22.72/VBBC M.P. 0.0) and (ii) the former VBBC rail line between Canadian Junction and the point of connection with CN, near St. Leonard, New Brunswick (CN M.P. 194.1), a total distance of approximately 25.1 route miles (referred to herein as the "Madawaska Line").

involving the turnaround of bankrupt or financially troubled railroads.³ My involvement with the BAR System dates from early 1999. At that time Railcar, Ltd. and Progress Rail Services Corporation (two railroad supply companies) were considering investing in Iron Road, the owner of the BAR System. They asked me to assist them in evaluating the investment, which they decided in turn to pursue. Iron Road used cash from Railcar and Progress to refinance the BAR System. Railcar and Progress received the right to appoint a director of Iron Road and of each of the BAR System railroads. Railcar and Progress designated me as that director. As is further explained below, effective February 20, 2001, I became President and CEO of the BAR System railroads. After substantially all of the operating assets of the BAR System were sold to MMA on January 9, 2003, I took my current position as Vice-Chairman of MMA.

Basic Information Pertaining to the BAR System

The BAR System consisted of approximately 849 route miles of rail line in the states of Maine and Vermont and in the provinces of Quebec and New Brunswick. The BAR System provided the shortest rail transportation route between many points in Maine and the Montreal gateway and a critical link in the rail route between Saint John, New Brunswick and Montreal. The rail lines of the former BAR System railroads are depicted on **Exhibit B** of the Application. The BAR System interchanged with CN (St. Leonard, NB; Ste. Rosalie, PQ; St. Jean, PQ), Canadian Pacific Railroad Company ("CP") (St. Jean, PQ), Guilford Rail System (Northern Maine Junction, ME, which is near Bangor, ME), Eastern Maine Railway and New Brunswick Southern Railway (Brownville Junction, ME), Quebec Central Railway (Sherbrooke, PQ), St. Lawrence and Atlantic Railroad (Sherbrooke/Lennoxville, PQ), and New England Central Railroad Company (White River Junction, VT). Principal commodities included paper, lumber,

³ A summary of my railroad industry experience is in **Appendix 1** attached hereto.

wood and agricultural products shipped from locations in eastern and northern Maine and inbound chemicals and other products used by paper producers and consumers in Maine.

In 2001, the BAR System operated 7,928 trains in Maine. Of these, 6,914 were on BAR and 1,014 were on CDAC.⁴ The BAR System operated slightly fewer trains over these railroads in 2002. Frequency of service varied somewhat by area. The BAR System generally operated on a five day a week schedule, but also operated switchers to the paper mills and through trains on the weekends. Attached as **Appendix 2** is a breakdown of the traffic on the BAR System by commodity, carloads, revenue and tonnage for 2001 and 2002. There are separate columns for BAR, CDAC and the combined BAR/CDAC system within the United States.⁵ All of the BAR movements in the United States were in Maine. However, the CDAC movements included a small number of movements within Vermont.

The principal concentrations of traffic on the BAR System were from the twin paper mills of Great Northern Paper ("GNP") in Millinocket and East Millinocket, Maine, and the Fraser facility at Madawaska, Maine. Together, the GNP and Fraser traffic constituted 17,889 carloads out of 66,184 total revenue units on the BAR System in 2001, and 15,598 carloads out of 50,685 total revenue units on the BAR System in 2002.⁶

⁴ In the BAR System there were two tariff carriers, BAR and CDAC. BAR operated over the rail line owned by VBBC. CDAC was the tariff carrier not only for itself, but also for QSR and NVT (which operated over the rail line owned by NRR). Thus, CDAC had crew starts in Vermont, as well as in Quebec, which are not included in this count.

⁵ The revenue totals in the combined BAR/CDAC system column result from the combination of BAR and CDAC revenues. The carload and tonnage totals, however, do not reflect such a combination because many cars moved over both systems and have only been counted once for purposes of the combined BAR/CDAC system column.

⁶ Revenue units includes both carloads and intermodal containers.

Table 1: BAR System Traffic (in carloads)

Year	Fraser Paper and Great Northern Traffic	Total BAR System Traffic
2001	17,889	66,184
2002	15,598	50,685

GNP and Fraser were the BAR System's only major on-line customers.⁷ Most of GNP's traffic on the BAR System moved south to Brownville Junction and then west over CDAC to interchange with CP in Montreal or vice versa. Some GNP traffic moved from Millinocket north over BAR's line through Portage, Maine to points on the BAR or over the Madawaska Line to interchange with CN at St. Leonard or vice versa. The GNP routings are specified in the table below.

Table 2: Great Northern Traffic Routing Volumes (in carloads)

Year	Millinocket-Brownville Jct.-CDAC	Millinocket-Northern Maine Jct.-Guilford	Millinocket-Madawaska Line - CN	Local Great Northern Traffic
2001	5,566	517	86	5,927
2002	3,678	203	46	3,533

Despite its importance to GNP and Fraser (as discussed further below), BAR's line from Madawaska south to Portage, Maine, a distance of approximately 59 route miles, was a light density line. Most of its traffic was bridge traffic. Besides Fraser and Great Northern traffic noted above, the Madawaska-Portage Line bridged propane (originated at Canadian points), lumber (originated on rail at Van Buren) and liquefied petroleum gas (LPG). The only significant on-line traffic was logs that originated at Ft. Kent.

On the CDAC Line, approximately 102 miles in length, most of the traffic was overhead traffic. Great Northern and Fraser traffic made up the majority, together with some oriented

⁷ The BAR System's third largest customer was Georgia Pacific (formerly Fort James), which moved approximately 4,805 cars in 2002.

strand board (“OSB”) from manufacturing plants located at Easton and New Limerick, lumber from stations on the BAR (located at Northern Maine Junction, Van Buren, Ashland, Skerry and Portage), and sulfuric acid to Searsport, all on the BAR. The CDAC Line had virtually no originated traffic and no terminated traffic.⁸

The BAR System’s light density also is revealed from a look at the cost side. System-wide operating costs were such that every carload or intermodal unit needed to recover about \$850 just to cover operating costs. For many years, the BAR System did not even cover its system-wide operating costs and had no money for capital improvements, debt service or other investments, to say nothing of a return on investment.

BAR’s Service to Fraser Papers

Fraser was a long-standing customer of BAR. Fraser, a leading manufacturer of specialized paper products, has a large paper mill located in Madawaska, Maine (the “Madawaska Mill”). Fraser’s Madawaska Mill generated substantial rail traffic over the BAR System, including inbound shipments of raw materials such as clay and specialty chemicals used in the paper manufacturing process and outbound shipments of paper products. In addition to the Madawaska Mill, Fraser owns and operates a number of manufacturing facilities in North America including facilities in Edmundston, New Brunswick that are right across the St. John River from and an integral part of Fraser’s Madawaska Mill.

Rail traffic to or from Fraser’s Madawaska Mill can move by four different routes. First, traffic can move over the Madawaska Line to CN at St. Leonard, New Brunswick or vice versa. For many years prior to implementation of a haulage arrangement in 2001, as described below, a substantial amount of Fraser’s traffic moved over this route under a joint rate quoted by CN and

⁸ There was a very small amount of lumber transloaded onto the railroad at Jackman, ME.

BAR. Since April 2001, BAR hauled (and now MMA hauls) this traffic for CN's account over the Madawaska Line pursuant to the Junction Settlement Agreement discussed in more detail below.

Second, traffic can move over the former BAR line from Madawaska south to the interchange between the former BAR and the former CDAC at Brownville Junction, ME, and then west to interchange with CP or CN near Montreal and other points in Quebec, or vice versa.

Third, the BAR System also interchanged with the Eastern Maine Railway and New Brunswick Southern Railway at Brownville Junction; thus Fraser traffic could be routed east from Brownville Junction to New Brunswick or vice versa.

Fourth, traffic from Fraser can move south over the former BAR line to the interchange with the Guilford Rail System at Northern Maine Junction, or vice versa.

For several years prior to the sale of the BAR System to MMA, most of the BAR System's Fraser traffic was routed over the Madawaska Line. A significant amount of Fraser traffic was routed south to Brownville Junction and then west over CDAC to interchange with CP in Montreal or vice versa. Some traffic moved over the line between Madawaska and Portage, Maine to points on the BAR System or to BAR's interchange with Guilford Rail System at Northern Maine Junction or vice versa. The following table sets forth the different routings used for Fraser traffic.

Table 3: BAR System Traffic To Or From Fraser Paper (in carloads)

Year	Total	Madawaska Line (Madawaska – Van Buren)	CDAC Line	BAR System Local Traffic	Guilford (Northern Maine Junction)
2001	5805	3914	356	823	712
2002	5722	4096	152	865	609

Fraser requires consistent and reliable rail service. Fraser remained a major customer of BAR throughout the financially tumultuous period between 1995 and the BAR's acquisition by MMA. BAR, recognizing the importance of Fraser's business, consistently provided Fraser with excellent service. Before the haulage arrangement, BAR/CN service to Fraser was provided under a joint rate. Since April 22, 2001, all service to Fraser over the Madawaska Line has been pursuant to the haulage arrangement under the Junction Settlement Agreement. However, the actual train service on the Madawaska Line had been provided by BAR (and now by MMA), rather than CN, for many decades. CN has never provided direct service to Fraser.

Events Leading Up to the Grant of CN Trackage Rights in March 2001

The BAR System was put together in a series of transactions in 1995-96. In January of 1995, CDAC, a newly formed affiliate of BAR, acquired the CP rail line between Brownville Junction, Maine and Lennoxville, Quebec. In March of 1995, Iron Road acquired BAR and CDAC. In September of 1996, Iron Road acquired NVT, NRR and QSR from CP. Iron Road borrowed from Bank Austria Creditanstalt to acquire BAR and acquired CDAC by assuming a purchase money loan from the seller, CP. Similarly, the purchase price for the three 1996 acquisitions by Iron Road also were seller-financed. Iron Road did not put its own money into the acquisitions, and it did not have sufficient working capital for the operations of any of the acquired railroads. Unfortunately, the operating revenue on the BAR System was not sufficient to make up for the undercapitalization. The acquisitions were highly leveraged, and from 1995 until the sale to MMA, the BAR System railroads were in an almost perpetual state of cash starvation.

BAR itself is a good and important example of the effect of the leverage and the undercapitalization. As of December 31, 1994, the end of the calendar year prior to Iron Road's acquisition of BAR, the railroad had total liabilities of \$28.6 million and shareholders' equity of \$47 million. At the end of 1995 total liabilities were \$67.6 million and shareholders' equity was \$19.3 million. At the end of 1996, total liabilities were \$72.7 million and shareholders' equity was \$15 million. The excess of current assets over current liabilities was a positive \$3.3 million at the end of 1994, swinging \$7.4 million in a single year to a negative \$4.1 million by the end of 1995 and dropping an additional \$2.0 million to negative \$6.1 million by the end of 1996.

Table 4: BAR Shareholder Equity and Liabilities

Year	Shareholder Equity	Total Liabilities	Excess of Current Assets Over Liabilities
1994	\$ 47 million	\$ 28.6 million	\$ 3.3 million
1995	\$ 19.3 million	\$ 67.6 million	-\$ 4.1 million
1996	\$ 15 million	\$ 72.7 million	-\$ 6.1 million

The BAR System's undercapitalization led to very serious financial problems in 1997-99. The 1999 Railcar/Progress refinancing mentioned above eased the cash crunch temporarily, but did nothing to solve the BAR System's underlying problems. BAR's unaudited Balance Sheet at July 31, 1999 (the month before the refinancing) showed a working capital balance of negative \$29.4 million and a current ratio⁹ of 0.22 to 1, indicating extreme pressure on liquidity. Five months later (December 31, 1999), the recapitalization allowed the working capital balance to

⁹ The current ratio is a standard measure of a company's ability to pay its short-term obligations. It is the ratio of current assets to current liabilities. In calculating the current ratio and the current asset and liability amounts, intercompany amounts due affiliates have been eliminated.

improve somewhat (to a negative \$11.2 million and a current ratio of 0.41 to 1). However, by December 31, 2000, working capital had decreased to negative \$17.5 million and the current ratio had deteriorated to 0.29 to 1, which meant the BAR was almost back to where it was just prior to the Railcar/Progress refinancing. The financial difficulties of the BAR System continued up to and through the grant of the CN trackage rights in early 2001, and the eventual sale to MMA in early 2003.

The Grant of the CN Trackage Rights

During BAR's financial struggle from 1995-2000, BAR's operations on the Madawaska Line were an exception to the downward spiral. BAR and CN quoted a joint rate to Fraser. BAR and CN negotiated a division of that joint rate. From 1995 to 2000, BAR received an average of approximately \$1,000 per loaded car for the movement of Fraser traffic to and from St. Leonard and Fraser's mill at Madawaska. The traffic volume, average BAR division per car and BAR revenue for Fraser traffic on the Madawaska Line for the years 1995 through 2000 are set forth in the table below:

Table 5: BAR Volume, BAR Division Per Car and BAR Revenue on Fraser Traffic on Madawaska Line 1995-2000			
Year	Carloads	Average BAR Division Per Car	BAR Operating Revenue
1995	2,282	\$ 964.13	\$2,200,147.00
1996	2,463	\$ 919.75	\$2,265,339.72
1997	2,835	\$ 986.82	\$2,797,629.84
1998	3,158	\$ 963.09	\$3,041,438.42
1999	2,744	\$1,073.57	\$2,945,878.67
2000	3,399	\$1,066.76	\$3,625,917.61

6-year Average	2,814	\$ 995.69	\$2,812,725.21
-------------------	-------	-----------	----------------

The financial condition of the BAR System would obviously have been far more distressed if BAR had not earned this substantial revenue from Fraser traffic during this financially challenging time.

The financial trouble of the BAR System was well known to everyone by the end of 2000, including Fraser. In fact, Austin Durant, Fraser's Vice President of Materials Management, who had responsibility for transportation matters, expressed a concern to BAR that BAR's service to the Fraser mill at Madawaska might be interrupted or shut down as a result of BAR's financial condition. Iron Road and BAR gave him every assurance that service to Fraser would continue at the same high level and would not be downgraded or shut down. As noted above, the service to Fraser has remained excellent at all times.

In early 2001, in order to address the BAR's desperate financial situation, Iron Road negotiated three contracts with CN pursuant to which CN paid \$5 million to BAR. In return, CN negotiated the right to receive a greater share of revenue for rail traffic moving to or from the Fraser mill in Madawaska. CN proposed, and Iron Road agreed, that BAR would handle (or "haul") cars between Madawaska and St. Leonard for the account of CN under a haulage agreement ("Junction Settlement Agreement"). CN would thereby have the ability on its own to set the rate for transportation to and from Madawaska without any input or concurrence from BAR. CN agreed to pay BAR \$500 for each loaded car hauled for the account of CN, rather than divide the joint line revenue as in the past.¹⁰ The \$500 per car payment was less than 50% of the approximately \$1,065 per car that BAR was earning just prior to the contract. There was no

¹⁰ The \$500 per car payment is subject to a standard cost adjustment index.

change in any physical operation associated with moving to a haulage arrangement. The only thing that changed was the identity of the railroad in whose account the cars moved. The effect of the Junction Settlement Agreement was to increase CN's revenue on Fraser traffic to the detriment of BAR.

As shown in the table above, BAR's operating revenue from Fraser traffic over the Madawaska Line between 1995 and 2000 was in the range of \$2.2 million to \$3.6 million. For the first twelve months under the haulage arrangement, BAR hauled 3,712 cars at a rate of \$503 per car (increased from the \$500 base rate by \$3 per car to cover customs clearance expenses) for a total cash freight operating revenue under the agreement of \$1,867,136.¹¹ That is at least¹² \$2,092,677 less revenue than BAR would have earned under the joint rate arrangement.¹³

In addition to entering into the Junction Settlement Agreement, Iron Road acquiesced to CN's demand that BAR provide trackage rights to permit CN to operate its own trains between Madawaska and St. Leonard if it wished to do so. Thus, the parties entered into a Trackage Rights Agreement, dated March 1, 2001 ("Trackage Rights Agreement").¹⁴

The Trackage Rights Agreement permits CN to run up to two trains in each direction over the Madawaska Line during any 24-hour period for service to Fraser only. The trackage rights can be exercised by CN at any time, in CN's discretion. CN is required to pay MMA \$100 per loaded or empty car (subject to adjustment using the same index as the Junction Settlement

¹¹ Haulage operations began on April 22, 2001.

¹² The revenue difference could have been higher. I used BAR's division for 2000 (\$1,066.76) to make this calculation, when the actual division might have increased slightly during the period between April 2001 and April 2002.

¹³ BAR moved approximately 2,913 carloads of Fraser traffic under the Junction Settlement Agreement from April 22, 2002 through December 22, 2002.

¹⁴ In addition to the Trackage Rights Agreement, CN demanded a freight easement over the Madawaska Line, which was conveyed by BAR to WRC pursuant to an ancillary easement agreement ("Easement Agreement").

Agreement). The Trackage Rights Agreement gives CN the immediate and unilateral right to shift additional revenue on Fraser traffic from MMA to CN.

The negotiations resulting in the Junction Settlement Agreement and the Trackage Rights Agreement were not between two parties with equal bargaining power. BAR was on the brink of bankruptcy, was in desperate need of cash and had extremely limited opportunities to raise such cash. In order to stave off bankruptcy, Iron Road gave CN direct commercial access to BAR's second largest customer in exchange for an immediate cash infusion.

The Junction Settlement Agreement has allowed CN to increase its own freight revenue on Fraser traffic since April 2001. In addition to this tidy return, CN apparently saw a superb opportunity to gain direct commercial access to Fraser's Madawaska mill by demanding trackage rights. The trackage rights are the clearest indicator to me of the one-sided nature of this transaction. Absent serious financial distress, no railroad manager would ever give up exclusive access to one of its major shippers and the balanced bargaining position between itself and its connecting railroads in division negotiations. In my opinion, based on my experience, the trackage rights and the freight easement were a gross overreach on the part of CN.

Events After the Grant of the CN Trackage Rights

Effective February 20, 2001, I became President and CEO of the BAR System railroads. Efforts to sell the BAR System as a whole had begun in the fall of 2000, but at the time I became President those efforts had not yet yielded a satisfactory offer. I decided to allow parties to bid to buy any part of the BAR System (even across corporate entities) as well as the whole BAR System. I also set about to do what I could to improve the marketing, operational, and financial performance of the railroads. My goals, announced my first day on the job, were to

- 1) significantly cut costs, 2) improve the service, and 3) preserve the assets, simultaneously.

The \$5 million cash infusion eased BAR's cash crunch for a time, but in August of 2001, a group of creditors filed an involuntary bankruptcy petition against BAR. In September of 2001, Rail World, Inc. ("Rail World"), a company controlled by Edward A. Burkhardt, submitted a written expression of interest to buy substantially all of the assets of the BAR System. This expression of interest was reduced to a letter of intent between BAR and Rail World. In October, BAR and an informal committee of creditors entered into a stipulation (approved by the Bankruptcy Court) suspending the bankruptcy proceedings, pending BAR's effort to enter into a definitive purchase agreement with Rail World (and other investors working with Rail World). Despite significant efforts on both sides, BAR and Rail World were not able to enter into a definitive agreement by the deadline in the stipulation. On November 26, 2001, the informal creditors committee filed a notice of default under the stipulation and on December 4, the Bankruptcy Court entered an order of relief against BAR.

Meanwhile, operations in 2001 had produced losses. In 2001, the BAR System had an operating cash deficit of approximately \$10.2 million and a net loss of approximately \$26.6 million.¹⁵ See 2001 BAR System Income Statement, attached hereto as **Appendix 3**. In May of 2002, the other four BAR System railroads in the United States (CDAC, VBBC, NRR and NVT) filed voluntary bankruptcy petitions. The BAR System losses continued in 2002. In 2002, the BAR System had an operating cash deficit of approximately \$2.4 million and a net loss of approximately \$9.5 million. See 2002 BAR System Income Statement, attached hereto as **Appendix 4**.

MMA now serves Fraser and, with minor exceptions, operates the former BAR System in its entirety. From the perspective of all interested parties, including Fraser, BAR, and CN, MMA

¹⁵ The operating cash deficit is defined as loss from operating less depreciation and special charges.

service to Fraser's Madawaska Mill subsequent to implementation of the Junction Settlement Agreement has been indistinguishable from BAR service before then. The only change has been the economic effect of the Junction Settlement Agreement on BAR, MMA, and CN.

Summary & Conclusion

Fraser's traffic over the Madawaska Line was one of the few bright spots during the BAR System's financially distressed years leading up to its bankruptcy and sale to MMA. The March 2001 transaction with CN was a failed attempt to address the BAR System's desperate financial situation at the expense of long-term revenue. The transaction has enabled CN to increase its share of the freight revenue on Fraser traffic at the expense of BAR and now MMA.

LIST OF APPENDICES

Appendix 1 – Professional Background and Experience of Frederic W. Yocum, Jr.

Appendix 2 - Breakdown of traffic on BAR System by commodity, carload, revenue and tonnage for 2001 and 2002

Appendix 3 - 2001 BAR System Income Statement

Appendix 4 - 2002 BAR System Income Statement

APPENDIX 1 TO YOCUM V.S.

Professional Background and Experience of Frederic W. Yocum, Jr.

Received a Bachelor of Science Degree in Chemistry from Ursinus College in 1964 and an M.A. in Science, Technology, and Public Policy from Case Institute of Technology (now Case Western Reserve University) in 1967.

In 1967, joined the Chesapeake and Ohio Railway/Baltimore & Ohio Railroad and held various positions including Vice President – Transportation. As Vice President, managed a \$1 billion annual budget and had 15,000 indirect reports.

In 1974, joined the Chicago and North Western Transportation Company and served as an Assistant Vice President and Division Manager of the Iowa Division until 1977.

In 1977, became Vice President – Operations and Marketing of the United States Railway Association (“USRA”). Helped to assemble a team of skilled and experienced railroad operating and marketing people to help analyze and improve Conrail’s performance and stem losses of approximately \$1 million a day, and gained a great deal of real world experience regarding the operation of troubled railroads.

In 1979, joined CSX Transportation (“CSXT”) and held various management positions until 1991. In 1989-90, assigned by CSXT to provide management support to the New York Susquehanna and Western Railroad, which was providing directed service on the lines of The Delaware and Hudson Railroad (“D&H”). The D&H was in bankruptcy.

From 1991-98, was the President, CEO and a Director of the Iowa Interstate Railroad, which was in serious financial difficulty. Negotiated workout arrangements with all of Iowa Interstate's major unsecured creditors, all of which were completed during tenure, and recapitalized the railroad. Also guided the Iowa Interstate during the flood of 1993, which closed fifty miles of track and eroded the agricultural traffic base of the railroad for a full year. Restructured the Iowa Interstate's intermodal business in such a way that it generated a larger traffic base, a large marketing presence, an industry marketing award, and a little money besides.

In early 1999, assisted Railcar, Ltd. and Progress Rail Services Corporation (two railroad supply companies) in evaluating an investment transaction with the BAR System. Iron Road used cash from Railcar and Progress to refinance the BAR System. Designated a director of Iron Road and each of the BAR System railroads by Railcar and Progress. Became President and CEO of the BAR System railroads on February 20, 2001. After substantially all of the operating assets of the BAR System were sold to MMA on January 9, 2003, took current position as Vice-Chairman of MMA.

APPENDIX 2 TO YOCUM V.S.

PROG: SYSTEM TRAFFIC F10 GROUP
WJA10410SYSYSYSTEM01.DBF

Bangor & Aroostook Railroad System

Period: 01/01/2001 thru 12/31/2001

10/01/2003
Public
301

410 GROUPING CODE DESCRIPTION	BAR			CDAC			SYSTEM		
	CARS	US PROP	TONS	CARS	US PROP	TONS	CARS	US PROP	TONS
100 LUMBER	2,184	1,865,281.90	192,631	2,484	1,328,709.71	218,734	2,663	3,193,991.61	224,576
110 OSB	2,180	1,261,033.38	156,884	3,517	2,230,884.17	259,063	3,870	3,491,917.55	284,237
120 ROUNDWOOD	4,219	830,591.90	209,056	559	181,392.19	33,060	4,491	1,011,984.09	226,503
130 WOODCHIPS	7,214	2,148,998.18	389,120	85	32,610.20	4,640	7,249	2,181,608.38	391,045
140 WOODPULP	129	135,194.22	11,001	2,182	2,208,863.00	191,173	2,248	2,344,057.22	199,108
200 PAPER	7,530	6,181,665.10	466,671	6,301	3,143,509.21	398,963	8,921	9,325,174.31	556,542
250 SCRAP PAPER	193	70,182.52	12,758	227	97,055.09	15,240	298	167,237.61	19,668
300 CLAY	761	729,028.12	72,633	308	294,655.12	29,514	855	1,023,683.24	81,797
320 GYPSUM ROCK				753	941,893.58	74,914	753	941,893.58	74,914
400 FERTILIZER	58	58,460.14	5,766	274	214,817.55	26,488	308	273,277.69	29,876
410 CHEMICALS	1,612	1,288,408.18	148,196	2,574	2,221,090.75	245,087	2,723	3,509,498.93	259,893
420 BUNKER C	2,320	1,321,583.10	215,760	105	37,840.31	9,312	2,320	1,321,583.10	215,760
430 LIGHT OIL	136	61,525.00	11,783	752	369,109.39	48,712	1,96	99,365.31	17,101
440 PROPANE	693	635,412.60	45,902	1,786	732,948.57	164,299	1,393	1,004,521.99	91,308
500 FOODS	97	84,103.48	8,867	13	5,128.22	678	1,791	817,052.05	170,350
510 FRZN FOODS							13	5,128.22	678
600 GRAIN	147	88,478.78	12,104	1,569	546,493.61	141,094	1,602	634,972.39	146,361
610 STARCH	404	468,193.04	32,941	287	144,144.54	22,601	426	612,337.58	34,237
700 STONE & SAND	357	110,087.90	34,242	40	16,773.01	3,954	374	126,860.91	35,926
800 INTERMODAL	1,018	176,150.45	30,948	10,638	2,612,232.23	184,671	11,420	2,786,382.68	209,360
850 AUTOS				1,676	1,602,112.09	39,758	1,676	1,602,112.09	39,758
900 MISC	1,040	717,438.05	79,684	3,270	1,808,092.57	247,640	3,630	2,525,530.62	286,841
HAULAGE	2,487	1,250,775.01	167,293	544	275,419.51	46,566	3,031	1,526,194.52	213,859
ZONE				3,962	837,177.87	346,987	3,962	837,177.87	346,987
	34,779	19,482,591.05	2,304,238	43,896	21,882,952.49	2,753,148	66,213	41,365,543.54	4,166,685

PROG: SYSTEM TRAFFIC F10 GROUP
W:\M10M10SY\SYSTEM02.DBF

Bangor & Aroostook Railroad System

Period: 01/01/2002 thru 12/31/2002

10/01/2003
Public
302

410 GROUPING		BAR		CDAC		SYSTEM	
CODE	DESCRIPTION	CARS	US PROP	CARS	US PROP	CARS	US PROP
100	LUMBER	2,168	1,873,880.04	2,308	1,232,496.49	2,557	3,106,176.53
110	OSB	2,344	1,421,482.33	3,637	2,288,577.61	4,007	3,710,069.94
120	ROUNDWOOD	3,124	602,029.49	301	129,702.22	3,409	731,731.71
130	WOODCHIPS	7,208	2,256,313.80	408	150,893.00	7,209	2,407,206.80
140	WOODPULP	63	107,950.53	1,901	2,041,054.79	1,964	2,149,005.32
200	PAPER	6,155	4,863,443.70	5,875	2,904,940.43	7,300	7,768,384.13
250	SCRAP PAPER	151	113,263.00	38	15,593.00	156	128,856.00
300	CLAY	143	99,963.92	16	9,138.92	143	109,102.84
320	GYP SUM BOARD	19	24,618.01	646	766,831.13	646	766,831.13
400	FERTILIZER	1,458	1,134,149.83	38	30,405.91	55	55,023.92
410	CHEMICALS	2,101	1,240,297.86	1	450.00	2,292	2,782,874.50
420	BUNKER C	96	60,225.00	55	24,013.56	2,102	1,240,747.86
430	LIGHT OIL	701	702,573.40	690	308,774.03	1,391	1,011,347.43
440	PROPANE	127	106,266.00	2,491	895,380.50	2,508	1,001,646.50
500	FOODS	292	144,695.44	904	312,538.42	1,100	457,231.86
510	FRZN FOODS	325	299,621.12	304	133,144.00	331	432,765.12
600	GRAIN	547	175,409.36	134	58,582.28	678	233,991.64
610	STARCH	67	18,125.00	1,119	397,287.39	1,186	413,412.39
700	STONE & SAND	623	470,888.59	1,904	1,783,876.78	1,904	1,783,876.76
800	INTERMODAL	4,282	2,162,722.64	959	611,012.27	1,189	1,081,900.88
850	AUTOS	2,488	566,626.76	343	186,745.24	4,411	2,349,467.88
900	MISC			3,994	914,587.80	3,994	1,481,214.58
	HAULAGE						
	ZONE						
		34,482	18,442,355.82	30,101	16,847,579.85	50,690	35,289,935.67
					2,256,590		3,586,936

APPENDIX 3 TO YOCUM V.S.

Bangor & Aroostook Railroad System Income Statement & Margin Analysis - Management Basis For the Twelve Months Ended December 31, 2001

10/30/02

	12/31/01	Margin
Revenues:		
Transportation Services	38,814,821	83.6%
Other Operating	7,607,456	16.4%
Total Revenues	46,422,277	100.0%
Operating Expenses:		
Payroll & Related	25,846,950	55.7%
Materials & Supplies	2,054,754	4.4%
Diesel Fuel	4,792,404	10.3%
Car Hire & Equip. Rentals, net	11,091,001	23.9%
Outside Services	5,577,862	12.0%
Rent, Heat & Utilities	1,050,619	2.3%
Insurance	690,219	1.5%
Other Services & Expenses	6,771,471	14.6%
Property & Corporate Taxes	838,716	1.8%
Depreciation & Amortization	2,377,727	5.1%
Capital & Misc. Credits	(1,565,187)	-3.4%
Other Operating Credits	(553,414)	-1.2%
Special Charges	8,990,034	19.4%
Total Operating Expenses	67,963,156	146.4%
Income (loss) from Operations (EBIT)	(21,540,879)	-46.4%
Operating Ratio	146.4%	
Non-operating Income	394,627	0.9%
Interest Expense	(5,489,690)	-11.8%
Income (loss) before Taxes	(26,635,943)	-57.4%
Federal Income Taxes	-	0.0%
State/Provincial Income Taxes	-	0.0%
Income Taxes	-	0.0%
Income (loss) before Extraordinary Items	(26,635,943)	-57.4%
Extraordinary Items	-	0.0%
Net Income (loss) before Preferred Dividend Requirement	(26,635,943)	-57.4%
Preferred Dividend Requirement	-	0.0%
Net Income (loss) to Common	(26,635,943)	-57.4%

APPENDIX 4 TO YOCUM V.S.

Bangor & Aroostook Railroad Systems Income Statement & Margin Analysis For the Twelve Months Ended December 31, 2002

10/1/03

	12/31/02	Margin
Revenues:		
Transportation Services	\$ 34,149,394	81.5%
Other Operating	7,761,454	18.5%
Total Revenues	41,910,848	100.0%
Operating Expenses:		
Payroll & Related	21,551,371	51.4%
Materials & Supplies	2,286,478	5.5%
Diesel Fuel	3,990,517	9.5%
Car Hire & Equip. Rentals, net	5,978,838	14.3%
Outside Services	5,905,939	14.1%
Rent, Heat & Utilities	685,515	1.6%
Insurance	915,089	2.2%
Other Services & Expenses	4,483,607	10.7%
Property & Corporate Taxes	896,911	2.1%
Depreciation & Amortization	2,042,821	4.9%
Capital & Misc. Credits	(1,226,012)	-2.9%
Other Operating Credits	(1,156,872)	-2.8%
Special Termination Benefits	-	0.0%
Total Operating Expenses	46,354,202	110.6%
Income (loss) from Operations (EBIT)	(4,443,354)	-10.6%
Operating Ratio	110.6%	
Non-operating Income	17,942	0.0%
Interest Expense	5,086,431	12.1%
Income (loss) before Taxes	(9,511,843)	-22.7%
Income Taxes	-	0.0%
Net Income (loss)	(9,511,843)	-22.7%

STATE OF MARYLAND)
)
) SS
COUNTY OF BALTIMORE)

Frederic W. Yocum, Jr.

Carole E. Williams
Notary Public

Public
305

VERIFIED STATEMENT

OF

EDWARD A. BURKHARDT

My name is Edward A. Burkhardt. I am Chairman of the Board of Montreal, Maine & Atlantic Corporation and its wholly owned subsidiary, Montreal, Maine & Atlantic Railway Ltd. ("MMA"). I am also President and CEO of Rail World, Inc., the founding shareholder of MMA. I have forty-two years of railroad management experience as described in my curriculum vitae, which I have attached. I am submitting this Verified Statement in support of the Trustee's Application for Adverse Discontinuance and Abandonment.

On July 24, 2002, MMA entered into an asset purchase agreement (the "APA") with James E. Howard ("Trustee"), Trustee of the Bangor & Aroostook Railroad Company and affiliated railways (collectively, "BAR"), pursuant to which MMA acquired substantially all of the railway operating assets of BAR except for the portion of the Northern Vermont Railroad south of Newport, Vermont (the "MMA System" or the "Former BAR System"). The United States Bankruptcy Court for the District of Maine approved the APA on October 8, 2002. MMA and the Trustee closed the purchase on January 9, 2003. Since January 9, MMA has owned and operated the Former BAR System.

I was aware that, prior to its bankruptcy, BAR had entered into a series of agreements with Canadian National Railway Company ("CN") that gave CN commercial access to the paper mill of Fraser Papers Inc. at Madawaska, Maine ("Fraser"). The agreements included (i) a "Junction Settlement Agreement," under which BAR agreed to provide haulage service for CN between Fraser and the CN/BAR interchange in St. Leonard, NB; (ii) a "Trackage Rights Agreement," under which CN obtained the right to serve Fraser directly using BAR's

lines between Fraser and the CN/BAR interchange; and (iii) an "Easement," which was to be used only in conjunction with CN's trackage rights. I will refer to these agreements collectively as the "CN Agreements."

The CN Agreements severely undermine the MMA System's viability. CN's use of the Junction Settlement Agreement shifts a significant stream of revenue – approximately \$600 per car – from MMA to CN. MMA operates a 745-mile network to move traffic locally and for interchange with CN, Canadian Pacific Railway ("CP"), and Guilford Rail System ("Guilford"). If CN commenced service to Fraser under the Trackage Rights Agreement, MMA would have little hope of earning revenues adequate to support continued operations, investment, and ownership with respect to substantial portions of the MMA System. If it cannot earn adequate revenues, MMA will have no choice but to rationalize its system through abandonments. For Fraser, this would likely mean the loss of MMA-CP and MMA-Guilford routing alternatives that it currently uses. For other shippers and communities in the State of Maine, this might mean the loss of rail service entirely. However, if MMA were no longer burdened by BAR's ill-advised agreements with CN, it would have additional resources for maintaining and improving operations over the lines used by Fraser and other shippers in Maine.

The CN Agreements Significantly Reduce MMA's Potential Revenues from Fraser Traffic

The CN Agreements deprive MMA of significant revenues that it would otherwise earn on traffic moving to and from Fraser. Prior to the implementation of the CN Agreements, BAR and CN offered joint line rates via BAR's interchange with CN at St. Leonard, NB. Under the joint line rates, BAR's revenues averaged approximately \$1,100 per loaded car. By contrast, under the Junction Settlement Agreement, CN pays MMA

approximately \$500 per loaded car for the same service.¹ The difference between BAR's division under the joint line rate and the current haulage payment to MMA is significant by itself. However, CN is not obligated to use the Junction Settlement Agreement to serve Fraser. CN could instead institute service with its own locomotives and crews under the Trackage Rights Agreement. Under the Trackage Rights Agreement, CN would pay MMA approximately \$100 for each loaded or empty car moving over the line between St. Leonard and Fraser.

The impact of the CN Agreements on MMA becomes even more apparent when one understands the actual amount of revenue at stake. Historically, Fraser had been BAR's second largest customer, accounting for approximately 14 percent of BAR's revenue in 2000. In 2000, the year prior to implementation of the CN Agreements, BAR and CN interchanged approximately 3,400 cars of Fraser traffic, generating BAR revenues of approximately \$3,626,000. Under the Junction Settlement Agreement, BAR's revenues would have been only \$1,700,000. Had CN instituted service under the Trackage Rights Agreement, BAR's revenues would have been only \$680,000.²

The CN Agreements have had a clear impact on MMA. In the first six months of 2003, MMA incurred operating losses of nearly \$1,969,000. Approximately half of this deficit could have been eliminated if the approximately 1,625 cars of Fraser traffic that MMA handled

¹ There are two MMA train assignments each day that perform switching for Fraser, among other duties. One of these also makes the CN interchange run to and from St. Leonard six days a week over the line of Class II track between Madawaska and St. Leonard.

² If CN were to implement the Trackage Rights Agreement, MMA revenue from Fraser traffic moving via St. Leonard would decrease from approximately \$500 per loaded car to approximately \$200 per loaded car. The loss of revenue would far outweigh any savings in operational expense, as MMA would retain responsibility for the extensive switching operations at Fraser.

under the Junction Settlement Agreement had moved under the BAR-CN joint line rates in place prior to the CN Agreements.

The MMA System's Light Density Makes Preserving Operations an Ongoing Challenge

The CN Agreements seriously threaten MMA's viability because of the underlying fragility of the Former BAR System. The MMA System is a risky operation from a financial perspective, as BAR's bankruptcy clearly illustrates. MMA's customer base is relatively concentrated, but MMA also relies on a collection of relatively small shippers for a significant portion of its revenues.³ It must operate a sizeable network in order to retain existing business and attract future business by offering shippers the ability to move traffic locally and for interchange with CN, CP, and Guilford.

In analyzing the viability of any component of the rail network, traffic density is perhaps the most important consideration. In my experience, the most useful measure of traffic density is a railroad's annual revenue per route mile. I used that measure in evaluating MMA's purchase of the Former BAR System, and I continue to use it in evaluating MMA's future prospects.

In 2000, average revenue per route mile of all U.S. Class I railroads was \$343,598. In the same year, Wisconsin Central, a financially successful regional railway of which I served as founder and Chairman, President and CEO, generated \$134,824 in average revenue per route mile. Wisconsin Central achieved a lower cost base than prevailed on the

³ In 2001, BAR's ten largest customers accounted for 62 percent of the system's gross freight revenues. The risks associated with dependency on a few larger shippers was dramatically illustrated by the recent bankruptcy of Great Northern Paper Company, which I discuss below.

Class I's, and was thereby able to operate successfully with its lighter revenue density. The average regional railroad generated approximately \$83,051 in average revenue per mile.

I do not expect MMA to achieve the revenue densities of a Class I or even a larger regional railroad like Wisconsin Central. Smaller rail carriers, such as BAR, and now MMA, can operate at lower revenues per route mile than their larger brethren through stringent control of costs. However, their margin for error is small, and if they do not achieve sufficient revenue densities, they enter into a downward spiral of deferred maintenance, reduced service, and thus diminished utility to shippers. Ultimately, their operations become unsustainable and selective abandonment of unprofitable segments becomes a virtual certainty.

The BAR system's revenue density in 2000 was \$53,569 – less than two-thirds that of the average regional railroad, less than half that of Wisconsin Central, and only 15 percent that of the Class I railroads. Its revenue density in 2001 was \$48,193, with the reduction in revenues on Fraser traffic being an important element in the decline. This was plainly insufficient to achieve financially viable operations, and BAR entered bankruptcy in December 2001. By 2002, average revenue per mile on BAR's system had dropped to \$44,282.

MMA's business plan projected that the MMA System would achieve revenue per mile of \$62,064. This assumed that MMA would be able to regain revenues lost because of the Junction Settlement Agreement, regain traffic lost because of the uncertain financial status of BAR, and achieve some modest growth in other areas. However, through the first six months of 2003, MMA's revenue density on an annualized basis actually dropped to \$33,978. At that rate,

MMA operations and investment cannot be sustained, despite the significant cost reductions implemented by MMA.⁴

MMA's Efforts to Develop a Viable System

MMA considered various options for acquiring all or portions of BAR's railway operating assets before acquiring the Former BAR System from the Trustee in January 2003. The system's light density in general, and BAR's loss of revenues resulting from the CN Agreements in particular, were important considerations in MMA's evaluation of the acquisition. However, the Trustee emphasized his view that the public interest required finding a buyer that would acquire as much of the system as possible, and MMA ultimately managed to develop a viable plan for acquisition of the Former BAR System after careful due diligence, operational planning, financial analysis, and negotiations with the Trustee. In the end, MMA was the only bidder for BAR's assets whose business plan assumed operation of the complete network (other than a portion of the Northern Vermont lines).

MMA's business plan carried substantial risk. It assumed that MMA could return to the revenue levels that BAR experienced before it entered into the CN Agreements and suffered other bankruptcy-related revenue losses. At the time MMA acquired the Former BAR System, I believed that MMA could have operated the entire system, even allowing for the lost Fraser revenues due to the Junction Settlement Agreement. However, there was little room for error. MMA would have been in a precarious position and would have had to consider certain abandonments unless it could successfully increase other traffic. It would have been continually

⁴ The 2002 and 2003 revenue density calculations are based on operations under the Junction Settlement Agreement. MMA's revenue density would fall even lower if CN commenced operations under the Trackage Rights Agreement.

vulnerable to economic downturns or the loss of significant business. I also recognized that, absent major traffic growth, CN's implementation of the Trackage Rights Agreement would have been devastating to the plan to operate the entire MMA System. Consequently, in its negotiations with the Trustee, MMA offered significantly less than it would have paid absent the CN Agreements, but it agreed to pay an additional \$5 million if the Trustee succeeded in eliminating the CN Agreements.

MMA anticipates that the elimination of the CN Agreements would allow it to negotiate with CN for a larger share of the revenue than MMA currently receives for Fraser traffic moving over the St. Leonard interchange. This additional revenue would benefit Fraser and other Maine shippers who rely on the MMA System. MMA would be in a stronger position to carry out its business plan by improving operations on its lines between Madawaska and Brownville Jct., and between Brownville Jct. and the Canadian border. Fraser and other MMA shippers use these lines to route traffic via CP and Guilford as alternatives to routings via CN. If MMA can attract more traffic to these lines, it can increase service frequency, to the benefit of Fraser and other MMA shippers. However, as I explain below, MMA's ability to obtain additional revenues is essential to this plan, because these lines are the ones most likely to be abandoned if the additional revenues do not materialize.

Events After the Acquisition Further Threaten the MMA System's Viability

The importance of restoring Fraser revenues that were lost because of the CN Agreements has become even greater in light of events that occurred just after MMA acquired the Former BAR System. Within hours after MMA and the Trustee closed on the sale, Great Northern Paper Company ("GNP"), the largest single customer on the Former BAR System, announced that it was filing for Chapter 11 bankruptcy protection. The next week, MMA

learned that GNP would not operate its Millinocket and East Millinocket paper mills while in bankruptcy. GNP accounted for approximately \$800,000 in monthly revenue, which was approximately 25 percent of the total monthly revenue for the BAR system.

The GNP mills were acquired by Brascan on or about April 29, 2003. Brascan resumed newsprint manufacturing at the East Millinocket Mill in June 2003.⁵ It has also slowly resumed directory paper manufacturing at the East Millinocket Mill. However, most of the shipments from East Millinocket move by truck because newsprint moves relatively short distances in relatively small amounts, orders must be filled quickly, and many receivers do not have rail service. As of today, the East Millinocket Mill is shipping only a small fraction of the rail traffic that moved historically in connection with this facility, while the Millinocket Mill remains closed.

The GNP shutdown exacerbated in the extreme the revenue problem created by the CN Agreements. The continuing sluggish performance of the economy in northern Maine and throughout the United States has also stunted the growth of MMA's traffic base and undermined MMA's efforts to attract sufficient business to offset revenue that MMA would have obtained absent the CN Agreements.

MMA has taken extraordinary steps to deal with these unexpected challenges. It has not relied on the possible termination of the CN Agreements to solve its problems. It has gone far beyond the initial, extensive cost-cutting measures it implemented when it acquired the Former BAR System. It slashed the salaries of its top managers by forty percent and reduced the pay of the balance of its U.S. employees by twenty-five percent within a week after GNP

⁵ Brascan is operating the former-GNP assets under the name Katahdin Paper.

announced its shutdown. It furloughed eight employees (but provided them with up to six months in continuing health benefits). It also reduced its train schedules and adjusted its yard operations to reflect lower traffic levels and cut costs.

MMA has done all that it can do to confront its current challenges without undermining its ability to serve its existing customers. However, despite its extensive efforts to cut costs, MMA cannot continue indefinitely to operate its entire system at current revenue levels. It has become exceedingly clear that MMA could not bear the additional loss of revenue that would result if CN commenced operations under the Trackage Rights Agreement.

MMA's Options to Remain Viable

MMA's options for remaining viable in light of its current circumstances are limited. I believe that MMA has the potential to grow into a strong, stable, profitable system. However, it will never have a chance to reach its potential unless it can achieve adequate revenues in the near term. I would strongly prefer to maintain the entire system and build on its strengths, but if MMA is unable to achieve adequate revenues, then the only sensible approach will be to rationalize the system in an effort to bring revenues and costs into balance. Such a rationalization would likely involve abandoning large portions of the MMA System and the loss of rail service that I, the Trustee, and many others have worked hard to preserve.

MMA has not prepared a formal analysis of potential abandonments. However, I considered the prospect of operating a smaller system in evaluating the acquisition of the Former BAR System. The most likely strategy would involve abandoning the former Canadian American Railroad Company line between Brownville Junction and the US/Canadian border and at least some portion of MMA's north-south main line south of Madawaska. Such a strategy would, in effect, reduce the MMA System to two short lines primarily serving the three largest

paper mills on its system (*i.e.*, Fraser's Madawaska Mill and the former-GNP mills in Millinocket and East Millinocket) and connecting to the nearest trunk line carriers (*i.e.*, CN at St. Leonard and Guilford at Northern Maine Jct.). I believe that this could be a viable operation, even if the former-GNP mills do not resume rail shipments at pre-bankruptcy levels. MMA would operate a much smaller system, but one with higher revenue density and lower costs. It would retain service to some of its largest customers, but those customers would lose access to alternative connections. For example, Fraser would no longer be able to use MMA-CP or MMA-Guilford routings as it does today; its only connection would be over St. Leonard with CN. I do not believe that abandonments are MMA's best option, but they may be the only option if MMA is not relieved of the burdens imposed by the CN Agreements.

Discontinuance of CN's Trackage Rights Is in the Public Interest

Much of the debate over rail policy in the United States in the years subsequent to the passage of the Staggers Act in 1980 has involved the need for competition between rail carriers. Shippers everywhere want rail competition, but effective public policy requires a balancing between such objectives and considerations of railroad efficiency and financial viability.

Historically, BAR (and now MMA) customers, including Fraser, have been directly served by only a single carrier. This situation developed because the relatively high costs and low revenues associated with serving the customer base would not support the introduction of competitive service. It reflects the market's determination that there is not sufficient traffic to sustain two-railroad competition.

I believe that Fraser's rates are largely constrained by truck competition for its inbound raw materials and outbound paper, and by MMA's strong interest in keeping Fraser

competitive with the hundreds of paper shippers not served by the MMA System.⁶ The current proceeding does not involve an effort to extract higher rates from Fraser; it involves MMA's ability to obtain a larger division from CN. However, even if Fraser has received some benefit from two-carrier service, that benefit was a pure windfall. CN access to Fraser does not reflect the market's determination that two-railroad competition could be sustained on the BAR system. To the contrary, it reflects the system's failure to generate sufficient revenues to support even one carrier.

MMA provides rail service throughout the State of Maine and has strong incentives to continue those operations. It has enjoyed substantial support from shippers, on-line communities, and government officials. It has sought to retain employees, retain facilities, and provide a high level of service for rail-dependent industries. The State of Maine has committed \$6 million over three years in matching funds to finance infrastructure upgrading projects. MMA has a strong interest in achieving the goals of its business plan and operating the entire MMA System.

MMA has been operating, albeit precariously, under the terms of the Junction Settlement Agreement since it acquired the Former BAR System. Its financial condition was been further weakened by the bankruptcy and closure of the GNP mills at Millinocket and East Millinocket – a development beyond its control. The resumption of operations at East Millinocket staved off disaster, but MMA is living on the edge. It will remain there unless it increases revenues or suffers another blow. CN's exercise of its rights under the Trackage

⁶ Moreover, Brascan owns 43 percent of Nexfor, which is Fraser's parent corporation, and Fraser has been tasked with operating the former-GNP mills. Thus, MMA has even stronger incentives than in the past to maintain a positive relationship with Fraser.

Rights Agreement would be a devastating blow. However, the elimination of the CN Agreements, including CN's ability to exercise the Trackage Rights Agreement, will allow MMA to recover lost revenues and achieve a level of stability that will ultimately benefit shippers throughout the State of Maine.

Conclusion

The CN Agreements threaten MMA's ability to continue to operate the entire MMA System. Under the present circumstances, MMA is not generating sufficient revenue from its current operations to support continued ownership and investment in major portions of the MMA System. Its prospects, and those of rail shippers throughout Maine, are severely undermined by the CN Agreements. The elimination of the CN Agreements and the discontinuance of CN's trackage rights would return revenue from Fraser traffic back to the MMA System. This additional revenue would be directed back into the MMA System and would dramatically improve MMA's prospects of sustaining operations on its entire network, to the benefit of Fraser and all of the other customers of the MMA System.



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Edward A. Burkhardt

Edward A. Burkhardt is President of Rail World, Inc., of Chicago, Illinois, a railroad investment, management and consulting company he formed in 1999.

United States:

Mr. Burkhardt serves as Chairman of the Montreal, Maine & Atlantic Railway, a 750 mile regional railway operating in Maine, Vermont, Quebec and New Brunswick. He is President of The San Luis Central Railroad Company, a short line railway based in Monte Vista, Colorado, and serves on the Board of Directors of the Wheeling & Lake Erie Railway, a regional carrier serving the states of Ohio, Pennsylvania and West Virginia. Prior to his creation of Rail World, Mr. Burkhardt was for 12 years the Chairman, President and Chief Executive Officer of Wisconsin Central Transportation Corporation, which was the largest of the regional railroads spun off from Class I's in recent years. Mr. Burkhardt also served as President of Algoma Central Railway, Inc., a Canadian subsidiary of WCTC.

International:

Mr. Burkhardt is Chairman of the Supervisory Board of Baltic Rail Services OÜ, and of its subsidiary, Eesti Raudtee (Estonian Railways), based in Tallinn, Estonia. He is President & CEO of Rail Polska, based in Warsaw. Rail Polska completed two acquisitions in early 2003: the shortline railway Kolex (based in Oświęcim) and the coal operation of ZecTrans (based in Wrocław). Kolex and Zec Trans have both been granted unrestricted operator licenses on the Polish rail network, and will commence long-haul train operations on October 2003.

Mr. Burkhardt was Chairman and Chief Executive of English Welsh & Scottish Railway Ltd. during the period from its start-up in December 1995 through July 1999. He led the investor group that purchased five railway operations from the British Railway Board. Today EWS handles 90% of rail freight in the United Kingdom. He also served as Chairman of Tranz Rail Holdings Ltd., the rail and ferry system of New Zealand, from its start-up in September 1993 until August 1999.

Mr. Burkhardt was also Chairman of Australian Transport Network from 1997 through August 1999, which purchased Tasrail, a freight carrier operating in the island State of Tasmania, Australia. Subsequently, Tasrail purchased the Emu Bay Railway from the mining company Pasminco and merged the two rail operations.

Prior to his time at Wisconsin Central, Mr. Burkhardt's railroad career spanned 20 years with the Chicago and North Western Transportation Co., where he was Vice President Marketing and Vice President Operations.

Mr. Burkhardt serves on the Board of Directors of ICN Pharmaceuticals, Inc. and PolyMedica Corporation.

He holds a B.S. degree with honors in Industrial Administration from Yale University and studied Rail Transportation at Yale's Graduate School.

He is Past President of the Western Railway Club. Mr. Burkhardt also served on the Executive Committee of the Regional Railroads of America. He is a former Chairman of the Finance Committee of the United States-New Zealand Council. In February 1995 Mr. Burkhardt was appointed Honorary Consul for New Zealand at Chicago. In 1999 he was named Railroader of the Year by "Railway Age" magazine, and subsequently in December 1999 "Railway Age" named him one of 16 Railroaders of the Century.

He resides in Kenilworth, Illinois, with his wife, Sandra. He has a grown daughter, Cindy.

October 2003

Public
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VERIFICATION

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Edward A. Burkhardt, being duly sworn, deposes and says that he is the Chairman of the Board of Montreal, Maine & Atlantic Corporation and its wholly owned subsidiary, Montreal, Maine & Atlantic Railway Ltd. ("MMA") and President and CEO of Rail World, Inc., the founding shareholder of MMA, that he has read the foregoing statement, knows the contents thereof, and that the same are true and correct to the best of his knowledge and belief.



Edward A. Burkhardt

Subscribed and sworn to before me this third day of October, 2003.



Notary Public

My Commission expires: 9-10-05



VERIFIED STATEMENT

OF

ROBERT C. FINLEY

My name is Robert C. Finley. I am a Principal with Harford & Associates, Inc. I have nearly thirty (30) years of experience in railroad marketing and financial analysis, as more specifically described in the resume that is attached hereto as **Appendix 1**.

I was retained by Rail Trac Associates to assist in the preparation of a report (the "Railtrac Report") that analyzes whether it would be in the financial interest of the Montreal, Maine & Atlantic Railway Ltd. ("MMA") to abandon the following lines of railroad: (1) the portion of its main line between Madawaska and Portage, Maine (the "Madawaska-Portage Line"); and (2) the portion of the former Canadian American Railroad Company line between Brownville Junction, Maine and the US/Canadian border (the "CDAC Line").

The Railtrac Report was prepared at the request of the Trustee's counsel. A copy of the Railtrac Report is attached hereto as **Appendix 2**. The Railtrac Report concludes that it would be in MMA's financial interest to abandon both the Madawaska-Portage Line and the CDAC Line. The basis for this conclusion is summarized below and is described more fully in the "Summary of Analysis of Revenue, Avoidable Costs and Opportunity Costs" set forth in **Appendix 2**.

Madawaska-Portage Line

The Railtrac Report first analyzes whether it would be in MMA's financial interest to abandon the Madawaska-Portage Line assuming the Junction Settlement Agreement and

Trackage Rights Agreement remain in place. The Railtrac Report concluded that MMA would save \$51,943 annually from abandoning the Madawaska-Portage segment.

CDAC Line

The Railtrac Report next analyzes whether it would be in MMA's financial interest to abandon the CDAC Line between Brownville Junction and the U.S. border in the event that the Junction Settlement Agreement and Trackage Rights Agreement remain in place. The Railtrac Report concluded that MMA would save \$528,015 annually from abandoning the CDAC Line.

Both Segments

The Railtrac Report also analyzes whether it would be in MMA's financial interest to abandon both the Madawaska-Portage Line and the former CDAC Line in the event that the Junction Settlement Agreement and Trackage Rights Agreement remain in place. The Railtrac Report concluded that MMA would save \$805,293 annually from abandoning both the Madawaska-Portage Line and the CDAC Line.

LIST OF APPENDICES

Appendix 1 – Robert C. Finley Resume

Appendix 2 – Rail Trac Associates Analysis of Proposed Abandonment of Rail Line Segments
of Montreal, Maine & Atlantic Railway

VERIFICATION

STATE OF Connecticut)
)
) SS Old Lyme
COUNTY OF New London)

Robert C. Finley, being duly sworn, deposes and says that he is a Principal with Harford & Associates, Inc., and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct to the best of his knowledge, information and belief.

Robert C. Finley
Robert C. Finley

Subscribed and sworn to before by Robert C. Finley this 3rd day of October, 2003:

James J. Jankowski
Notary Public

My Commission Expires: 7/31/06

APPENDIX 1 TO FINLEY V.S.

ROBERT C. FINLEY—Principal

M.B.A. Finance, Wharton School of the University of Pennsylvania
B.A. Economics and Accounting, Muskingum College

Robert Finley has close to three decades of executive experience in the transportation industry, specifically in the areas of finance, marketing, workouts, acquisitions, and leasing. He has successfully reduced costs and increased productivity for a number of companies, while carefully balancing performance and market demand. In addition to establishing aggressive line sales, he spearheaded a small company's growth from \$5 million to \$30 million; he restructured a failing company, for which he attained equity infusion and restored profitability; and he implemented a new form of tax advantage financing for regional railroads. Mr. Finley is recognized for his innovative marketing and finance techniques.

Mr. Finley advised the Transport Reform Unit of the Victoria, Australia, government about the financial strategies for privatization of their freight and passenger railroad operations. Initial studies for the state indicated the freight operations could be sold for \$20 to \$40 million but would require financial assistance and subsidies. Based on Mr. Finley's suggested alterations to the financial plan and offering memorandum, the freight operations were sold for \$167 million with no requirements for state assistance.

He has acted as the independent financial analyst for the Federal Railroad Administration determining the viability of regional and shortline railroads applying for government loans under the Railroad Rehabilitation and Improvement Financing Program (RRIF). These assignments are particularly challenging as the analysis has to determine that the applicant could not obtain conventional financing but will be able to repay the Federal government over a more extended period of time.

Mr. Finley assisted the Camas Prairie RailNet in one of the few heavily contested abandonment applications since the formation of the Surface Transportation Board. His responsibilities included preparation of carload costing projections using the Uniform Rail Costing System (URCS) and financial statements based on those projections.

Currently Mr. Finley assists the Housatonic Railroad, a shortline railroad located in western Massachusetts and Connecticut, and Iowa Pacific Holdings, a shortline holding company based in Chicago, serving each as their Vice President of Finance. In these part time jobs he oversees the finance and many administrative functions of the properties.

ROBERT C. FINLEY—Page 2

MAJOR ACCOMPLISHMENTS

As executive vice president of Iowa Interstate Railroad Limited, a \$30 million regional railroad operating from Chicago to Omaha, he directed finance and human resources. He directly affected all corporate functions, organizing the company from near bankruptcy and coordinated debt restructuring and equity infusion. Among numerous successful accomplishments at Iowa Interstate, Mr. Finley:

- Helped merge Iowa Interstate, at the time an almost bankrupt railroad, with Heartland Rail Corporation. He negotiated with creditors, found new sources of secured debt, gained approval from government lenders, issued stock, centralized corporate offices and stabilized the financial structure and profitability of the line—all within a single year.
- Reorganized the corporate accounting department, solving an outside auditor's premerger "material weakness qualification."
- Managed a 1993 flood crisis, not only saving the company but also turning a modest profit.
- Identified a willing investor whose major cash injection stabilized the company's financial position.
- Negotiated debt restructuring through a tax-advantaged sale/leaseback of in-use mainline rail, generating \$11.8 million in the process, and he utilized NOLs, lowering cash needs by \$1.1 million.
- Acquired rail lines in the Des Moines area, thus boosting Iowa Interstate's customer base.
- Lowered liability and property insurance expenses by 50 percent.
- Convinced Iowa Interstate's largest customer to stay in Iowa by building a new rail yard, intermodal transfer facility and engine repair facility, using grants and forgivable loans from the state and county.
- Thwarted another company's unacceptable attempt to purchase Iowa Interstate.
- Developed a cost accounting system and model that enabled Iowa Interstate to set prices that fully reflected allocated costs, thus ensuring that all traffic moved at a profit.

As vice president of Chicago West Pullman Transportation Corporation, a growth and acquisition-oriented company, Mr. Finley managed all aspects of new property purchases while assisting in selected marketing efforts. Specifically, he:

- Grew the company from four to seven operating properties, increasing revenues by \$25 million.

ROBERT C. FINLEY—Page 3

- Developed an acquisition strategy, identified purchase candidates, assembled proposals, managed bidding, coordinated purchases and assisted in the start-up of the acquisitions.
- Implemented a new business plan that turned around a stagnant property and grew the business 25 percent.
- Coordinated financing with a holding company and directed customer service and sales for selected properties.

As assistant vice president of marketing services at the Southern Pacific Transportation Company, a \$3 billion railroad, Mr. Finley directed a staff of 40, including market research, intermodal development, labor negotiations, telemarketing, advertising, freight equipment planning, information systems and branch line development and abandonment. In this position, he:

- Set the company's commercial direction to help it become an aggressive user of the newly deregulated environment.
- Eliminated circuitous routing (in transit storage), resulting in a savings of \$50 million and causing minimal disruption to customers and competing railroads.
- Liquidated \$10 million of losing operations and sold \$50 million of unprofitable operations for \$75 million.
- Negotiated union contract rule changes that enabled the company to capture \$25 million in new revenues. The company subsequently received the Golden Freight Car, which recognizes the most innovative marketing program.

He has been responsible for the finance and administrative functions of two start-up corporations. One, a publicly financed venture, was an attempt to privatize the railroad equipment maintenance for the Massachusetts Bay Transportation Authority. Mr. Finley was coordinating the hiring of more than 500 people in less than six weeks when the effort was thwarted by legal and political issues outside of the venture's control. A second venture, privately funded, reintroduced the use of railroad boxcars for fast delivery of small volume shipments.

Mr. Finley has also held positions with the United States Railway Association and the Southern Railway System.

[THE RAIL TRAC REPORT IS HIGHLY CONFIDENTIAL]

**[THE VERIFIED STATEMENT OF JAMES N. HELLER
IS HIGHLY CONFIDENTIAL]**