Formal issue 14#01A 27 January 2014

**MAINE**
MDOT: 6th IRAP open, applications 20 February.*

**MMA estate:** For LMS sale see box in 4.3.

Pan Am: Derailment on E.Augusta Running Track.*

**MASSACHUSETTS**

[No report.]

**NEW HAMPSHIRE**
Pan Am/MBRX: Despite two derailments, Pan Am declines MBRX offer of help for Hendrix.

**RHODE ISLAND**

[No report.]

**VERMONT**

CN: Update on Plaster Rock derailment.++

**MARITIMES**

A cross-reference to companies mentioned here.

**PEOPLE, POSITIONS, EVENTS**

Quebec Railway Symposium.

**EDITORIALS**

See mini-editorial in New Hampshire.

FROM THE PUBLISHER

I will, after this issue, no long cover general US and Canadian news on crude transport and tank car safety. Others (even *The New York Times*) are handling it. I will continue with regional news on crude.

- Chop Hardenbergh
Next formal issue Feb 10

Common abbreviations:
MMA: AUCTION RESULT; COURTS' APPROVAL; COMMENTARY ++


Surprisingly, given that Trustee Robert Keach reported multiple bids, and that the bid procedures were relatively complicated, the auction took less than 45 minutes. The fact that the auction ended was made known at 10h40 to your editor and the only other media present, cameraman Bertrand Galipeau and reporter Claudine Richard-Beaudoin from CBC Sherbrooke, by George Marcus, who represented secured creditor Wheeling & Lake Erie Railroad.

Vermont Rail System happy

Representatives of VRS, including Mary Anne Michaels, chief financial officer, emerged about five minutes later. David Wulfson, president, would say nothing except “We are very happy.”

Fortress

About 20 minutes later, John Giles, who was representing Fortress subsidiary Railroad Acquisition Corporation, emerged. “We are back in the railroad business,” he said. “I am happy to say we won.” {Giles was president and CEO of RailAmerica, owned by Fortress before its sale to GWI.]

Asked about the VRS comment, Giles said “we can work with them. We know them from the New England Central” [NECR was part of RailAmerica when Fortress owned it.]

The others

Everyone else who emerged from the auction would say little or nothing:

- Ian Simpson, NB&M general manager (no comment)
- Bob Grindrod, MMA president (no comment)
- Rob Culliford, Pan Am general counsel (no comment)
- Nate Moulton, MDOT rail administrator (“I am not unhappy with the result.”) Moulton did add that he was present during the weekend with Bob Keach, vetting the bids.
- Rob Elder, chief of the MDOT freight division, seemed pleased with the result.
- Frederic Maheux, an attorney with the Government of Quebec.
- Patrick Maxey, representing Rail World. He noted that no discussions about Rail World Locomotive Leasing occurred.
- Andrew Adessky with Richter, the Quebec court monitor, who said his report to the Quebec court would appear “either tonight or tomorrow” on the Richter website [see below (4)]. He also said that all bidders were found to meet the requirements to place bids this day.
- Four people declined to give their names. (These were not other bidders). {ANR&P coverage}

The winning bidder

Some media were confused by the card which John Giles handed to your editor, which stated ‘Great Lakes Partners’, located in Jacksonville, Florida.

Giles attended the auction on behalf of Fortress Investments. His affiliation with Great Lakes [probably his consulting firm – editor] did not mean that Great Lakes was making the purchase.

The NB&M/Pan Am bid

Surprisingly, Mary Keith, JD Irving spokesperson, at 15h34 on 21 January (about three hours after the Fortress win news broke) sent this:
STATEMENT FOR IMMEDIATE RELEASE
Wayne Power, Vice President of J.D. Irving, Transportation and Logistics Division

SAINT JOHN, NB: Today, Eastern Maine Railway Company partnered with Springfield Terminal Railway Company to bid for the Maine portions of the Maine Montreal and Atlantic (MMA) rail line. In the end, the trustee went forward with a single buyer of the entire MMA railway line (Maine, Quebec and Vermont track). We look forward to working with Fortress Investment Group of New York as they assume operation of the MMA railway.

J.D. Irving Transportation Division operates 3 short line railroads - the Eastern Maine Railway (EMR), Maine Northern Railway (MNR) and the New Brunswick Southern Railway (NBSR) - covering 883 kilometers (549 miles) of track.

23 January, Bangor, Montreal. **THE US BANKRUPTCY COURT, AND THE QUEBEC SUPERIOR COURT, APPROVED THE SALE TO RAILROAD ACQUISITION HOLDINGS** for US$14.25 million for the entire network in both countries. More than US$1.6 million is also expected to be received from the sale of 25 locomotives to other buyers, according to U.S. Trustee Robert Keach.

*[The locomotives, as explained below, accounted for the bump-up in price, not the difference between the loonie and the dollar as I erroneously reported earlier. Editor]*

The Quebec-appointed monitor, Richter Advisory Group, recommended approval of the sale. 'The offer is for all of the assets and will result in the continued operation of railroads in both Canada and the United States, which is in the public interest,' it wrote in its 22 January report to the Quebec court. The sale allows for the majority of employees in Canada to keep their jobs and that the offer was 'beneficial' to the economic development of the communities along the railway. {Ross Marowits in The Canadian Press 23.Jan.14}

23 January, Maine. **SOME COMMENTARY ON THE SELECTION OF FORTRESS.** Three different Maine sources, all with good rail industry connections who did not want to be named, wrote:

**Source one**
'Keach did a good job of creating a superficial appearance of competition throughout this proceeding. It doesn’t surprise me that no other party saw a compelling reason to operate the whole thing, as I could never envision more than a half-dozen bidders, some of which would only want segments.'

'I would guess that Fortress contemplates a deal with the Canadians to resume oil movements (giving Irving a CN alternative), possibly with a longer-range view of a pipeline in at least part of the MMA rail corridor.'

'The threat of an oil embargo in Quebec and Michaud’s two-man-crew bill (HR 3040) undoubtedly had the unintended consequence of deflating the franchise value to a minor fraction of what Keach was trumpeting ($50-100-million) until the Fortress “stalking-horse” bid was announced. The sad part is that families of the 47 victims will see only token payments at best, and Lac-Megantic and Quebec will bear the brunt of uninsured property damage and environmental clean-up costs.'

**Source two**
'Don’t you think Irving would consolidate, including reducing work or closing the Hermon HQ and Derby [shops]? Also, I’d hate to see the line closed between Old Town and ‘Keag if the interchange moved to Northern Maine Junction. Maybe a company like Fortress will zoom up the railroad similar to [the Florida East Coast Railway – see below Fortress affidavit].'

**Source three**
'In all honesty, I think this is poorly played by Irving. They continue to be monopolized by a Class I and subject to [less than perfect] service from Pan Am. Fortress may or may not help them out... it's a big risk and they gave up a lot of supply chain control for an extremely discounted price. I'm very surprised and disappointed.' {e-mails to ANR&P 21-22.Jan.14}
Editorial comment
I too am surprised that Pan Am/NB&amp;M did not find a third partner who would buy the Quebec lines. Admittedly, that party would have had to pay an additional $8 million, roughly, to reach the next bid level.

By sharing the line from Northern Maine Junction to Brownville Junction with NB&amp;M, Pan Am could abandon Mattawamkeag to Old Town, leaving NB&amp;M to serve Lincoln Paper and Tissue. Indeed, Pan Am probably could have probably sold that portion for $4 million.

THE FOLLOWING SET OF ARTICLES DESCRIBES IN DETAIL THE AUCTION EVENTS

MMA ASSET SALE(1): THE COUNTDOWN*
18 January, Portland. THE TRUSTEE HAS “MULTIPLE BIDS”, he said this day. One bid arrived on Thursday the 16th, and others on Friday the 17th. He declined to reveal the number, value, or coverage. “We’re in the process of reading them now, analyzing them and seeing how they fit together.”

No public word until the court hearing
Keach said earlier that the auction, following the rules approved by the Court [see 13#12A], would be private, and he would not permit reporters to attend. He will present the results of the auction to the Court in Bangor for approval on Thursday 23 January. {ANR&amp;P discussion 18.Jan.13; Tom Bell in Portland Press Herald 17.Jan.13; Whit Richardson in Bangor Daily News 18.Jan.13}

The public interest
Under federal statute, 11 USC section 1165 as interpreted by the US Senate report, the Trustee must consider the “public interest” in the preservation of the debtor’s rail service.

§1165. Protection of the public interest
In applying sections 1166, 1167, 1169, 1170, 1171, 1172, 1173, and 1174 of this title, the court and the trustee shall consider the public interest in addition to the interests of the debtor, creditors, and equity security holders. (Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2641.)

Historical and Revision Notes
legislative statements
Section 1165 of the House amendment represents a modification of sections 1165 and 1167 of the Senate amendment requiring the court and the trustee to consider the broad, general public interest in addition to the interests of the debtor, creditors, and equity security holders in applying specific sections of the subchapter.

senate report no. 95–989
Section 1165 requires the court, in consideration of the relief to be granted upon the filing of an involuntary petition, to take into account the “public interest” in the preservation of the debtor’s rail service. This is an important factor in railroad reorganization, which distinguishes them from other business reorganizations. Hence, this section modifies the provisions in sections 303 and 305 that govern generally when the business of a debtor may continue to operate, when relief under the Act sought should be granted, and when the petition should be dismissed.

Section 1167 [enacted as section 1165] imposes on the trustee the obligations, in addition to her or his other duties and responsibilities, to take into account the “public interest” in the preservation of the debtor’s rail service.

Trustee's Manual. The US Department of Justice, which administers the US Trustees' Office, has published a manual. The pertinent language from the 1998 version, which per Jane Limprecht, public information officer for the Executive Office for U.S. Trustees is 'still effective' {e-mail to ANR&amp;P 18.Dec.13} states:

The United States Trustee supervising the administration of a railroad reorganization estate should be cognizant of certain features of this type of case that are not typical of the ordinary chapter 11.
First, in addition to the consideration generally given to the interests of the debtor, creditors, and equity security holders, the court is required to consider the “public interest” in applying certain provisions of this subchapter. 11 U.S.C. § 1165.

Given the fact that the Surface Transportation Board and the Department of Transportation, as well as any state or local commission having regulatory jurisdiction over the debtor, are accorded the right to be heard on any issue in the case, it may be presumed that these agencies will assist in informing the court of what the public interest is. See 11 U.S.C. § 1164.

Other language within the subchapter indicates that the public interest would include, among other things, maintenance of adequate rail service and considerations having to do with the impact of the court's decisions on employees, shippers, and communities affected by the debtor's operations.

Notwithstanding 11 U.S.C. §§ 365 and 1113, the wages and working conditions of railroad employees established by a collective bargaining agreement cannot be changed by the trustee or the court except as permitted by non-bankruptcy laws. Other preferences in favor of railroad employees are afforded in connection with abandonments, 11 U.S.C. § 1170(e)(1) and (2), and transfer of operations, 11 U.S.C. § 1172(c)(1) and (2). {Manual on-line Volume 3 pages 193-194}

**Who argues for the public interest? MDOT**

Not only is the Court responsible for the public interest, and the statute requires the Trustee to take it into account, but as the Manual stated, USDOT and the STB could assist as well.

MDOT, according to spokesperson Ted Talbot, is 'representing the public interest in the bankruptcy and we are communicating with the bankruptcy Trustee on a regular basis.' {e-mail to ANR&P 18.Dec.13}

Nate Moulton, the department's rail administrator, wrote on 17 January: 'I am likely tied up and out of the office on the MMA bankruptcy thru [23 January].' {e-mail to ANR&P}

**MMA ASSET SALE(2): HEY! THAT’S OUR EQUIPMENT**

16 January, Bangor. **SEVERAL LESSORS OBJECTED TO A BUYER ASSUMING THEIR LEASES** without paying more than what the Trustee deemed due. {from Court website, docket no. 13-10670}

**CP**

CP leased some bulkhead flats to MMA in 2003. 'The Contract & Cure Schedule lists the Leases and indicates that the Trustee’s calculation of cure costs associated with the CP Agreements totals $28,000.00.' [This 'Cure' amount, per the Trustee, satisfies any outstanding obligations under the lease. *Editor*] CP calculates the amount as $62,357. {document #573}

**Rail World Locomotive Leasing**

Under a 2004 agreement, MMA leased locomotives from Rail World Locomotive Leasing. The Trustee calculated the cure amount as $234,147.70. RWLL calculates it as $366,560.79. {document #570}

**NB&M**

Under a Commercial Agreement dated 9 January 2003, among MMA, EMRY, and NBSR, '[t]he amount required to cure MMA's defaults under the Commercial Agreement in accordance with the provisions of 11 U.S.C § 365 (b)(1)(A) and (B) is $2,167,911.34.

Also, 'As a result of changes agreed to, and implemented, by the parties in the ordinary course of MMA's operations following the commencement of MMA's bankruptcy proceedings, the parties have substantially modified the terms of the Commercial Agreement. Among the operating changes implemented by the parties, MMA no longer bills and collects freight charges from customers for services provided by NBSR and EMR under interchange and haulage agreements with MMA. Accordingly, any assumption and assignment of the Commercial Agreement must reflect the changes to the agreement that have been implemented by the parties and that are currently in effect.' {document #571}
Montreal, Maine & Atlantic Railway
Mileage Information

Map not to scale

To Madawaska
State of ME Owned North of Mile 109 to Mile 260
Operated by Irving MNR

Maine 220.73
Quebec 236.81
Vermont 23.47
Total 481.01

Distances in Miles
Brownville Jct to St. John 189.50
Millinocket to St. Jean 299.54
Millinocket to Montreal 325.54
Millinocket to Brownville Jct 36.84
Searsport to St. Jean 338.11
Searsport to Montreal 364.11
NMJ to St. Jean 309.11
Brownville Jct to St. Jean 262.70
Sherbrooke to St. Jean 77.10
Farnham to St. Jean 20.00
Newport to St. Jean 80.40

Sub Mileages
Adirondack 20.00
Ste-Rosalie 25.40
St-Anselme 26.40
Searsport 29.00

Non-Main Track Miles in Vermont and Maine 87.88 as of May 24, 2012
MMA ASSET SALE(3): FORMAL CANADIAN REPORT*

22 January, Montreal. **RICHTER, THE COURT MONITOR, FILED A REPORT ON THE AUCTION** following the 21 January auction, with the Quebec Court, as part of the 'Fifth Report on the state of Petitioner's financial affairs.' It stated:

The other bids

46. Prior to the bid deadline of January 17, 2014, two additional bids were submitted and were deemed to be Qualified Bids in accordance with the Bid Procedures.
   - The first Qualified Bid (from Washington County Railroad Company ("Washington")) was for US$750,000 solely for the Newport Subdivision Lot which consists of track between Vermont and Quebec;
   - The second Qualified Bid was a joint bid (from Eastern Maine Railway Company and Springfield Railway Terminal Company ("EMR") for US$8,000,000 for assets identified as the Modified MM&AR Lot representing all the assets in the United States, excluding the Newport Subdivision Lot.

47. On January 20, 2014 a letter was received from the Stalking Horse bidder indicating that pursuant to section 8.2(n) of the APA, it was satisfied in all material respects with its due diligence, but reserved its rights with respect to the any prospective costs on account of certain legal proceedings and the ability of MM&A to continue rail operations until the sale transaction closes (Exhibit "6").

48. The Chapter 11 Trustee and the Monitor conducted the auction in Portland, Maine on January 21, 2014 at the Chapter 11 Trustee's office.

49. The auction was attended by the Stalking Horse, the other Qualified Bidders, as well as representatives of the FRA, the Province, the Maine Department of Transport, the New England Independent Transmission Company, Bangor Savings Bank, Camden [Savings Bank] and Wheeling [and Lake Erie Railroad].

50. During the auction process, Washington and EMR were provided the opportunity to amend and /or otherwise increase their respective offers for the assets they were bidding upon. Both declined to do so. In addition, both the FRA and the Province waived their right to credit bid.

51. Consequently, the Chapter 11 Trustee, the Monitor, and the Petitioner declared RAH as the successful bidder having the highest and best bid and the auction was then concluded.

52. Washington and EMR were accepted by the Chapter 11 Trustee as backup bidders in accordance with the bid procedures.

53. As previously mentioned, the Sale and Vesting Motion is to be heard on January 23, 2014.

54. As noted elsewhere in this report, it is important that this transaction is closed as soon as possible due to the expiry of the insurance on April 1, 2014 and the inability to extend the Certificate of Fitness without appropriate insurance.

Amendment to purchase agreement excluding LMS and locomotives

45. On January 16, 2014, following ongoing discussions with the Stalking Horse, an amendment to the APA (Exhibit "5") was entered into to remove some of the conditions precedent of the APA including the requirement that the Stalking Horse conclude a transaction to purchase LMS. The amendment also excluded 25 locomotives owned by MM&AR which are secured in favor of LMS's secured lender, the Bangor Savings Bank. The exclusion of these locomotives increases the net proceeds to be received by the Federal Railroad Administration ("FRA"), the primary secured creditor on MM&AR's fixed assets. {text from Richter website

MMA ASSET SALE(4): FORMAL US REPORT++

22 January, Bangor. **TRUSTEE ROBERT KEACH MADE SEVERAL FILINGS THIS DAY** relating to the auction and the proposed sale.

Contents of this article

4.1 Keach report on auction.

4.2 Proposed asset purchase agreement (aka “Bid”)


4.3 Amendment to asset purchase agreement, excluding 25 locomotives and LMS [see box].
4.4 Gordian affidavit on search for bidders.
4.5 Fortress affidavit on its qualifications as bidder.
4.6 Proposed Court Order on sale.

4.1 KEACH REPORT ON AUCTION

Reporting personally on the auction, which he attended, as well as introducing documents attached to his report, Keach wrote *inter alia*:

**RAH amends bid, but not price**

'13. Only RAH had submitted a Qualified Bid on the All Asset Lot, in the amount of $14,250,000.00 (the “RAH Bid”). Prior to the Auction, RAH notified me that it intended to amend the RAH Bid as follows:

'a. Twenty-five (25) locomotives were removed from the Assets to be acquired and were instead listed as “Excluded Assets;”
'b. Sections 8.2(k) (regarding governmental restrictions), 8.2(m) (no material adverse change provision), and 8.2(o) (acquisition of LMS Corp. assets) were deleted from the RAH APA;
'c. The period of time for the purchaser to conduct due diligence regarding the Assets was extended to 10:00 a.m. on January 20, 2014; and
'd. The requirement that, in order to qualify for the Break-Up Fee and Expense Reimbursement, RAH was required to waive the conditions set forth in sections 8.2(i) (environmental review), 8.2(k) (regarding governmental restrictions), and 8.2(m) (no material adverse change provision) of the RAH APA prior to the Auction, was deleted.'

**Value of bid now $15,850,000**

'17. Accordingly, the RAH Bid, as amended, was determined to be the Successful Bid and RAH was designated the Successful Bidder. ... The Monitor and I valued the RAH Bid, as amended, at $15,850,000.00 in light of the asset exclusions provided by the amendments [see box and 4.3] and the removal or modification of conditions. The Washington County Bid and the Irving/PanAm Bid

**WHAT PRICE FOR LMS AND THE LOCOMOTIVES?**

**Locomotives**

One knowledgeable person priced the locomotives if operating and blue-carded (have their FRA inspection) as each worth $50,000 to $100,000. {MMA-rail e-list}

At the minimum, then, the estate would fetch $1,250,000 for the locomotives. Ed Burkhardt, MMA chair, wrote on 27 January: 'I would hope the locomotives are worth considerably more than the value estimate we have seen. Obviously it depends on how they are sold, and over what timeframe.'

Trustee Keach also wrote on the 27th: 'We disagree with your industry sources' on the value of the locomotives. Hence [see body of article] his valuation at $1.6 million.

**LMS for sale separately**

LMS Acquisition Corporation is the vehicle used by MMA to purchase from the Bangor and Aroostook bankruptcy estate the warehouse and transload entity in Bangor called Logistics Management Systems. In 1997 LMS started an intermodal service for the Bangor area [97#18] which ended relatively quickly. As noted in the article, it is not part of the bankruptcy estate.

Over the years since the B&A established it, the outfit ran operations not only in Bangor but also Jackman, Presque Isle, and Van Buren.

Williard Emery, the operations manager, said on 27 January when MMA sold the Madawaska subdivision to JD Irving [see 13#05B], it also sold the Van Buren facility to Irving. He deferred comment to Burkhardt.

Burkhardt wrote: 'LMS is for sale separately, and we are working with several prospects. ...It is governed by a board of directors, which I chair.

**Contact Ed**

Burkhardt added: 'Anyone interested in LMS should contact me. This is a fine property, and should be a profitable investment for the right owner.'

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1 Keach and journalists confused readers by stating the new “price” or “value” of the Bid was $15,850,000. Technically true, Keach should have said RAH no longer wanted the locomotives, which he could sell at $1.6 million, thus raising total proceeds to $15,850,000. He also confused readers by not making plain that LMS was not part of the bankruptcy estate. *Editor*
were each determined to be Back-Up Bids. The Auction was then adjourned.’

4.2 PROPOSED ASSET PURCHASE AGREEMENT

Some sections of the Agreement aka “Bid” which Rail Acquisition and the Trustee will sign:

Deposit. '(a) Within five (5) Business Days following the full execution and delivery of this Agreement, Purchaser shall deliver to Bernstein, Shur, Sawyer & Nelson, P.A., as escrow agent, the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) (the “Deposit”). The Deposit (and any interest accrued thereon) shall be credited as a partial payment of the Purchase Price payable at the Closing. {page 15}

2.5 Purchase Price. The purchase price for the Assets (the “Purchase Price”) shall consist of Fourteen Million Two Hundred Fifty Thousand Dollars ($14,250,000.00) plus the Assumed Liabilities...Except as otherwise specified herein, the term “Dollars” or “$” as used in this Agreement refers to United States Dollars.

2.6 Closing. The closing (the “Closing”) shall occur no later than thirty (30) days following the later to occur of (a) the date upon which the Sale Order and the Vesting Order approving the sale of the Assets to Purchaser in accordance with this Agreement shall have become Final Orders, and (b) the receipt of any necessary Governmental Permits necessary to authorize the transactions contemplated by the Agreement, or on such other date as may be mutually agreed by the parties, but in any event (subject to Sections 10.1(b)(vi) and 10.1(c)(iii)) not later than March 14, 2014. The Closing shall take place at the offices of Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, Portland, Maine, or such other place as Sellers and Purchaser shall agree, and shall be effective as of 11:59 p.m. Portland, Maine time on the date of Closing (the “Closing Date”).

2.7 Allocation of Purchase Price. The Purchase Price shall be allocated in accordance with Schedule 2.7 to Real Property [82.2% – see next article] and other Assets [17.8%]. Each of MMA, MMA Canada, and Purchaser hereby covenants and agrees that it will not take any position inconsistent with the Purchase Price allocations set forth on Schedule 2.7 on any tax return. {page 16} {Court website, Docket No 13-10670, document 579-2}

4.3 AMENDMENT TO PROPOSED ASSET PURCHASE AGREEMENT

According to Keach's report, RAH approached him with a request to modify the draft Purchase Agreement (aka the “bid”). On 16 January Trustee Keach, MMA President Bob Grindrod, and RAH representative Ken Nicholson agreed on the Amendment. As Keach reported [see 4.1], the Amendment stated:

Locomotives excluded

'I. Section 2.1(a)(iii) of the draft is hereby deleted in its entirety. In lieu thereof, the parties hereby agree [that RAH is purchasing]:

'(iii) all locomotives (other than those bearing the road numbers in set forth in Section 2.2(h)), rail cars, maintenance of way equipment, work equipment, hirail vehicles, other rolling stock and motor vehicles owned by MMA, in each case selected by Purchaser and as listed in Schedule 2.1(a)(iii).'

The road numbers and types of the 25 locomotives excluded

The types were provided by the *Canadian Trackside Guide 2011*, which listed all MMA locomotives. The listing leads to the conclusion that the 25 are the vast majority of locomotives MMA owned in 2010.²

**The exclusion of LMS**

LMS Acquisition Corporation (LMS) *was not part of the estate*. The initial draft Purchase Agreement covered the its purchase. [Apparently Fortress first thought it wanted LMS, and was dealing separately with its owner Rail World. See box.]

Section 8.2(o) (o) stated:

"LMS Acquisition. Purchaser shall have entered into an agreement, on terms and conditions satisfactory to Purchaser in its sole discretion (including, without limitation, a break-up fee and expense reimbursement on substantially the same terms as set forth in Section 5.4 hereof), to acquire substantially all of the assets (or such lesser portion of such assets designated by Purchaser) of LMS Acquisition Corp., a Delaware corporation ("LMS"), which sale transaction shall close simultaneously with, or prior to, the Closing, and the sale of such assets to Purchaser shall be free and clear of any Liens, Claims, encumbrances or interests....'"

The Amendment stated simply that 'Section 8.2(o) is deleted in its entirety.' Thus Fortress was free of any obligation to buy LMS.

**4.4 GORDIAN AFFIDAVIT: SOME SECTIONS**

Thomas McCarthy is the head of the Restructuring and Distressed Mergers & Acquisitions practice at Gordian Group, LLC ("Gordian"), an investment banking firm with significant expertise in bankruptcy, general investment banking, and financial advisory issues. Gordian maintains offices at 950 Third Avenue, New York, NY 10022. McCarthy said in his affidavit, inter alia:

'9. Despite the accelerated time frame of the process, Gordian believes the marketing efforts have been adequate to maximize the value of the assets and obtain the best possible value for the Assets. This is particularly true in light of several recent train derailments in North America involving crude oil and the resulting uncertainty involving the regulatory environment for continued transportation of crude by rail. On December 12, 2013, Railroad Acquisition Holdings, LLC, an affiliate of Fortress Investments Group, entered into an asset purchase agreement ("APA") as a stalking horse bidder, for the purchase of the entirety of the Assets.'

'10. Upon confirmation of Railroad Acquisition Holdings, LLC as stalking horse by the court on December 19, 2013, Gordian continued to market the Assets and sent the approved bid procedures and stalking horse APA to approximately 25 potential purchasers. The Trustee, Gordian, and DSI continued to provide due diligence assistance to all potential purchasers up until the auction. Of these potential purchasers, three have submitted competing bids for certain lots designated in the bid procedures.' {Court website, Docket No 13-10670, document 580}

As Keach told the Court on 23 January during its approval of the Fortress contract, Gordian's task got “more challenging and got more difficult with every day's newspaper.” {audio of hearing, Court website, Docket No 13-10670, document 591}

**4.5 FORTRESS AFFIDAVIT: SOME SECTIONS**

Ken Nicholson, a managing director of Fortress Investment Group LLC, provided an affidavit to the Court stating, *inter alia:*

² Lease billings by Rail World Locomotive Leasing to MMA indicate that MMA is leasing three C39-8s. {document 570}
'8. The Purchaser [Railroad Acquisition Holdings] is a wholly-owned subsidiary of Fortress Worldwide Transportation and Infrastructure General Partnership ("FTAI"), an entity managed by an affiliate of Fortress. Fortress is a leading global investment management firm with approximately $58 billion of assets under management. Fortress has extensive experience in the transportation industry, including railroad operations through ownership of Florida East Coast Railway, LLC ("FEC") by certain investment funds managed by an affiliate of Fortress. {page 3}

'13. The Purchaser also has the operational expertise to operate a railroad as a going concern over all of the Assets that it proposes to acquire pursuant to the Agreement. Since 2005, FEC has won five E. H. Harriman Memorial Awards in recognition of its outstanding achievements in the area of rail safety.

'Over the same period FEC has also been awarded six Jake Awards by the American Short Line & Regional Railroading Association Safety Committee for outstanding safety achievements, including the 2011 President's Award.

'14. In accordance with the Bid Procedures, the Purchaser has expressed its commitment to operate a railroad over all of the Assets that it proposes to acquire pursuant to the Agreement as a going concern in the Public Interest, and has indicated that it has no present intention to abandon, discontinue or limit any of the railroad lines that it proposes to acquire pursuant to the Agreement. Time is of the essence in closing the Sale in order to preserve the viability of the Sellers' business as a going concern.' {page 5} {Court website, Docket No 13-10670, document 581}

4.6 PROPOSED COURT ORDER: SOME CHANGES
(Note: the numbering of the document is not clear to your editor. I repeat the numbers and letters used, and provide page numbers as well.)

RED indicates change from December's proposed Court Order as filed by the Trustee.

T. Objections to Assumption and Assignment. All counterparties to the Assigned Contracts and Leases upon which the Sellers served a Contract & Cure Schedule and/or a Supplemental Notice who did not timely file and serve an objection to the assumption and assignment of the Assigned Contracts and Leases or relevant Cure Amount, are hereby deemed to have consented to (i) the assumption by the Trustee of their respective Assigned Contracts and Leases, (ii) the assignment of such Assigned Contracts and Leases to the Purchaser, and (iii) the relevant Cure Amount. AllThe following counterparties to the Assigned Contracts and Leases that filed and served a timely objection to the assumption and assignment of such parties’ respective Assigned Contracts and Leases and/or Cure Amount relating thereto were heard at:

i. CIT Group/Equipment Financing, Inc., Flex Leasing I, LLC, and Flex Leasing II, LLC [D.E. 568];

ii. Rail World Locomotive Leasing, LLC [D.E. 570];

iii. Canadian Pacific Railway Co. [D.E. 573]; and

iv. Eastern Maine Railway Company and New Brunswick Southern Railway

T. The foregoing parties are referred to collectively as the “Assumption and Assignment Objectors,” and such parties’ objections are referred to collectively as the “Assumption and Assignment Objections.”

On or about January 22, 2014, the Trustee served a Supplemental Notice pursuant to the Assumption and Assignment Procedures (as defined in the Bid Procedures Order) upon the Assumption and Assignment Objectors and certain other parties notifying them that the Purchaser had informed the Trustee of its intention to refrain from selecting, and to remove from the schedules of MMA Assigned Contracts, MMA Assigned Leases, MMA Canada Assigned Contracts and MMA Canada Assigned Leases under the Agreement (collectively, the “Assigned Contract Schedules”), the executory contracts and unexpired leases that are the subject of the
Assumption and Assignment Objections and certain other contracts and leases;

provided, however, that the entry of this Sale Hearing (to the extent not withdrawn), were considered by Order shall be without prejudice to any rights that the Assumption and Assignment Objectors may have to assert their respective Assumption and Assignment Objections pursuant to the Assumption and Assignment Procedures in the event that the Purchaser subsequently determines to add any of the foregoing contracts or leases to the Assigned Contract Schedules in accordance with the Agreement. Accordingly, the Court, and are hereby determines that each of the Assumption and Assignment Objections is moot and is therefore hereby overruled on the merits with prejudice. {page 11}

30. **Time is of the Essence.** Time is of the essence in closing the Sale. The Court hereby determines that it is in the best interests of the Debtor’s estate, and in the public interest, to close the Sale as soon as practicable in accordance with the Agreement. The Court therefore respectfully requests that the Surface Transportation Board and the relevant Canadian regulatory authorities expedite their respective review processes, and render final decisions as soon as practicable. but in any event no later than March 14, 2014 (in order to enable closing of the transactions contemplated by the Agreement on or before March 31, 2014). {page 25}

33. **Back-Up Bids.** Each of the following bids was accepted by the Trustee as a “Back-Up Bid,” as such term is defined in the Bid Procedures:
   a. The bid of the Washington County Railroad Company for the Newport Subdivision Lot, which bid was submitted on January 15, 2014; and

To the extent necessary, the Court approves these Back-Up Bids, and authorizes and orders the parties to perform their obligations under the Back-Up Bids in accordance with the Bid Procedures and the terms of the Back-Up Bids. {page 26} {Court website, Docket No 13-10670, document 584}

### MMA ASSET SALE(5): WLE OBJECTION++

22 January, Bangor. **WHEELING & LAKE ERIE RAILROAD MOVED FOR MORE TIME** to consider the proposed sale. It argued that ‘at about 4:30 p.m. on the date of this Objection, the Trustee filed his Supplemental Notice Pursuant to Assumption and Assignment Procedures of Removal of Contracts From the Contract and Cure Schedule (Document Entry 585), which purports to attach as Exhibit A thereto revisions to the schedules of contracts to be assumed. Wheeling has not yet had an opportunity to review these new filings (nor the filings made earlier in the afternoon).’ {page 2}

### Division of price between real and personal assets

'5. Of particular note is Schedule 2.7, filed on January 22, 2014. This schedule purports to contain the agreed upon allocation of the purchase price....between real property and personal property without any way allocating the purchase price among various categories of real or personal property, or permitting anyone to assess the fairness or reasonableness of the proposed allocations. Wheeling objects to being bound by this proposed, which has been received only now, and without any meaningful opportunity for inquiry or challenge.' {page 2-3}

   [Schedule 2.7 allocates 82.2% to Real Property and other Assets 17.8%. {Document 585}]

### Request for denial or deferral

'WHEREFORE, Wheeling respectfully requests that the Sale Motion be denied, or that consideration of it be deferred, pending the finalization of all material schedules and other contracts and agreements, the distribution of the same to Wheeling and other parties in interest, and the provision of a reasonable opportunity to inquire and to assess the fairness and reasonableness of same.' {Court website, document 587}
Resolution on 23 January
At the Court hearing approving the Asset Purchase, Trustee Keach said that Wheeling was concerned that the allocation stated in the schedule would lock in the allocation for income tax purposes. The Court and the lawyers present were able to assure Wheeling that the Bankruptcy Court documents would not lock it for Wheeling. {audio of hearing, Court website, Docket No 13-10670, document 591}

MMA FUTURE: SOME OPINIONS
25 January, Bangor. WITH FORTRESS NOT YET SPEAKING, OTHERS SPECULATE ON WHAT MAY HAPPEN:

Previous interest
One source reported that RailAmerica, which was owned by Fortress from 2007 to 2012, approached MMA in 2010 or 2011. While Fortress’ past overtures didn’t go anywhere for “a combination of reasons,” the source said, they make clear that Fortress has had an eye on MMA’s assets for many years. [This interest was covered in issue 11#10.]

Customer GAC Chemical
Fortress began speaking with MMA’s customers in December 2013 when it was negotiating the stalking horse bid of $14.25 million [see 13#12A]. David Colter, CEO of GAC Chemical Corporation [see 11#11A and 13#05B] in Searsport, said Fortress approached him. “I think they were just looking for how we are impacted by the bankruptcy and if they were the acquiring company what would we see as our rail needs now and in the future.”

Given its proactive approach, the fact it has the capital to make it work and that it has past railroad experience, Colter said he looks at Fortress taking over the railroad as a “positive.”

MMA’s bankruptcy has decreased service. Now, GAC Chemical receives “steady inbound traffic” two days a week. “We’d love to see service five days a week,” Colter said, but he recognizes that will only be possible if Fortress is able to increase the total amount of traffic on that section of the line.

Oil traffic?
Your editor believes Fortress will work hard to regain the oil traffic. The question is, will Canada or the province of Quebec have a voice on what traffic Fortress carries?

Searsport and global traffic
David Cole, former MDOT commissioner, now consults on trade and logistical issues, including with the Action Committee of 50 [see 12#06B]. He believes Fortress values the network as “more than just the volume currently on there.” Searsport has “untapped potential.” Brazil is closer to Searsport by sea than it is to New Orleans; its cargo could move via the rail to the entire Midwest region.

“Strategically, Searsport is valuable to niche players. You’re not going to be New York City or Long Beach, but a relatively small amount of freight will have a big impact in Maine, economically speaking.” Maine railroads have a hard time surviving with only “indigenous freight.”

“If you look at this region’s future economic development potential, all signs globally and nationally point to the fact jobs are being reshored back to America. Manufacturing is making a comeback and if we want to be a part of that we need to be on the path of commerce and freight. We need to be on these trade paths.”

Cole named Thermogen Industries in Millinocket as a perfect example of a natural-resource-based company making an exportable product (torrified wood pellets) that could be moved over MMA’s rail lines to Searsport. {Whit Richardson in Bangor Daily News 25.Jan.13}

Intermodal traffic?
Before the Lac Megantic disaster, MMA was moving some intermodal traffic for Saint John. Now, Tropical
Shipping is sending a considerable number of boxes to and from Saint John via CN [see 13#12A], just as it uses Fortress's Florida East Coast. Would Tropical move the traffic to the MMA line?

Matt Jacobson, former SLR honcho, noted: 'Maybe the boxes. Maybe. I'm jaded because I was one of the "team" of folks who were transferred from CSX to SeaLand to "integrate" the two companies. After a few years, SeaLand got sold to Maersk - the experiment didn't work.

'In this case there are powerful existing routes west via Class 1 single-line service (Halifax - CN to Montreal & Chicago; NYC - NS and CSX to Chicago, etc.) that Fortress would have to defeat. These guys won't give up their traffic lightly and have a lot of in place infrastructure to protect. Maybe Fortress can, but the price/service pressure will make it tough to run profitably. Intermodal is not the most lucrative line of business unless it is done with volume and consistently (the same every day in both directions). Time will tell.' {e-mail to ANR&P 26.Jan.14}

Burkhardt comments

Previous effort at sale. 'When MMA approached the market in 2010, RA was one of those contacted. They wound up being one the final bidders, but everyone was tripped up by issues surrounding the FRA loan, so the prospect of a sale at the time was discarded. It's ironic that bankruptcy solved that problem.'

[The FRA loan, as Burkhardt reported at the time, held up the transfer of the Madawaska subdivision also – see 13#05B Maine.]

John Giles. 'I've known John Giles for a long time, I think from back in his CSX days. He's an experienced and competent rail manager. And with backing from Fortress, he's got deep pockets behind him. That is a requirement! I'm happy he was sufficiently impressed in MMA's potential to continue his interest.

Concerning intermodal. 'It's a tough market, particularly with issues with the US Food & Drug Administration on foodstuffs in transit between Canadian points crossing Maine. It turns out that food and drink is important in balancing loads in this territory.

'If someone can solve this problem, they can give it a go. But two US senators and one US representative and MMA's lawyers couldn't, so the traffic wound up bypassing Maine to the north [see 06#03B]. It's a fact that the US has become a very unfriendly place to do business, and we are losing jobs and opportunities as a result.'

Concerning Tropical. Burkhardt also said that MMA once served Tropical. 'To serve Tropical properly required a highly coordinated service between CP, MMA and NBSR. Our two partners had competing objectives, and the net result was we lost the movement. Can Fortress get it back? It's possible but unlikely.' {e-mails to ANR&P}

MMA FINANCES

During the 23 January court hearing on collateral for Wheeling and Lake Erie’s secured interests [a complex issue on which I am not going to report – editor] some interesting comments emerged from testimony of Donald Gardner, MMA chief financial officer:

MMA board meetings. The board of the MMA held “routine quarterly board meetings” in Bangor. Both Chair Ed Burkhardt and board member Larry Parsons, the head of Wheeling and Lake Erie Railroad attended regularly.

Cash needed. MMA could not function until the end of March 2014 relying only on its cash receipts and the remainder (about $500,000) of its $3 million line of credit from Camden National Bank [see 13#12B].

“If we were not getting the cash receipts from Canada, we would have been out of business.”
Collecting money from customers. If the railroad had stopped operating, and thus serving its customers, collecting the bills due would have been even more difficult than now. Gardner said that railway staff has always had to routinely call customers monthly or even weekly to collect. The railroad would even resort to legal action.

If the railroad stopped serving them, “the customers would have ignored the bills. They would not have volunteered cheques. If we are providing a service, we have far more leverage. Lawyers are effective, but the service provides more leverage.” {audio of hearing, Court website, Docket No 13-10670, document 591}

PW: ANOTHER STOCK COMMENT
15 January. ANOTHER ANONYMOUS ANALYST RECOMMENDED PW STOCK, based on the potential for increased traffic and the possibility of a sale to GWI. {Seeking Alpha} [See previous one at 13#08B.]

Your editor responded to the anonymous analyst, writing under the name ValueArtifex, as follows: 'Your 15 January article covered what is known about PWX, and supplied some hope for the company based on hours of service for truckers.

'However, it did not state that the holder of the preferred shares, Bob Eder, also chair, controls the company. Until Bob dies - he is over 80, but in robust health - PW will not sell out to anyone, I believe. Bob is having too much fun.' Editor

CRUDE TRAFFIC*

CN

18 January. West to Saint John: 4 units pulling 95 cars: 13 wells (one single-stacked), 1 autorack, 1 small white tank car, 2 small black tank cars, 12 boxcars, 64 large black tank cars (cuts of 13, 22, 24), and 2 covered hoppers. {RailsNB}

CRUDE OIL AND TANK CAR SAFETY*

Note: Two derailments and subsequent explosions in Quebec (6 July) and New Brunswick (7 January) in the Atlantic Northeast, as well as the others in North Dakota (30 December – see 13#12B photo) and Alabama, have drawn attention to the need for change – if not for an immediate halt to movement of Bakken crude by rail, as I argued [see 13#123B].

10 January, Ottawa. CANADIAN MINISTER OF TRANSPORT LISA RAITT ANNOUNCED RULES TO IMPROVE SAFETY OF TRANSPORTING HAZARDOUS MATERIALS BY RAIL. The proposed regulations would introduce new standards for certain tank cars: new DOT-111 tank cars will need thicker steel, different top fittings, and head shields.

Transport Canada continues to work with tank-car industry stakeholders and U.S. government officials to determine what additional requirements would enhance the DOT-111 tank-car standard, such as by improving their design, retrofitting or repurposing the cars, or retiring older ones in the North American fleet, said Raitt in a press release.

Records of classification
The proposed amendments also would requiring that the person who classifies a dangerous good before transport keep a classification record and a record of the sampling method used. Stakeholders will have a 30-day consultation period to comment on the proposed regulations before they are finalized and published. {Progressive Railroading bulletin 13.Jan.14}

13 January, Ottawa. NEW-SPECIFICATION DOT-111 TANK CARS FARED BETTER THAN THE OLDER DOT-111 TANK CARS AT PLASTER ROCK, according to Sam Berrada, director general of safety and
occupational health services for CN. During an address in Ottawa at a Canadian Transportation Research Forum on rail safety, he told an overflow crowd of industry types, regulators, lobbyists and local first responders that railways “will continue to push aggressively” for safer, stronger tank cars.

The railway industry wants to “aggressively phase out” older model tank cars that have been implicated in several recent accidents, Berrada said. But the consensus at the day-long workshop saw no quick fix for a decades-old problem that has almost 80,000 sub-standard DOT-111 tank cars carrying flammable liquids on North American tracks.

**Fleet breakdown**
Forum attendees heard that out of 335,000 tank cars of all types in use in North America, 228,000 are the model known as DOT-111. About 92,000 DOT-111s are used to carry flammable liquids, and only 14,000 of those are the new, stronger cars built after October 2011; 78,000 older DOT-111s remain the workhorse of the oil-by-rail boom.

Bob Ballantyne, a career railway man who now works for the Freight Management Association of Canada told the forum that railway companies collectively own fewer than 700 tank cars (CN Rail owns just 20), while eight leasing companies own more than 243,000 tankers and shippers own another 79,000. Retrofitting older cars can cost more than $70,000 each, while new tank cars cost well over $100,000.

“It is, I think, inevitable that safety will be enhanced and there will be increased costs for consignors, consignees, carriers, governments and the general public,” said Ballantyne. “How these increased costs will be allocated across the supply chain remains to be seen.”

[Total retrofit cost: $70,000 * 78,000 cars comes to about $5.6 billion. Editor] “You can’t just snap your fingers and change the fleet overnight,” said Ballantyne in an interview later.

**Which cars did what**
On 9 January CN spokesperson Mark Hallman wrote that information obtained by CN from the Association of American Railroads showed that three of the five crude-carrying tank cars that derailed were newly built DOT-111 cars that conformed with the higher tank-car standards ordered after October 2011 for transporting crude and ethanol.

'Two of the tank cars of crude oil that derailed in the New Brunswick incident are the older DOT-111 tank cars that CN and the rail industry are recommending be phased out or retrofitted.' He added that the vast majority of tank cars are owned by shippers and by rolling-stock leasing companies and not by railways.

**New Canadian standards not new and not tougher**
Transport Minister Lisa Raitt’s 10 January announcement of new standards [see above] only formalize the standard for new tank car construction adopted by the rail industry in October 2011.

Raitt’s spokesperson Moreau said Raitt has asked an advisory council “to report back to the minister on additional enhancements and recommendations with respect to the DOT-111.” Raitt will be working on the standards with her U.S. counterpart, Transportation Secretary Anthony Foxx, Moreau added.

**Disaster fund?**
An official with the Canadian Transportation Agency also told the forum the government is considering the idea of a rail industry disaster fund, similar to the fund financed by the shipping industry for environmental clean-
ups at sea. {Bruce Cheadle of Canadian Press in Financial Post 14.Jan.14}

13 January, Casselton. **NORTH DAKOTA GOVERNOR JACK DALRYMPLE TALKED WITH BNSF HEAD MATT ROSE** about rail safety. Dalrymple expects the Pipeline and Hazardous Materials Safety Administration to act quickly in developing enhanced safety standards for new tank cars and a plan for replacing tank cars in the nation's fleet, he said in a press release. 'It's very clear that we need tank cars with improved safety features for the transportation of Bakken crude oil. We support new, more stringent safety standards for tank cars, but we also need to address operational practices.'

Dalrymple and Rose also discussed operational practices pertaining to trains carrying crude from the Bakken Shale. The governor called for a review of train speeds in populated areas; operational protocols involving trains passing one another through populated areas; and communication systems for improved emergency response between passing trains. {WDAY-tv 13.Jan.14}

14 January. **NEW TANK CAR RULES WOULD DERAIL THE BAKKEN BOOM.**

2011 rail industry specifications
In 2011, the AAR's Tank Car Committee asked PHMSA to adopt upgraded design requirements for new tank cars carrying hazardous materials such as crude oil (PHMSA Petition – 1577): thicker, more puncture-resistant tanks, thicker walls at both ends of the tanks, and more protection for the fittings and valves on top of the rail cars.

Although PHMSA has not mandated these new requirements, the TCC adopted the new designs for new rail tank cars in 2011. Thus far, more than 14,000 cars have been ordered to this more stringent standard.
2014 Canadian specifications
On 11 January 2014, the Canadian Government published rules [see above] that will go into effect in July, setting a new Canadian rail tank car standard called TP14877, based on the US PHMSA Petition – P1577. The new requirements apply to the majority of rail tank cars used to transport light sweet crude - built to a design known as DOT 111A. Rail tank cars constructed with insulation and heated coils and designed to carry heavy crude are already compliant with the new standards.

No capacity for backfitting
As noted, the rail industry has 78,000 older DOT-111 cars. Regardless of cost, the rail tank car industry lacks available capacity to carry out retrofitting. The backlog of new orders for rail cars in 3Q13 was 61,000 of which 49,000 were tank cars (source: Railway Supply Institute). That backlog is expected to take 4 years to clear, leaving little capacity for retrofitting work. Smaller tank car repair shops also have limited capacity to do retrofitting work.

Banning all Bakken by rail?
Given that North Dakota producers are relying on rail in 2014 to move as much as 90% of the state production [see 13#12B], if rail is removed from the equation, existing crude production could not reach the market. Rapid crude production shut-in would follow: producers would drop prices enormously to get their crude onto overflowing pipelines. Lower crude prices and lack of storage capacity would also likely discourage new drilling. In effect an overnight crude-by-rail ban would slam the brakes on the North Dakota oil boom.

'Our belief is that it is highly unlikely that regulators go cold turkey on rail shippers by ruling most tank cars out of commission overnight. However concerns about this happening mean that lease rates for rail tank cars meeting the new standards are almost certain to increase and vice versa for old cars. It is also possible that we may see a more significant shift away from crude-by-rail and back to the existing pipelines out of North Dakota. Inevitably crude prices in North Dakota will come under pressure in the face of such transport constraints. In the meantime we hope that the lessons learned from the recent accidents can be rapidly assimilated into improved operational safety to reduce the risk of future recurrence.' {Sandy Fielden in RBN Energy 14.Jan.14}

15 January, DC. THE HOUSE RAILROADS, PIPELINES AND HAZARDOUS MATERIALS SUBCOMMITTEE WILL EXAMINE CRUDE-BY-RAIL SAFETY, according to chair Rep. Jeff Denham, R-Calif. Aides had no date for a hearing yet. {Jennifer Diouhy in fuelfix.com 15.Jan.14}

16 January, DC. CLASS I LEADERS MET USDOT SECRETARY ANTHONY FOXXX ON SAFE TRANSPORT OF ENERGY PRODUCTS, along with their energy customers.

As recently as November 2013, railroads urged the Pipeline and Hazardous Materials Safety Administration (PHMSA) to increase the federal tank car safety standards for cars used to move flammable liquids such as crude oil and ethanol. {AAR press release}

MAINE

MMA: REPETITION
23 January, East Millinocket. IN A TERRIBLE REPEAT OF ELEVEN YEARS AGO, GREAT NORTHERN PAPER SUSPENDED PAPER-MAKING. GNP, owned by Cate Street Capital, is the name of the successor-in-ownership of the paper mills in Millinocket (operation suspended in 2008 [see 08#06A] without a resumption date) and East Millinocket (operated until this day). On this day Railroad Asset Holdings was named as the purchaser of the MMA lines.

On 9 January 2003, on the very day that MMA began operating the Bangor & Aroostook lines, Inexco, which then owned the mills, announced it was putting them into bankruptcy. [See 03#01A.]
The 2014 announcement; workers retained

Great Northern Paper (GNP), announced today a temporary stop in manufacturing due to the current high costs of production combined with lower market prices for its products.

GNP spokesperson Scott Tranchemontagne said the company is at a crossroads and must make fundamental long-term adjustments. “Like any business, Great Northern Paper must operate in a way that is sustainable over the long term. We take very seriously our responsibility to employees, customers, suppliers and investors. The responsible action at this time is to temporarily stop production and restructure the company.”

Following the afternoon shift [on 23 January], GNP will stop production for up to sixteen weeks to implement a business improvement plan. All employees will be retained for at least two months. They will work toward improving operating efficiencies at the Mill relating to water and energy usage, among other areas.

No conversion to natural gas

Tranchemontagne said the paper industry is more competitive than ever, which continues to drive paper prices down, meaning less revenue during a time when GNP is paying high costs for wood, pulp and energy. The company had been preparing a conversion to heating the mill with natural gas so that its biomass boiler could be dedicated to powering two paper machines, but extremely volatile natural gas prices render this option unfeasible....

During the production stoppage GNP will work on measures to lower GNP’s production costs. It will also work with suppliers to resolve outstanding payables, in addition to maintaining communication with customers to meet their future needs.

Tranchemontagne added that GNP is extremely grateful for all the support it has received from the Katahdin Region and across the state of Maine since restarting the mill in October 2011. “We have tried to give back to the communities by providing good jobs, relying on local vendors, supporting community efforts, and moving forward with Thermogen, which will provide additional new jobs and economic development,” said Tranchemontagne. “We know how important the East Millinocket mill is to the Katahdin Region, and we are doing everything we possibly can to make it strong again.”

Tranchemontagne added that GNP clearly understands and accepts its role and responsibility in attempting to create conditions that will allow GNP to succeed. “Stopping production was an extremely difficult decision to make, but continuing to run the mill under the current conditions is neither a viable nor responsible option. We need to fix fundamental, long-term issues, as opposed to applying short-term fixes. We cannot alter the very challenging conditions in today’s paper markets so GNP must focus on reducing all of our various production costs, make critical investments to our operations, and restart as a two-machine mill to be viable over the long term. It won’t be easy, but we are committed to working as hard as we can with all of our partners toward success.” {GNP press release}

The 2003 announcement; effect on MMA and Fortress

At noon on 9 January 2003, papers were signed transferring the bankrupt Bangor and Aroostook assets to the new Montreal, Maine and Atlantic Railway. Hours later, Great Northern Paper (the original GNP, unrelated to the current GNP) filed for bankruptcy. GNP’s two paper mills in Millinocket and East Millinocket were the Bangor & Aroostook Railroad’s largest customer at the time.

In 2010, Bob Grindrod, MMA’s president, said he believed that GNP purposefully held off its bankruptcy filing until MMA officially owned Bangor & Aroostook Railroad’s assets, fearing the rail deal would fall apart if the buyer knew the largest customer was broke. “If you think that was a coincidence, I have a bridge in Brooklyn I’d like to sell you,” Grindrod said.

On 23 January 2014, Grindrod – still MMA president said, “It’s deja vu all over again...a strange coincidence,” but he did not definitely believe that GNP timed its announcement on 23 January 2014 for after the Bankruptcy Court.

“That may be the case, but Great Northern was a huge portion of the traffic base of the Bangor & Aroostook Railroad in 2003, and it isn’t any longer.” The volume shipped in and out of the sole remaining mill in East Millinocket via rail “is substantially less” than it once was, Grindrod said. {Whit Richardson in Bangor Daily News blog 23 Jan.14}

MMA carloads

In 2005, MMA moved 50,000 carloads in and out of Maine. By 2010 that number dropped to 30,000 carloads, according to Joe McGonigle, MMA vice-president of marketing. In that year he noted that the closure of paper mills and sawmills over the years added to the economic slowdown of the 2008 Great Recession. {Christopher
Cousins in Bangor Daily News 20.Mar.11

Follow the bouncing ball of ownership

The mills now called Great Northern Paper and owned by Cate Street Capital began as Great Northern, then Great Northern Nekoosa, then Bowater, then Inexcon (the mills named Great Northern), then Katahdin Paper owned by Fraser Papers, which itself was part of Brascan (now Brookfield Asset Management) and Nexfor until spun off. Editor

PAN AM: CAR IN MUD ON AUGUSTA RUNNING TRACK*

14 January, Winslow. THE SECOND DERAILMENT IN TWO WEEKS OCCURRED HERE. Deane Nason of Nason Realty reported that a derailment at the beginning of the month required Pan Am track workers to spend all night and half the day rerailing cars.

On this day, a train derailed one covered hopper [from a photo accompanying the article, the consist had at least two low gondolas, probably for Industrial Metals, and two covered hoppers, probably for Blue Seal Feeds, both in East Augusta].

Town Manager Michael Heavener said he spoke with the town’s public works director, who said water runoff from the hill above Bay Street is getting into the tracks and freezing. {Amy Calder in Waterville Sentinel 15.Jan.14}

A different approach to winter

Your editor often, and fondly, repeats a friend's remark from 1968: “Every year, winter comes as a surprise to the Penn Central.” CN may be different, according to this:

Canadian National has learned from its experience with winter weather conditions and has adopted a proactive plan to address issues even before they arise, writes Mischa Wanek-Libman. For instance, the Class I relies on its WinterREADY strategy to ensure a smooth operational workflow despite tough weather conditions. "Over the last 12 months, we have engaged customers more than ever, determined to learn and better position ourselves to succeed this winter," CN said. {Railroad Track & Structures online 16.Jan.14}

MDOT: IRAP OPEN*

16 January, Augusta. MDOT OPENED ITS 6th IRAP ROUND FOR APPLICATIONS FOR THE $2 MILLION AVAILABLE, wrote rail administrator Nate Moulton. The announcement stated:

'The Industrial Rail Access Program (IRAP) is a Public/Private freight partnership program overseen by the Office of Freight and Business Services at MaineDOT. IRAP provides financial assistance to businesses and shippers for investment in rail or freight-rail-related infrastructure located on, within, or adjacent to the general railroad system.

'The intent of the program is to stimulate economic and employment growth through generation of new or expanded freight rail service and transportation efficiencies to Maine businesses as well as to enhance intermodal transportation in the State. This State investment will be matched at a minimum 50/50 match level with local and/or private industry funds.

'IRAP is a competitive program with applications scored based on several criteria as outlined on the IRAP webpage at the following link: http://www.maine.gov/mdot/ofbs/irap.htm

'MaineDOT currently has up to $2,000,000 programmed for IRAP that will be available beginning March 10, 2014. Applications maybe found on the IRAP webpage with a deadline for submission of February 20, 2014.' {MDOT website}

Environmental permitting

Moulton pointed out that IRAP uses state bond funds, and hence is not subject to federal environmental permitting. Moreover, IRAP addresses freight programs, not the highway and transit programs for which the US
federal government has eased environmental requirements [see box]. \{e-mails to ANR&P\}

However, the rating system and the 'benefit-cost analysis' has elements of the federal environmental permitting steps. Moulton wrote: 'The environmental benefits generally are through efficiency of rail and trucks off the road. The only real way to quantify it is trucks and related emissions off the road.' \{e-mails to ANR&P 17.Jan.14\}

**PROGRAM REQUIREMENTS**

**Project Categories**
Projects are rated in the following ten categories:
- Job creation/retention
- New investment
- Intermodal efficiencies
- Private share of project cost - the greater the share the higher the rank
- Anticipated decrease in air emissions
- Anticipated decrease in highway maintenance costs
- Anticipated decrease in highway congestion
- Transportation and logistics cost savings
- Improvements in rail service
- Benefit-cost ratio [see below]

**Application Package Information**
The application package defines five project categories: accelerated maintenance, rehabilitation, new siding improvements, right-of-way acquisition, and intermodal facility construction.

However, the Department has, and will, entertain any project that enhances rail transportation without necessarily involving actual track work, such as construction of systems to transfer bulk materials between rail and other transportation modes.

The **benefit-cost methodology** used in the application process is the same methodology used by the Federal Railroad Administration for the former Local Rail Freight Assistance Program. [This is determined by a 1990 25-page methodology created by the FRA in response to the 1989 Local Rail Freight Assistance Act. The MDOT IRAP website has it.] The analysis is a nine-step procedure, each step of which is briefly defined below.

**Establish the Project Alternative**: in this step the applicant defines the project, and should also include discussion of any alternatives that were reviewed and rejected.

**Determine Project Costs**: the application package contains sheets for detailed project estimates, the totals of which can be used in this step.

**Determine the Null Alternative**: the null alternative is an estimate of what will happen if the project is not undertaken and is the alternative against which the proposed project must be compared during the benefit-cost analysis.

**Use the Standard Planning Horizon**: through [five per Moulton, and this] rounds of project solicitations, the Department has used ten years as the standard planning horizon.\(^4\)

\(^4\) For example, MDOT requires claw-back if the IRAP-funded project does not operate for ten years. See 13#11B Maine on end of service on Madison branch.
Use a Discount Rate: the discount rate is generally the state's cost of borrowing (general fund bonds) less the portion of the borrowing costs estimated to be caused by inflation. The discount rate is used to calculate the present value of the estimated benefits over the standard planning horizon. In the [five per Moulton, and this] rounds to date 6% has been used.

Calculate Transportation Efficiency Benefits: these are a direct effect of project completion and generally are incurred by the operating railroad and its shippers. The application package provides examples of such benefits but each applicant is encouraged to apply any such benefits which may be unique to the proposed project.

Calculate Secondary Benefits: these benefits cover a broad spectrum of possibilities. It is up to the writer of the application to find those benefits which are an indirect consequence of project completion. One such benefit is the reduction in state spending on highway maintenance which may be attributable to the project removing truck traffic from the state's highways.

Calculate Salvage Value: the project's material salvage value must be calculated for the last year of the planning horizon. The salvage value is used in the final calculations to arrive at an accurate benefit-cost ratio.

Calculate the Benefit-Cost Ratio: the discount rate is used to calculate the present value of the benefits accrued over the planning horizon. The ratio is equal to the present value of the benefits divided by the project cost. {text from MDOT IRAP website}

More detail
The Application itself adds these points:

A more competitive ranking will be given if a project contains any of the following attributes:

Economic development: a construction or reconstruction project that generates new employment and investment in the State; that opens up new economic markets due to decreased shipping costs, enhanced service, and/or improved transit times; and that will make Maine more competitive in the global marketplace.

Intermodal: a project that shows transportation efficiencies through use of an intermodal transfer facility including, but not limited to, bulk transfer, trailer-on-flatcar, container-on-flatcar, etc.

Private Investment: a greater than 50% share of project costs to be assumed by the applicant. {text of application form}
2 January (Thursday): A Pan Am train making its way up the Hillsboro Branch to serve Hendrix Cable in Milford derailed enroute, blocking the access road to Granite State Concrete. Granite State employees could not get vehicles in or out. Apparently frozen flangeways on the road let the locomotive ride up and off the track, leaving two covered hoppers across the road.

Pan Am employees worked heroically that afternoon and late into the night to get the locomotive back on the track, and moved the entire train east, away from the road. [See photo.]

2 January (Thursday): MBRX/Granite State offered a large loader to help re-rail the locomotive to clear the crossing. The Pan Am dispatcher thanked MBRX for the offer but believed Pan Am would get the crossing cleared soon.

3 January (Friday): Hendrix was told that their cars would arrive by noon. A relief crew arrived by vehicle to operate the train. Unfortunately no one informed them that the locomotive was damaged and would not start. Pan Am sent up a second locomotive, but by the time it arrived on the five-miles-per-hour-track, the crew was outlawed.

4 January (Saturday): A new crew arrived to operate the rescue locomotive. Instead of delivering the cars to Hendrix, it apparently took the train back to Nashua.

6 January (Monday): Hendrix received no cars. The three cars for Hendrix were stored in the Nashua Yard.

7 January (Tuesday): Pan Am Executive Vice-president Cyndi Scarano wrote: 'Since the engine was on the wrong side of train to make the proper switch, coupled with the weather, operationally it made more sense to take the train to Nashua, replace loco, and switch Hendrix next morning.'

10 January (Friday): The Granite State dispatcher spotted Pan Am moving the cars again toward Hendrix, and again derailing, this time at Hendrix before spotting the new cars. The train is rerailed.

13 January (Monday): Hendrix did finally get the delivery over the weekend.

17 January (Friday): Pan Am went to Hendrix and removed two empty cars. {E-mails to ANR&P from Cyndi Scarano, Kevin Boette of Hendrix, and Peter Leishman 2-17.Jan.13}

**Power shortage?**
Perhaps Pan Am needed the locomotive which returned to Nashua. On 4 January an NS pony made a rare trip to Rigby Yard in South Portland to pick it up. [See photo.]

**Similar derailment in Saco**
On 3 January, a Pan Am train derailed in Saco, crossing Industrial Park Road, while delivering a car to Boise Cascade at 68 Industrial Park Road. [Both Google and Bing aerial photos show one, empty centerbeam lumber car spotted on the spur at Boise. Editor]

Pan Am workers, as in Milford, performed a miracle rerailing the train after a second locomotive moved the derailed train from the crossing.

“We go up the industrial track two to three times per week,” said Pan Am Executive Vice-president Cyndy Scarano. “Ice can be an issue depending on how the tracks are plowed, but weather does not often contribute to derailments.” {Scott Dolan in Portland Press Herald 3 Jan. 13}

**Hendrix use of rail**

Hendrix has spots for at least eight cars, and relies on Pan Am to switch the facility [see photo]. Boette said the small building, a “clean room”, has spots for two cars, and the siding has six.

**Should MBRX do the switching? A mini-editorial**

MBRX has often offered to purchase or lease the three miles of Pan Am track between Wilton and the Granite State facility, to enable MBRX to maintain the track to a higher standard and thus serve Granite State more efficiently. Leishman asserted on 6 January: ‘I can assure you that the derailment at Granite State would not have occurred as the MBRX would have made certain the crossing at Granite State and all crossings between Milford and Wilton would have been cleared and salted. As such, the three cars that were on their way to Hendrix would have made it on Thursday and not returned to Nashua on Saturday.’ {e-mail to ANR&P}

Even better, Pan Am should turn the serving and switching of Hendrix over to MBRX. It certainly cannot profit a large regional such as Pan Am to run up 15 miles of a branch line limited to five miles per hour to handle under 100 cars per year. Indeed, Pan Am has declined to provide such service to North Anson, Maine.

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5 The Pan Am Railways Temporary Speed Restriction Summary #342 covering 8 December 2013 required operating at five miles per hour from MP0 to MP2, and from MP3 to MP13.

6 The Pan Am Employee Time Table #2 4 November 2012 lists three customers: Law Warehouse at MP3.4, Harcross Chemical at MP5.2, and Hendrix at MP14.3. The ETT shows timetable speed for the Branch at 10 miles per hour to MP13, and from MP13 to
on the Madison Branch in a very similar situation: 25 miles of track limited to five miles per hour and under 100 carloads a year [see 13#11B]. Wherein lies the difference between the Madison branch and the Hillsboro branch?

Letting MBRX handle this matter would give the New Hampshire railroad industry three big boosts. First, Pan Am could devote its resources, and its winter action team, to areas which must be more profitable. Second, MBRX could operate more efficiently. And third, Hendrix would have more efficient service.

The move would also, one hopes, pull the thorn from Pan Am's side which the Leishman situation has become.

## MARITIMES

### CN/NBDOT: DEAL DOES NOT SAVE ALL

24 January, Miramichi. **THE PROVINCE OF NEW BRUNSWICK AND CN WILL PRESERVE RAIL FREIGHT SERVICE ON THE LINE IN NORTHERN NEW BRUNSWICK.**

Under the agreement, the Province of New Brunswick will invest up to $25 million in rail infrastructure improvements to the Newcastle subdivision. CN will in turn spend a comparable amount to maintain and operate the line, ensuring continued rail freight service for a 15-year period on the northern and southern sections of the rail line: between Irvco, N.B., and Nepisquit Junction, N.B., in the north and between Catamount, N.B., and Nelson Junction in the south, where there are active rail freight customers.

CN will seek to discontinue rail operations on the 44-mile middle section of the Newcastle subdivision, between Nelson Junction (mile 62) and Nepisquit Junction (mile 106), due to the significant investments required to maintain the line and the lack of both originating and terminating freight traffic on that section.

Before this part of the line can be discontinued, however, it will be offered for sale in early February to private interests and then to municipal, provincial and federal levels of government, as per the provisions of the Canada Transportation Act. They will have a five-month window to submit offers to purchase the middle section, should there be a desire to maintain rail service on the segment. [CN press release]

**More in a future issue**

The potential elimination of 44 miles means VIA Rail would have to halt or move its service. The agreement apparently only requires CN to operate for 15 years. One wonders whether it specifically requires CN to spend $25 million to do so. More in a future issue.

### CN: PLASTER ROCK UPDATE ++

**Note:** On 7 January a CN train derailed 19 cars including tank cars of crude and one locomotive (in the middle of the train) in Plaster Rock, New Brunswick. A fire ensued, but no explosion; no Bakken crude was involved. [see 13#12B].

**9 January** Three cars were still burning, one a tank car of crude. [Solarina Ho and Randall Palmer of Reuters]

**10 January** Authorities conducted a controlled burn of three butane-filled cars. CN spokesman Jim Feeny said the explosion was carried out by the rail company and a crew from Louisiana with expertise in cleaning up derailed tankers. Crews will work through the night to begin the clean-up of the site, including work to rebuild
the track, and arranging to move what's in the cars.

“The next step will be a transfer of product. There are other cars that were never involved in the fire that are containing products that will have to be transferred from one car to another or to a truck so those products can be removed.” {CBC 10.Jan.13}

10 January. Detours of CN trains through northern New Brunswick showed the need to keep the line [though apparently the Province does not agree, see above], argued opponents of abandoning the line between Irvco and Catamount [see map in 13#05A]. Campbellton Mayor Bruce MacIntosh believes the incident will help his group lobby CN, as well as the provincial and federal governments, to keep the line from Campbellton to Moncton open.

“If they do have a problem on one line, then certainly this line that we have here in northern New Brunswick can certainly add to their other transportation link into Halifax. So I think this project is now going to be even more important than ever.”

Bathtub Mayor Stephen Brunet said he is glad CN is able to use the northern line to detour. “It points to the need for our rail beds to be upgraded and points to the need for this line to remain, so that in the event of anything like this happening again, it's there.”

For safety reasons, freight trains using the northern line will only be able to travel at 40 kilometres per hour along sections where the rail bed has deteriorated, CN officials said. {CBC News}

11 January. CN cleared the site, and terminated detours. {CN website}

15 January. Trucks moved contaminated soil to Fredericton's Envirem Organics from the site of the 7 January derailment.

CN, using private security guards, restricted access to the clean-up site. CN spokesman Jim Feeny said things were handled “perfectly.” Risk mitigation managers on-site “are not comfortable with allowing access due to the large number of trucks and heavy equipment moving in, out and around the worksite.” {CBC news 15.Jan.14}

Transportation Safety Board of Canada Railway Investigation R14M0002

‘Investigators found a cracked wheel on a car near the front of the train. This wheel moved on the axle and lost track gauge, resulting in the derailment of that wheel set. There was also a broken rail. The derailed wheel and pieces of that wheel found close to the initial point of derailment will be sent to the TSB Engineering Laboratory for more detailed analysis.

‘TSB investigators walked the track from the pile-up to a crossing to the west. They also travelled along the track by hi-rail 10 miles to the west. They were able to determine the initial point of derailment. Along the 10 miles of track before the pile-up, there were 17 broken rails found. The base of the rail was damaged in 50 places by the derailed wheel.

‘The TSB entered the hot zone. Many photos were taken on site. Some tank cars were moved for examination and documentation. The specialists from the TSB Engineering Laboratory examined the damage to these cars.

‘There were 5 Class 111 tanks cars and 4 Class 112 tanks that sustained damage, and 2 Class 111 and 2 Class 112 that caught fire. The 111 tank cars contained petroleum crude oil and the 112 tank cars contained liquefied petroleum gas.

Investigator in Charge, Guy Laporte joined the Transportation Safety Board of Canada in 2006. He had previously acquired valuable experience in the rail industry over a 27-year career at CN in Montréal, where he held various technician positions in Technical Services and supervisory positions with the railway's Buildings and Bridges and Structures departments.

Since joining the TSB, Mr. Laporte has taken part in numerous rail accident investigations in Eastern Canada.
Canada. Mr. Laporte earned a diploma in civil engineering technology from Montréal's Collège Ahuntsic, in 1978. {Transportation Safety Board of Canada website}

**RAIL FREIGHT FACILITIES**

*Described in this issue.*

Great Northern Paper (MMA, Maine). Shut paper machines indefinitely.
Hendrix (Pan Am, New Hampshire) Two derailments cut off service.

**PEOPLE, EVENTS**

SEE BOX ON QUEBEC RAILWAY SYMPOSIUM PAGE 21