

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN RE:)	
BANGOR & AROOSTOOK)	Chapter 11
RAILROAD COMPANY,)	Bankr. Case No. 01-11565
)	
DEBTOR)	
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BNSF RAILWAY COMPANY,)	
)	Adversary Proceeding
APPELLANT)	Bankr. No. 03-1205
)	
v.)	
)	CIVIL No. 06-141-B-H
JAMES E. HOWARD, <i>Chapter 11</i>)	
<i>Trustee of Bangor & Aroostook</i>)	
<i>Railroad Company,</i>)	
)	
APPELLEE)	

ORDER ON APPEAL

Oral argument on this appeal was held on February 22, 2007. I recognize that there are strong arguments on both sides of the primary issue. Indeed, there appears to be a Circuit split on the issue (7th vs. 3d and 6th). See In re Iowa R.R. Co., 840 F.2d 535 (7th Cir. 1988); In re Penn. Cent. Transp. Co., 486 F.2d 519 (3d Cir. 1973); Missouri Pacific Rail Co. v. Escanaba & Lake Superior R.R. Co., 897 F.2d 210 (6th Cir. 1990). Undoubtedly, therefore, this appeal is heading to the First Circuit and, in light of the apparent Circuit split, perhaps to the Supreme Court. But I conclude that Judge Haines' well-written opinion is

faithful to existing First Circuit precedent, namely In re Morales Travel Agency, 667 F.2d 1069 (1st Cir. 1980). Under any standard of review, I **AFFIRM** Judge Haines on this and the other issues in this appeal.

So ORDERED.

DATED THIS 23RD DAY OF FEBRUARY, 2007

/s/D. BROCK HORNBY

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

**U.S. DISTRICT COURT
DISTRICT OF MAINE (BANGOR)
CIVIL DOCKET FOR CASE #: 1:06cv141 (DBH)**

BNSF RAILWAY COMPANY
Formerly Known As
BURLINGTON NORTHERN AND
SANTA FE RAILWAY CO.

Appellant

Represented By **LEONARD M. GULINO**
Bernstein Shur
P.O. Box 9729
Portland, ME 04104-5029
(207) 774-1200
email: lgulino@bssn.com

v.

JAMES HOWARD
Trustee

Appellee

Represented By **Peter James Heissenbittel**
Roger Clement
Gayle H. Allen
Verrill & Dana
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000
email:
pheissenbittel@verrilldana.com
rclement@verrilldana.com
gallen@verrilldana.com