

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:)	
)	
Montreal Maine & Atlantic Railway Ltd.,)	Case No. 13-10670
)	
Debtor.)	
)	

ORDER COMPELLING RULE 2004 EXAMINATION

Upon consideration of the Wheeling and Lake Eire Railway Company’s (the “Wheeling”) motion (the “Motion”) for entry of an order authorizing the Wheeling to examine the Trustee¹ and to compel the production of documents, filed in this Court on or about September 23, 2013, and pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, a hearing having been held on October 1, 2013, and the Court having heard the arguments of counsel, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. The Motion is granted, subject to and upon the terms and conditions set forth in this Order.
2. Service of the Motion and form of order was sufficient notice to parties under the circumstances of this case.
3. The Trustee shall appear, through an authorized representative or representatives, for an examination at the offices of MCM on such date and time as the parties may determine by agreement, or failing such agreement, by order of the Court. The representative or representatives of the Trustee shall be knowledgeable to testify concerning the matters identified on **Exhibit A** to the Motion.

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion.

4. In connection with said examination, the Trustee shall produce certain documents in the Debtor's possession, custody, or control, which documents are identified on Exhibit B to the Motion; provided, however, that until further written notice from Wheeling, production of documents pursuant to this Order shall be limited to the following documents as described in said Exhibit B:

All Documents and tangible things related to the following matters:

(a) the existence of and scope of and director and officer liability policies pursuant to which the Debtor, and/ or any of its directors or officers are insured, and covering any such insured entities for any periods of time between June 9, 2013 and the date of this Motion ("D&O Policies");

(b) Information held by the Trustee and related to the obligations of the Debtor and each of its affiliates—Montreal Maine & Atlantic Corporation ("MMA Corp."), and MMA Canada to LMS Acquisition Corporation.

5. The documents described in Paragraph 4(a) and (b) above shall be provided to counsel for the Wheeling at the address set forth in the Motion not later than 5:00 pm on October 8, 2013, unless a later date is agreed upon in writing by Wheeling and the Trustee. Wheeling shall be entitled to provide written notice to the Trustee of its request that the Trustee produce additional documents as identified on said Exhibit B, and such additional documents shall be produced at a time that the parties may determine by agreement, or failing such agreement, by order of the Court.

6. The Trustee's request for protection with respect to production of director and officer liability policy or policies, made orally at the hearing held on October 1, 2013, is hereby denied.

7. This Order is without prejudice to other and further requests by the Wheeling for relief under Rule 2004 of the Federal Rules of Bankruptcy Procedure, and without prejudice to other and further requests for protection by the Trustee, in accordance with applicable local rules.

8. Notwithstanding anything to the contrary in the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, this Order shall become final when entered on the docket.

Date October 4, 2013



Hon. Louis J. Kornreich
United States Bankruptcy Judge

EXHIBIT B

Wheeling requests that the Debtor produce the following documents:

Definitions and General Instructions

A. “Debtor” shall mean Montreal Maine & Atlantic Railway Ltd, together with any affiliates (including MMA Canada), , together with their members, directors, officers, attorneys, agents, employees, and representatives.

B. “D&O Policies” shall mean any insurance policies relating to or purporting to cover or encompass the acts and omissions of the Debtor’s management.

C. “Bankruptcy Code” shall mean the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

D. “Document” or “documents” shall mean all objects, **tangible or intangible**, from which any information may be derived. By way of example, “document” or “documents” shall mean the original, or a copy when the original is not available, and each nonidentical copy, including those that are nonidentical by reason of notations or markings, of any books, pamphlets, periodicals, letters, reports, memoranda, handwritten notes, notations, messages, telegrams, cables, records, drafts, diaries, videotapes, studies, analyses, summaries, magazines, booklets, circulars, bulletins, instructions, minutes, photographs, purchase orders, bills, checks, tabulations, invoices, questionnaires, surveys, drawings, sketches, working papers, charts, graphs, indexes, tapes, correspondence, records of purchase or sale, contracts, agreements, leases, expense records, trip reports, statements, accounting records, income statements, releases, appraisals, valuations, estimates, opinions, financial statements, balance sheets, electronic or other transcriptions or taping of telephone or personal conversations or conferences, or any and all other written, printed, typed, punched, filmed or graphic matter or tangible thing, or

whatsoever description, however produced or reproduced (**including electronically stored or generated data, together with instructions and programs necessary to search or retrieve such data**), and shall include all attachments and enclosures to any requested item, which shall not be separated from the items to which they are attached or enclosed.

E. “Person” shall mean any live human being, individual, association, professional association, corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, company, limited liability company, sole proprietor, cooperative, business entity, or any public agency, department, or bureau, and is used to reflect both the singular and plural.

F. “Relating to” shall mean concerning, referring to, alluding to, responding to, in connection with, commenting on, in response to, with respect to, about, regarding, announcing, evidencing, embodying, explaining, discussing, showing, depicting, describing, studying, reflecting, analyzing or constituting.

G. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, the Debtor is required to produce all requested documents and tangible things in the possession, custody and control of the Debtor and it’s employees and agents.

H. This request for production of documents and tangible things is continuing in nature. The Debtor is requested and required to immediately produce to legal counsel for Wheeling any documents or tangible things that are requested below and that are discovered or located subsequent to its production of documents and tangible things in accordance with the Federal Rules of Civil Procedure, or on such other date and time as legal counsel for Wheeling and legal counsel for the Debtor may mutually agree upon in writing.

I. The documents and tangible things requested below are to be produced to legal counsel for Wheeling either as they are kept by the Debtor in the usual course of business or

shall be organized and labeled to correspond with the categories in this request for production, as required by Rule 34(b) of the Federal Rules Civil Procedure.

L. If the Debtor contend that any of Wheeling's requests for production of documents and/or tangible things seeks the identification or production of a document or a tangible thing that they believe is protected from discovery by any privilege, doctrine or immunity, please identify: (1) the date the document or tangible thing was created or transmitted; (2) the name of the author of the document or tangible thing; (3) the name of the person(s) to whom the document or tangible thing was addressed or sent; (4) the name of any person(s) to whom the document or tangible thing was disclosed, in whole or in part; (5) a brief description of the document's or tangible thing's subject matter; and (6) the nature of the claimed privilege or immunity, including, but not limited to, the attorney-client privilege or the attorney work product immunity.

Requests for Documents and/or Tangible Things

All Documents and tangible things related to the following matters:

(a) the existence of and scope of and director and officer liability policies pursuant to which the Debtor, and/ or any of its directors or officers are insured, and covering any such insured entities for any periods of time between June 9, 2013 and the date of this Motion ("D&O Policies");

(b) Information held by the Trustee and related to the obligations of the Debtor or its affiliates—Montreal Maine & Atlantic Corporation ("MMA Corp."), MMA Canada, and LMS Acquisition Corporation ("LMS") and together with MMA Corp. and MMA Canada, the "Affiliates")—to Wheeling pursuant to that certain Line of Credit Note and Security Agreement dated June 15, 2009, a copy of which is attached to the Motion as **Exhibit C**. Without in any

way intending to limit the generality of the foregoing, this includes the following:

(i) The amount owed by the Debtor to any of its Affiliates as of the Petition Date and also as of the date hereof;

(ii) Accounts receivable of the Debtor in which some or all of its Affiliates are the account debtor as of the Petition Date and also as of the date hereof;

(iii) All accounts receivable held by any of the Debtor's Affiliates from any entity;

(iv) Financial statements issued by or on behalf of the Debtor's Affiliates, including all financial statements (which shall include balance sheets, income statements, and cash flow statements) issued in or with respect to calendars year 2012 and 2013;

(c) Cash Collateral of Wheeling as of the Petition Date, and the use by the Debtor or the Trustee of such Cash Collateral since the Petition Date through the date of this Motion, and proposed use by the Trustee of Cash Collateral thereafter; and

(d) The replacement lien as ordered by the Court in the orders approving use of Cash Collateral.