

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**MOTION FOR ORDER COMPELLING SMBC RAIL SERVICES, LLC TO
APPEAR FOR RULE 2004 EXAMINATION AND TO PRODUCE
DOCUMENTS IN CONNECTION THEREWITH**

Robert J. Keach, as trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), hereby moves the Court for an order authorizing the examination of SMBC Rail Services, LLC (“SMBC”) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Motion”). The Trustee seeks an examination of SMBC (the “Examination”) to explore potential claims of the Debtor’s estate against SMBC or others in connection with the Derailment (as defined below). In further support of this Motion, the Trustee states as follows:

JURISDICTION AND VENUE

1. The United States District Court for the District of Maine (the “District Court”) has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Motion pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s Local Rules, the District Court has authority to refer and has referred this chapter 11 case to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court has constitutional authority to enter judgment in this proceeding.

3. Venue in this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue in this action is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief requested in this Motion is predicated upon rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2004-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Maine (the “Local Rules”).

BACKGROUND

5. On July 6, 2013, an eastbound train operated by the Debtor and/or the Debtor’s Canadian subsidiary (the “Train”) derailed in Lac-Mégantic, Québec (the “Derailment”). The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and killed 47 people. At the time of the Derailment, the Train was transporting crude oil (the “Crude Oil”) owned and/or controlled by World Fuel Services Corporation, World Fuel Services, Inc., Western Petroleum Company, World Fuel Services, Canada, Inc. and/or Petroleum Transport Solutions, LLC (individually or collectively, as the context requires, “WFS”) produced from the Bakken Formation in North Dakota (the “Bakken Formation”).

6. The Train was comprised of United States Department of Transportation (“DOT”)-111 tankers (the “Tankers”) that had been leased by WFS. SMBC is or may be one of the entities that leased and/or supplied the Tankers to WFS.

7. As a result of the Derailment, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Derailment also precipitated a filing by the Debtor’s wholly-owned subsidiary Montreal Maine & Atlantic Canada Co. (“MMA Canada”) under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended.

8. On or about August 21, 2013, the United States Trustee appointed the Trustee to serve in the Debtor's Chapter 11 Case (the "Case") pursuant to 11 U.S.C. § 1163.

RELIEF REQUESTED

9. By this Motion, the Trustee requests that this Court enter an order compelling SMBC to appear for an examination at the offices of Bernstein, Shur, Sawyer & Nelson, P.A. ("Bernstein Shur"), 100 Middle Street, Portland, Maine at 9:00 a.m. (EST) on January 23, 2015, or on such other date or place as the parties may determine by agreement. In connection therewith, the Trustee also seeks to examine certain documents in SMBC's possession, custody, or control, which documents are identified on Exhibit A attached hereto.¹ The examination will cover topics related to the documents responsive to the requests listed in Exhibit A.

BASIS FOR RELIEF

10. Rule 2004 provides that, on motion of any party in interest, the court may order the examination of *any* entity with respect to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate...." Fed R. Bankr. P. 2004(a) and (b).

11. "The attendance of an entity for examination and for the production of documents ...may be compelled as provided in Rule 9016....." Fed. R. Bankr. P. 2004(c).

12. The primary purpose of the Rule 2004 examination is to permit the estate's fiduciaries and stakeholders to unearth assets. An early decision noted that, in an often repeated characterization, the "purpose of a Rule 2004 examination is to show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it,

¹ To the extent the Court enters an order granting the relief sought in this Motion, the Trustee requests that SMBC produce the documents identified on Exhibit A as provided in Fed. R. Bankr. P. 9016. *See* Fed. R. Bankr. P. 2004(c) ("The attendance of an entity for examination and for *the production of documents...may be compelled as provided in Rule 9016* for the attendance of a witness at a hearing or trial.") (emphasis added).

that the rights of the creditor may be preserved.”² “[T]he purpose of a Rule 2004 exam is ‘to assist a trustee in a bankruptcy proceeding to learn quickly about the debtor entity so that he or she may maximize the realization of the debtor’s estate and discover the existence and location of assets of the estate.’”³ In addition, Rule 2004 enables a party in interest to

obtain information about the debtor’s financial condition, matters that may affect the administration of the debtor’s estate, right to a discharge, or operation of a business and the desirability of its continuance, sources of, and consideration for, money or property to consummate a plan, and other matters relevant to the case or formulation of a plan.⁴

Thus, Rule 2004 is extremely broad in scope; in what is now a well-worn description, a Rule 2004 examination has been likened to a lawful “fishing expedition.”⁵

13. The examination of (and seeking documents production from) “any entity” is allowed under the rule. “Third parties having knowledge of the debtor’s affairs, as well as a debtor itself, are subject to examination.”⁶ “Discovery under Rule 2004 extends beyond the debtor to persons associated with him as well as to those persons who may have had business dealings with the debtor.”⁷

14. Accordingly, Rule 2004 is designed for use as a pre-litigation discovery device, useful for both discovering potential estate causes of action and supporting facts in the first instance, as well as to determine the odds of a successful prosecution of the claim. As the *Bennett Funding Group* court stated, “[Rule 2004] is properly used as a pre-litigation device to determine whether there are grounds to bring an action...”, and the rule is a “broad discovery

² *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991)(citing *Cameron v. U.S.*, 231 U.S. 710, 717, 34 S. Ct. 244, 246, 58 L. Ed. 448 (1914)(discussing a predecessor to Rule 2004).

³ *In re Metiom, Inc.*, 318 B.R. 263, 270 n.6 (S.D.N.Y. 2004) (citing, *inter alia*, *In re Dinubilo*, 177 B.R. 932, 940 (E.D. Cal. 1993), called into doubt on other grounds by *In re Symington*, 209 B.R. 678 (Bankr. D. Md. 1997)).

⁴ *In re Daisytek, Inc.*, 323 B.R. 180, 187 (N.D. Tex. 2005).

⁵ *In re Bennett Funding Group, Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996); *In re Hammond*, 140 B.R. 197, 201 (S.D. Ohio 1992).

⁶ *In re Valley Forge Plaza Assoc.*, 109 B.R. 669, 674 (Bankr. E.D. Pa. 1990) (citations omitted).

⁷ *In re CIS Corp.*, 123 B.R. 488, 490 (S.D.N.Y. 1991).

tool.”⁸ The Delaware bankruptcy court has noted that “[o]ne of the primary purposes of a Rule 2004 examination is as a pre-litigation device.”⁹ The *Mirant Corporation* court emphasized the Rule’s utility in ensuring that “no viable cause of action is lost” and that “all possible claims...have been identified.”¹⁰ The Rule has long been recognized as a device for discovery of possible avoidance actions.¹¹

15. SMBC is or may be one of the entities that leased and/or supplied the Tankers to WFS. Through the Examination, the Trustee seeks to determine whether SMBC was aware that the Tankers were known to be highly prone to failure and leakage even in collisions at low speed. The Trustee also seeks to determine whether SMBC was aware that the Tankers, individually, and the Train, as whole, were inadequate and unsafe for transporting crude oil produced from the Bakken Formation, which was known to have a dangerously low flash point and/or other characteristics that made it more highly volatile than other crude oil from other locations.

16. Fundamentally, the Trustee seeks to determine if the Debtor’s estate has any causes of action against any person or entity other than WFS arising out of the Derailment.

17. In light of the possibility that it will allow the Trustee to determine if the Debtor’s estate possesses claims against additional persons or entities other than WFS, the proposed examination of SMBC falls squarely within the parameters of Fed. R. Bankr. P. 2004(b).

⁸ *Bennett Funding Group.*, 203 B.R. at 28.

⁹ *In re Washington Mutual, Inc.*, 408 B.R. 45, 53 (Bankr. D. Del. 2009).

¹⁰ *Mirant Corp.*, 326 B.R. at 357. See also *Cohen v. Morgan Schiff & Co., Inc. (In re Friedman’s Inc.)*, 385 B.R. 381, 428 (S.D. Ga. 2008)(“Rule 2004 is a ‘powerful tool, enabling an attorney investigating a claim to perform almost all of the necessary discovery before filing an action’” citing and quoting *Solomon v. Riverview Finance Co.*, 70 B.R. 501, 504 (Bankr. E.D. Mich. 1987).

¹¹ *Stonitsch v. St. Louis Banana and Tomato Co. (In re Matter of Isis Foods, Inc.)*, 33 B.R. 45, 47 (Bankr. W.D. Mo. 1983)(“A trustee is entitled to have discovery of transactions which may lead to the discovery of evidence of avoidable transfers under §§546, 547 and 548 of the Bankruptcy Code.”). See generally, Robert J. Keach & Halliday Moncure, *Rule 2004 as a Pre-Litigation Tool in a Post Twombly/Iqbal World: Part I*, 29 ABI. J. 28, 80 (Oct. 2010).

18. The Trustee certifies that, pursuant to Local Rules 2004-1(a) and 9013-1(b), counsel for the Trustee conferred with known counsel for SMBC, who, as of the date of this filing, has not consented to the relief requested herein. The Trustee will continue to negotiate with such counsel as to the date, time and location of the Examination.

CONCLUSION

WHEREFORE, the Trustee requests that this Court enter an order pursuant to Fed. R. Bank. P. 2004 commanding SMBC to appear for an examination at the offices of Bernstein Shur at 9:00 a.m. (EST) on January 23, 2015, or on such other date as the parties may determine by agreement. In addition, the Trustee requests authority to seek to compel production of the documents requested in Exhibit A pursuant to Fed. R. Bankr. P. 2004(c).

Dated: October 7, 2014

ROBERT J. KEACH
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Paul McDonald
Paul McDonald, Esq.
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EXHIBIT A

Definitions

In construing these Document Requests, the following definitions shall apply:

A. The “Bakken Formation” shall mean the sub-surface rock formation covering approximately two hundred thousand square miles in the States of Montana and North Dakota, as well as the Canadian Provinces of Saskatchewan and Manitoba.

B. The “Bankruptcy Case” shall mean the Debtor’s chapter 11 bankruptcy case currently pending before the Court under the case caption, *In re Montreal, Maine & Atlantic Railway, Ltd.*, Docket No. Bk. No. 13-10670.

C. The “Court” shall mean the United States Bankruptcy Court for the District of Maine.

D. “CPR” shall mean Canadian Pacific Railway Company, including its former and present predecessors, subsidiaries, affiliates, divisions, directors, officers, employees, agents and representatives, and all those who act or have acted on its behalf.

E. The “Crude Oil” shall mean the crude oil that was transported on the Train, including all other components of such material.

F. The “Debtor” shall mean Montreal, Maine & Atlantic Railway, Ltd., including its former and present predecessors, subsidiaries, affiliates, divisions, directors, officers, employees, agents and representatives, and all those who act or have acted on its behalf.

G. “WFS” shall mean World Fuel Services Corporation, World Fuel Services, Inc., Western Petroleum Company, World Fuel Services, Canada, Inc., and Petroleum Transport Solutions, LLC, including any predecessors, subsidiaries, affiliates, divisions, directors, officers,

employees, agents and representatives, and all those who act or have acted on any or all such entities' behalf.

H. The "Derailment" shall mean the derailment of a freight train transporting tank cars loaded with the Crude Oil in Lac-Mégantic, Quebec (Canada) on July 6, 2013.

I. "MMA Canada" shall mean Montreal Maine & Atlantic Canada Co., including its former and present predecessors, subsidiaries, affiliates, divisions, directors, officers, employees, agents and representatives, and all those who act or have acted on its behalf.

J. The "Train" shall mean the train that was the subject of the Derailment.

K. The "Tankers" shall mean the DOT-111 tankers attached to the Train at the time of the Derailment.

L. "DOT" shall mean the United States Department of Transportation.

M. "Train Engineer(s)" shall mean Tom Harding and/or any other person operating or assisting in operating the Train.

N. "Document" shall have the broadest meaning possible under the Federal Rules of Civil Procedure, made applicable to the Bankruptcy Case by the Federal Rules of Bankruptcy Procedure, including, but not limited to, all originals, non-identical copies, amendments, restatements, and drafts of any written, printed, handwritten, recorded, or graphic matter of any kind, however produced or reproduced, and regardless of where located, including, but not limited to, any work paper, correspondence, memorandum, note, research, checklist, opinion, minutes, electronic mail, report, chart, graph, summary, index, diary, desk or pocket calendar, notebook, any magnetic or other recording tape, computer data (including information or programs stored in a computer, whether or not ever printed out or displayed), photograph, microfiche, microfilm, videotape, record, or motion picture, and electronic, mechanical, or

electrical record or representation of any kind, including but not limited to tape, cassette, disc, magnetic card, or recording. “Document” shall include metadata and/or other identifying information for those documents stored electronically, including electronic mail. “Document” shall also include the file folders in which said documents are maintained and any table of contents or index thereto; and copies of documents of which the originals have been destroyed pursuant to a document destruction policy or otherwise.

O. “Communication” shall mean any transmission of words or ideas between or among two or more persons, including, but not limited to, spoken words, conversations, conferences, discussions, interviews, reports, meetings, negotiations, agreements and understandings, whether transmitted in person or by an electronic device such as telephones or radio, facsimile transmission or e-mail, and documents, as defined herein.

P. “Relate to” or “relating to” or any variation thereof shall mean in any way directly or indirectly, in whole or in part, relating to, regarding, constituting, concerning, about, pertaining to, reflecting, considering, underlying, modifying, amending, confirming, mentioning, endorsing, evidencing, summarizing, memorializing, describing, discussing, analyzing, evaluating, representing, supporting, qualifying, terminating, revoking, canceling, or negating the matter described in the Document Request.

Q. “You” and “Your” shall mean SMBC Rail Services, LLC, including its former and present predecessors, subsidiaries, affiliates, divisions, directors, officers, employees, agents and representatives, and all those who act or have acted on its behalf.

R. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the Document Request inclusive rather than exclusive.

S. “Any” includes “all” and “all” includes “any.”

T. The single includes the plural, and vice versa.

U. All words used in the present tense shall be read to include the past tense and vice versa.

Instructions

In responding to and interpreting these Document Requests, the following shall apply:

A. If any Document Request, read literally, requires the production of a part or portion of a document, production of the entire document is requested.

B. Each Document Request contemplates the production of a document (along with all drafts thereof) in its entirety, without abbreviation or expurgation.

C. With respect to ESI:

a. All electronic mail and spreadsheets responsive to these Document Requests that are maintained in the usual course of business in electronic format shall be produced in their native format along with the software necessary to interpret such files if such software is not readily available.

b. All other documents responsive to these Document Requests that are maintained in the usual course of business in electronic format shall be produced as searchable single-page TIFF Group IV 300 dpi images and single-page text files (the filename of the TIFF and text files should be the Bates/PageID) with a Summation DII load file which establishes appropriate document breaks and maintains parent/child relationships. A Summation DII load file is a text file that is used to load images and text into Summation establishing appropriate document breaks.

c. All documents responsive to these Document Requests shall be produced with the metadata normally contained within such documents, and the necessary Summation load files. If such metadata is not available, each document shall be accompanied by a listing of all file properties concerning such document, including, but not limited to, all information concerning the date(s) the document was last accessed, created, modified or distributed, and the author(s) and recipient(s) of the document.

d. Under no circumstances should ESI be converted from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome to use ESI. ESI should not be produced in a form that removes or significantly degrades the ability to search the ESI by

electronic means where the ESI is ordinarily maintained in a way that makes it searchable by electronic means. Databases or underlying data should not be produced without first discussing production format issues with the Trustee. If you decline to search or produce ESI on the ground that such ESI is not reasonably accessible because of undue burden or cost, identify such information by category or source and provide detailed information regarding the burden of cost you claim is associated with the search or production of such ESI.

D. If any specific Document Request cannot be complied with in full, it shall be complied with to the extent possible, and an explanation shall be given why full compliance is not possible.

E. If you contend that any document responsive to a Document Request is privileged from disclosure or production, identify each document as to which privilege is claimed as follows:

- i. Date of the document;
- ii. Author(s) of the document;
- iii. Recipient(s) of the document, including those receiving copies via cc;
- iv. Type of document;
- v. Subject matter of the document; and
- vi. The nature of the privilege claimed.

F. As to any document which no longer exists but which you are aware existed at one time, please identify the document with as much particularity as possible, including:

- i. The author(s), editor(s), reviewer(s) and addressee(s);
- ii. The addressee(s) of any indicated or blind copies;
- iii. The date, subject matter and number of pages;
- iv. A description of any attachment(s) or appendice(s) to the document;
- v. All persons to whom the document was distributed, shown or explained;

- vi. The date of destruction or discard, manner of destruction or discard and reason for destruction or discard of the document; and
- vii. The person(s) authorizing or carrying out such destruction or discard.

As to any data which no longer exists but which you are aware existed at one time, please identify the data with as much particularity as possible, including:

- i. The author(s), editor(s) and reviewer(s);
- ii. The recipient(s) and all other persons given access to the data by email or by other electronic form;
- iii. The system components, machines or other locations upon which such recipients or other persons accessed the data;
- iv. Any email servers used to send or receive the data;
- v. The creation date and subject matter;
- vi. The date of destruction or discard, manner of destruction or discard and reason for destruction or discard of the data; and
- vii. The person(s) authorizing and carrying out such destruction or discard.

G. If a portion of an otherwise responsive document or data set contains information subject to a claim of privilege, those portions of the document subject to the claim of privilege shall be deleted or redacted from the document and the rest of the document shall be produced along with a privilege log entry complying with paragraph F.

H. If you object to any of the Document Requests, state the reasons for the objection with particularity. If you object to any part of any Document Request, state your objection, identify the part to which you are objecting, and answer the remaining portion of the Document Request. If you object to the scope or time period of any Document Request, state your objection, identify the scope or time period to which you are objecting and answer the Document Request for the scope or time period you believe appropriate. Any objection shall be stated

completely and clearly in writing and deliver those written objections to the offices of Bernstein, Shur, Sawyer & Nelson, P.A., 100 Middle Street, P.O. Box 9729, Portland, ME 04104-5029, attention Timothy J. McKeon, Esq., on or before the deadline to respond to these Requests.

I. These Document Requests shall be deemed continuing. You shall promptly provide additional responsive documents/data it may locate after they provide their formal response.

J. Please provide a written response to these Document Requests in addition to providing responsive documents. Please set forth the particular Document Request in full before each response.

K. If one or more responses to these Document Requests would require production of a document previously produced by you in response to another Document Request made herein, you may, in lieu of making a duplicative production of it, refer to that document on each subsequent occasion in a manner identifying the document with particularity as to the specific portion, page, paragraph and line thereof.

L. Each paragraph or subparagraph of this Document Request should be construed independently and without reference to any other paragraph or subparagraph for the purpose of litigation.

Document Requests

1. All Documents that evidence, refer, or relate to Your awareness, prior to the Derailment, that crude oil extracted from the Bakken Formation can be explosive and can self-ignite at low ambient temperatures.

2. All other Documents that evidence, refer, or relate to whether crude oil extracted from the Bakken Formation can be explosive and can self-ignite at low ambient temperatures.

3. All Communications sent to or received from WFS that refer or relate to whether that crude oil extracted from the Bakken Formation can be explosive and can self-ignite at low ambient temperatures.

4. All Documents that evidence, refer, or relate to Your awareness, prior to the Derailment, as to whether any other party had performed any testing or analysis of the flash point, boiling point, or chemical composition of any of the Crude Oil, or of any other crude oil extracted from the Bakken Formation.

5. All other Documents that evidence, refer, or relate to any other party's performance of any testing or analysis of the flash point, boiling point, or chemical composition of any of the Crude Oil, or of any other crude oil extracted from the Bakken Formation.

6. All Documents that evidence, refer, or relate to Your awareness, prior to the Derailment, as to whether any other party had made any effort to identify the correct hazardous waste classification or packing group that pertained to any of the Crude Oil.

7. All other Documents that evidence, refer, or relate to any other party's making any effort to identify the correct hazardous waste classification or packing group that pertained to any of the Crude Oil.

8. All Documents that evidence, refer, or relate to Your communication with WFS, prior to the Derailment, that the Crude Oil would be transported in the Tankers.

9. All Documents that evidence, refer, or relate to Your awareness, prior to the Derailment, that the Tankers could tear or rupture upon a collision and/or derailment, which could potentially spill their cargo.

10. All other Documents that evidence, refer, or relate to whether the Tankers could tear or rupture upon a collision and/or derailment, which could potentially spill their cargo.

11. All Documents that evidence, refer, or relate to Your awareness, prior to the Derailment, whether the risk of the Tankers rupturing could be eliminated or reduced by implementing certain design changes, such as reinforced shells, head shields, valves, and other exposed fittings.

12. All other Documents that evidence, refer, or relate to whether the risk of the Tankers rupturing could be eliminated or reduced by implementing certain design changes, such as reinforced shells, head shields, valves, and other exposed fittings.

13. All Documents that evidence, refer, or relate to Your performance of, or You causing to be performed, any testing, analysis, or investigation as to the structural integrity and/or the safety any of the Tankers.

14. All Documents that evidence, refer, or relate to Your awareness, prior to the Derailment, as to whether any other party performed any testing, analysis, or investigation as to the structural integrity and/or the safety any of the Tankers.

15. All other Documents that evidence, refer, or relate to any other party's performance of any testing, analysis, or investigation as to the structural integrity and/or the safety any of the Tankers.

16. All Documents that evidence, refer, or relate to the maintenance and/or inspection of the Tankers from 2008 to the date of the Derailment, including, without limitation, records and files related to the inspection, maintenance, and/or repair(s) done to the Tankers.

17. All Documents that evidence, refer, or relate to the shops and/or garages located in the United States where maintenance and/or inspection is performed on the Tankers, including, without limitation, the names, addresses and telephone numbers of such shops and garages.

18. All Documents evidencing the title and registration of the Tankers.
19. All Documents that evidence, refer, or relate to the manufacturer, make and model of Tankers, as well as their brakes.
20. All Documents that evidence, refer, or relate to any proposed and completed changes in the design of the Tankers during the period from 2003 to the present.
21. All Documents that evidence, refer, or relate to any permits or licenses covering the Tankers or the Crude Oil on the day of the Derailment.
22. All Documents that evidence, refer, or relate to the daily condition reports submitted by the **Train Engineer**(s) from June 6, 2013 through August 6, 2013.
23. All Documents that evidence, refer, or relate to any maintenance, inspection, or repair records or invoices with respect to the Tankers after the Derailment.
24. All agreements that refer or relate to the transportation of the Crude Oil from the wells from which it was extracted to the New Town, North Dakota intermodal facility, including any drafts thereof.
25. All Documents that refer or relate to the agreements identified in the prior Document Request.
26. All other Documents that evidence, refer, or relate to the Debtor's transportation of the Crude Oil from the wells from which it was extracted to the New Town, North Dakota intermodal facility, including, but not limited to, all shipping documents, invoices, and payments.
27. All agreements that refer or relate to the Debtor's transportation of the Crude Oil from the New Town, North Dakota intermodal facility to its intended destination, St. John, New Brunswick (Canada), including any drafts thereof.

28. All Documents that refer or relate to the agreements identified in the prior Document Request.

29. All other Documents that evidence, refer, or relate to the Debtor's transportation of the Crude Oil from the New Town, North Dakota intermodal facility to its intended destination, St. John, New Brunswick (Canada), including, but not limited to, all shipping documents, invoices, and payments.

30. All Documents that evidence, refer, or relate to Your efforts to ensure that the Crude Oil would be safely transported from the New Town, North Dakota Intermodal Facility to St. John, New Brunswick (Canada).

31. All Documents that evidence, refer, or relate to the pickup and/or delivery dates and times or delays and/or detention of equipment relative to the operations of the Train at the time of the Derailment.

32. All documents that evidence, refer, or relate to the loading, unloading or detention of equipment and/or the Crude Oil, including, without limitation, freight bills, bills of lading, manifest, or other documents regardless of form or description, that show signed receipts for cargo delivered along with any other type of document that may show dates and times the Crude Oil was scheduled to be picked-up and/or delivered.

33. All agreements that may in any way impose on You an obligation to provide indemnity from or contribution to damages incurred by any third-party, which arise out of or relate to the Derailment, including any drafts thereof.

34. All Documents that refer or relate to the agreements identified in the prior Document Request.

35. All other Documents that evidence, refer, or relate to any actual or potential obligation for You to provide indemnity from or contribution to damages incurred by any third-party, which arise out of or relate to the Derailment.

36. All agreements that refer or relate to any insurance policy in effect at the time of the Derailment under which You are a named insured or any other agreement that may obligate a person or entity to provide any investigative services or defense to You or provide indemnification and/or contribution with respect to claims arising out of the Derailment

37. All Documents that evidence, refer, or relate to the agreements identified in the prior Document Request.

38. All Communication sent by You demanding indemnification or contribution from any person or entity, or putting any person or entity on notice that You contend that such person or entity has or may have a duty to indemnify You or contribute to Your losses, arising out of or related to the Derailment.

39. All Communication between You and any insurance company or authorized representative in connection with any claims arising from the Derailment.

40. All Communications sent to or received from the Debtor that refer or relate to the Train or the Derailment.

41. All Communications sent to or received from MMA Canada that refer or relate to the Train or the Derailment.

42. All Communications sent to or received from CPR that refer or relate to the Train or the Derailment.

43. All Communications sent to or received from WFS that refer or relate to the Train or the Derailment.

44. All other Communications sent by You to or received from any other person or entity that refer or relate to the Train or the Derailment.

45. All pictures, drawings, photographs, slides, sketches, maps and videotapes of the Derailment in Your possession, custody or control.

46. Any investigative report, file, diagram and/or Documents that refer or relate to the Derailment.

47. All Documents that evidence, refer, or relate to any reconstruction of the Derailment by You or any other person or entity.

48. All Documents prepared by any expert that You retained for any purpose in connection with the Derailment, including, without limitation, all notes, memoranda, correspondence, reports, tests, and statements.

49. All objects, photographs, drawings, reports, statements or otherwise described documents or objects in Your possession that evidence, refer, or relate to the Derailment, including, without limitation, any and all reports and written or electronically recorded statements made by You to any other person, organization or governmental entity.

50. All Documents that evidence, refer, or relate to any investigation, citation, or compliance review of You conducted by DOT or any other governmental or administrative agency.

51. All accident or police reports, traffic citations, Department of Public Safety reports, Federal Railroad Administration reports, NTSB reports, DOT reports, and any other reports or documents regarding accidents in the past five years, other than the Derailment, in which the Tankers were involved.

52. All Documents that evidence, refer, or relate to Your business relationship with any of the other Tank Lessors.

53. All Documents that evidence, refer, or relate to Your “net worth” for the years 2003 to the present, including, without limitation, income tax returns, financial statements, loan applications, bank statements, information on certificates of deposit and retirement accounts, and other similar documents.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER GRANTING MOTION FOR ORDER COMPELLING SMBC RAIL SERVICES,
LLC TO APPEAR FOR RULE 2004 EXAMINATION AND TO PRODUCE
DOCUMENTS IN CONNECTION THEREWITH**

This matter having come before the Court on the motion (the “Motion”)¹ of Robert J. Keach, as Chapter 11 Trustee (the “Trustee”) for the estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), seeking an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure compelling SMBC Rail Services, LLC (“SMBC”) to appear, through its designated managing agent, for examination and to produce certain records, documents and other information; the Motion having been filed in accordance with D. Me. LBR 9013-1(d); and there appearing to be just cause for such relief; it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Motion is granted, and the relief requested therein is granted and approved in its entirety, as further described therein.

2. SMBC is ordered to appear for an examination on topics related to the documents requested in **Exhibit A** to the Motion at the offices of Bernstein, Shur, Sawyer & Nelson, P.A. (“Bernstein Shur”), 100 Middle Street, Portland, Maine at 9:00 a.m. (EST) on January 23, 2015, or on such other date as the parties may determine by agreement.

¹ Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

3. Subject to the service of a subpoena pursuant to Fed. R. Bankr. P. 2004(c), and the exercise of SMBC's rights in connection therewith, SMBC shall produce the documents within its custody or control that are responsive to the Document Requests set forth in **Exhibit A** to the Motion for inspection and/or copying at the offices of Bernstein Shur on or before 5:00 p.m. (EST) within thirty (30) days from the entry of this Order, or on such other date as the parties may determine by agreement.

Dated:

The Honorable Louis H. Kornreich
United States Bankruptcy Court for the District of
Maine

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

NOTICE OF HEARING

Robert J. Keach, the duly appointed chapter 11 trustee in the above-captioned case (the “Trustee”), has filed the following motions (individually or collectively, as the context requires, the “Rule 2004 Motions”):

- a. Motion for Order Compelling Marathon Oil Corporation to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- b. Motion for Order Compelling Slawson Exploration Company, Inc. to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- c. Motion for Order Compelling Oasis Petroleum Inc. to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- d. Motion for Order Compelling Oasis Petroleum LLC to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- e. Motion for Order Compelling QEP Resources, Inc. to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- f. Motion for Order Compelling Devlar Energy Marketing, LLC to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- g. Motion for Order Compelling Arrow Midstream Holdings, LLC to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- h. Motion for Order Compelling Trinity Industries, Inc. to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- i. Motion for Order Compelling Trinity Rail Group, LLC to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;

- j. Motion for Order Compelling Trinity Rail Leasing 2012 LLC to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- k. Motion for Order Compelling General Electric Railcar Services Corporation to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- l. Motion for Order Compelling Union Tank Car Company to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith;
- m. Motion for Order Compelling SMBC Rail Services, LLC to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith; and
- n. Motion for Order Compelling First Union Rail to Appear for Rule 2004 Examination and to Produce Documents in Connection Therewith.

A hearing to consider the Rule 2004 Motions is scheduled to be held on **November 18, 2014 at 10:00 a.m. ET.**

If you do not want the Court to approve the Rule 2004 Motions, individually or collectively, then **on or before November 4, 2014**, you or your attorney must file with the Court a response or objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before November 4, 2014.**

You may attend the final hearing with respect to the Rule 2004 Motions scheduled to be held at the **Bankruptcy Court, 202 Harlow Street, Bangor, ME 04401** on **November 18, 2014 at 10:00 a.m. ET.** You may attend the hearing with respect to the Rule 2004 Motions via Court Call.

If no objections are timely filed and served, then the Court may enter a final order approving the Rule 2004 Motions without any further hearing.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought, and may enter an order granting the requested relief without further notice or hearing.

Dated: October 7, 2014

ROBERT J. KEACH
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Timothy J. McKeon

Michael A. Fagone, Esq.

Paul McDonald, Esq.

Timothy J. McKeon, Esq.

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