UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD. Debtor.	Bk. No. 13-10670 Chapter 11

TRUSTEE'S OBJECTION AND REPLY TO WHEELING & LAKE ERIE RAILWAY COMPANY'S MOTION TO COMPEL ATTENDANCE AT DEPOSITION AND PRODUCTION OF DOCUMENTS RELATED THERETO AND OBJECTION TO THE TRUSTEE'S MOTION TO SEAL

Robert J. Keach, the trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), by and through his undersigned counsel, hereby objects and replies to Wheeling & Lake Erie Railway Company's Motion to Compel Attendance at Deposition and Production of Documents Related Thereto and Objection to the Trustee's Motion to Seal [D.E. 1439] [D.E. 1442] (the "Motion to Compel").[1] In support of his objection to the Motion to Compel (the "Objection"), the Trustee states as follows:[2]

BACKGROUND

1. On July 6, 2013, an eastbound train operated by the Debtor and/or the Debtor's Canadian subsidiary derailed in Lac-Mégantic, Québec (the "Derailment"). The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and killed 47 people.

2. As a result of the Derailment, on August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of 11 U.S.C. § 101 et seq. (the "Bankruptcy Code").

[1] Wheeling filed the Motion to Compel on June 3, 2015 [D.E. 1439] and again on June 4, 2015 [D.E. 1442]. The motions appear to be identical, with the only difference being the docket text for each filing.

[2] The Debtor requests a waiver of the requirements of D. Me. LBR 9013-1(f) given that the Motion to Compel, and the Debtor's objection, are focused on the narrow issue of Wheeling's request for discovery and objection to the Trustee's Motion to Seal (as defined herein) and are not concerned with factual disputes.

Thereafter, on August 21, 2013, the United States Trustee appointed the Trustee to serve in the Debtor's Chapter 11 case pursuant to 11 U.S.C. § 1163. [D.E. 64].

3. On August 8, 2013, the Debtor's wholly-owned subsidiary, Montreal Maine & Atlantic Canada Co. ("MMA Canada") filed for protection under Canada's Companies' Creditors Arrangement Act (the "Canadian Case") in Quebec Superior Court in Canada (the "Canadian Court"). Richter Advisory Group Inc. (the "Monitor") was appointed as the monitor in the Canadian Case.

4. The Trustee, the Monitor, the Debtor and MMA Canada (among others) have worked collectively from the commencement of the Debtor's case and the Canadian Case to engage in settlement discussions with various parties identified as potentially liable for damages arising from the Derailment. As a result of these negotiations, approximately 22 entities or groups of affiliated entities entered into Settlement Agreements, whereby the Released Parties (as defined in the Settlement Agreements) will contribute to a settlement fund in exchange for a full and final release of all claims against them arising out of the Derailment, as well as the protection of a global injunction barring assertion of any Derailment-related claims against the Released Parties. As of the date of this Objection, the proposed settlement fund is approximately (CAD) $300 million.

5. On April 21, 2015, the Trustee filed the Motion for Entry of an Order Authorizing Filing of Settlement Agreements Under Seal [D.E. 1397] (the "Motion to Seal"). In the Motion to Seal, the Trustee requests that the Court enter an order, pursuant to section 107(b)(1) of the Bankruptcy Code, authorizing and ordering the filing of the Settlement Agreements under seal. See Motion to Seal, ¶ 7, 12. The Trustee has, however, disclosed the names of the Released Parties, the aggregate settlement amount, and a template of the Settlement Agreements. As

noted in the Motion to Seal, the Trustee is required to keep the specific dollar amounts confidential so as to not prejudice the Released Parties in the event the Plan does not become effective. See Motion to Seal, ¶ 13. Moreover, the Settlement Agreements specifically provide that the parties thereto agree to keep the terms of the agreements strictly confidential. A hearing on the Motion to Seal is currently scheduled for June 23, 2015.

6. On March 31, 2015, the Trustee filed the Trustee's Plan of Liquidation Dated March 31, 2015 [D.E. 1384] (the "Plan") and the Disclosure Statement for the Trustee's Plan of Liquidation Dated March 31, 2015 [D.E. 1385] (the "Disclosure Statement"). A hearing on the Disclosure Statement is currently scheduled for June 23, 2015.

ARGUMENT

A. The Court Should Deny Wheeling's Request to Compel Attendance at Deposition and the Production of Documents.

7. Generally, discovery is permitted in a bankruptcy case only if it is related to an adversary proceeding or a contested matter. See Fed. R. Bankr. P. 7026; see also Fed. R. Bankr. R. 9014(c). Absent such disputes, or leave from the Court, a creditor, for example, may not compel a debtor or trustee to respond to discovery demands. Such demands, if made, would be improper and prima facie invalid.

8. To determine whether discovery demands are related to a contested matter, and thereby proper, there must first be a contested matter. The Bankruptcy Code does not define contested matter; however, the Committee Advisory Notes for Rule 9014 provides that "[w]henever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter." Fed. R. Bankr. P. 9014 Advisory Committee Note (1983). "For example, the filing of an objection to a proof of claim, to a claim of exemption, or to a disclosure statement creates a dispute which is a contested

matter." Id. (underscore added). Objections to a plan also give rise to a contested matter. Id. In short, "only when an objection is filed does the dispute become a contested matter proceeding."[3] 11 Norton Bankr. L. & Prac. 3d Fed. R. Bankr. P. 9014.

9. Here, the discovery demands Wheeling seeks in its Motion to Compel are not related to, or based on, any contested matters before the Court. Wheeling attempts to link its demands to the Trustee's Motion to Seal, as well as the Disclosure Statement and Plan. These efforts fail.

10. First, there is no contested matter between the Trustee and Wheeling with respect to the Motion to Seal. To the extent Wheeling may argue that the Motion to Compel serves as its objection to the Motion to Seal, this is an obvious misrepresentation. The Motion to Compel is devoid of any analysis of the Motion to Seal, as well as 11 U.S.C. § 107(b) and the law governing requests to file documents under seal. By simply labeling its motion as an objection to the Motion to Seal, Wheeling is attempting to create a mirage of a contested matter through which it hopes to conduct discovery it would otherwise be unable to attain. Wheeling's failure to state with any particularity its objection(s) to the Motion to Seal means that the Motion to Compel should not be accepted as a valid objection. See Fed. R. Bankr. R. 9013 (a motion must "state with particularity the grounds therefor, and shall set forth the relief or order sought."). Indeed, even the ad damnum clause in the Motion to Compel does not contain a request with respect to the Motion to Seal.

11. Similarly, there is no contested matter between the Trustee and Wheeling with respect to the Disclosure Statement and/or the Plan. As provided by the Committee Advisory Notes, the filing of the Disclosure Statement and the Plan does not, contrary to Wheeling's

[3] Although not relevant to the issue before the Court, certain motions will inherently trigger a contested matter, e.g., a motion for relief from the automatic stay. See 11 Norton Bankr. L. & Prac. 3d Fed. R. Bankr. P. 9014.

unsupported assertion, initiate a contested matter. See Fed. R. Bankr. P. 9014 Advisory Committee Note (1983); see also 11 Norton Bankr. L. & Prac. 3d Fed. R. Bankr. P. 9014; c.f. Motion to Compel, ¶ 7. Wheeling has not filed an objection to either the Disclosure Statement or the Plan. To the extent Wheeling relies on the Motion to Compel as a basis to seek discovery in connection with the Disclosure Statement and/or the Plan, such efforts are improper and impermissible. The Motion to Compel is not directly tied to the Disclosure Statement and/or the Plan so as to create a valid discovery request with respect to those filings. Indeed, there is no actual dispute before the Court with respect to either the Disclosure Statement or the Plan between the Trustee and Wheeling.

12. Second, even assuming arguendo that the Motion to Compel does create a contested matter with respect to the Motion to Seal, Wheeling's deposition topics and document requests seek information that has no bearing on Motion the Seal or the Disclosure Statement. Specifically, Wheeling does not require knowledge of the contents of the Settlement Agreements for the purpose of objecting to whether the Trustee met his burden under section 107(b). Additionally, Wheeling does not require knowledge of the contents of the Settlement Agreements for the purpose of determining whether it believes the Disclosure Statement contains "adequate information." 11 U.S.C. § 1125(b).

13. Third, the parties to the Settlement Agreements have agreed to keep the terms of the agreements strictly confidential. Any disclosure of the specific terms of the Settlement Agreements will invalidate the agreements. Accordingly, in the event the Trustee is compelled to submit to Wheeling's discovery demands, such disclosures could result in the termination of the Settlement Agreements and a loss of approximately (CAD) $300 million in proposed settlement payments to the Debtor's estate.

14. Fourth, and importantly, Wheeling seems to suggest that the order denying Wheeling's motion to intervene in the Trustee's adversary proceeding against World Fuels, et al. (the "Intervention Order") gives Wheeling some type of right to the discovery it is seeking. The Intervention Order, however, does no such thing. In fact, any rights granted in the Intervention Order cut against the needs of Wheeling to review the Settlement Agreements because, as provided for by the terms of the Intervention Order, Wheeling is not bound by the terms of the Settlement Agreements in relation to the characterization of the proceeds. This means any claims of prejudice by Wheeling should fall on deaf ears.

15. In light of the foregoing, and given that the requested discovery demands are not related to, or based on, a pending contested matter between the Trustee and Wheeling, as well as the necessity to the Debtor's estate that the terms of the Settlement Agreements remain confidential, the Trustee requests that the Court deny the Motion to Compel.

B. The Court Should Grant the Trustee's Motion to Seal

16. To the extent the Court accepts the Motion to Compel as a valid objection to the Trustee's Motion to Seal, it should reject Wheeling's arguments (because there aren't any) and grant the Trustee leave to file the Settlement Agreements under seal. The Motion to Compel fails to set forth any argument in opposition to the Motion to Seal. Indeed, as referenced above, the Motion to Compel is devoid of any legal analysis with respect to section 107(b) of the Bankruptcy Code. Wheeling merely asserts that it "must conduct discovery" with respect to the Settlement Agreements and sealing the Settlement Agreements would prevent such discovery. Motion to Compel, ¶ 5. This argument, however, does not address the Trustee's position that the Settlement Agreements fall under the broad category of "commercial information" that is eligible to be sealed under section 107(b)(1).

17. Given Wheeling's failure to actually set forth any opposition to the Motion to Seal, the Court should grant the relief sought therein.

CONCLUSION

18. In light of the foregoing, the Court should deny the Motion to Compel and grant the Motion to Seal. Specifically, the Court should deny Wheeling its requested discovery demands because such demands are not related to any contested matters, or relevant to any matters, before Court. Additionally, given the factually ignorant nature of the relief sough, the Trustee demands that he be reimbursed by Wheeling for the costs associated with responding to the Motion to Seal.

Dated: June 8, 2015

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

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