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

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

**TRUSTEE'S OBJECTION TO CANADIAN PACIFIC RAILWAY COMPANY'S MOTION TO COMPEL THE PRODUCTION OF SETTLEMENT AGREEMENTS AND MEMORANDUM IN SUPPORT OF MOTION**

Robert J. Keach, the chapter 11 trustee (the "Trustee") in the above-captioned chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), by and through his undersigned counsel, hereby objects (the "Objection") to *Canadian Pacific Railway Company's Motion to Compel the Production of Settlement Agreements and Memorandum in Support of Motion* [D.E. 1632] (the "Motion to Compel"). In support hereof, the Trustee respectfully states the following:

## PRELIMINARY STATEMENT

Canadian Pacific Railway Company ("CP") stylizes the Motion to Compel as if in response to a motion to seal documents, when in reality it is an affirmative request to receive discovery that is subject to a protective order. Oriented in the accurate procedural posture, CP must demonstrate, *inter alia*, (a) standing to raise the issue and (b) good cause to modify the orders of the CCAA Court[1] and this Court that prevent CP from receiving the Settlement Agreements in any form other than what has already been permitted. But CP lacks standing and

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1534] (as may be amended, the "Plan") or the *Revised First Amended Disclosure Statement with Respect to Trustee's Plan of Liquidation Dated July 15, 2015* [D.E. 1535] (the "Disclosure Statement"), as applicable.

cannot demonstrate "good cause" because none exists: CP's actual motivation for seeking production of the Settlement Agreements is litigation leverage. CP's message (in this pleading and in each other pleading filed in the Chapter 11 Case) is clear: give CP the unredacted Settlement Agreements so that CP may know how much it should offer in settlement, or CP will hold up confirmation until the victims of the Derailment are forced to bow to CP's requests in order to obtain their deserved compensation. The Motion to Compel should thus be denied.

## RELEVANT BACKGROUND

### A. Trustee's Adversary Proceeding

1. On January 30, 2014, the Trustee filed a complaint commencing adversary proceeding No. 14-01001 against the World Fuel Defendants for, *inter alia*, alleged negligence in connection with the Derailment [D.E. 605] (as modified below, the "Adversary Proceeding"). On January 9, 2015, the Trustee filed the *First Amended Complaint*, adding CP and Irving Oil Limited ("Irving") as defendants to the Adversary Proceeding.[2]

2. On January 15, 2015, CP filed a *Motion to Withdraw the Reference*, seeking to remove the Adversary Proceeding to the District Court, and on June 8, 2015, the District Court denied CP's motion. On June 23, 2015, CP moved to dismiss the Adversary Proceeding (the "Motion to Dismiss"), and on August 20, 2015, the Court denied the Motion to Dismiss on the record at the hearing.

### B. Settlement Negotiations

3. Since the commencement of the Case, the Trustee, the Monitor, the Debtor, MMA Canada, and representatives of certain victims of the Derailment have engaged in settlement

[2] On May 18, 2015, the Trustee filed his *Second Amended Complaint*, adding SMBC Rail Services, LLC ("SMBC") as a defendant to the adversary proceeding. On June 8, 2015, the Trustee and the World Fuel Defendants announced the conclusion of an agreement whereby, subject to Court approval in Canada and in the United States, the World Fuel Defendants will contribute US$110,000,000 to the Trustee's fund for settling Derailment Claims. In addition, on about June 8, 2015, the Trustee also reached a settlement with SMBC.

discussions with various parties identified as potentially liable for damages arising from the Derailment (including, among others, the World Fuel Defendants, SMBC, Irving and CP). As a result of the settlement discussions, approximately 25 groups of affiliated entities (collectively, the "Settling Defendants") have entered into Settlement Agreements, whereby Settling Defendants agree to contribute to a settlement fund in exchange for, *inter alia*, a full and final release of all claims arising out of the Derailment. The settlement fund is, as of the date hereof, approximately CAD$446 million (the "Settlement Fund"),[3] which constitutes the vast majority of assets available for distribution under the Plan. These Settlement Agreements are to be approved in connection with confirmation, and implemented in connection with consummation, of the Plan. And each Settlement Agreement (other than the XL Settlement Agreement, which was filed as Exhibit 3 to the Plan) could be subject to termination if disclosed to the public prior to the effective date of the Plan.

4. As of the date hereof, CP is the only Non-Settling Defendant. CP has, at various points during the Chapter 11 Case and the CCAA Case, evidenced interest in seeing the Settlement Agreements of the Settling Defendants, though it has not evidenced much interest in settlement discussions.

**C. CCAA Sealing Order and Sanction Order**

5. In response to CP's request for access to the Settlement Agreements in the CCAA Case, on June 17, 2015, the CCAA Court entered the *Reasons for Judgment Rendered from the Bench* [No. 450-11-000167-134] (the "CCAA Sealing Order").[4] In the CCAA Sealing Order, the

[3] This figure is based on CAD/USD exchange rates as of September 10, 2015.

[4] An English translation of the CCAA Sealing Order is attached as an exhibit to the *Trustee's Omnibus Reply to Objections Filed in Response to the Trustee's Motion for Entry of an Order Authorizing Filing of Settlement Agreements Under Seal* [D.E. 1491] (the "Translated Sanction Order").

CCAA Court found, among other things, that CP was not, as a matter of law, entitled to receive the Settlement Agreements in any form. The Canadian Court found and reasoned:

> . . . Canadian Pacific has been informed of the global amount offered by the third parties. We are at over $430,000,000. Whether one party or another offers a different amount does not change Canadian Pacific's position. Canadian Pacific did not give the court the information necessary to have allowed the court to make a distinction that Canadian Pacific did not itself make.

CCAA Sealing Order, ¶ 11.

6. But since certain Released Parties had agreed to deliver redacted copies[5] to CP (and only to CP) under certain specific conditions relating to confidentiality and use, the CCAA Court granted CP's request in part, ruling that the CCAA Court:

> **ORDERS** the third parties who signed the settlement agreements to transmit them to Canadian Pacific's attorneys with the financial details of the settlement agreements redacted. The redacted settlement agreements will be communicated only to Canadian Pacific's attorneys, the reason being that the motion would have been rejected if the third parties did not accept to transmit the documents under this express condition;
>
> **ALLOWS** the third parties to transmit information as it wishes and not in the manner Canadian Pacific wishes to receive it. The redacted settlement agreements and their content will be inadmissible as evidence with the exception of being used for the purposes of the Canadian approval order and the U.S. approval order. The settlement agreements must be filed in court under seal and must be the object of a sealing order prohibiting the disclosure, not to be interpreted as a renunciation by any of the third parties as to the confidentiality of the settlement agreements and to the privileges attaching thereto.

CCAA Sealing Order, ¶¶ 15-16.[6]

7. Also on June 17, 2015, the CCAA Court held a hearing to consider whether to sanction the CCAA Plan. The CCAA Plan was sanctioned by the CCAA Court on July 13, 2015

[5] In addition, as CP's counsel has admitted, CP's counsel has received redacted versions of all of the Settlement Agreements, as well as unredacted version of the Irving Oil Limited, CIT and World Fuels Settlement Agreements.

[6] Even with that ruling, the CCAA Court imposed costs upon CP. *See* CCAA Sealing Order, ¶ 19.

(the "Sanction Order").[7] The Sanction Order orders, in pertinent part, "that the Settlement Agreements ***shall be sealed and shall not form part of the public record***, subject to further order of this [CCAA] Court." *See* Translated Sanction Order, ¶ 95.

8. On July 27, 2015, CP filed a motion for leave to appeal the Sanction Order (the "Motion for Leave"). The Motion for Leave is scheduled to be heard on October 13, 2015.[8]

**D. Chapter 11 Plan Process**

9. On July 15, 2015, the Trustee filed the Plan and Disclosure Statement. On July 17, 2015, this Court entered the *Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan* [D.E. 1544] (the "Disclosure Statement Order"). Confirmation of the Plan is scheduled to be considered on September 24, 2015.[9]

10. As the Trustee has already noted, the Plan, and any confirmation order with respect to the Plan, will provide for judgment reduction for the Non-Settling Defendant in the event that, in a future trial, it is established that certain of the Released Parties would have been partially or fully responsible for any judgment rendered against such Non-Settling Defendant (the "Judgment Reduction Provision").[10] This Judgment Reduction Provision will provide CP the relief to which it is entitled under binding First Circuit authority, Austin v. Raymark, 841 F.

[7] On July 24, 2015, the Trustee filed an English translation of the Sanction Order in the Chapter 11 Case [D.E. 1550].

[8] The Motion for Leave was originally scheduled to be heard on September 9, 2015, but by email to the parties receiving notice in connection with that matter, the Court rescheduled the hearing for October 13, 2015, apparently due to a conflict by the judge assigned to preside.

[9] On September 10, 2015, CP filed an objection to confirmation of the Plan [D.E. 1657] (the "CP Confirmation Objection").

[10] For the avoidance of doubt, such a Judgment Reduction Provision would have no effect on the Releases and Injunctions for the Released Parties set forth in the Plan.

2d 1184 (1st Cir. 1988), and the same relief provided to CP in the Sanction Order, *see* Translated Sanction Order, ¶¶ 58-62.

**E. Chapter 15 Proceedings and Entry of Enforcement Order**

11. Following entry of the Sanction Order, on July 20, 2015, the Monitor filed (a) the *Chapter 15 Voluntary Petition of Montreal, Maine & Atlantic Canada Co.* [No. 15-20518, D.E. 1], (b) the *Verified Petition for Recognition of Foreign Proceeding and Related Relief (With Memorandum of Law)* [No. 15-20518, D.E. 2], and (c) the *Motion for Entry of an Order Recognizing and Enforcing the Plan Sanction Order of the Québec Superior Court* [No. 15-20518, D.E. 3] (the "Motion for Recognition and Enforcement"), together with related legal and factual support.

12. On August 20, 2015, the Court granted the Motion for Recognition and Enforcement, and entered an order granting same on August 26, 2015 [No. 15-20518, D.E. 74] (the "Enforcement Order"). On September 9, 2015, CP appealed the Enforcement Order [No. 15-20518, D.E. 78, 80, 81] (the "Enforcement Order Appeal"). The Enforcement Order Appeal is currently pending.

**OBJECTION**

**A. The Motion to Compel is an Impermissible Collateral Attack on the Orders of the CCAA Court and this Court**

13. The Motion to Compel is a thinly veiled collateral attack on two of the CCAA Court's orders, which are entitled to comity, and one of this Court's orders.[11] Each such order either prevented CP from receiving the Settlement Agreements in any manner other than as

[11] In addition, to the extent the Motion to Compel alleges that access to the Settlement Agreements is required for creditors to cast an informed vote on the Plan (*see* Mot. to Compel, ¶ 9 ("CP, like any other party, is entitled to review the agreements *to know how the plan affects the railroad and to assess plan fairness*.") (emphasis added)), such an assertion is an impermissible collateral attack on the Disclosure Statement Order, pursuant to which this Court already determined that the Disclosure Statement contained "adequate information" to enable creditors to vote on the Plan, *see* Discl. Stat. Ord.¶ 3 ("The Disclosure Statement contains adequate information in accordance with section 1125 of the Bankruptcy Code and is **APPROVED**.") (emphasis in original).

specifically prescribed by order or required that the Settlement Agreements be kept confidential. The Motion to Compel is thus an attempt to circumvent the clear mandates of such orders in a procedurally improper manner. Such a collateral attack should not be countenanced.

***i. CP is Collaterally Estopped from Challenging the CCAA Sealing Order and the Sanction Order***

14. The CCAA Court has twice addressed this issue: first, in the CCAA Sealing Order, and second, in the Sanction Order. In the CCAA Sealing Order, the CCAA Court found that CP was not, as a matter of law, entitled to receive the Settlement Agreements in any form. *See* CCAA Sealing Order ¶¶ 5-8 (canvassing Canadian law on the production of confidential settlement agreements, and finding that such law "should close the debate definitively" on CP's request). And in the Sanction Order, the CCAA Court "ORDER[ED] that the Settlement Agreements ***shall be sealed and shall not form part of the public record***, subject to further order of this [CCAA] Court." *See* Translated Sanction Order, ¶ 95 (emphasis added).

15. CP implies that the CCAA Sealing Order has no force "south of the border." Mot. to Compel ¶ 3. As an initial matter, the doctrine of comity renders an order of the CCAA Court entered with proper jurisdiction and on grounds not repugnant to the laws of the United States enforceable in the United States. As more fully briefed in the Trustee's Joinder to Motion for Recognition[12], "[t]he decision of a foreign tribunal is to be accorded comity where the [foreign] court properly exercised jurisdiction and where its ruling does not violate the public policies of the forum state." Hilton v. Guyot, 159 U.S. 113, 202-03 (1895). Indeed, comity means that the U.S. court ***merely judges the fundamental fairness of the foreign insolvency***

[12] The "Joinder to Motion for Recognition" means the *Joinder and Memorandum of Law of Robert J. Keach, Trustee, in Support of (A) Verified Petition for Recognition of Foreign Proceeding and (B) Motion for Entry of an Order Recognizing and Enforcing the Plan Sanction Order of the Quebec Superior Court; Response to Canada Pacific Railway Co.'s Objection; and Response to U.S. Trustee's Motion to Continue* [No. 15-20518, D.E. 43]. The memorandum of law set forth in Section B of the Joinder to Motion for Recognition is incorporated as if fully set forth herein.

***regime***, not whether the results generated by the foreign laws are identical to those that would be obtained in the United States or whether the foreign insolvency laws mirror those in this country. *See* In re Brierly, 145 B.R. 151, 164 (Bankr. S.D.N.Y. 1992) ("The congruence of the [England's] Insolvency Act and the Bankruptcy Code convinces me that the comity factor supports a grant of [the administrator's] ancillary petition. Nothing dictates that the foreign law be a carbon copy of our law; rather, the Insolvency Act must not be repugnant to American law and policies, which it is manifestly not."). And specifically, "American federal courts have ***uniformly and consistently granted comity to Canadian bankruptcy proceedings*** . . . . Raddison Design Mgmt., Inc. v. Cummins, No. 07-92, 2008 WL 55998 at *2 (W.D. Pa. Jan. 3, 2008) (emphasis added). It would stretch credibility to assert either that the CCAA Court did not "properly exercise[] jurisdiction" or that the CCAA Sealing Order "violate[s] [U.S.] public policy." *See* Hilton, 159 U.S. at 202-03. Indeed, the "fundamental fairness" of the CCAA Court or the CCAA Case is not seriously at issue. *See* Brierly, 145 B.R. at 164. Accordingly, the CCAA Sealing Order should be granted comity. *See* Hilton, 159 U.S. at 202-03.

16. The CCAA Sealing Order deserving of comity, CP is precluded from collaterally attacking that order in this Court. *See* In re Aerovias Nacionales de Colombia S.A. Avianca, 345 B.R. 120, 125 (Bankr. S.D.N.Y. 2006) ("a claim determination by a nonbankruptcy court in the United States would seemingly be conclusive as to the issues determined, for bankruptcy purposes, based on *res judicata* or collateral estoppel grounds . . . . A similar result should ordinarily apply to determinations of foreign courts by virtue of principles of comity.") (internal citations omitted); Talisman Capital Alt. Inv. Fund, Ltd. v. Moutett (In re Moutett), 493 B.R. 640, 656 (Bankr. S.D. Fla. 2013) ("Because the Jamaican judgment should be given comity, then *res judicata* and collateral estoppel resolve all those claims addressed in or directly dependent

on, the allegations resolved by the Jamaican trial court."). The Motion to Compel is just such a collateral attack, and thus must be denied.

***ii. CP is Collaterally Estopped from Challenging the Enforcement Order***

17. In addition, the Court has entered the Enforcement Order, giving "full force and effect" to the Sanction Order in the United States. In particular, the Enforcement Order provides: "The CCAA Plan and Plan Sanction Order, in their entirety, are hereby recognized, granted comity and given full force and effect in the United States and are binding on all persons subject to this Court's jurisdiction . . ." Enforcement Order ¶2. And as set forth above, the Sanction Order prevents the Settlement Agreements from becoming part of the public record without further order of the CCAA Court. *See* Translated Sanction Order, ¶ 95. Both the Sanction Order and the CCAA Sealing Order specifically address the very request that CP impermissibly repeats here. Accordingly, even in the event that this Court declined to grant comity to the CCAA Court or protect the CCAA Sealing Order from collateral attack, this Court has already entered an order enforcing the Sanction Order, thereby preventing the Settlement Agreements from becoming part of the public record in the Chapter 11 Case. *See* Enforcement Order ¶2. CP has already appealed the Enforcement Order; that is the proper procedural posture for attacking this Court's enforcement of the Sanction Order, not a motion to compel production in violation of the Sanction Order and the Enforcement Order.

18. CP opposed entry of the CCAA Sealing Order, the Sanction Order, and the Enforcement Order, and lost on all three fronts. By the Motion to Compel, CP impermissibly seeks to collaterally attack the three orders. Such an attack is improper and should not be countenanced. Accordingly, the Motion to Compel should be denied.

**B. CP Inaccurately Frames the Issue, and When Correctly Framed, the Relief Requested Is Inappropriate**

19. In addition to attempting a collateral attack on orders of this Court and the CCAA Court, CP attempts to obfuscate the nature of the dispute to the fatal detriment of the relief requested. The issue is not whether the Trustee may file the Settlement Agreements under seal, as CP argues, *see generally* Mot. to Compel; that issue is not before the Court. Instead, at issue is whether CP is entitled to the production of confidential documents in discovery that are subject to a protective order. Especially when viewed in the correct procedural posture, CP has not met its burden, and the Motion to Compel must thus be denied.

20. The cumulative effect of the CCAA Sealing Order, the Sanction Order and this Court's Enforcement Order—all as set forth above—is the creation of a protective order precluding CP from receiving the Settlement Agreements in any form other than what has already been permitted by order (collectively, the "Protective Order"). Faced with a protective order preventing CP from obtaining access to the unredacted Settlement Agreements, CP must meet its burden for compelling production of confidential documents.

***i. CP Lacks Standing to Seek Modification of the Protective Order***

21. As an initial matter, CP lacks standing to assert that the protective order should be vacated or modified. A party suffering no injury as a result of the protective order has no standing to challenge such order. *See* United States v. Dimasi, No. CR. 09-10166, 2011 WL 915349, at *3 (D. Mass. Mar. 16, 2011) (citing Liggett, 858 F.2d at 787 n. 12; Bond v. Utreras, 585 F.3d 1061, 1077–78 (7th Cir. 2009)).

22. In its alleged creditor hat, CP has no interest in the reasonableness of the Settlement Payments. CP asserts that it is a creditor in Classes 7 and 13, as well as being an administrative creditor. *See* CP Conf. Obj. at 1 n.2. But Holders of Administrative Expense

Claims must be paid in full in order to confirm a chapter 11 plan (and the Plan provides for such payment), and Class 7 is Unimpaired. *See* Plan, §§ 2.1, 4.7. Its rights with respect to any valid Administrative Expense Claims or Class 7 Claims Unimpaired, CP suffers no injury by being unable to judge the reasonableness of the Settlement Payments in such capacities. Moreover, Settlement Payments, no matter how large or small, cannot be used to address any of CP's claims, however classified. The use of such funds, as CP is aware (and as public documents make clear), is limited to payment of the claims of victims of the Derailment and professional fees.

23. As an alleged Holder of Claims in Class 13, CP likewise suffers no harm in being unable to judge the reasonableness of the Settlement Payments because the treatment of Class 13 Claims is only affected by the amount of the Settlement Payments if there are surplus WD Trust Assets after satisfaction of (a) all Derailment Claims, (b) all Administrative Expense Claims, and (c) all Claims in Classes 1 through 7. *See* Plan §§ 4.13(b) (providing that distributions on account of Class 13 Claims shall be "such Holder's Pro Rata share of the Class 13 Cash"), 1.40 (defining "Class 13 Cash," in pertinent part, to be "any surplus WD Trust Assets, as determined pursuant to Section 5.16 of the Plan, in all cases to the extent not used to fund the Administrative Expense Fund or to fund payments to Holders of Claims in Classes 1 through 7, inclusive,"). But also as set forth in the Plan, "[t]he Trustee does not anticipate surplus WD Trust Assets at this time." *See* Plan § 5.16. Since CP is the lone Non-Settling Defendant, it is determined beyond doubt that, absent a judgment against CP or a CP settlement, there are no surplus WD Trust Assets. Having no economic interest in the Settlement Payments, CP—as a Class 13 creditor—has no interest in the reasonableness of the amounts paid by the Settling Parties, and thus is not harmed by ignorance of such amounts.

24. And finally, in its capacity as (the sole remaining) Non-Settling Defendant, CP suffers no harm from an inability to access the Settlement Agreements or understand the amount of individual Settlement Payments. As set forth above, any confirmation order will include the Judgment Reduction Provision, providing CP the rights to which it is entitled under applicable law. *See* Austin, 841 F. 2d 1184 (requiring a reduction in any damage award against non-settling defendants by the amount equivalent to the settling defendants' proportionate liability, and finding reasonable the reapportionment of insolvent defendant's liability as among other defendants); *see also* In re Tribune Co., 464 B.R. 208, 223-24 (Bankr. D. Del. 2011) (denying motion of non-settling defendant for reconsideration of order confirming plan, which included third-party releases with accompanying judgment reduction provision for non-settling defendant, as confirmation order preserved rights of non-settling defendant under applicable law); Whyte v. Kivisto (In re Semcrude), No. 08–11525, 2010 WL 4814377, at *6-7 (Bankr. D. Del. Nov. 19, 2010) (finding fair and equitable a settlement that barred third-party claims against settling parties but also included a judgment reduction provision that left intact non-settling defendants' state law setoff/contribution rights); In re Worldcom, Inc. ERISA Litigation, 339 F. Supp. 2d 561 (S.D.N.Y. 2004) (over objection of non-settling defendant, approving settlement agreement that barred third-party claims against non-settling defendants, but which also included a proportionate judgment reduction formula, albeit one that reduced the judgment reduction credit to account for the insolvency of a settling defendant). Accordingly, CP has no justifiable interest in the Settlement Agreements or the amount of the Settlement Payments in its capacity as Non-Settling Defendant because its rights are fully protected by the Judgment Reduction Provision. Indeed, the amounts paid by others are irrelevant to the relief to which CP, as a Non-Settling Defendant, is entitled.

25. Because the Settlement Agreements do not affect CP in any way, CP's inability to review the amounts paid works no injury on CP. Absent such injury, CP lacks standing to seek modification of the Protective Order, or otherwise obtain access to the Settlement Agreements or the amount of the Settlement Payments. *See* Dimasi, 2011 WL 915349, at *3 (citing Liggett, 858 F.2d at 787 n. 12; Bond, 585 F.3d at 1077–78.

***ii. In Any Event, CP Has Not Met Its Burden to Modify the Protective Order***

26. Even if the Court were to find that CP has standing to seek to modify the Protective Order in attempt to obtain the Settlement Agreements (which do nothing to affect CP's rights), CP fails to satisfy the burden for modifying an order that maintains the confidentiality of documents in discovery. The party seeking to modify a protective order bears the burden of proof when seeking to compel production of documents. Fairchild Semiconductor Corp. v. Third Dimension Semiconductor, Inc., No. 08-158, 2009 WL 1210638, at *1 (D. Me. Apr. 30, 2009) (internal citations omitted); *see also* Moses v. Mele, No. 10-cv-253, 2011 WL 2174029, at *3 (D.N.H. June 1, 2011). At bare minimum, a movant must show "good cause" to obtain modification of a protective order, and may need to show more. *See* Public Citizen v. Liggett Group Inc., 858 F.2d 775, 791 (1st Cir. 1988) (declining to adopt "extraordinary circumstances" standard, and finding a standard less restrictive appropriate, but not explicitly adopting the "good cause" standard used by other courts); *see also* Officemax Inc. v. Sousa, No. 2:09-cv-00631, 2011 WL 143916, at *2 (D. Me. Jan. 14, 2011) (applying "good cause" standard). If appropriate, the "good cause" standard "is a flexible one that requires an individualized balancing of the many interests that may be present in a particular case," "including considerations of the public interest, the need for confidentiality, and privacy interests." Moses, 2011 WL 2174029, at *3 (citing Gill v. Gulfstream Park Racing Ass'n, 399 F.3d 391, 402 (1st Cir. 2005)) (internal quotations omitted).

27. Balancing the interests in the case at bar, on the one hand is the integrity of the chapter 11 case—if the Trustee is forced to turn over the Settlement Agreements to a third party without the consent of the relevant Settling Defendant, such Settling Defendant may have a right to terminate the respective Settlement Agreement, thus destroying (at least in part) the substantial settlement fund the Trustee and many others have long worked to create for the benefit of the victims of the Derailment. On the other hand is CP's strategic (and non-creditor) interest, which amounts to an unabashed desire to understand the amount for which certain other Settling Defendants settled in an effort to obtain a commercial advantage over the victims of the Derailment. In the Trustee's view, there is no contest: the strategic benefit to an entity not acting in its capacity as a creditor of the Debtor's estate pales in comparison to the interest of maintaining the integrity of the Settlement Funds for the benefit of victims of the Derailment. The balance of harms weighing against CP, good cause is found to be lacking, and the relief requested—which amounts to modification of a protective order—must be denied. Moreover, the minimum requisite for "cause" to modify a protective order is that the party seeking to modify establish a necessity for the discovery sought. Since the amounts of the Settlement Payments are wholly irrelevant to any claim or defense that CP can raise, the Court need not even reach the balancing effort noted above. CP's request must be denied.

## CONCLUSION

**WHEREFORE**, the Trustee respectfully requests that this Court enter an order sustaining this Objection, denying the Motion to Compel, and granting such other and further relief as this Court deems necessary and appropriate, including an award of costs and attorneys' fees incurred by the Trustee.

Dated: September 14, 2015

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

By his attorneys:

*/s/ Lindsay K. Zahradka*

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