

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**STIPULATED PROTECTIVE ORDER
AND CONFIDENTIALITY AGREEMENT**

This Stipulated Protective Order and Confidentiality Agreement (the “**Order**”) is entered into and agreed to by New Brunswick Southern Railway Company Limited (“**NBSR**”), Maine Northern Railway Company (“**MNR**” and together with NBSR, the “**Irving Railroads**”) and Robert J. Keach, the Estate Representative of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (the “**Estate Representative**”).

Pending entry of this Order by the Court, the Estate Representative, NBSR and MNR (each of which a “**Party**” and collectively, the “**Parties**”) agree to be bound by the terms of this Order and to conduct the production, review and distribution of information covered by this Order consistent with the terms herein.

INTRODUCTION

In connection with this bankruptcy case, it is anticipated that the Parties shall be producing documents and other information that will be regarded as confidential by the

producing Party, including but not limited to financial records, tax returns and other information not generally known to the public (“**Confidential Information**”). It is also anticipated that pleadings and discovery papers in this bankruptcy case may include reference to documents regarded as confidential and proprietary by the Party producing them or otherwise refer to confidential and proprietary information. The protection stipulated to by the Parties is appropriate for protecting the fairness of the judicial and discovery process in this bankruptcy case. Rule 26(c) of the Federal Rules of Civil Procedure, made applicable to this bankruptcy case through Rules 7026 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), provides for entry of a protective order such as is contained here.

ACCORDINGLY, at the request of the Parties, and based upon their agreement as set forth herein, it is hereby ORDERED as follows:

1. *Scope.* This Order shall be applicable to all documents, including financial records and tax returns provided by the Parties pursuant to their Supplemental Document Requests served on March 24, 2017 that are designated as containing confidential information. As used herein, the term “document” shall include all forms of information delineated in Federal Rule of Civil Procedure 34(a), as made applicable to this bankruptcy case through Bankruptcy Rules 7034 and 9014.

2. *Form and Timing of Designation.* Subject to paragraph 15 hereof, a Party may designate documents as confidential and restricted in disclosure under this Order by placing or affixing the words “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” on the document in a manner that will not interfere with the legibility of the document and that will permit complete removal of the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation. The Party designating information as CONFIDENTIAL - SUBJECT TO

PROTECTIVE ORDER shall make such designation only relative to documents or categories of documents that contain confidential information that it in good faith believes legitimately fall within the definition of protectable documents under Federal Rule of Civil Procedure 26(c).

Documents and information containing Confidential Information that are produced pursuant to this Order shall not be produced or shared with any person who is not a Party to this Order or who is not otherwise an Authorized Person under this Order as set forth below. Documents produced by any Party and exhibits used by any person shall be designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, by marking each page of such documents and exhibits with a legend indicating "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER." In lieu of marking the original of a document, the designating Party may mark the copy that is produced or exchanged.

The front page of all documents produced, discovery requests, responses, exhibits, deposition transcripts, and other documents which reproduce, paraphrase, summarize, or otherwise contain Confidential Information shall be labeled in accordance with the provisions of this Order.

3. *Documents Which May be Designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.* Any Party may designate documents as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER but only after review of the documents by an attorney or an agent of such attorney who has in good faith determined that the documents contain information protected from disclosure by statute or that should be protected from disclosure as Confidential Information. The designation shall be made subject to the standards of Rule 11 and the sanctions of Rule 37 of the Federal Rules of Civil Procedure. Information or documents that are available

in the public sector may not be designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.

4. *Protections of Confidential Material.*

(a) General Protections and Use. Documents designated CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order shall not be used or disclosed by the parties, counsel for the parties or the any other Authorized Person identified in paragraph 4(b) for any purpose whatsoever except as provided in this Order. Except as agreed by the designating Party (or its counsel) or as otherwise provided herein, information designated as Confidential Information: (i) may be disclosed by such Authorized Persons only to other Authorized Persons entitled to access thereto and shall not be disclosed or made available by such Authorized Persons to anyone who is not an Authorized Person; and (ii) may be used by such Authorized Persons only for the purposes of this bankruptcy case and for no other purpose whatsoever.

Nothing herein shall prevent disclosure beyond the terms of this Order if the Party designating the information as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER consents to disclosure, or if the Court, after notice to all Parties, orders such disclosure.

Nothing herein shall prevent any counsel of record from utilizing Confidential Information in the examination or cross-examination of any person who (i) is the author or source of the Confidential Information; (ii) was previously provided with such information by means that do not constitute a violation of this Order; (iii) testifies pursuant to Federal Rule of Civil Procedure 30(b)(6), made applicable to this bankruptcy case through Bankruptcy Rules 7030 and 9014, concerning subject matter related to the

Confidential Information at issue; or (iv) otherwise testifies and executes an Acknowledgement (as defined below).

Nothing in this Order shall be construed as a restriction on the use or disclosure of information by the person supplying the information. Nothing herein shall prevent disclosure as required by law, or by any judicial, governmental, or administrative body under any law, regulation, or order; provided, however, that, if permitted by law, the person being required to disclose Confidential Information shall give five (5) business days prior written notice of such disclosure by e-mail or facsimile, and by overnight mail, to the person(s) who provided such Confidential Information, addressed to the attorneys of record for such persons as applicable, unless the judicial, governmental, or administrative body's law, regulation, or order requires disclosure sooner, in which case the person from whom disclosure is requested shall give such notice by telephone and e-mail as soon as practical, but in any event before any disclosure is made.

(b) Limited Third Party Disclosures. Access to Confidential Information furnished to a Party shall be restricted to the following Authorized Persons ("**Authorized Persons**"):

(i) Outside counsel of record for the Parties ("**Outside Counsel**") and regular employees of such attorneys to whom it is necessary that the material be shown for the purposes of this bankruptcy case;

(ii) In-house attorneys for the Parties and their staff that are directly assisting with this bankruptcy case;

(iii) Employees (in addition to in-house counsel) of each Party who are involved in addressing the issues involved in connection with the Estate Representative's

objection to the Irving Railroads' proofs of claim in this bankruptcy case after they have signed the Acknowledgement to be bound by the Order attached hereto as Exhibit A (the "**Acknowledgement**"), so long as their duties and responsibilities with respect to this bankruptcy case require access to the Confidential Information;

(iv) Independent consultants and their staff retained by any Party, including in the case of the Estate Representative, Development Specialists, Inc., to assist in the preparation and hearing of the Estate Representative's objection to the Irving Railroads' proofs of claim, after they have signed the acknowledgement;

(v) Any person, and their counsel, as to whom it is apparent from the face of the document that such person was either the author or recipient of the Confidential Information to be disclosed, or a person as to whom it has been established at a deposition is an author or recipient of such information prior to the intended disclosure in this action;

(vi) The Court and any persons employed by it working on this action, and any appellate court to which an appeal may be taken or in which review is sought, and any persons employed by it;

(vii) Court reporters (including stenographers and video technicians);

(viii) Outside vendors working at the direction of Outside Counsel or its staff, including any individual or organization that provides photocopying, document processing or other document-related services, data management support (including third party contract attorneys), translation, graphics services as part of discovery in connection with any matters relating to this bankruptcy case, and persons employed or retained by them solely in providing support services to Outside Counsel; and

(ix) Any others as ordered by the Court or to whom the producing Party has given written consent.

(c) **Control of Documents.** Counsel for the parties shall make reasonable efforts to prevent unauthorized disclosure of documents designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed by persons acknowledging their obligations under this Order for a period of t years from the date of signing.

(d) **Copies.** Prior to production to another party, all copies, electronic images, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as “Copies”) of documents designated as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order, or any individual portion of such a document, shall be affixed with the designation “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” if the word does not already appear on the copy. All such copies shall thereafter be entitled to the protection of this Order. The term “copies” shall not include indices, electronic databases or lists of documents provided these indices, electronic databases or lists do not contain substantial portions or images of the text of confidential documents or otherwise disclose the substance of the confidential information contained in those documents.

5. *Filing of CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER Documents Under Seal.* Before any document marked as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER is filed with the Clerk, the Party filing the document shall make reasonable efforts to ensure that the document is protected from public disclosure. The filing Party shall first consult with the Party which originally designated the document as CONFIDENTIAL - SUBJECT TO PROTECTIVE

ORDER to determine whether, with the consent of that Party, a redacted document may be filed with the Court not under seal. Where prompt agreement is not possible, before a confidential document is filed with the Clerk, it shall be placed in a sealed envelope marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER DOCUMENTS”, displaying the case name, docket number, a designation of what the document is, the name of the party on whose behalf it is submitted, and name of the attorney who has filed the documents on the front of the envelope. If the contents of CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER documents are incorporated into memoranda or other pleadings filed with the Court, counsel shall prepare two versions of the pleadings, a public and a confidential version. The public version shall contain a redaction of references to CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents. The confidential version shall be a full and complete version of the pleading and shall be filed with the Clerk under seal as above.

6. *No Greater Protection of Specific Documents.* No Party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the Party moves for an order providing such special protection.

7. *Challenges by a Party to Designation as Confidential.* A Party shall not be obligated to challenge the propriety of a designation of information as Confidential Information at the time of disclosure, and a failure to do so shall not preclude a subsequent challenge thereto.

In the event that any party to this bankruptcy case objects at any stage of these proceedings to the designation by another person of any information as Confidential

Information, the Parties shall try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may seek appropriate relief from the Court.

8. *Action by the Court.* Applications to the Court for an order relating to documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER shall be by motion under Local Rule 7. Nothing in this Order or any action or agreement of a Party under this Order limits the Court's power to make orders concerning the disclosure of documents produced in discovery or at trial.

9. *Use of Confidential Documents or Information at Trial.* A Party which intends to present or which anticipates that another Party may present at trial CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents or information derived therefrom shall identify the issue, not the information, in the pretrial memorandum. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

10. *Obligations on Conclusion of Bankruptcy Case.*

(a) Order Remains in Effect. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(b) Return of CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER Documents. Within thirty days after dismissal or entry of final judgment not subject to further appeal, all documents treated as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER under this Order, including copies as defined in ¶6(d), shall be returned to the producing Party unless: (1) the document has been offered into evidence or filed without

restriction as to disclosure; (2) the Parties agree to destruction in lieu of return; or (3) as to documents bearing the notations, summations, or other mental impressions of the receiving Party, that Party elects to destroy the documents and certifies to the producing Party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER, so long as that work product does not duplicate verbatim substantial portions of the text or images of confidential documents. This work product shall continue to be CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER under this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose or use CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER documents.

(c) Return of Documents Filed under Seal. After dismissal or entry of final judgment not subject to further appeal, the Clerk may elect to return to counsel for the Parties or, after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.

11. *Order Subject to Modification.* This Order shall be subject to modification by the Court on its own motion or on motion of a Party or any other person with standing concerning the subject matter. Motions to modify this Order shall be served and filed under Local Rule 7.

12. *No Prior Judicial Determination.* This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any documents or information designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER by counsel

or the Parties is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

13. *Exceptions and Modifications.* Exceptions to this Order may be made by agreement of all the Parties, and any Party may seek an order of this Court modifying this Order. This Order shall be without prejudice to any Party to bring before the Court at any time the questions of whether any particular information is or is not, in fact, confidential, proprietary, or secret information or otherwise appropriately designated in accordance with this Order.

14. *No Admission Implied.* The authorization contained herein for the Parties to designate any information as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER is intended solely to facilitate discovery in connection with this bankruptcy case, and such designation shall not be construed in any way as an admission or agreement by the other Parties that such information constitutes or contains confidential, proprietary, or secret information in contemplation of law. However, irrespective of whether in contemplation of law such information contains or constitutes confidential, proprietary, or secret information, all information designated as Confidential Information shall not be disclosed or used by the receiving Parties except pursuant to the specific provisions of this Order or such other order as this Court may issue. The provisions of this Order are without prejudice to the right: (a) of a Party receiving Confidential Information to apply to the Court for an order that a given document or item of information received need not be treated as Confidential Information and is not subject to the restrictions contained in this Order; and (b) of a person producing documents or disclosing information to apply to the Court for an order imposing further restrictions on specific documents or information.

15. *Error in Designation or Production.* In the event any Party produces Confidential Information that has not been designated as such or not correctly designated, the producing Party may designate or re-designate the information to the same extent as it may have designated the information before production, by a subsequent notice in writing specifically identifying the re-designated information, in which event the recipients of such information shall henceforth treat such information in accord with this Order, and shall undertake their best efforts to correct any disclosure of such information contrary to the re-designation, including retrieving any documents from persons not qualified to receive them under the re-designation and informing such persons that they should not further use or disseminate the information thereon. No demonstration or proof of error, inadvertence, or excusable neglect by the designating Party shall be required for such re-designation.

The inadvertent or unintentional production of documents containing, or other disclosure of, confidential, proprietary, or secret information without being designated as Confidential Information at the time of the production or disclosure shall not be deemed a waiver in whole or in part of a person's claim of confidentiality or secrecy, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

In accordance with Federal Rule of Evidence 502(d), the inadvertent or unintentional production of documents or other information containing privileged information or attorney work product shall not be deemed a waiver in whole or in part of a Party's claim of privilege or work product protection, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter.

Any error in designation or production shall be corrected as soon as reasonably possible after the designating Party becomes aware of the error. Documents subject to a claim of privilege or work product protection and inadvertently produced shall, after notification by the producing Party, be destroyed by the Party in receipt of such documents and no copies shall be made, distributed or otherwise relied upon in this action, without waiver of the right of any Party to challenge any claim of privilege.

The production of documents or other tangible filings pursuant to a request for production by a Party herein shall not be deemed a waiver of any right by the producing Party to object to the admissibility of such document or other thing on grounds of relevancy, materiality, privilege, or other valid ground of objection.

16. *Reservation of Rights.* This Order is without prejudice to objections to discovery asserted by any Party, all of which are specifically reserved. Any Producing Party who withholds Confidential Information pursuant to the preceding sentence will provide to all other Parties a log of any such responsive discovery withheld on relevance grounds, which describes the nature of the categories of withheld discovery sufficiently to allow all other Parties to assess whether or not the withheld information is relevant and, if the parties cannot resolve any disagreements, to seek an Order from the Court compelling the production of the withheld discovery.

17. *Retention of Jurisdiction.* This Court shall retain exclusive jurisdiction over all matters relating to this Order between the Parties, regardless of whether the Confidential Information is being used (or is proposed to be used) in a matter pending before another

court or tribunal. Any violation of the Order may result in the imposition of penalties for contempt of the Court.

SO ORDERED.

Stipulated and agreed on this __ day of April, 2017.

WE SO MOVE, and agree to abide by the terms of this Order:

/s/ Alan R. Lepene
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Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Stipulated Protective Order and Confidentiality Agreement dated April __, 2017 in the above-captioned action and attached hereto (the “**Order**”), understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States Bankruptcy Court for the District of Maine in matters relating to the Order and understands that the terms of the Order obligate him/her to use documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

Date: _____

Signature