

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

In re:

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**CONSENT MOTION FOR ENTRY OF CONSENTED-TO PROTECTIVE ORDER  
WITH RESPECT TO THE TRUSTEE'S MOTIONS FOR ORDERS  
COMPELLING CERTAIN PARTIES TO APPEAR FOR RULE  
2004 EXAMINATIONS AND TO PRODUCE DOCUMENTS  
IN CONNECTION THEREWITH**

Robert J. Keach, as trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), hereby moves, pursuant to the *Order Granting Trustee's Motions for Rule 2004 Examinations and the Production of Documents in Connection Therewith* [D.E. 1258] (the "Rule 2004 Order"), and with the consent of Arrow Midstream Holdings, LLC, ConocoPhillips, Enersco Energy LLC, InCorr Energy Group LLC, Shell Trading US Company, Marathon Oil Company, Oasis Petroleum Inc., Oasis Petroleum LLC, and QEP Resources, Inc. (each an "Examinee" and collectively, the "Examinees"), for entry of a consented-to protective order by and between the Trustee and the Examinees. In further support of this consented-to 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 (the "Consent Motion") is predicated upon the Rule 2004 Order and Rule 2004-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Maine (the "Local Rules").

### **BACKGROUND**

5. On August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Thereafter, 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.

6. On September 25, 2014 and October 7, 2014, the Trustee filed nine motions seeking orders from this Court compelling the Examinees to appear for examinations pursuant to Rule 2004 and to produce documents in connection therewith (the "Rule 2004 Motions") [D.E. 1144, 1118, 1119, 1120, 1121, 1138, 1140, 1141, and 1142]. In response, several objections were filed by the Examinees, individually and collectively [D.E. 1191, 1195, 1196 and 1212].

7. On November 18, 2014, the Court conducted a hearing on the Rule 2004 Motions. As a result of negotiations between the parties, an agreement was reached whereby all parties consented to a proposed order. On November 19, 2014, the Court entered the Rule 2004 Order.

8. Pursuant to Paragraph 1(f) of the Rule 2004 Order, the parties agreed, in part, that the Court will enter a protective order, which “shall provide that the documents produced and testimony procured shall not be disseminated by the Trustee without further court order.” Rule 2004 Order, at 2-3.

### **RELIEF REQUESTED**

9. By this Motion, the Trustee requests that this Court enter the consented-to Confidentiality/Protective Order (the “Protective Order”) attached hereto as Exhibit A thereby (i) limiting the use and dissemination of any documents produced pursuant to the Rule 2004 Order, and (ii) providing that any examination conducted pursuant to the Rule 2004 Order shall be subject to the proposed Protective Order.

### **BASIS OF RELIEF**

10. As referenced above, the Rule 2004 Order provides, in part:

A protective order limiting the use and dissemination of documents produced and any examination conducted shall be entered by the Court and shall provide that documents produced and testimony procured shall not be disseminated by the Trustee without further court order. The Protective Order shall be acceptable to the Trustee and the Examinees.

Rule 2004 Order, at 2-3.

11. Local Rule 2004-1(b) permits a Rule 2004 examinee to seek the entry of a protective order as provided by Fed. R. Civ. P. 26(c) and Fed. R. Bankr. P. 7026. D. Me. LBR 2004-1(b). Pursuant to Bankruptcy Rule 7026(c), “[a] party or any person from whom discovery is sought may move for a protective order . . . .” Fed. R. Bankr. P. 7026(c)(1). Bankruptcy Rule 7026(c) further states that:

The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) Forbidding the disclosure or discovery;
- (B) Specifying the terms, including time and place, for the disclosure or discovery;
- (C) Prescribing a discovery method other than the one selected by the party seeking discovery; [and]
- (D) Forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters; . . .

Id.

12. Good and sufficient cause exists for the Court to enter the Protective Order. The information and documents that may be produced or revealed pursuant to the Rule 2004 Order may require the disclosure of confidential information, as well as materials that may be related to pending or threatened lawsuits against the Examinees by third parties. In light of the nature of the information that may be the subject of discovery, good cause exists for the entry of the Protective Order to permit the Examinees to fulfill their obligations under the Rule 2004 Order while providing adequate assurance that discovery will be strictly limited to the purposes detailed in the Rule 2004 Order and Rule 2004 Motions.

13. The Trustee and the Examinees have agreed to be bound by the terms and conditions of the Protective Order and request that it be entered by the Court. The Trustee and the Examinees also request that the Court grant this Motion without hearing pursuant to D. Me. LBR 9013-1.

WHEREFORE, the Trustee and the Examinees request that the Court formally adopt and enter the Protective Order attached hereto as Exhibit A.

Dated: December 19, 2014

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

By his attorneys:

*/s/ Paul McDonald*

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

**CONFIDENTIALITY/PROTECTIVE ORDER**

Robert J. Keach, as Chapter 11 Trustee (the “Trustee”) for the estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), on the one hand, and Arrow Midstream Holdings, LLC, ConocoPhillips, Enserco Energy LLC, InCorr Energy Group LLC, Shell Trading US Company, Marathon Oil Company, Oasis Petroleum Inc., Oasis Petroleum LLC, and QEP Resources, Inc. (each an “Examinee” and collectively, the “Examinees”), on the other hand, have agreed to the terms of this Order; accordingly, it is ORDERED:

1. **Scope.** All documents produced by the Examinees (the “Documents”) and testimony provided by the Examinees (the “Testimony”) (the Documents and the Testimony, together, the “Confidential Material”) in response to the Order Granting Trustee’s Motions for Rule 2004 Examinations and the Production of Documents in Connection Therewith dated November 18, 2014 (“Rule 2004 Order”) shall be subject to this Order concerning the Confidential Material as set forth below and the Rule 2004 Order.

2. **Protection of Confidential Material.**

(a) The Confidential Material shall be used or disclosed by the Trustee or any other persons identified in paragraph 2(b) for the sole purpose of investigating and determining whether the Trustee, on behalf of the Debtor's estate, holds viable causes of action against any of the Examinees. Notwithstanding the foregoing, Confidential Material may be used in the adversary proceeding captioned *Robert J. Keach v. World Fuel Services Corp., et al.*, Adv. Pro. No. 14-1001 (Bankr. D. Me.) (the "Adversary Proceeding") subject to the provisions of paragraph 5 below.

(b) Limited Third-Party Disclosures. The Trustee shall not disclose or permit the disclosure of any Confidential Material to any third person or entity except the following:

(1) Counsel for the Trustee and employees of counsel who have responsibility for the matter described in paragraph 2(a) above and the Adversary Proceeding, all of whom shall be bound by the terms of this Order;

(2) Court reporters and recorders engaged for the Rule 2004 examinations of the Examinees, but only after such persons have completed and executed the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound (the "Acknowledgement");

(3) Consultants, investigators, or experts employed by the Trustee to assist in the above-referenced Chapter 11 case (the "Chapter 11 Case") and the Adversary Proceeding, but only after such persons have completed and executed the Acknowledgement;

(4) The Monitor appointed by the Quebec Superior Court for Montreal, Maine & Atlantic Canada Co. ("MMA Canada") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended, and its counsel, but only after such persons have completed and executed the Acknowledgement;

(5) MMA Canada and its counsel in its Canadian insolvency proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended, but only after such persons have completed and executed the Acknowledgement; and

(6) The Defendants in the Adversary Proceeding and their counsel, but only the Confidential Material introduced at an examination attended by such persons and only after such persons have completed and executed the Acknowledgement.

(c) The Trustee and the Debtor agree that if: (1) they are served with a subpoena, other discovery request or any other demand or request (collectively "Request(s)") calling for disclosure of any Confidential Material subject to this Order; or (2) receive notice from any person or entity (collectively "Person") to whom the Trustee or the Debtor has disclosed Confidential Material pursuant to this Order that said Person has received such a Request, the Trustee and the Debtor shall provide Examinees with written notice of such Request as soon as reasonably possible in advance of any deadline for responding to said Request.

(d) The Trustee and the Debtor agree that at any Examination they conduct of an Examinee pursuant to section 1(c) of the Rule 2004 Order, all persons attending said examination under Section 1(d) of the Rule 2004 Order shall have previously



completed and executed the Acknowledgment and tendered a copy of the same to the Examinee.

(e) **Stamping or Marking of Confidential Material.** All Documents that any Examinee desires to be covered by the terms of this Order shall, prior to production to the Trustee, be stamped or marked with the designation “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.” All Testimony that an Examinee provides shall automatically be covered by the terms of this Order, and any transcript of such testimony shall be stamped or marked with the designation “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER.”

3. **Redaction of Confidential Business Information (“CBI”).** In addition to the provisions against disclosure described in paragraph 2, the parties may redact information, which they in good faith believe constitutes CBI, which includes sensitive technical, financial, competitive, and/or personnel information. Redactions made by the parties will be subject to challenge as described in paragraph 5.

4. **Filing of Confidential Material.** Before any Confidential Material is filed with the Clerk, the party filing the document shall first consult with the Examinee to determine whether, with the consent of that party, a redacted document may be filed with the Court not under seal. Where agreement is not possible or adequate, Confidential Material may be electronically filed under seal only in accordance with Local Rule 7A of the United States District Court for the District of Maine (“Local Rule 7A”). Other than motions to seal and memoranda governed by Local Rule 7A, if Confidential Material is 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 the contents of Confidential Material and shall be filed with the Clerk. The confidential version shall be a full and complete version of the pleading, including any exhibits which the party maintains should be under seal and shall be filed with the Clerk attached to a motion to seal filed in accordance with Local Rule 7A. The public version shall plainly indicate the exhibits (both by number and description of the exhibit) that have been filed under seal with the confidential version.

5. **Challenges to Designation as Confidential Material; Use of Confidential Material in Adversary Proceeding.** All Confidential Material is subject to challenge by the Trustee. Additionally, no Confidential Material may be used in the Adversary Proceeding without compliance with this paragraph. The following procedures shall apply to any designation challenges or use of Confidential Material in the Adversary Proceeding.

(a) **Objection to Confidentiality.** The Trustee may serve upon the designating party an objection to the designation of any Document or Testimony as CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER. The objection shall specify the Documents and/or Testimony to which the objection is directed and shall set forth the reasons for the objection. Confidential Material to which an objection has been made shall remain CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER until designated otherwise by waiver, agreement or order of the Court.

(b) **Demand to Use Confidential Material in Adversary Proceeding.** The Trustee may serve upon the designating party a demand to use any Document or Testimony marked as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER in the Adversary Proceeding. The demand shall specify the Documents and/or Testimony to

which the demand relates and shall set forth the reasons for the demand. Confidential Material about which a demand has been made shall not be used in the Adversary Proceeding until agreed to by the designating party or ordered by the Court after notice and a hearing.

(c) **Obligation to Meet and Confer.** The Trustee and the party that provided the Confidential Material shall have fifteen (15) days from service of the objection or demand to meet and confer in a good faith effort to resolve the objection or demand by agreement. If agreement is reached waiving the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation of any of the Confidential Material subject to the objection, the Trustee shall serve on all parties to whom disclosure of such Confidential Material has been made a notice specifying the nature of the agreement.

(d) **Obligation to File Motion.** If the parties cannot reach agreement after discharging their obligation to meet and confer, the Trustee may file a motion under seal to remove the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation or for authority to use the Confidential Material in the Adversary Proceeding. The designating party shall have the burden to show good cause for why the CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER designation should not be removed. The Trustee shall have the burden to show good cause for why he should be authorized to use the Confidential Material in the Adversary Proceeding.

6. **Use of Confidential Materials at Hearings or Trial.** A party that intends to present Confidential Materials at a hearing or at trial shall identify the issue, not the information, to the Court, which shall thereafter make such orders as are necessary to govern the use of such documents or information at the hearing or trial.

7. **Obligations Upon Disposition of Chapter 11 Case or Conclusion of Adversary Proceeding.**

(a) Order Remains in Effect. Unless otherwise agreed or ordered, this Order shall remain in force after dismissal of, conversion of, or entry of a final decree in this Chapter 11 Case and dismissal or entry of final judgment not subject to further appeal of the Adversary Proceeding.

(b) Return of Confidential Materials. Within thirty days after the later of dismissal of, conversion of, or entry of a final decree in this Chapter 11 Case or dismissal or entry of final judgment not subject to further appeal of the Adversary Proceeding, all Documents and transcripts of Testimony, including copies thereof, shall be returned to the producing party unless: (1) the Confidential Material has been offered into evidence or filed without restriction as to disclosure; or (2) the producing party and the Trustee agree to destruction in lieu of return.

8. **No Prior Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating Bankruptcy Rule 2004 Examinations of the Examinees. 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 from disclosure until such time as the Court may rule on a specific document or issue.

9. **Persons Bound.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties, and persons made subject to this Order by its terms.

10. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction over all matters relating to this Order between parties bound by this Order, regardless of whether the Confidential Materials are being used (or are 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

11. This Order shall become final in fourteen (14) days unless a party in interest sooner objects, in which case the matter shall be set for hearing and considered by the court as if this Order had not been entered.

Dated:

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The Honorable Louis H. Kornreich  
United States Bankruptcy Judge

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

In re:

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Agreed Confidentiality/Protective Order dated \_\_\_\_\_ (the “Order”) in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the exclusive jurisdiction of the United States Bankruptcy Court for the District of Maine (the “Court”) in matters relating to the Order, regardless of whether the Confidential Materials are being used (or are proposed to be used) in a matter pending before another court or tribunal, 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 Order may result in penalties  
for contempt of the Court.

Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Signature