

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**TRUSTEE'S OBJECTION TO MOTION OF WHEELING & LAKE ERIE RAILWAY
COMPANY'S MOTION FOR AN EXPEDITED HEARING ON ITS 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 to Wheeling & Lake Erie Railway Company's ("Wheeling") Motion for an Expedited Hearing on its Motion to Compel Attendance at Deposition and Production of Documents Related Thereto and Objection to the Trustee's Motion to Seal [D.E. 1440] (the "Expedited Motion"), seeking an expedited hearing on Wheeling'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 Expedited Motion (the "Objection"), the Trustee states as follows:²

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 In light of the fact that this Objection pertains only to Wheeling's request for an expedited hearing on the Motion to Compel, and does not address the relief requested or the issues addressed in the underlying Motion to Compel, the Trustee respectfully requests that the Court waive the requirements of D. Me. LBR 9013-1(f), which requires that "[e]very response to a motion shall admit or deny each allegation of the motion and, in addition, shall assert affirmatively . . . such defenses or other matters as may be required fully to inform the Court of the scope of issues raised by the motion." D. Me. LBR 9013-1(f).

1. The Local Rules for the United States Bankruptcy Court for the District of Maine (the “Local Rules”) provide a mechanism whereby a movant may seek to have a motion considered earlier than the 21-day notice period generally required. See D. Me. LBR 9013-1(d)(5) (requiring that a hearing on a motion be at least 21 days from the date such motion is filed); see also D. Me. LBR 9013-1(i). Pursuant to Local Rule 9013-1(i), a movant seeking an expedited hearing must “set forth in detail all facts and circumstances which justify expedited hearing...” Id. Wheeling simply does not - because it cannot - satisfy this standard for the reasons set forth below.

2. First, Wheeling claims that it needs the discovery requested in the Motion to Compel: (a) to address the Trustee’s motion seeking to seal the terms of certain settlement agreements (the “Motion to Seal”); (b) to address the disclosure statement (the “Disclosure Statement”); and (c) to address the plan of liquidation filed by the Trustee (the “Plan”). Expedited Motion, ¶ 4. The Disclosure Statement was filed on March 31, 2015 (slightly more than two months ago). The Motion to Seal was filed on April 21, 2015 (slightly less than two months ago). Wheeling was served with both of these documents when filed. This means that Wheeling has had literally months to address the discovery issues for the Motion to Seal and the Disclosure Statement that it is now demanding be heard on an expedited basis.

3. In relation to the Plan, the timing gets even more ridiculous. Plan objections are not due for months from now and yet Wheeling requires an expedited hearing to compel discovery to address Plan issues. Just because Wheeling failed to timely address its supposed needs in relation to discovery should not allow Wheeling to push its own alleged “fire drill” on

to the estate and its creditors. For these “timing” reasons alone, the Expedited Motion should be denied.³

4. However, there is a second reason why the Expedited Motion should be denied. Wheeling has failed to offer a sufficient basis on which expedited relief with respect to the Motion to Compel is warranted. As noted above, the sole basis for expedited treatment appears to be Wheeling’s belief that the discovery sought by the Motion to Compel is necessary for it to determine its position with respect to the Motion to Seal, the Disclosure Statement and the Plan. Motion to Expedite, ¶ 4. As justification for the expedited hearing, Wheeling states that absent its requested discovery it is unable to “determine its position with respect to either the Motion to Seal or approval of the Disclosure Statement...[and] its position with respect to the Trustee’s Plan[.]”⁴ Expedited Motion, ¶ 4.

5. Wheeling, however, does not require knowledge of the contents of the Settlement Agreements for the purpose of objecting to either the Motion to Seal or the Disclosure Statement. First of all, it should be noted that Wheeling has already objected to the Motion to Seal. See Motion to Compel, p.1. Moreover, a party does not require knowledge of the contents of the documents to be filed under seal in order to argue that the moving party did not satisfy its burden under 11 U.S.C. § 107(b). See 11 U.S.C. § 107(b). Similarly, 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).

³ Additionally, it should be noted that Wheeling filed the Expedited Motion on Wednesday, June 3, 2015 at 10:03 p.m. EST seeking to set a hearing on the Motion to Compel for Wednesday, June 10, 2015 at 11:30 a.m. EST and setting an objection deadline of 4:00 p.m. EST on June 8, 2015 (the “Objection Deadline”). The Local Rules provide that responses to expedited motions “be filed no later than the business day preceding the day of hearing.” D. Me. LBR 9013-1(i)(3). Nevertheless, Wheeling limited the Trustee to an accelerated Objection Deadline of less than three (3) business days and which is two (2) days before the hearing on the Expedited Motion. The Objection Deadline is entirely inappropriate given the timing between the proposed hearing and the date(s) on which Wheeling filed its motions.

⁴ Wheeling’s justification for expedite treatment of the Motion to Compel ignores the fact that the Motion to Compel “shall also serve as [Wheeling’s] objection (the “Objection”) to the Trustee’s Motion to Seal[.]” Motion to Compel, at p.1.

Wheeling is entitled to simply make that argument even in the absence of the Settlement Agreements themselves.

6. To the extent Wheeling argues that the discovery sought in the Motion to Compel is necessary for it to determine its position with respect to the Plan, as explained above, such request is untimely given that the Court has not yet approved the Disclosure Statement. Moreover, the Settlement Agreements are not effective until the Plan becomes effective, which the Trustee anticipates may occur in September, 2015. As such, the alleged harm Wheeling hopes to identify through the requested discovery would not exist, if at all, for an additional three months.

7. Further, 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, which serves as Wheeling's objection to the Motion to Seal, 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 that would require the Court to conduct a hearing, much less an expedited hearing, on the requested discovery matters.

8. There is third reason why the Expedited Motion should be denied and that is that Wheeling has other avenues available to it to protect its rights and none of those require that anything be heard on an expedited basis. As alluded to by Wheeling, the Order on Wheeling & Lake Erie Railway Company's Motion to Intervene as of Right Pursuant to Bankruptcy Rule 7024 and Rule 24(a) of the Federal Rules of Civil Procedure (Case No. 14-01001) [D.E. 54] (the "Order on Motion to Intervene"), preserves Wheeling's alleged rights to the proceeds of certain settlement payments. Specifically, it provides, in part, that "no...categorization or description of, the proceeds received by the Trustee on account of such judgment and/or settlement shall be

binding upon Wheeling.” Order on Motion to Intervene, ¶ 2(B). The same order further provides that “Wheeling shall, at any time, be entitled to seek a determination by this Court...as to the actual nature, characterization or description of any such proceeds of judgment or settlement.” Id., ¶ 2(C). In connection with such determination, “Wheeling shall not be bound by any preclusive rule, or presumptive effect as to the nature, characterization or description of such proceeds arising from such judgment or settlement.” Id. Given the preservation of such rights, there is no need for expedited treatment of the Motion to Compel.

9. In light of the fact that Wheeling has not asserted a basis for expedited relief, the Trustee requests that this Court: (i) deny the Expedited Motion; (ii) set the hearing on the Motion to Compel in accordance with D. Me. LBR 9013-1(d)(1) and D. Me. LBR 4001-1(c)(1); and (iii) order that Wheeling reimburse the Trustee for his costs associated with responding to the Expedited Motion.

Dated: June 8, 2015

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

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