UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:	)	
	)	
Montreal Maine & Atlantic Railway Ltd.,	)	**Case No. 13-10670**
	)	
Debtor.	)	**Related to D.E. 1397**
	)	

WHEELING & LAKE ERIE RAILWAY COMPANY'S SUPPLEMENTAL OBJECTION TO MOTION FOR ENTRY OF AN ORDER AUTHORIZING FILING OF SETTLEMENT AGREEMENTS UNDER SEAL

NOW COMES Wheeling and Lake Eire Railway Company ("Wheeling") and files this supplemental objection to the above-referenced motion (the "Motion to Seal"),[1] filed by Robert J. Keach, the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd. (the "Trustee" and the "Debtor," respectively).

OBJECTION

1. By virtue of prior motion papers, including Wheeling's Motion to Compel and Objection with respect to the Motion to Seal, and oral argument related thereto, the Court is now familiar with the dispute at hand.[2] The Trustee filed the Motion to Seal, by which he asks that this Court invoke the provisions of § 107(b) of the Bankruptcy Code and order that all of the Settlement Agreements that the Trustee has entered into with the Released Parties be sealed from public view and from the view of Wheeling and all other creditors and parties in interest.

2. As the Court is aware, Wheeling holds a valid, perfected, and enforceable security interest in certain assets of the Debtor, including all payment rights arising from a variety of sources. These payment rights are known as "accounts" or "payment intangibles" under Article 9 of the Maine Uniform Commercial Code, 11 M.R.S.A. § 9-1101 *et. seq.* (the "Maine UCC").

[1] Capitalized terms not defined herein shall have the meaning set forth in the Motion to Seal.

[2] *See, e.g.*, 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] (the "Motion to Compel").

Wheeling believes that the payments called for by the Settlement Agreements constitute payments arising from pre-petition contracts, conduct, and activities of the Debtor and, therefore, that they are "payment intangibles." By virtue of the same, they are also Wheeling's collateral. Under well-settled and binding authority in the First Circuit, these payment intangibles are and remain Wheeling's collateral, even if they were contingent or unliquidated before the Petition Date, and did not become fixed, liquidated, and actually paid until after the Petition Date. *See Cadle v. Schlictman*, 267 F.3d 14 (1st Cir. 2001).

3. Wheeling objects to the Motion to Seal for the following reasons.

4. First, as a general matter, while § 107 of the Bankruptcy Code permits the Court to enter protective orders to seal certain described information and materials from public view, it does not follow that § 107 permits the Court to allow the Trustee to keep information "secret" from parties in interest that have a demonstrable need to know. While the Trustee may have reasons to prevent the general public from seeing the Settlement Agreements, there is no justification for preventing Wheeling from seeing them, particularly where Wheeling maintains, on *bona fide* grounds, that the same purport to dispose of assets in which it has a valid, perfected and enforceable security interest. It is inconceivable that the Court would expect Wheeling to protect and to litigate its property rights in the Settlement Agreements, while at the same time permitting the Trustee to keep them a secret from Wheeling. This confounds any plausible notion of due process. Wheeling is more than willing to enter into appropriate confidentiality agreements to keep the Settlement Agreements from the view of anyone who does not have a demonstrable need for the same.

5. Second, the Office of the United States Trustee (the "UST") has filed its Objection To Motion For Entry Of An Order Authorizing Filing Of Settlement Agreements

Under Seal [D.E. 1459] (the "UST's Objection"). In the UST Objection, the UST has made the point that the information which the Trustee seeks to seal from public view is not the type of information described in § 107 as being eligible for protection from public view. Wheeling endorses the UST Objection and will not repeat its arguments here.

6. Finally, the Trustee's assertion (most recently made in his objection to the Motion to Compel [D.E. 1451]) that disclosure of the Settlement Agreements to Wheeling, even under the protection of a protective order, would vitiate the settlements, strains credulity. Confidentiality provisions customarily and almost universally have exceptions for disclosures pursuant to Court order. Assuming that the Trustee's Settlement Agreements contain such a provision, then his argument that the settlements will go away by disclosure is entirely false. Conversely, if the Trustee actually agreed to a confidentiality agreement without the customary carve-outs for court-ordered disclosures, then the Trustee should so state by affidavit, and the Court will need to address this material and damaging omission and how to rectify it. Suffice to say, it cannot be rectified by permitting the Trustee to conduct proceedings in this Court in secret. There is nothing in § 107 that abrogates the due process clause of the Constitution or that allows a Trustee to keep information that a party in interest has a *bona fide* reason to know a secret. Due process requires disclosure with appropriate protections, not secret Court proceedings.

RESPONSE REQUIRED BY D. Me. LBR 9013-1(f)

1. Paragraph 1 of the Motion to Seal contains conclusions of law to which no response is required.

2. Paragraph 2 of the Motion to Seal contains conclusions of law to which no response is required.

3. Admit.

4. Admit.

5. Wheeling lacks personal knowledge or information about the allegations contained in paragraph 5 of the Motion to Seal.

6. Admit.

7. Paragraph 7 is a request for relief to which no response is required.

8. Paragraph 8 requires no response.

9. Paragraph 9 of the Motion to Seal contains legal conclusions to which no response is required.

10. Paragraph 10 of the Motion to Seal contains legal conclusions to which no response is required.

11. Paragraph 11 of the Motion to Seal contains legal conclusions to which no response is required.

12. Paragraph 12 of the Motion to Seal contains legal conclusions to which no response is required.

13. The terms of the Settlement Agreements speak for themselves. Wheeling lacks personal knowledge or information about the remaining allegations of paragraph 13 of the Motion to Seal.

14. Wheeling lacks personal knowledge or information about the allegations in Paragraph 14 of the Motion to Seal.

15. Paragraph 15 of the Motion to Seal contains conclusions of law to which no response is required. Answering further, *In re Dana Corp.*, 412 B.R. 53 (S.D.N.Y. 2008) does not support the relief requested by the Trustee insofar as that case did not consider the propriety

of sealing settlement agreements under similar circumstances. Rather, in that case, there was no opposition by the appellant to a motion to seal.

16. Denied.

WHEREFORE, Wheeling respectfully requests that the Court (A) enter an order denying the relief requested in the Motion to Seal; (B) alternatively, taking such action on the Motion to Seal as it deems appropriate, while at the same time requiring disclosure of the Settlement Agreements to Wheeling under appropriate confidentiality provisions; and (C) granting such further and additional relief as the Court deems just and proper.

Dated: June 16, 2015

/s/ George J. Marcus
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CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and that I caused a true and correct copy of the above document to be served upon the parties electronically at the addresses set forth on the Service List below on 16th day of June, 2015.

/s/ Holly C. Pelkey
Holly C. Pelkey
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Electronic Mail Notice List

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