

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Case No. 13-10670
Chapter 11

**RESPONDING PARTIES' JOINDER IN TRUSTEE'S OBJECTION TO CANADIAN
PACIFIC RAILWAY COMPANY'S MOTION TO COMPEL THE PRODUCTION OF
SETTLEMENT AGREEMENTS**

The Responding Parties¹ hereby join in the objection [Docket No. 1669] (the "Objection") of Robert J. Keach, as chapter 11 trustee in the above-captioned case (the "Trustee"), to *Canadian Pacific Railway Company's Motion to Compel Production of Settlement Agreements and Memorandum in Support of Motion* [Docket No. 1632] (the "Motion"). For the reasons set forth in the Objection and below, the Responding Parties respectfully request that the Motion be denied.

RESPONSE

First, the confidentiality provisions of the settlement agreements are material and non-severable components of the heavily negotiated settlements between the Responding Parties (and other settling parties), the Trustee, and Montreal, Maine & Atlantic Canada Co. (the "Canadian Debtor"). In turn, the settlements are the centerpiece of the coordinated U.S. and Canadian plans of liquidation. As part of its approval of the Canadian Debtor's plan of arrangement, the Quebec Superior Court of Justice (Commercial Division) (the "Canadian Court") recognized the

¹ The Responding Parties for purposes of this joinder are: QEP Resources, Inc., Slawson Exploration Co., Inc., Devlar Energy Marketing, LLC, Marathon Oil Company, Oasis Petroleum, Inc., and Oasis Petroleum, LLC.

importance of the confidentiality provisions of the settlement agreements, entertained the objections of Canadian Pacific Railway Company (“CP”), and specifically ordered that the settlement agreements only be disclosed in redacted form to CP’s Canadian counsel. The Motion is plainly an end-run around the Canadian Court’s standing order, which is subject to comity under the *Order Adopting Cross-Border Insolvency Protocol* on September 4, 2014 [Docket No. 168] (the “Cross-Border Protocol”).

Second, CP ostensibly seeks disclosure of the unredacted agreements in order to inform its vote on the Trustee’s pending plan of liquidation. See Motion ¶ 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). However, this rationale is subterfuge in light of the Court’s order approving the Trustee’s disclosure statement [Docket No. 1544] (the “DS Order”). In the DS Order, the Court held (among other things) that, “The Disclosure Statement contains adequate information in accordance with section 1125 of the Bankruptcy Code and is **APPROVED.**” DS Order ¶ 3. Based on this final and unappealable order, the Trustee circulated the disclosure statement to creditors who, based on this “adequate information,” have now overwhelmingly voted in favor of the plan, including nearly unanimous support from the creditors most directly impacted by the proposed third party releases – the victims of the Lac Megantic tragedy.

Third, the true motivation of CP in seeking to compel disclosure of the unredacted agreements likely relates to its ongoing litigation with the Trustee and the victims in both the U.S. and Canada. As a threshold matter, to the extent that CP seeks the agreements for use in this other litigation, it cannot seek this discovery in connection with the plan. See, e.g., In re Buick, 174 B.R. 299, 306 (Bankr. D. Colo. 1994) (discovery related to issues within scope of

pending adversary proceeding must be sought in adversary proceeding, not main case). Moreover, even in the adversary proceeding, it is questionable whether CP would be entitled to such information – the only relevance of the settlement amounts to CP would be for purposes of judgment reduction, and the Trustee’s plan already provides for such protections without disclosure of the unredacted agreements.

WAIVER OF REQUIREMENTS OF LOCAL RULE 9013-1(f)

In light of the limited nature of this response to the Motion, the Responding Parties request that the Court waive the requirement of Rule 9013-1(f) of this Court’s Local Bankruptcy Rules requiring that any response to a motion admit or deny each allegation of the motion.

WHEREFORE, the Responding Parties join in the Objection and request that the Court enter an order denying the Motion.

Dated: September 14, 2015

Respectfully Submitted,

QEP RESOURCES, INC.

By its attorneys:

/s/ Jeremy R. Fischer
Jeremy R. Fischer
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, Maine 04101
Telephone: (207) 772-1941
E-mail: jfischer@dwmlaw.com

DEVLAR ENERGY MARKETING, LLC

By its attorneys:

/s/ Steven E. Cope
Steven E. Cope
COPE LAW FIRM
P.O. Box 1398

Portland, Maine 04104
Telephone: (207) 772-7491
E-mail: scope@copelegal.com

SLAWSON EXPLORATION CO., INC.

By its attorneys:

/s/ Steven E. Cope
Steven E. Cope
COPE LAW FIRM
P.O. Box 1398
Portland, Maine 04104
Telephone: (207) 772-7491
E-mail: scope@copelegal.com

MARATHON OIL COMPANY

By its attorneys:

/s/ Jeremy R. Fischer
Jeremy R. Fischer
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, Maine 04101
Telephone: (207) 772-1941
E-mail: jfischer@dwmlaw.com

-and-

Tracie J. Renfroe, admitted *pro hac vice*
KING & SPALDING LLP
1100 Louisiana Street
Suite 4000
Houston, TX 77002-5213
Telephone: (713) 751-3214
E-mail: trenfroe@kslaw.com

-and-

Sarah R. Borders, admitted *pro hac vice*
KING & SPALDING LLP
1180 W. Peachtree Street
Atlanta, GA 30309
Telephone: (404) 572-3596

E-mail: sborders@kslaw.com

**OASIS PETROLEUM INC. and
OASIS PETROLEUM LLC**

By its attorneys:

/s/ Timothy H. Norton
Timothy H. Norton
KELLY, REMMEL & ZIMMERMAN
53 Exchange Street, P.O. Box 597
Portland, Maine 04112
Telephone: (207) 775-1020
E-mail: tnorton@krz.com

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing joinder via this Court's CM/ECF system on all parties in the above-captioned case who have requested CM/ECF notice.

Dated: September 14, 2015

/s/ Jeremy R. Fischer
Jeremy R. Fischer
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, Maine 04101
Telephone: (207) 772-1941
E-mail: jfischer@dwmlaw.com