

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**WHEELING & LAKE ERIE RAILWAY COMPANY’S MOTION TO COMPEL
ATTENDANCE AT DEPOSITION AND PRODUCTION OF DOCUMENTS RELATED
THERETO AND OBJECTION TO THE TRUSTEE’S MOTION TO SEAL**

NOW COMES Wheeling and Lake Erie Railway Company (“Wheeling”) and, pursuant to Rule 37 of the Federal Rules of Civil Procedure, which is applicable to this matter pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure, hereby requests entry of an order compelling the attendance of Robert J. Keach, the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd (the “Trustee” and the “Debtor,” respectively) or his designee at a deposition and the production of documents related thereto. Moreover, until such time as Wheeling completes the requested discovery, this Motion shall also serve as its objection (the “Objection”) to the Trustee’s Motion to Seal (as such term is defined herein).

1. As the Court is aware, Wheeling claims a first priority security interest in, among other things, all payment rights of the Debtor, including “accounts” and “payment intangibles,” as those terms are defined under Title 11 of the Maine Revised Statutes (the “Maine UCC”). Wheeling has initiated an adversary proceeding (Adversary No. 13-1033) before this Court to seek a determination of the validity, extent, and priority of its security interest in such property.

2. The Trustee has filed his Motion For Entry Of An Order Authorizing Filing Of Settlement Agreements Under Seal [D.E. 1397] (the “Motion to Seal”), pursuant to which he

seeks an order sealing copies of Settlement Agreements (as such term is used in the Motion to Seal) with certain Released Parties (as such term is used in the Motion to Seal).

3. The Trustee has also filed his Disclosure Statement For The Trustee's Plan Of Liquidation Dated March 31, 2015 [D.E. 1385] (the "Disclosure Statement"), a motion to approve the same [D.E. 1432] (the "DS Motion"), and his Plan Of Liquidation Dated March 31, 2015 [D.E. 1384] (the "Plan"). These filings created contested matters pursuant to Rule 9014 of the Federal Rules of Bankruptcy Procedure in which discovery is authorized pursuant to Rule 9014(c).

4. The Trustee has proposed that payments pursuant to the Settlement Agreements be used to fund portions of his Plan and that an order confirming the Plan approve the Settlement Agreements. Wheeling believes that some or all of the Settlement Agreements (as effectuated under the Plan) may result in payment rights that constitute "accounts" or "payment intangibles" that are collateral for Wheeling's secured claim. Further, although the Trustee's Plan provides that Wheeling is "unimpaired" with respect to its secured claim, the Plan also provides that the accounts and/or payment intangibles from the proposed settlements—which are or may constitute Wheeling's collateral—will be paid to other creditors, without any compensation or other adequate protection for Wheeling's security interest therein. Any such disposition of accounts or payment intangibles would violate Wheeling's rights as an unimpaired secured creditor.

5. Consequently, Wheeling must conduct discovery into the contents of the Settlement Agreements and claims to be settled thereby in order to determine whether payments proposed to be made under the Settlement Agreements are Wheeling's collateral and whether the

disposition of such payments pursuant to the Plan would be lawful. Sealing the Settlement Agreements will prevent Wheeling from doing so.

6. In connection with the foregoing, Wheeling has served a deposition notice for the taking of a deposition of the Trustee and a related document request (the “Deposition Notice”), a copy of which is attached as **Exhibit A**.

7. The Trustee has taken the position, however, (A) that the discovery is not relevant, (B) that the Settlement Agreements cannot be disclosed, and (C) that there is no pending proceeding in which Wheeling can do this discovery. Wheeling disagrees because this discovery is permitted in the different contested matters initiated by the filing of the Motion to Seal, the Disclosure Statement, and the DS Motion. Fed. R. Bankr. P. 9014(c).

8. Wheeling would consent to entry of an appropriate confidentiality order treating the Settlement Agreements, related documents, and testimony about the same as confidential, provided that any such order reserves to Wheeling the right to make appropriate filings in this Court. This includes objections to the Trustee’s Plan and claims for payment or adequate protection for its collateral, even if such filings must be made under seal, to the extent that they address or disclose confidential materials.

9. By way of additional background for the Court, Wheeling sought to intervene in the Trustee’s pending adversary proceeding against the so-called World Fuel Defendants (the “Adversary Proceeding”) because Wheeling believes that the Trustee’s causes of action include claims for breach of contract (and/or related payment rights) that are Wheeling’s collateral and that any payment in settlement of those claims would also be its collateral. (The Trustee’s Adversary Proceeding is pending before this Court with an adversary number of AP-14-1001.)

10. Attached hereto as **Exhibit B** is a copy of the Court's prior order denying Wheeling's motion to intervene but reserving to Wheeling the right to seek a determination as to whether such claims are its collateral as to then-present defendants and those who are subsequently added as defendants. By this prior order, the Court has recognized that Wheeling is entitled to assert that proceeds of various causes of action asserted by the Trustee, and settlements of the same, constitute Wheeling's collateral and that it has the right to recover and/or protect such collateral. The issues presented by the Motion to Seal, the Disclosure Statement, the DS Motion, and the Trustee's Plan are the same and warrant the same consideration by the Court.

11. Wheeling certifies that it has in good faith conferred or attempted to confer with the Trustee and his counsel in an effort to obtain the requested discovery without court action.

WHEREFORE, Wheeling respectfully requests entry of an order (A) compelling the Trustee (or his designee) to appear at a deposition, prior to the deadline for objection to the Motion to Seal, to testify about the topics in the Deposition Notice; (B) compelling production of the documents requested in the attached Deposition Notice prior to or at said deposition; and (C) granting such further and additional relief as the Court deems just and proper, including ordering that the Settlement Agreements, related documents, and testimony related thereto be produced subject to a protective order if the Court deems that to be appropriate.

Dated: June 3, 2015

/s/ George J. Marcus

George J. Marcus

David C. Johnson

Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

MARCUS, CLEGG & MISTRETТА, P.A.

One Canal Plaza, Suite 600

Portland, ME 04101

207.828.8000

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)
)
Montreal Maine & Atlantic Railway Ltd.,) **Case No. 13-10670**
)
Debtor.)
_____)

**NOTICE OF TAKING OF ORAL DEPOSITION OF ROBERT J. KEACH IN HIS
CAPACITY AS CHAPTER 11 TRUSTEE OF MONTREAL MAINE & ATLANTIC
RAILWAY, LTD. PURSUANT TO RULES 30(b)(1) AND (6) OF THE FEDERAL RULES
OF CIVIL PROCEDURE AND FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9014**

To: Robert J. Keach, Esq.
Timothy McKeon, Esq.
Bernstein Shur
P.O. Box 9729
Portland, ME 04104-5029
mfagone@bernsteinshur.com

PLEASE TAKE NOTICE THAT, pursuant to Federal Rules of Civil Procedure 30(b)(1) and (6) and Federal Rule of Bankruptcy Procedure 9014, Wheeling & Lake Erie Railway Co., ("Wheeling") will take the deposition of the designee or designees of Robert J. Keach in his capacity as the Chapter 11 Trustee (the "Trustee") of Montreal, Maine & Atlantic Railway, Ltd. (the "Debtor"), commencing at **10:00 a.m.. (EST) on June 8, 2015**, and continuing from day to day until complete.

The deponents shall appear at the below address for their deposition:

***Marcus, Clegg & Mistretta, P.A.
One Canal Plaza – Suite 600
Portland, Maine 04101-4035***

The deposition of the Trustee designee or designees shall be by oral examination, with a stenographic record made thereof, before a notary public. You are hereby invited to attend the deposition and cross-examine the Trustee designee or designee.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), examination the Trustee is requested on the following matters:

- A. The allegations and assertions made in the Trustee's Motion For Entry Of An Order Authorizing Filing Of Settlement Agreements Under Seal [D.E. 1397] (the "Motion to Seal").
- B. The contents of each of the Settlement Agreements (as such term is used in the Motion to Seal).
- C. The contents of any and all documents or communications, whether tangible or electronic, related to the Settlement Agreements.
- D. Negotiations and/or communications between and among the Trustee and his representatives and the Released Parties (as such term is used in the Motion to Seal) and their representatives, with respect to the Settlement Agreements and the disputes proposed to be settled thereby, including, without limitation, communications and negotiations with each of the persons identified on the List of Released Parties attached to the Motion to Seal as Exhibit A.
- E. Any and all documents or communications between the Trustee (or his attorneys and agents) and the Monitor (or its attorneys and agents) about the Settlement Agreements and the Motion to Seal.
- F. The basis for, including the facts and legal principles in support of, any proposed Settlement Agreement that is the subject of the Motion to Seal.
- G. The manner in which the Trustee's Plan Of Liquidation Dated March 31, 2015 [D.E. 1384] (the "Plan"), proposes to treat proceeds of any claim to be resolved pursuant to a Settlement Agreement.
- H. The manner in which the Plan proposes to treat Wheeling's claims against Montreal, Maine, & Atlantic Railway and, to the extent relevant, Montreal, Maine, & Atlantic Canada.

The Trustee is further requested to produce the following documents at or before the date and time of the deposition:

1. Any and all documents, whether tangible or electronic, that are relevant or related to the foregoing areas of inquiry and/or the Settlement Agreements, other than those documents that are subject to the attorney-client privilege. Without limiting the generality of the foregoing, this includes:

- (a) Any and all written or electronic records of communications between the Trustee, on one hand, and the Monitor and/or the Released Parties, on the other hand, related to the foregoing areas of inquiry as well as copies of all Settlement Agreements; and
- (b) Any and all written or electronic records of any analysis, report, study, evaluation, or expert opinion related to the Settlement Agreements or the claims and causes of action settled thereby.

The Trustee is hereby reminded of his obligation under Rule 30(b)(6) of the Federal Rules of Civil Procedure to designate one or more authorized representatives to testify on its behalf on these subject matters.

Dated: June 2, 2015

/s/ Andrew C. Helman

George J. Marcus, Esq.

David C. Johnson, Esq.

Andrew C. Helman, Esq.

MARCUS, CLEGG & MISTRETТА, P.A.

One Canal Plaza, Suite 600

Portland, ME 04101

Tel: (207) 828-8000

**EXHIBIT
B**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

_____)	
In re:)	
)	
Montreal Maine & Atlantic Railway Ltd.,)	Chapter 11
)	Case No. 13-10670
Debtor.)	
_____)	
)	
Robert J. Keach, solely in his capacity as)	
the chapter 11 trustee for Montreal, Maine)	
& Atlantic Railway, Ltd.,)	
)	
Plaintiff)	Adv. No. 14-01001
)	
v.)	
)	
World Fuel Services Corporation,)	
World Fuel Services, Inc.,)	
Western Petroleum Company,)	
And Petroleum Transport Solutions, LLC,)	
)	
Defendants)	
_____)	

**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**

Upon consideration of the above-referenced motion (the “Motion”)¹ filed by Wheeling, after appropriate notice and hearing thereon, and good cause having been demonstrated to the Court, it is hereby **ORDERED** as follows:

1. Service of the Motion as set forth in the Certificate of Service accompanying the Motion is adequate under the circumstances of this matter;
2. The Court enters the following orders on and with respect to the Motion:

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion.

- A. Wheeling's request to intervene as a party plaintiff in this adversary proceeding is denied;
- B. Notwithstanding denial of the Motion, the Court hereby orders and determines that in the event that the Trustee recovers a judgment in this adversary proceeding against any Defendant, or makes any recovery in a settlement agreement against any party Defendant, or recovers a judgment or makes a settlement with any party who becomes a Defendant in this Adversary Proceeding after the date hereof, no determination by the Court or by any Party as the nature of, or categorization or description of, the proceeds received by the Trustee on account of such judgment and/or settlement shall be binding upon Wheeling.
- C. Without limiting the generality of the foregoing, Wheeling shall, at any time, be entitled to seek a determination by this Court, or by any other court of competent jurisdiction, as to the actual nature, characterization or description of any such proceeds of judgment or settlement, and in conjunction with any 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.

Date: November 4, 2014



Hon. Louis H. Kornreich
United States Bankruptcy Judge

Notice Recipients

District/Off: 0100-1

User: kford

Date Created: 11/4/2014

Case: 14-01001

Form ID: pdf901

Total: 15

Recipients of Notice of Electronic Filing:

aty	Andrew Helman, Esq.	ahelman@mcm-law.com
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aty	George J. Marcus, Esq.	bankruptcy@mcm-law.com
aty	Jay S. Geller	jgeller@jaysgellerlaw.com
aty	Michael A. Fagone, Esq.	mfagone@bernsteinshur.com
aty	Timothy J. McKeon, Esq.	tmckeon@bernsteinshur.com

TOTAL: 6

Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla	Robert J. Keach	Bernstein, Shur, Sawyer & Nelson, P.A.	100 Middle Street	P.O. Box
	9729	Portland, ME 04104-5029		
dft	World Fuel Services Corporation	Attn: Assistant General Counsel	9800 NW 41 Street	Suite
	400	Miami, FL 33178		
dft	World Fuel Services, Inc.	Attn: Assistant General Counsel	9800 NW 41 Street	Suite
	400	Miami, FL 33178		
dft	Western Petroleum Company	Attn: Assistant General Counsel	9800 NW 41 Street	Suite
	400	Miami, FL 33178		
dft	World Fuel Services, Canada, Inc.	Attn: Assistant General Counsel	9800 NW 41 Street	Suite
	400	Miami, FL 33178		
dft	Petroleum Transport Solutions, LLC	Attn: Assistant General Counsel	9800 NW 41 Street	Suite
	400	Miami, FL 33178		
aty	Paul McDonald	Bernstein Shur Sawyer & Nelson, P.A.	100 Middle Street	PO Box
	9729	Portland, ME 04104-5029		
ust	Office of the U.S. Trustee	537 Congress Street	Portland, ME 04101	
ust	Office of U.S. Trustee	537 Congress Street, Suite 300	Portland, ME 04101	

TOTAL: 9

Holly Pelkey

From: MEB_ECFmail@meb.uscourts.gov
Sent: Tuesday, November 04, 2014 2:04 PM
To: CourtMail@meb.uscourts.dcn
Subject: AP lhk 14-01001 Keach Order on Motion To Intervene

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U.S. Bankruptcy Court

Maine

Notice of Electronic Filing

The following transaction was received from kef entered on 11/4/2014 at 2:03 PM EST and filed on 11/4/2014

Case Name: Keach et al v. World Fuel Services Corporation et al

Case Number: [14-01001](#)

Document Number: [54](#)

Docket Text:

Order Denying Motion To Intervene (Related Doc # [38]) (kef)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:14-1001 38 order on motion to intervene.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=993675568 [Date=11/4/2014] [FileNumber=3930404-0]
[1a4abf844f76268f6a049d23e3ba0d6dd69014864fc294444b0b43115877d9292807
146a83ef1efbc70b0a66882a3c1ddbb1edfd0cbf7ac5f75c18712d5e6c15]]

14-01001 Notice will be electronically mailed to:

D. Sam Anderson, Esq. on behalf of Plaintiff Robert J. Keach

sanderson@bernsteinshur.com,

acummings@bernsteinshur.com;sspizuoco@bernsteinshur.com;astewart@bernsteinshur.com;kquirk@bernsteinshur.com

Michael A. Fagone, Esq. on behalf of Plaintiff Robert J. Keach

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Jay S. Geller on behalf of Defendant Petroleum Transport Solutions, LLC

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Jay S. Geller on behalf of Defendant Western Petroleum Company

jgeller@jaysgellerlaw.com

Jay S. Geller on behalf of Defendant World Fuel Services Corporation

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Jay S. Geller on behalf of Defendant World Fuel Services, Canada, Inc.

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Jay S. Geller on behalf of Defendant World Fuel Services, Inc.

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Andrew Helman, Esq. on behalf of Intervenor-Plaintiff Wheeling & Lake Erie Railway Company

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George J. Marcus, Esq. on behalf of Intervenor-Plaintiff Wheeling & Lake Erie Railway Company

bankruptcy@mcm-law.com

Timothy J. McKeon, Esq. on behalf of Plaintiff Robert J. Keach

tmckeon@bernsteinshur.com,

sspizuoco@bernsteinshur.com; kquirk@bernsteinshur.com; astewart@bernsteinshur.com

14-01001 Notice will not be electronically mailed to:

Paul McDonald on behalf of Plaintiff Robert J. Keach

Bernstein Shur Sawyer & Nelson, P.A.

100 Middle Street

PO Box 9729

Portland, ME 04104-5029

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**ORDER GRANTING WHEELING & LAKE ERIE RAILWAY COMPANY'S MOTION
TO COMPEL ATTENDANCE AT DEPOSITION AND PRODUCTION OF
DOCUMENTS RELATED THERETO AND OBJECTION TO THE TRUSTEE'S
MOTION TO SEAL**

Upon consideration of the above-referenced motion (the "Motion"),¹ filed by Wheeling, after appropriate notice and a hearing thereon, if necessary, and good cause having been demonstrated to the Court, it is hereby ORDERED as follows:

1. Service as set forth in the Certificate of Service filed in connection with the Motion is adequate service under the circumstances of this matter;
2. The Motion is GRANTED;
3. The Trustee is hereby ordered to personally attend, or to designate an appropriate representative to attend on his behalf, a deposition with respect to the topics set forth in the Deposition Notice prior to the deadline for objection to the Motion to Seal; and
4. The Trustee is hereby ordered to produce the documents requested in the Deposition Notice prior to or at said deposition.

Dated: June __, 2015

Hon. Peter G. Cary
United States Bankruptcy Judge

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion.