

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

| | | |
|---------------------------|---|-------------------|
| |) | |
| In re |) | Chapter 11 |
| |) | Case No. 13-10670 |
| MONTREAL MAINE & ATLANTIC |) | |
| RAILWAY, LTD. |) | |
| |) | |
| Debtor. |) | |

**INTERIM ORDER AUTHORIZING DEBTOR
TO USE CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

On the Motion of Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”) for Order Pursuant to 11 U.S.C. §§ 361, 362, and 363: (I) Authorizing Debtor to Use Cash Collateral on Interim Basis; and (II) Scheduling a Hearing to Consider the Use of Cash Collateral on a Final Basis (the “**Motion**”), after a hearing conducted on August 8, 2013, upon finding by the Court that that: (i) the Debtor requires the use of Cash Collateral (as defined herein) for ordinary course operations; (ii) the Debtor’s ability to protect and preserve its going concern operations will be seriously undermined in the absence of the use of Cash Collateral; (iii) the Wheeling & Lake Erie Railway Company (“**W&LER**”) claims an interest in the Debtor’s Cash Collateral; (iv) the Debtor’s offer of adequate protection to W&LER having been accepted by W&LER subject to and upon the terms and conditions of this Order; and (v) the Debtor has given sufficient notice under the circumstances of the hearing on the Motion, the Court hereby finds as follows:

A. This Court has jurisdiction over these proceedings and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The subject matter of the Motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) upon which the Court has the Constitutional authority to enter this Order.

B. On August 7, 2013, (the “**Petition Date**”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”). The Debtor is continuing in possession of its property, and operating and managing its business as a debtor-in-possession pursuant to this Court’s Order Authorizing the Debtor’s Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee. [Dkt. No. 34]. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED

1. The Debtor is authorized, effective as of August 7, 2013, to use Cash Collateral¹, including cash on hand and cash from collection of its pre-petition accounts receivables on an interim basis for ordinary course business purposes through close of business on August 23, 2013 (the “**Expiration Date**”), pursuant to the interim budget attached hereto as Exhibit A (the “**Revised Budget**”)² and incorporated herein by reference; and

2. Notwithstanding section 552(a) of the Bankruptcy Code, as and for adequate protection for the post-petition use by the Debtor of Cash Collateral in which W&LER claims an interest, including accounts and inventory of the Debtor and proceeds thereof, the Debtor is hereby authorized and by entry of this Order does grant to W&LER a valid, perfected, and enforceable security interest in all accounts, inventory, and proceeds of accounts acquired by the Debtor on or after the Petition Date to the same extent that W&LER had a valid, perfected, and enforceable security interest in all accounts, inventory, and proceeds of accounts acquired by the

¹ Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Cash Collateral Motion.

² The Revised Budget differs slightly from the Budget that was submitted with the Motion [Dkt. No. 5, Exhibit A]. The changes are described in the *Debtor’s Supplement to Motion for Order Pursuant to 11 U.S.C. §§ 361, 362, and 363: (I) Authorizing Debtor to Use Cash Collateral on Interim Basis; and (II) Scheduling a Hearing to Consider the Use of Cash Collateral on a Final Basis* filed contemporaneously herewith.

Debtor prior to the Petition Date (the “**Replacement Lien**”); provided, however, that the Replacement Lien shall not attach to funds collected by the Debtor on behalf of other carriers to the extent such funds are subsequently determined by the Court to be held by the Debtor in an express or implied trust for such other carriers. The Replacement Lien shall (i) secure all obligations of the Debtor to the W&LER; (ii) be limited in amount to the amount of Cash Collateral actually utilized by the Debtor on or after the Petition Date; (iii) in any event be limited to the amount of Cash Collateral that the Debtor had on hand as of the Petition Date; and (iv) shall have the same validity, enforceability, and priority as the security interests of W&LER had with respect to Cash Collateral as of the Petition Date. The Replacement Lien has the validity, enforceability, and priority as is set forth in the preceding sentence without the need for any public filing or other action.

3. If, notwithstanding the grant of adequate protection provided in this Order, W&LER has a claim allowable under Sections 503(b), and 507(a)(2) of the Bankruptcy Code arising from the use of Cash Collateral pursuant to this Order, then, such claim shall have priority over all other claims allowable under Section 507(a)(2).

4. From the date of this Order and until the Expiration Date, the Debtor shall provide W&LER, the United States Trustee (“UST”), and each of the twenty largest unsecured creditors of the Debtor making a written request of the Debtor for such reporting, the following regular reports on its financial condition and cash flow no later than each Wednesday by 10:00 A.M. of each week, commencing the week of August 19, 2013, and for the one week period ending on the preceding Saturday: (a) a report comparing the Debtor’s actual performance during the week to the Budget; (b) a report on the balances, as of the end of each weekly period, in each of the Debtor’s debtor-in-possession banking accounts, the balance of the Debtor’s accounts receivable,

and an aging report of all outstanding accounts receivable, and the balances of all inventory; and (c) a rolling forward projection of sources and uses of cash, and balance sheet accounts for cash, accounts receivable and inventory for the ensuing thirteen (13) week period. W&LER and the UST shall also have the right to request and to promptly receive further information and reports necessary to evaluate the Debtor's profitability and cash flow. The foregoing is without prejudice to, and shall not be deemed a waiver of any parties' right to seek examination of the Debtor pursuant to Fed. R. Bankr. P. 2004.

5. For so long as the Debtor is authorized under the terms of this Order to use Cash Collateral, the Debtor shall not seek authority for, or otherwise allow, any other liens to be granted which are superior or in any way prime W&LER's pre-petition liens or the Replacement Lien, without the express written consent of W&LER.

6. Unless cured within five (5) business days after W&LER provides written notice of default by electronic mail to the Debtor (rclement@verrilldana.com), and the UST (jennifer.h.pincus@usdoj.gov), each of the following shall constitute an "**Event of Default**" for purposes of this Order:

- (a) the Debtor's chapter 11 case is either dismissed or converted to a case under chapter 7 pursuant to an Order of this Court, the effect of which has not been stayed;
- (b) the occurrence of the Expiration Date, without the express written consent of W&LER or an Order of the Court authorizing the continued use of cash collateral beyond the Expiration Date;
- (c) the Debtor expends Cash Collateral in an amount that exceeds one hundred and ten percent (110%) of the amount shown on the row entitled "Total Disbursements" on the Budget; or (ii) fails to provide the requisite financial reports within 5 business days of receipt of notice of any failure of reporting,
- (d) this Court enters an Order terminating the Debtor's authority to use Cash Collateral;

- (e) the Debtor ceases the operation of substantially all of its present businesses or takes any material action for the purpose of effecting the foregoing without the prior written consent of W&LER, provided, however, that filing of a motion for sale of all or substantially all of the Debtor's assets shall not constitute an Event of Default;
- (f) the Debtor expends any funds or monies for any purpose other than as set forth in the Budget or as otherwise authorized by the Court after notice and a hearing;
- (g) any material and/or intentional misrepresentation by the Debtor in the financial reporting or certifications required to be provided by the Debtor under this Order; and
- (h) non-compliance or default by the Debtor with any of the other terms, provisions, and conditions of this Order.

Upon the occurrence of an Event of Default, and provided that such default remains uncured after 5 business days after notification thereof by W&LER, the Debtor's authority to use Cash Collateral pursuant to this Order shall immediately cease and terminate. Nothing in this Order shall prohibit the Debtor from filing motions with the Court seeking emergency and/or expedited hearing, and continued and/or renewed authority to use cash collateral.

7. The terms and conditions of this Order shall be in effect and immediately enforceable upon its entirety by the Clerk of the Court and shall be binding against the Debtor, the estate and/or any trustee subsequently appointed in this case, whether under Chapter 7 or Chapter 11 of the Bankruptcy code, and notwithstanding any potential application of Bankruptcy Rule 6004(g), 7062 or 9014; and not be stayed absent (a) an application by a party-in-interest for such stay in conformance with Bankruptcy Rule 8005, and (b) a hearing upon notice to the Debtor, W&LER and the United States Trustee;

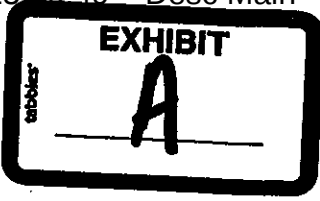
8. A further and final hearing on Debtor's request to use Cash Collateral shall be held on the Motion on August 22, 2013 at 11:00 a.m. at the Kennebec County Superior Court, Augusta, Maine. Debtor shall promptly provide notice of such further hearing in accordance

with the applicable Bankruptcy Rules and Local Bankruptcy Rules. Objections, if any, to the proposed final order shall be filed and served on or before August 20, 2013 at 4:00 p.m.

Dated: August 12, 2013

A handwritten signature in black ink, reading "Louis H. Kornreich". The signature is written in a cursive style with a horizontal line underneath the name.

Hon. Louis H. Kornreich
United States Bankruptcy Judge



Montreal, Maine & Atlantic Railway*

Current Status

| | W/E 8/19/2013 | W/E 8/23/2013 |
|---|-------------------|-------------------|
| Receipts: | | |
| Transportation Revenue | | |
| Freight Revenue | \$ 215,000 | \$ 225,000 |
| ISS Receipt | | |
| Zone Switching | | 45,000 |
| Sub Total - Transportation Revenue | 215,000 | 270,000 |
| Other Operating Revenue | | |
| Switching & Miscellaneous | 20,000 | 20,000 |
| Contract Shop & Car Repairs | | |
| Car Hire Revenue | | 120,000 |
| Sub Total - Other Operating Revenue | 20,000 | 140,000 |
| Non-Operating Revenue | | |
| Scrap Sales | | |
| Private & Govt Re-imburements | | |
| Traveler Bill | | |
| Sub Total - Non-Operating Revenue | | |
| Total Cash Receipts | 235,000 | 410,000 |
| Disbursements: | | |
| Transportation Revenue Offsets | | |
| NBSR, MNR, SLO, CN | (25,000) | (22,000) |
| Sub Total - Transportation Revenue Offsets | (25,000) | (22,000) |
| Payroll & Related | | |
| Salaries, Wages & Commissions US | (180,000) | |
| Salaries, Wages & Commissions CDN | (39,900) | (140,461) |
| Employee Benefits & Insurance | (25,000) | (25,000) |
| Sub Total - Payroll & Related | (244,900) | (165,461) |
| Materials & Supplies | | |
| Diesel Fuel | | |
| Material Costs US | (52,519) | (50,000) |
| Material Costs CDN | (50,681) | (48,250) |
| Sub Total - Material & Supplies | (103,200) | (98,250) |
| Freight Car & Locomotive Expense | | |
| Leases - Car | | |
| Leases - Locomotive | | |
| Car Hire | | |
| Car Repair Debits | (20,000) | |
| Sub Total - Freight Car & Locomotive | (20,000) | |
| Rent, Heat & Utilities | | |
| Rent | | |
| Electricity | | |
| Heat | | |
| Phone, Internet, Radio | (5,000) | (5,000) |
| Sub Total - Rent, Heat & Utilities | (5,000) | (5,000) |
| Other Indirect/Operating Costs | | |
| Business Insurance Payments | | |
| Credit card | | |
| Fees and other (detail see below) | | |
| Sub Total - Other Indirect/Operating Costs | | |
| Total Disbursements | (398,100) | (290,711) |
| Net Cash Flow (Use) - Operations | (163,100) | 119,289 |
| INVESTING ACTIVITIES | | |
| Capital Additions / Improvements | | |
| Net Cash Flow (Use) - Investing Activities | (163,100) | 119,289 |
| SUMMARY | | |
| Cash Beginning | 401,485 | 238,365 |
| Net Weekly Cash Flow | (163,100) | 119,289 |
| Cash Ending | \$ 238,385 | \$ 357,654 |

Montreal, Maine & Atlantic Railway Confidential

Collateral Analysis

| | | |
|---|--------------------|--------------------|
| Accounts Receivable | | |
| Accounts Receivable A/R Trade Beg Balance | \$ 7,221,854 | \$ 7,256,854 |
| Add: Net Sales | 250,000 | 250,000 |
| Less: Collections | 215,000 | 225,000 |
| Less: sale of Receivable | | |
| A/R Trade Ending | <u>7,260,854</u> | <u>7,281,854</u> |
| Less: Ineligible A/R | <u>(2,977,434)</u> | <u>(2,977,434)</u> |
| A/R - Ending - Eligible | 4,278,420 | 4,304,420 |
| A/R Advance Rate | <u>60%</u> | <u>80%</u> |
| A/R Collateral Value | 3,423,536 | 3,443,536 |
| Inventory value | 1,181,097 | 1,181,097 |
| Gross Collateral | <u>6,460,517</u> | <u>5,485,517</u> |
| Ending Line of Credit Balance | <u>6,000,000</u> | <u>6,000,000</u> |
| Excess (Over Advance) | <u>(539,483)</u> | <u>(514,483)</u> |
| Diesel Fuel | 266,623 | 271,623 |

District/Off: 0100-1
Case: 13-10670

User: kford
Form ID: pdf900

Date Created: 8/12/2013
Total: 24

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TOTAL: 13

Recipients submitted to the BNC (Bankruptcy Noticing Center):

| | | | | |
|-----|--|--|-------------------------------------|------------------------|
| db | Montreal Maine & Atlantic Railway Ltd. | 15 Iron Road | Hermon, ME 04401 | |
| cr | Maine Department of Transportation | c/o Victoria Morales | 16 State House Station | Augusta, ME |
| | 04333 | | | |
| cr | Eastern Maine Railway Company | c/o Alan Lepene | 3900 Key Center | 127 Public |
| | Square | Cleveland, OH 44114-1291 | | |
| cr | Maine Northern Railway Company | c/o Alan Lepene | 3900 Key Center | 127 Public |
| | Square | Cleveland, OH 44114-1291 | | |
| cr | New Brunswick Southern Railway Company | c/o Alan R. Lepene | 3900 Key Center | 127 Public |
| | Square | Cleveland, OH 44114-1291 | | |
| cr | Bangor Savings Bank | P.O.Box 930 | Bangor, ME 04402-0930 | |
| cr | United States of America | c/o Department of Justice, Civil Divisio | 1100 L Street, N.W. | Room |
| | 10052 | Washington, DC 20005 | | |
| aty | Alan R. Lepene | 3900 Key Center | 127 Public Square | Cleveland, OH 44114 |
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| | 1060 | Augusta, ME 04332 | | |

TOTAL: 11