

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

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

On August 7, 2013, Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”) filed a 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 [D.E. 4] (the “**Motion**”). The Court previously entered an *Interim Order Authorizing the Debtor to Use Cash Collateral and Granting Adequate Protection* [D.E. 51]. On August 21, 2013, the United States Trustee appointed Robert J. Keach (the “**Trustee**”) as the chapter 11 trustee of MMA pursuant to 11 U.S.C. § 1163 [D.E. 64], and the appointment of the Trustee terminated the Debtor’s authority pursuant to the Court’s order dated August 8, 2013 [D.E. 34]. Notwithstanding that termination, the Trustee adopted the Debtor’s request for relief in the Motion at a continued hearing on the Motion conducted on August 22, 2013. Based on the Court’s review of the Motion and the representations of counsel at the hearing on August 22, 2013, the Court finds that: (i) the Trustee requires the use of Cash Collateral (as defined herein) for ordinary course operations; (ii) the Trustee’s ability to protect and preserve MMA’s 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

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the Cash Collateral; (iv) the Trustee'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 continued hearing on the Motion, the Court hereby further 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**"). Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED

1. The Trustee is authorized, effective as of August 22, 2013, to use Cash Collateral,¹ including cash on hand and cash from collection of MMA's pre-petition accounts receivables on an interim basis for ordinary course business purposes through close of business on September 6, 2013 (the "**Expiration Date**"), pursuant to the interim budget attached hereto as Exhibit A (the "**Budget**") 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 of Cash Collateral in which W&LER claims an interest, including accounts and inventory of the Debtor and proceeds thereof, the Trustee is hereby authorized and by entry of this Order does grant to W&LER a valid, perfected, and enforceable

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

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 Debtor prior to the Petition Date (the “**Replacement Lien**”); provided, however, that the Replacement Lien shall not attach to funds collected on behalf of other carriers to the extent such funds are subsequently determined by the Court to be held by MMA 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 or the Trustee 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 Section 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 the Trustee, W&LER, the United States Trustee (“**UST**”), the Federal Rail Administration (the “**FRA**”), and the Maine Department of Transportation (“**MDOT**”) 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 12, 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. These reports shall be transmitted via e-mail to FRA (John.Stemplewicz@usdoj.gov) and MDOT (Nathan.Moulton@maine.gov and Toni.Kemmerle@maine.gov). The Trustee, W&LER, UST, FRA and MDOT 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. Without limiting the generality of the foregoing, the Debtor shall cooperate with W&LER and the Trustee to find a mutually agreeable date, time and place for an examination of the Debtor. In the event that on or prior to August 26, 2013, the Trustee, the Debtor, and W&LER are unable to agree upon such date, time and place, then the W&LER is hereby authorized to examine the Debtor, and to require the production of documents, pursuant to Fed. R. Bankr. P. 2004 and D. ME. LBR 2004-1(a), upon three (3) business day's written notice to the Trustee and the Debtor, at the offices of counsel for W&LER in Portland, Maine. In furtherance of the timely production of documents, W&LER shall provide the Debtor and the Trustee with a list of requested documents on or before the close of business on Monday, August 26, 2013.

5. For so long as the Trustee is authorized under the terms of this Order to use Cash Collateral, the Trustee 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 Trustee (rkeach@bernsteinshur.com), the UST (jennifer.h.pincus@usdoj.gov), FRA (John.Stemplewicz@usdoj.gov) and MDOT (Nathan.Moulton@maine.gov and Toni.Kemmerle@maine.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 Trustee 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 Trustee's authority to use Cash Collateral;
- (e) the Trustee ceases the operation of substantially all of MMA's 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 Trustee 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; and
- (g) non-compliance or default by the Trustee 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 Trustee's authority to use Cash Collateral pursuant to this Order shall immediately cease and terminate. Nothing in this Order shall prohibit the Trustee 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 entry by the Clerk of the Court and shall be binding against the Trustee, 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 hearing on Trustee's request to use Cash Collateral shall be held on the Motion on **September 4, 2013 at 10:00 a.m.** at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine. The Trustee shall promptly provide notice of such further hearing in accordance with the applicable Bankruptcy Rules and Local Bankruptcy Rules. Objections, if any, to any proposed further order shall be filed and served on or before September 3, 2013 at 4:00 p.m.

Dated: August __, 2013

Hon. Louis H. Kornreich
United States Bankruptcy Judge



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Current Status

Receipts:

| | Forecast W/E 8/18/2013 | Actual W/E 8/18/2013 | W/E 8/23/2013 | W/E 8/30/2013 | W/E 8/6/2013 | W/E 9/13/2013 |
|-------------------------------------|------------------------------|----------------------------|------------------|------------------|-----------------|------------------|
| Transportation Revenue | \$ 150,000 | \$ 93,623 | \$ 145,000 | \$ 150,000 | \$ 150,000 | \$ 150,000 |
| Freight Revenue and Zone Switching | | | | | (20,000) | |
| ISS Receipt | | | | | 130,000 | 160,000 |
| Sub Total - Transportation Revenue | 150,000 | 93,623 | 145,000 | 150,000 | 130,000 | 160,000 |
| Other Operating Revenue | | | | | | |
| Switching & Miscellaneous | 30,000 | 155 | 30,000 | 30,000 | 30,000 | 30,000 |
| Contract Shop & Car Repairs | | 581 | | 20,000 | | |
| Car Hire Revenue | | | 72,500 | | | |
| Sub Total - Other Operating Revenue | 30,000 | 736 | 102,500 | 50,000 | 30,000 | 30,000 |
| Non-Operating Revenue | | | | | | |
| Traveler Business Interruption | | | | | | |
| Sub Total - Non-Operating Revenue | | | | | | |
| Total Cash Receipts | 180,000 | 94,359 | 247,500 | 200,000 | 160,000 | 180,000 |

Disbursements:

| | | | | | | |
|---|------------------|------------------|----------------|------------------|-----------------|-----------------|
| Transportation Revenue Offsets | | | | | | |
| NBSR, MRR, SLQ, CN | 25,000 | 25,000 | 22,000 | 53,204 | 20,204 | 20,204 |
| Sub Total - Transportation Revenue Offsets | 25,000 | 25,000 | 22,000 | 53,204 | 20,204 | 20,204 |
| Payroll & Related | | | | | | |
| Salaries, Wages & Commissions US | 180,000 | 178,048 | | 160,076 | | 150,076 |
| Employee Benefits Claims - US | | (1,142) | | 5,000 | 5,000 | 5,000 |
| Salaries, Wages & Commissions CDN | | 5,372 | 117,444 | | 110,128 | |
| Group Health, pension and union dues- CDN | 33,000 | 31,142 | 2,000 | | 25,000 | |
| Vacation pay arrears - CDN | 16,000 | 16,041 | | 50,000 | | |
| Sub Total - Payroll & Related | 229,000 | 229,459 | 119,444 | 205,076 | 140,128 | 155,076 |
| Materials & Supplies | | | | | | |
| Diesel Fuel | | | | | | |
| Material Costs US | 25,000 | 6,134 | 20,000 | 25,000 | 20,000 | 20,000 |
| Material Costs CDN | 24,125 | 4,063 | 9,300 | 14,125 | 9,300 | 9,300 |
| Sub Total - Material & Supplies | 49,125 | 10,198 | 29,300 | 39,125 | 29,300 | 29,300 |
| Freight Car & Locomotive Expense | | | | | | |
| Leases - Car | | | | | 5,000 | |
| Leases - Locomotive | | | | | | |
| Car Repair Debits | | | | | | 5,000 |
| Sub Total - Freight Car & Locomotive | | | | | 5,000 | |
| Other Operating Costs | | | | | | |
| Rent | | | | | 15,000 | |
| Electricity | | | | 9,000 | | |
| Liability Insurance Payments | | | | | 21,346 | 43,500 |
| Phone, Internet, Radio, Other expenses | 10,000 | 5,247 | 10,000 | 10,000 | 10,000 | 10,000 |
| Sub Total - Rent, Heat & Utilities | 10,000 | 5,247 | 10,000 | 19,000 | 46,346 | 53,500 |
| Restructuring Costs | | | | | | |
| Utility Deposits - US | | | | | | |
| Utility Deposits - CDN | | | 10,000 | | 10,000 | |
| NoEco in newspaper | | | 15,000 | | | |
| Professional fees - US | | | | | | |
| Professional fees - CDN | | | | | | |
| Sub Total - Other Indirect/Operating Costs | | | 25,000 | | 10,000 | |
| Total Disbursements | 313,125 | 269,903 | 205,744 | 316,405 | 250,976 | 258,080 |
| Net Cash Flow (Use) - Operations | (133,125) | (175,544) | 41,756 | (116,405) | (90,976) | (78,080) |

SUMMARY

| | | | | | | |
|--|-----------|-----------|---------|-----------|----------|----------|
| Cash Beginning | 378,834 | 378,834 | 203,290 | 245,046 | 128,841 | 37,665 |
| Net Weekly Cash Flow | (133,125) | (175,544) | 41,756 | (116,405) | (90,976) | (78,080) |
| Sub Total | 245,709 | 203,290 | 245,046 | 128,641 | 37,665 | (40,415) |
| Traveler Business Interruption Insurance | 245,709 | 203,290 | 245,046 | 128,641 | 37,665 | (40,415) |
| Sub Total | 491,418 | 406,580 | 490,092 | 257,282 | 75,330 | (80,830) |

For Management Discussion Pu

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| | 8/16/2013 | 8/16/2013 | 8/23/2013 | 8/30/2013 | 8/30/2013 | 9/13/2013 |
|---|--------------|--------------|--------------|--------------|--------------|--------------|
| Collateral Analysis | | | | | | |
| Accounts Receivable | | | | | | |
| Accounts Receivable A/R Trade Beg Balance | \$ 8,469,391 | \$ 6,008,422 | \$ 5,199,383 | \$ 5,254,383 | \$ 5,304,383 | \$ 5,424,383 |
| Add: Net Sales | 200,000 | 284,584 | 200,000 | 200,000 | 250,000 | 250,000 |
| Less: Collections | 150,000 | 83,823 | 145,000 | 150,000 | 130,000 | 150,000 |
| A/R Trade Ending | 8,519,391 | 6,199,183 | 5,254,383 | 5,304,383 | 5,424,383 | 5,524,383 |
| Less: Ineligible A/R | (2,977,434) | (1,812,170) | (1,812,170) | (1,812,170) | (1,812,170) | (1,812,170) |
| A/R - Ending - Eligible | 5,541,957 | 4,387,013 | 3,442,213 | 3,492,213 | 3,612,213 | 3,712,213 |
| Inventory value | 1,181,097 | 1,136,938 | 1,136,938 | 1,136,938 | 1,136,938 | 1,136,938 |
| Total Inventory Collateral Value | 1,181,097 | 1,136,938 | 1,136,938 | 1,136,938 | 1,136,938 | 1,136,938 |
| Gross Collateral | 4,723,054 | 4,624,145 | 4,579,145 | 4,629,145 | 4,749,145 | 4,849,145 |
| Line of Credit Maximum | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 |
| Eligible Collateral | 4,723,054 | 4,524,145 | 4,579,145 | 4,629,145 | 4,749,145 | 4,849,145 |
| Beginning Line of Credit Balance | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 |
| Advances / (Payments) (incl write down) | | | | | | |
| Ending Line of Credit Balance | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 | 6,000,000 |
| | (1,276,946) | (1,475,855) | (1,420,855) | (1,370,855) | (1,250,855) | (1,150,855) |
| Diesel Fuel | 286523 | 286523 | 271523 | 256523 | 241523 | 226523 |

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