

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

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

On August 7, 2013, Motion of 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], a *Second Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection* [D.E.98], a *Third Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection* [Docket No. 173], and a *Fourth Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection* [Docket No. 255] (the “Fourth Interim Order”). Pursuant to the Fourth Interim Order, a further continued hearing on the Motion was set for October 1, 2013. 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]. Based on the Court’s review of the Motion and the representations of counsel at the hearing on October 1, 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 the Cash Collateral; (iv) the Trustee's offer of adequate protection to W&LER has 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 October 1, 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 October 11, 2013 (the "**Expiration Date**"), subject to extension of the Expiration Date pursuant to paragraph 9 of this Order, and 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

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

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 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. In addition to the grant of a Replacement Lien as provided in the immediately preceding paragraph of this order, and as and for additional adequate protection for the post-petition use of Cash Collateral in which W&LER claims an interest, the Trustee shall provide the following additional consideration for the benefit of W&LER:

(a) From the proceeds of any and all accounts owed or claimed by the Trustee or the Debtor to be owed by any of the Irving companies, so called, or any affiliate thereof, to the

Debtor as of the Petition Date (the “**Irving Accounts**”), and paid to the Debtor or the Trustee on or after September 13, 2013, the first \$150,000 of any such payment of the Irving Accounts shall be deposited in an escrow account, with an escrow agent to be determined by agreement of W&LER and the Trustee, or failing such agreement, by this Court. The funds so deposited shall be and remain subject to the security interests claimed by W&ELR, and may be used by the Trustee as Cash Collateral only in accordance with a budget approved by the Court, after due and appropriate notice and hearing, or with the consent of W&ELR. After payment, on or after September 13, 2013, of \$150,000 to the Trustee on account of the Irving Accounts, all additional payments made on account of the Irving Accounts shall be delivered and turned over to W&ELR within two business days of receipt thereof, without deduction or offset of any kind, and W&LER shall be authorized to apply such payment in partial satisfaction of the obligations of the Debtor to W&LER, in such manner as Wheeling and the Trustee may agree upon, or, failing such agreement, as the Court may order;

(b) The Trustee shall not settle or compromise the Irving Accounts or any portion thereof without the written consent of W&LER, or an order of this Court, entered after due and adequate notice and hearing.

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

5. From the date of this Order and until the Expiration Date, the Debtor shall provide the Trustee, W&LER, the 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.

6. 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.

7. Unless cured within five (5) business days after W&LER provides written notice of default by electronic mail to the Trustee (rkeach@bernsteinshur.com), and 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.

- 8. 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 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 UST.

9. The Expiration Date may be extended, one or more times and from time to time, by written agreement of the Trustee and W&LER. Any such extension shall be for such period of time and upon such budget for the Trustee's operations as the Trustee and W&ELR may agree upon, in writing. The period of time between the Expiration Date as originally set forth in this Order and any extended Expiration Date agreed upon by the Trustee and W&LER shall be referred to as the "Extension Period". All of the terms and conditions of this Order shall apply during the Extension Period, unless the Trustee and W&LER shall otherwise agree, in writing; and provided further that the budget for the operations of the Trustee during any such Extension Period shall be as agreed upon in writing by the Trustee and W&LER.

10. A further hearing on the Trustee's request to use Cash Collateral shall be held on the Motion on **October 9, 2013 at 9:00 a.m.** at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine, and shall be continued to **October 9, 2013 at 1:00 p.m.** should the Trustee's request to use Cash Collateral be contested and an evidentiary hearing be required; provided, however, that in the event that the Trustee and W&ELR shall, by mutual written agreement, agree to an Extension Period, a further hearing shall be held at such time as the parties shall agree and the Court shall be available to conduct such hearing. 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 not later than two business days prior to such hearing.

Dated: October 10, 2013

A handwritten signature in black ink, reading "Louis H. Kornreich". The signature is written in a cursive style with a large initial "L".

Hon. Louis H. Kornreich
United States Bankruptcy Judge

	Cash Flow	
	Revised Budget 9-27-13	
	W/E 10/4/2013	W/E 10/11/2013
Forecasted Net Freight Revenue (Sales):	140,000	160,000
Receipts:		
Transportation Revenue Collected:		
Freight Revenue and Zone Switching	\$ 13,350	\$ 80,000
ISS Receivable	160,000	
Ins. Settlement - Travellers		
Customer Settlements	50,000	
Sub Total - Transportation Revenue	223,350	80,000
Other Operating Revenue		
Switching & Miscellaneous	79,185	
Railcar Storage		
Contract Shop & Car Repairs		
Equipment Rental	37,000	
Car Hire Revenue		
Sub Total - Other Operating Revenue	116,185	-
Non-Operating Revenue		
Scrap Sales		
Private & Gov't Re-imbursements		
Traveler Business Interruption	-	-
Sub Total - Non-Operating Revenue	-	-
Total Cash Receipts	339,535	80,000
Disbursements:		
Transportation Revenue Offsets		
NBSR, MNR, SLQ, CN	85,624	-
Sub Total - Transportation Revenue Offsets	85,624	-
Payroll & Related		
Salaries, Wages & Commissions US	63,413	
Employee Benefits & Claims - US	31,500	31,500
Salaries, Wages & Commissions CDN	82,000	
Group Health, pension and union dues- CDN	31,400	
Aetna Past Dues		
Vacation pay arrears - CDN		
Sub Total - Payroll & Related	208,313	31,500
Materials & Supplies		
Diesel Fuel	-	-
Material Costs US	13,000	10,000
Material Costs CDN	50,000	10,000
Sub Total - Material & Supplies	63,000	20,000
Freight Car & Locomotive Expense		
Leases - Car	20,000	
Leases - Locomotive	15,000	-
Car Repair Net	-	-
Sub Total - Freight Car & Locomotive	35,000	-
Other Operating Costs		
Rent	20,000	
Electricity	9,000	
Heat		
Insurance Payments	73,406	
Bank Charges / Interest Expense		
Rail Testing		58,000
Brush Cutting		
CK Railcar Purchase Option & Cure		
Phone, Internet, Radio, Other expenses	44,399	16,500
Sub Total - Rent, Heat & Utilities	146,805	74,500
Restructuring Costs		
Utility Deposits - US		
Sub Total - Other Indirect/Operating Costs	-	-
Total Disbursements	538,742	126,000
Net Cash Flow (Use) - Operations	(199,207)	(46,000)
SUMMARY		
Cash Beginning	580,795	381,588
Net Weekly Cash Flow	(199,207)	(46,000)
Financing Receipts (Paydowns)	-	-
Cash Ending	\$ 381,588	\$ 335,588

District/Off: 0100-1

User: kford

Date Created: 10/10/2013

Case: 13-10670

Form ID: pdf900

Total: 93

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

intp Wrongful Death, Personal Injury, Business, Property and Environmental Clients as of 9/1/13

TOTAL: 1

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