

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

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

On August 7, 2013, the above-captioned debtor (the “Debtor”) filed the 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 (the “Motion”). [D.E. 4]. In connection with the Motion, this Court previously entered certain Orders [D.E. 51, 98, 173, 255 and 374] granting the Debtor or the Trustee appointed in this case (the “Trustee”), as applicable, the right to use cash collateral through October 11, 2013. After hearing before this Court on October 9, 2013 (the “Hearing”), and upon consideration of the agreement reached between the Trustee and Wheeling & Lake Erie Railway Company (“Wheeling”), which agreement was set forth on the record of the Hearing, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

1. 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.

2. Effective as of October 12, 2013, the Trustee is authorized to use Cash Collateral, including cash, through close of business on January 31, 2014, provided, however, that if Closing, as defined below, shall not have occurred on or prior to October 25, 2013, authority to use Cash Collateral pursuant to this Order shall extend only through October 25, 2013 (January 31, 2014, or October 25, 2013, as applicable, is referred to herein as the “Expiration Date”). Cash Collateral may be used until the Expiration Date upon the terms and conditions set forth herein.¹ Between October 12, 2013 and the date of the closing on the loan facility with Camden National Bank authorized by this Court (the “Closing”), the Trustee’s use of Cash Collateral shall be in accordance with budget attached hereto as **Exhibit A**.

3. Within two (2) business days after the Closing (the “Closing”), the Trustee shall establish a segregated escrow account and shall deposit therein, the amount of \$200,000.00 (the “\$200,000 Escrow Amount”), which amount shall be held by the Trustee for the sole and limited purpose of providing additional adequate protection of Wheeling’s interest in Cash Collateral and which Amount shall be disbursed only in accordance with a further Order of the Court. The \$200,000 Escrow Amount, or a portion thereof, may be disbursed (i) to Wheeling, in accordance with a further Order of this Court determining that Wheeling has an allowed claim under sections 507(a)(2) and 507(b) on account of the use of Cash Collateral, (ii) to the Trustee upon the provision of Substitute Collateral, as set forth in paragraph 4 below or upon further Order of this Court, or (iii) to Wheeling or the Trustee, as the case may be, upon an agreement between Wheeling and the Trustee. Notwithstanding anything to the contrary herein, the Trustee and Wheeling reserve all of their respective rights, including, but not limited to, rights to dispute,

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

litigate, object to, or take discovery on, the existence, and extent, of Wheeling's claim under section 507(a)(2) and 507(b), if one is asserted.

4. The Trustee shall be entitled to obtain a release and disbursement of the \$200,000 Escrow Amount, or a portion thereof, by delivering to or for the benefit of Wheeling substitute collateral of equal value to the amount requested to be released and disbursed (the "Substitute Collateral"), all in accordance with this paragraph. The Trustee shall be entitled, at any time, to deliver to Wheeling a written request for the release and disbursement of the entire, or any portion of, the \$200,000 Escrow Amount, in an amount equal to the value of any Substitute Collateral proposed to be provided to Wheeling by the Trustee. Within five (5) days of receipt of a written request for substitution of collateral from the Trustee, Wheeling may accept such request, with or without conditions, or it may reject such request. In the event that Wheeling declines to accept such request, the Trustee shall be entitled to seek an Order of this Court, upon due notice and hearing, releasing the \$200,000 Escrow Amount or a portion thereof, upon the provision of Substitute Collateral. If the Court enters an order authorizing the release of funds in escrow, upon the provision of Substitute Collateral, Wheeling shall have the right to appeal such order, but shall not have the right to seek a stay of such order pending appeal, which right Wheeling irrevocably waives.

5. On and after the date of the Closing, and as and for additional adequate protection, the Trustee shall establish a segregated escrow account (the "Wheeling AR Escrow") and shall deposit therein any and all amounts collected by the Trustee, without deduction, from the payment of accounts receivable that were created at any time prior to the date of the Closing, including prior to the Petition Date (the "Pre-Closing A/R"). The Trustee shall remit the proceeds of any and all Pre-Closing A/R to Wheeling on or before the 5th of each month without

further Court Order. Nothing herein shall prohibit Wheeling from seeking an order granting relief from stay for the purpose of collecting Pre-Closing AR.

6. On and after the date of the Closing, to the extent that the Trustee uses in its operations any inventory (including diesel fuel) owned by the Debtor as of the date of the Closing (the "Pre-Closing Inventory"), the Trustee shall remit payment for the use of such Pre-Closing Inventory to Wheeling. Payment shall be in an amount equal to the actual cost of the Pre-Closing Inventory so used, as such cost is or has been recorded in the books and records of the Debtor. Payment shall be remitted monthly to Wheeling, with the first payment being made on or prior to November 5, 2013, for the period from the Closing through October 15, 2013, and subsequent payments being remitted to Wheeling on the 5th day of each succeeding month on account of the use of Pre-Closing Inventory in the preceding month.

7. In the event that the Closing occurs on or before October 18, 2013, Wheeling shall be granted a \$50,000.00 floating, first priority lien and security interest on accounts receivable created by the Debtor after the date of the Closing (the "Post-Closing A/R") in order to adequately protect Wheeling against any diminution in the value of its Cash Collateral as of the Petition Date. In the event that the Closing occurs after October 18, 2013, and on or before October 25, 2013, Wheeling shall be granted a \$100,000.00 floating, first priority lien and security interest on Post-Closing A/R in order to adequately protect Wheeling against any diminution in the value of the Cash Collateral as of the Petition Date. Notwithstanding anything to the contrary herein, the Trustee and Wheeling reserve all of their respective rights, including, but not limited to, rights to dispute, litigate, object to, or take discovery on, the existence, and extent, of any diminution in the value of the Cash Collateral asserted by Wheeling.

8. From the date of this Order, the Trustee shall have the same reporting requirements as are set forth in paragraph 5 of the Fifth Interim Order Authorizing Use of Cash Collateral [D.E. 374]. After the Closing, the Trustee and Wheeling may agree on different periodic reporting to Wheeling, which reporting will reflect the different use of Wheeling's collateral after the Closing in accordance with this Order. In addition, the Trustee shall determine the amount of inventory, accounts, and cash as of the Closing, provided, however, that the Trustee shall not be required to take a physical inventory in relation to determining the inventory as of the Closing Date.

9. As and for adequate protection for the use, after the Closing, of cash in which Wheeling claims an interest, the Trustee is hereby authorized and by entry of this Order does grant to Wheeling 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 Wheeling 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"). The Replacement Lien shall be limited in amount to the amount of any diminution in cash that constitutes Wheeling's collateral as of the Closing, and shall have the same validity, enforceability, and priority as the security interests of Wheeling 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. Nothing set forth herein shall be deemed to impact any adequate protection provided to Wheeling in any prior Order of this Court relating to the Debtor's use of Cash Collateral.

10. If, notwithstanding the grant of adequate protection provided in this Order, Wheeling 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).

11. 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, 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, Wheeling and the UST.

12. In the event that the Trustee and Wheeling shall, by mutual written agreement, agree to extend the use of Cash Collateral past the Expiration Date, 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 11, 2013



The Honorable Louis H. Kornreich
United States Bankruptcy Judge for the District
of Maine



Cash Flow
Revised Budget 10-7-13

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ACTUAL FORCAST

	10/4/2013	10/11/2013	10/18/2013	10/25/2013
Forecasted Net Freight Revenue (Sales):	182,020	160,000	160,000	160,000
Receipts:				
Transportation Revenue Collected:				
Freight Revenue and Zone Switching	\$ 281,752	\$ 20,000	\$ 30,000	\$ 30,000
ISS Receivable	149,632			
Ins. Settlement - Travellers				
Customer Settlements	50,000			150,000
Sub Total - Transportation Revenue	481,384	20,000	30,000	180,000
Other Operating Revenue				
Switching & Miscellaneous	79,867			16,000
Railcar Storage				
Contract Shop & Car Repairs				
Equipment Rental	37,000			
Car Hire Revenue				10,000
Sub Total - Other Operating Revenue	116,867	-	-	26,000
Non-Operating Revenue				
Scrap Sales				
Private & Gov't Re-imbursements				
Traveler Business Interruption	-	-	-	-
Sub Total - Non-Operating Revenue	-	-	-	-
Total Cash Receipts	598,251	20,000	30,000	206,000
Disbursements:				
Transportation Revenue Offsets				
NBSR, MNR, SLQ, CN	83,615	-	-	-
Sub Total - Transportation Revenue Offsets	83,615	-	-	-
Payroll & Related				
Salaries, Wages & Commissions US	63,743	91,000	67,465	
Employee Benefits & Claims - US	48,190	31,500	31,500	31,500
Salaries, Wages & Commissions CDN	80,095		103,426	
Group Health, pension and union dues- CDN	21,072	10,300	14,400	
Aetna Past Dues				
Vacation pay arrears - CDN				
Sub Total - Payroll & Related	213,100	132,800	216,791	31,500
Materials & Supplies				
Diesel Fuel	-	-	25,200	31,500
Material Costs US	1,622	10,000	10,000	45,000
Material Costs CDN	18,692	30,000	35,000	10,000
Sub Total - Material & Supplies	20,314	40,000	70,200	86,500
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	15,770	-	4,230	
Electricity	8,473	-	500	
Heat				2,700
Insurance Payments	82,711			43,500
Bank Charges / Interest Expense	1,439			1,500
Rail Testing		58,000	30,000	
Phone, Internet, Radio, Other expenses	69,261	16,500	25,000	34,500
Sub Total - Rent, Heat & Utilities	177,654	74,500	59,730	82,200
Restructuring Costs				
Utility Deposits - US			5,000	
Sub Total - Other Indirect/Operating Costs	-	-	5,000	-
Total Disbursements	494,683	247,300	386,721	200,200
Net Cash Flow (Use) - Operations	103,568	(227,300)	(356,721)	5,800
SUMMARY				
Cash Beginning	580,795	684,363	457,063	100,342
Net Weekly Cash Flow	103,568	(227,300)	(356,721)	5,800
Financing Receipts (Paydowns)	-	-	-	-
Cash Ending	\$ 684,363	\$ 457,063	\$ 100,342	\$ 106,142

	10/4/2013	10/11/2013	10/18/2013	10/25/2013
Collateral Analysis:	10/4/13	10/11/13	10/18/13	10/25/13
Customer AR:				
MMA Frt	1,665,020			
MMA Misc	819,707			
MCC Frt	159,877			
MCC Misc	477,373			
Total Customer AR	3,121,977	3,121,977	3,234,945	3,334,945
Add Sales Debited to AR		132,968	130,000	130,000
Less AR Cash Collected		(20,000)	(30,000)	(206,000)
Rollforward AR	3,121,977	3,234,945	3,334,945	3,258,945
ISS Settlement	32,968	60,000	90,000	120,000
Gross Waybills (Consider Work in Process)	297,744	299,300	299,300	299,300
Total AR	3,452,689	3,594,245	3,724,245	3,678,245
Inventory:				
Spare Parts-see assumption below	1,091,650	1,075,275	1,059,146	1,043,259
Diesel @ 3.05 per gallon per below	115,900	80,825	69,425	64,325
Total Inventory	1,207,550	1,156,100	1,128,571	1,107,584
Total Collateral	4,660,239	4,750,345	4,852,816	4,785,829
Collateral Inc(Dec)	\$ (265,171)	\$ (175,065)	\$ (72,594)	\$ (139,581)
Spare Part Useage Per Wk	1.50%	1.50%	1.50%	1.50%
Diesel Gallon, Beg	48,500	38,500	26,500	22,762
Purchase			8,262	10,328
Useage Assumption	(10,000)	(12,000)	(12,000)	(12,000)
Adj for recovered diesel	-	-	-	-
Diesel Gallon, End	38,500	26,500	22,762	21,090
Purchase Price Assumption	3.05	3.05	3.05	3.05