

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**ORDER GRANTING MOTION FOR ORDER (I) AUTHORIZING ASSIGNMENT  
OF TAX CREDITS AND (II) GRANTING RELATED RELIEF**

This matter having come before the Court on the *Motion for Order (I) Authorizing Assignment of Tax Credits and (II) Granting Related Relief* [D.E. 463] (the “Motion”), filed by Robert J. Keach, the chapter 11 trustee (the “Trustee”); and due and appropriate notice of the Motion having been given; and the Court having reviewed the Motion, and considered any objections or responses to the Motion; and the Court having determined that is in the best interests of the Debtor, the Debtor’s creditors, and the Debtor’s equity security holders to grant the relief sought in the Motion; the Court hereby **ORDERS, ADJUDGES, and DECREES** that:

1. The Motion is granted upon and subject to the terms and conditions of this Order.
2. The Trustee is authorized to assign the 45G Tax Credits to KMSI, on the terms set forth in the Motion and pursuant to the Agreement.<sup>1</sup> In addition, the Trustee is authorized to assign the 45G Tax Credits earned for the months of November 2013 and December 2013 (collectively, the “Remaining 45G Tax Credits”) to KMSI pursuant to the Agreement.
3. The Trustee has released any and all claims arising under chapter 5 of the Bankruptcy Code against KMSI and/or any affiliate of KMSI, and said release is hereby approved.

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<sup>1</sup> Capitalized terms used but not defined in this Order have the meanings given to such terms in the Motion.

4. The Trustee is hereby authorized to pay the commission earned by the Broker with respect to July through October 2013 pursuant to the terms of the letter of engagement attached to the Motion as Exhibit A (the “Mickelson Letter Agreement”), in the amount of \$20,007.42, and to pay any commission earned by the Broker with respect to the assignment of the Remaining 45G Tax Credits in an amount to be determined pursuant to the terms of the Mickelson Letter Agreement.

5. The Trustee is authorized to establish an escrow account for the sole and exclusive benefit of KMSI in an amount equal to the sum of (i) \$442,269.27; and (ii) 52.5% of the Remaining 45G Tax Credits. All such funds (*i.e.*, the \$442,269.27 plus 52.5% of the Remaining Tax Credits) shall constitute the sole and exclusive property of KMSI and shall be paid to KMSI by the Trustee pursuant to the terms of the Agreement. To the extent that KMSI takes action pursuant to the terms of the Agreement such that it is not entitled to receive such funds (for example by utilizing the Shipping Credits, as defined in the Agreement) and the funds thereby become additional Net Funds (as defined below), then the security interest of Wheeling & Lake Erie Railway (“Wheeling”) shall attach to such additional Net Funds to the same extent that Wheeling has a security interest in the 45G Credits (as determined by agreement of Wheeling and the Trustee or, failing that, by order of the Court in connection with the hearing described in Paragraph 7 below).

6. The Trustee and Wheeling expressly reserve all of their respective rights with respect to the application and use of the money from the assignment of the 45G Tax Credits and the Remaining 45G Tax Credits obtained by the Trustee and/or the Debtor pursuant to the Agreement after payment of any commission earned by the Broker and segregation and payment of funds owed to KMSI under the Agreement. Any and all money received by the Debtor and/or

the Trustee in relation to the assignment of the 45G Tax Credits and the Remaining 45G Tax Credits after payment of any commission earned by the Broker and segregation and payment of funds owed to KMSI under the Agreement (the “Net Funds”) shall be held in escrow pending determination of the Trustee’s and Wheeling’s respective rights in and to such Net Funds. Notwithstanding the foregoing, the Trustee shall use the first \$19,000 of the Net Funds of the Remaining 45G Credits, if any, to pay to Wheeling in accordance with the terms of this Court’s order with respect to the *Chapter 11 Trustee’s Motion for Order Approving Compromise and Settlement with Irving Paper Limited, Irving Pulp & Paper, Limited, and J.D. Irving, Limited* [D.E. 307]. Determination of the Trustee’s and Wheeling’s respective rights in and to the Net Funds shall not determine, or otherwise have any preclusive effect on, the issues raised by Wheeling & Lake Erie Railway Co. v. Keach, et al., Adv. Pro. No. 13-1033 (Bankr. D. Me. Oct. 7, 2013).

7. The Court will conduct a hearing on **January 23, 2014** at **10:00 a.m.** in Bangor, Maine to determine the validity, priority, and extent of Wheeling’s security interest in and to the Net Funds; provided, however that either the Trustee or Wheeling may request that the hearing to be held on January 23, 2014, commence at 9:00 a.m. in order to allow adequate time for the presentation of evidence (if there is genuine issue of material fact). The Trustee and Wheeling may engage in discovery prior to such hearing, with any such discovery to be concluded on or before **January 16, 2014**. The Trustee and Wheeling shall exchange and file simultaneous briefs on or before **January 21, 2014**.

8. The stay imposed by Fed. R. Bankr. P. 6004(h) is hereby waived for cause shown.

Dated: December 17, 2013



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Louis H. Kornreich, Chief Judge  
U.S. Bankruptcy Court

District/Off: 0100-1

User: kford

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**Recipients of Notice of Electronic Filing:**

ust Office of U.S. Trustee ustpreion01.po.ecf@usdoj.gov  
aty Aaron P. Burns aburns@pearcedow.com  
aty Alan R. Lepene, Esq. Alan.Lepene@ThompsonHine.com  
aty Andrew Helman, Esq. ahelman@mcm-law.com  
aty Andrew J. Kull, Esq. akull@mittelasen.com  
aty Benjamin E. Marcus, Esq. bmarcus@dwmlaw.com  
aty Christopher Fong, Esq. christopherfong@paulhastings.com  
aty Craig Goldblatt craig.goldblatt@wilmerhale.com  
aty Curtis E. Kimball, Esq. ckimball@rudman-winchell.com  
aty D. Sam Anderson, Esq. sanderson@bernsteinshur.com  
aty Daniel C. Cohn, Esq. dcohn@murthalaw.com  
aty Daniel R. Felkel, Esq. dfelkel@troubheisler.com  
aty David C. Johnson bankruptcy@mcm-law.com  
aty Deborah L. Thorne, Esq. deborah.thorne@btlaw.com  
aty Debra A. Dandeneau  
aty Edward MacColl, Esq. emaccoll@thomport.com  
aty Elizabeth J. Wyman, Esq. liz.wyman@maine.gov  
aty Elizabeth L. Slaby bslabby@clarkhillthorpreed.com  
aty Frank J. Guadagnino fgudagnino@clarkhillthorpreed.com  
aty George J. Marcus, Esq. bankruptcy@mcm-law.com  
aty George W. Kurr, Jr. gwkurr@grossminsky.com  
aty Isaiah A. Fishman ifishman@krasnowsaunders.com  
aty James F. Molleur, Esq. jim@molleurlaw.com  
aty Jason C. Webster, Esq. jwebster@thewebsterlawfirm.com  
aty Jay S. Geller jgeller@maine.rr.com  
aty Jeffrey T. Piampiano, Esq. jpiampiano@dwmlaw.com  
aty Jennifer H. Pincus, Esq. Jennifer.H.Pincus@usdoj.gov  
aty Jeremy R. Fischer jfischer@dwmlaw.com  
aty John R McDonald, Esq. jmcdonald@briggs.com  
aty John Thomas Stemplewicz john.stemplewicz@usdoj.gov  
aty Jordan M. Kaplan, Esq. jkaplan@zwerdling.com  
aty Joshua Aaron Randlett jrandlett@rwlw.com  
aty Joshua R. Dow, Esq. jdow@pearcedow.com  
aty Kameron W. Murphy, Esq. kmurphy@tuethkeeney.com  
aty Keith J. Cunningham, Esq. kcunningham@pierceatwood.com  
aty Kelly McDonald, Esq. kmcdonald@mpmlaw.com  
aty Maire Bridin Corcoran Ragozzine, Esq. mcorcoran@bernsteinshur.com  
aty Michael A. Fagone, Esq. mfagone@bernsteinshur.com  
aty Michael F. Hahn, Esq. mhahn@eatonpeabody.com  
aty Mitchell A. Toups matoups@wgttlaw.com  
aty Nathaniel R. Hull, Esq. nhull@verrilldana.com  
aty Pamela W. Waite, Esq. pam.waite@maine.gov  
aty Patrick C. Maxcy, Esq. patrick.maxcy@dentons.com  
aty Paul Joseph Hemming phemming@briggs.com  
aty Peter J. Flowers pjf@meyers-flowers.com  
aty Richard P. Olson, Esq. rolson@perkinsolson.com  
aty Richard Paul Campbell rpcampbell@campbell-trial-lawyers.com  
aty Robert J. Keach, Esq. rkeach@bernsteinshur.com  
aty Roger A. Clement, Jr., Esq. rclement@verrilldana.com  
aty Ronald Stephen Louis Molteni, Esq. moltenir@stb.dot.gov  
aty Seth S. Holbrook holbrook\_murphy@msn.com  
aty Stephen G. Morrell, Esq. stephen.g.morrell@usdoj.gov  
aty Taruna Garg, Esq. tgarg@murthalaw.com  
aty Timothy R. Thornton pvolk@briggs.com  
aty Victoria Morales Victoria.Morales@maine.gov  
aty William C. Price wprice@clarkhill.com  
aty William H. Welte, Esq. wwelte@weltelaw.com

TOTAL: 57

**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

tr Robert J. Keach Bernstein Shur Sawyer & Nelson 100 Middle Street P.O. Box 9729 Portland,  
ME 04104

cr Estates of Marie Alliance, et al c/o Murtha Cullina LLP 99 High Street Boston, ME 02110

cr Estates of Stephanie Bolduc c/o Meyers & Flowers, LLC 3 North Second Street, Suite 300 St.  
Charles, IL 60174

aty Bernstein, Shur, Sawyer & Nelson 100 Middle Street 6th Floor PO Box 9729 Portland, ME  
04104-5029

intp Surface Transportation Board 395 E Street, S.W. Washington, DC 20423

intp J.D. Irving, Limited c/o Pierce Atwood LLP 254 Commercial Street Portland, ME 04101

intp Irving Pulp & Paper, Limited c/o Pierce Atwood LLP Attn: Keith J. Cunningham 254 Commercial  
Street Portland, ME 04101

intp Irving Paper Limited c/o Pierce Atwood LLP Attn: Keith J. Cunningham 254 Commercial  
Street Portland, ME 04101

cr First Union Rail c/o Curtis Kimball, Esq. P.O. Box 1401 Bangor, ME 04401

cr Center Beam Flat Car Company, Inc. c/o Curtis Kimball, Esq. P.O. Box 1401 Bangor, ME 04401

cr Real Custeau Claimants et al c/o Mitchell A. Toups, Esq. PO Box 350 Beaumont, TX 77704

cr Camden National Bank 2 Elm Street Camden, ME 04843

aty Verrill Dana LLP One Portland Square P.O. Box 586 Portland, ME 04112-0586

cr Frederick J. Williams 74 Bellevue Street Compton, QU J0B 1L0 CANADA

cr Daniel Aube 308 St-Lambert Street Sherbrooke, QU J1CON9 CANADA

cr Robert D. Thomas 49 Park Street Dexter, ME 04930

aty Shaw Fishman Glantz & Towbin LLC

aty Verrill & Dana, LLP One Portland Square P.O. Box 586 Portland, ME 04112-0586

aty Alan S. Gilbert 233 South Wacker Drive, Suite 7800 Chicago, IL 60606

aty Allison M. Brown Weil, Gotshal & Manges LLP 301 Carnegie Center, Suite 303 Princeton, NJ  
08540

aty Arvin Maskin Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153

aty Craig D. Brown Meyers & Flowers, LLC 3 North Second Street, Suite 300 St. Charles, IL 60174

aty Dennis M. Ryan, Esq. Faegre Baker Daniels LLP 90 South 7th St Ste 2200 Minneapolis, MN  
55402-3901

aty Diane P. Sullivan Weil, Gotshal & Manges LLP 301 Carnegie Center, Suite 303 Princeton, NJ 08540

aty Eric M. Hocky Clark Hill Thorp Reed 2005 Market Street Suite 1000 Philadelphia, PA 19103

aty Luc A. Despins Paul Hastings, LLP 75 East 55th Street New York, NY 10022

aty Marcia L. Goldstein Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153

aty Michael R. Enright Robinson & Cole, LLP 280 Trumbull Street Hartford, CT 06103

aty Michael S. Wolly, Esq. Zwerdling, Paul, Kahn & Wolly, PC 1025 Connecticut Ave.,  
N.W. Washington, DC 20036

aty Robert Jackstadt Tueth, Keeney, Cooper, Mohan & Jackstadt 101 West Vandalia, Suite  
210 Edwardsville, IL 62025

aty Stefanie Wowchuck McDonald 233 South Wacker Drive, Suite 7800 Chicago, IL 60606

aty Stephen Edward Goldman Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103

aty Steven J. Boyajian Robinson & Cole LLP One Financial Plaza, Suite 1430 Providence, RI 02903

aty Victoria Vron Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153

aty Virginia Strasser Surface Transportation Board 395 E Street, S.W. Washington, DC 20423

aty Wzystan M. Ackerman Robinson & Cole LLP 280 Trumbull Street Hartford, CT 06103

smg State of Maine Bureau of Revenue Services Compliance Division Bankruptcy Unit P.O. Box  
1060 Augusta, ME 04332

TOTAL: 44