

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**DEBTOR’S MOTION FOR AUTHORIZATION TO USE
PRE-PETITION BANK ACCOUNTS AND BUSINESS FORMS**

Montreal, Maine & Atlantic Railway Ltd. (“MMA” or “Debtor”), debtor-in-possession in the above captioned case, through its undersigned proposed counsel, hereby moves this Court (the “Motion”) for entry of an Order authorizing the Debtor to use prepetition bank accounts and business forms and, in support hereof, the Debtor states as follows:

I. Jurisdiction and Venue

1. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 & 1334 and D. Me. Local R. 83.6(a), pursuant to which all cases filed in Maine under the Bankruptcy Code are referred to bankruptcy judges of this district. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding over which the Court has the jurisdiction and Constitutional authority to enter a final order.

II. Procedural Background

2. On August 7, 2013 the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Petition Date”).

3. The Debtor remains in possession and control of its property and continues to operate as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

III. Factual Background

4. Reference is made to the affidavit of M. Donald Gardner, Jr. (the “**Gardner Affidavit**”) for the factual background of MMA and the events leading to this bankruptcy case. Said facts are incorporated herein as if set forth in full.

IV. Relief Requested

5. As discussed in more detail in the Gardner Affidavit, MMA and MMA Canada operate in the U.S. and Canada as one system on an integrated basis. As such, MMA maintains bank accounts in both the United States and Canada. In the United States, MMA maintains accounts at TD Bank (operations), Bank of America (car hire income)¹ and Bangor Savings Bank (*de minimis*; operations). In Canada, MMA maintains two accounts at the Canadian Imperial Bank of Commerce (“**CIBC**”), one for deposits of U.S. funds and one for deposits of Canadian funds which consists primarily of the Canadian ISS deposits (collectively, the “**Bank Accounts**”).

6. By this Motion, the Debtor seeks entry of an Order by this Court: (a) authorizing the continued use of the Bank Accounts; and (b) authorizing the continued use of the Debtor’s business forms upon the terms and conditions set forth herein.

V. Predicate for Relief Requested

7. The United States Trustee for Region 1, who administers bankruptcy cases filed in the District of Maine, has issued certain chapter 11 operating guidelines pursuant to 28 U.S.C. § 586. These guidelines include a requirement that chapter 11 debtors close all existing bank

¹ Car hire income represents car hire and repair revenue, net of car hire and repair expense. Car hire and repair revenue is income earned by the Debtor and its affiliates from other railroads for use of the Debtor’s freight cars on the lines of other railroads and for the Debtor’s repair of freight cars owned by others while the cars on the Debtor’s lines. Car hire and repair expense represent expenses incurred by the Debtor for use of others’ freight cars on the Debtor’s lines and for repairs made to the Debtor’s cars by other railroads.

accounts upon filing of the petition and open new “debtor-in-possession” accounts in certain financial institutions designated as authorized depositories by the United States Trustee (the “**U.S. Trustee**”). These requirements are designed to provide a clear line of demarcation between prepetition and post-petition claims and payments, and help to protect against the inadvertent payment of prepetition claims by preventing the banks from honoring checks drawn before the Petition Date.

8. While the Debtor acknowledges that the U.S. Trustee’s requirements serve a useful function in chapter 11 cases, the application of those requirements to the instant case would create a particular hardship on the Debtor. Allowing the Bank Accounts to be maintained with the same account numbers will assist the Debtor in accomplishing a smooth transition to operations in chapter 11. Consequently, the Debtor seeks a waiver of the requirement that the Debtor open new accounts.

9. Any change would be particularly disruptive in this case since MMA is a beneficiary under the Railroad Clearinghouse, Inc. (the “**Clearinghouse**” or “**RCH**”), a trust established by the Association of American Railroads (“**AAR**”) to facilitate settlement and payment of interline freight charges among its members.² If the Debtor is required to open new accounts, it may disrupt deposits under the Interline Settlement System to TD Bank (in the U.S.)

² Because shipping freight any distance by rail generally requires the services of several railroad lines, shippers routinely pay one carrier (the “**Collecting Carrier**”) a charge for the entire journey. That amount includes the charges of each railroad along the way. Thus, with regard to inter-line shipments, each railroad may be at once the Collecting Carrier for some, receiving funds and accruing obligations to participating carriers; and for others a participating carrier, accruing rights to freight charges for shipments which travel over its rails. In order to sort out who owes what to whom, many railroads, including MMA, have entered into a comprehensive arrangement to “net out” their entitlements and obligations on a monthly basis. Railroads doing business under the Clearinghouse structure agree to deal with one another through rules promulgated by AAR. Those rules include the Railway Accounting Rules and the “Interline Settlement System (“**ISS**”) Railroad Clearinghouse Settlement Regulations.

and CIBC (in Canada). The ISS deposits represent the major source of operating revenue for the Debtor each month and any disruption in the settlements would have severe and swift operational consequences for the Debtor.

10. Bankruptcy courts within this Circuit have routinely permitted debtors to utilize their existing bank accounts, finding that such relief is entirely consistent with applicable provisions of the Bankruptcy Code. *See, e.g., In re Androscoggin Energy LLC*, Chapter 11 Case No. 04-12221 (LHK) (Bankr. D. Me. December 22, 2004); *In re Pegasus Satellite Television, Inc.*, Chapter 11 Case No. 04-20878 (JBH) (Bankr. D. Me. June 7, 2004); *In re Divine Inc.*, Chapter 11 Case No. 03-11472 (JNF) (Bankr. D. Mass. 2003); *In re ACT Mfg., Inc.*, Chapter 11 Case No. 01-47641 (JBR) (Bankr. D. Mass. 2001); *In re Trend-Lines, Inc.*, Chapter 11 Case No. 00-15431 (CJK) (Bankr. D. Mass. 2000); *In re Sea Pine, Inc.*, Chapter 11 Case No. 10-10590 (LHK) (Bankr. D. Me. 2010).

11. The Bank Accounts are the Debtor's only accounts from which checks are written, and the Debtor has not closed and re-opened any bank accounts. By separate motions filed contemporaneously herewith, the Debtor has sought authority to: (i) to prohibit disconnection of utilities; (ii) to pay employee wages; and (iii) use Cash Collateral (as that term is defined in the Bankruptcy Code). As such, the Debtor has specifically identified those limited pre-petition obligations that it seeks the authority to honor post-petition. Accordingly, there is little risk that claims arising prior to the Petition Date which are not authorized by separate order of the Court will be inadvertently satisfied.

12. The Debtor also requests that it be authorized to continue to use all correspondence, business forms (including, but not limited to, letterhead, purchase orders, and invoices) and checks existing immediately before the Petition Date. Parties doing business with

the Debtor undoubtedly will be aware of the Debtor's status as a debtor-in-possession as a result of press coverage for this high-profile case. Moreover, if the Debtor is required to change its correspondence, business forms and checks, it would be forced to choose standard forms rather than the current forms with which the Debtor's employees and customers are familiar. Such a change in operations would create a sense of disruption and potential confusion for the Debtor's customers. The Debtor believes that a successful outcome for this bankruptcy case is dependent upon the Debtor's customers, which are reportedly already contacting the State of Maine regarding alternatives to MMA, perceiving the bankruptcy filing as having little impact on the Debtor's services as possible. The Debtor respectfully submits that creating new forms will contribute to that very perception and that appropriate care can be taken to assure the proper use of the existing forms.

13. For these reasons, the Debtor seeks authorization to use existing checks and business forms provided that it affixes a stamp designating its status as "Debtor-in-Possession." *See, e.g., In re Correct Building Products*, Case No. 09-20124 (JBH) (Bankr. D. Me. December 22, 2004); *In re Gold-Standard Baking, Inc.*, 179 B.R. 98, 105-106 (Bankr. N.D. Ill. 1995); *In re Great Northern Paper, Inc.*, Case No. 03-10048 (LHK) (Bankr. D. Me. 2003).

VI. Notice

14. The Debtor, through counsel, will cause this Motion, as well as the proposed Order, to be served by first class U.S. mail, postage prepaid and, as applicable, by electronic mail on (i) United States Trustee; (ii) the 20 largest unsecured creditors in this case; (iii) the Federal Rail Administration; (iv) Wheeling & Lake Erie Railway Company; (v) the United States Secretary of Transportation; (vi) the Surface Transportation Board; and (vii) all parties requesting notice in this case. The Debtor

respectfully requests that the Court find such notice to constitute fair, adequate, and sufficient notice of all matters set forth in this Motion.

WHEREFORE, the Debtor respectfully requests the entry of an Order, substantially in the form attached hereto, authorizing and approving the Debtor's continued use of the Bank Accounts and the continued use of existing business forms, and granting such other relief as is appropriate.

Dated: August 7, 2013

Respectfully submitted,

MONTREAL MAINE & ATLANTIC
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