

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:)	
)	
Montreal Maine & Atlantic Railway Ltd.,)	Case No. 13-10670
)	
Debtor.)	
)	

**MOTION FOR *EXPEDITED* HEARING ON MOTION OF THE WHEELING & LAKE
ERIE RAILWAY COMPANY FOR ORDER AUTHORIZING RULE 2004
EXAMINATION OF THE TRUSTEE AND FOR ORDER REQUIRING THE TRUSTEE
TO PRODUCE CERTAIN DOCUMENTS AND TANGIBLE THINGS IN
ACCORDANCE WITH FED. R. BANKR. P. RULE 2004,
WITH INCORPORATED MEMORANDUM OF LAW**

NOW COMES Wheeling and Lake Eire Railway Company (“Wheeling”), by and through its undersigned attorneys, and pursuant to 11 U.S.C. § 105 and D.Me. LBR 9013-1(i), files this motion (the “Motion to Expedite”) seeking an *expedited* hearing on the above-referenced Debtor’s Motion for Order Authorizing Rule 2004 Examination of the Trustee and For Order Requiring the Trustee to Produce Certain Documents And Tangible Things In Accordance With Fed.R.Bankr.P 2004, With Incorporated Memorandum of Law (the “2004 Motion”). In support of this Motion to Expedite, Wheeling states as follows:

JURISDICTIONAL STATEMENT

1. This Court has jurisdiction over the above-captioned bankruptcy case pursuant to 28 U.S.C. §§ 157(a), 1334(a), 1408(1) and Rule 83.6 of the Local Rules of the United States District Court for the District of Maine, pursuant to which all cases filed in Maine under the Title 11 of the United States Code (the “Bankruptcy Code”) are automatically referred to this Court. This is a core proceeding. The Court has jurisdiction to enter a final order on this Motion pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M) and (O).

GENERAL ALLEGATIONS

2. On August 7, 2013 (the "Petition Date"), the Montreal, Maine & Atlantic Railway, Ltd. (the "Debtor") filed a voluntary petition for relief under chapter 11 of 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"). On August 21, 2013, the United States Trustee appointed Robert J. Keach, Esq. (the "Trustee") to serve as Chapter 11 Trustee in the Debtor's Chapter 11 case (the "Case") pursuant to 11 U.S.C. § 1163.

3. The Debtor is a Delaware corporation that has, since January of 2003, operated in an integrated, shortline freight railroad system with its wholly owned Canadian subsidiary, Montreal Maine & Atlantic Co. ("MMA Canada"). On August 7, 2013, MMA Canada filed for protection from creditors in a concurrent proceeding under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended.

4. This Court has jurisdiction over the above-captioned bankruptcy case pursuant to 28 U.S.C. §§ 157(a), 1334(a), 1408(1) and Rule 83.6 of the Local Rules of the United States District Court for the District of Maine, pursuant to which all cases filed in Maine under the Title 11 of the United States Code (the "Bankruptcy Code") are automatically referred to this Court. This is a core proceeding. The Court has jurisdiction to enter a final order on this Motion pursuant to 28 U.S.C. §§ 157(b)(2)(A), (M) and (O).

FACTUAL ALLEGATIONS AND REQUEST FOR RELIEF

5. As discussed in more detail in the 2004 Motion, to which the Court is directed for a more complete discussion of the relief requested therein, Wheeling is one of the Debtor's primary secured creditors and it holds a first-priority lien in the Debtor's accounts receivable, inventory and proceeds thereof. As such, since the Petition Date, the Court has entered multiple orders permitting the Debtor (and then the Trustee) to use Wheeling's cash collateral under

specific terms and conditions. Currently, that use of cash collateral is governed by the Fourth Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection (the “Interim Cash Collateral Order”) [D.E. # 255]. The Trustee’s authority to use Wheeling’s cash collateral currently expires at the close of business on October 2, 2013. The next hearing on use of Wheeling’s cash collateral is scheduled for October 1, 2013 at 9:00 a.m.

6. In the 2004 Motion, Wheeling seeks information on several issues directly pertinent to the Debtor’s and the Trustee’s historical and continued use of its cash collateral:

- a. Cash collateral of Wheeling as of the Petition Date, and the use by the Debtor or the Trustee of such cash collateral and the balances of separate items of cash collateral, since the Petition Date through the date of this Motion, and proposed use by the Trustee of cash collateral thereafter;
- b. Information regarding various obligations and relationships between, and on behalf of Debtor and its affiliates—Montreal Maine & Atlantic Corporation (“MMA Corp.”), MMA Canada, and LMS Acquisition Corporation (“LMS” and together with MMA Corp. and MMA Canada, the “Affiliates”)—to the Wheeling pursuant to a Security Agreement dated June 15, 2009, including the extent of all accounts payable and receivable (*i.e.*, cash collateral) by and between the Debtor and its affiliates;
- c. The replacement lien as ordered by the Court in the orders approving use of Wheeling’s cash collateral (including, but not limited to the Interim Cash Collateral Order); and
- d. The existence of and scope of and director and officer liability insurance policies pursuant to which the Debtor, and/ or any of its directors or officers are insured, and covering any such insured entities for any periods of time between June 9, 2013 and the date of this Motion (“D&O Policies”).

7. Wheeling respectfully submits that an expedited hearing on the 2004 Motion is needed because the Debtor’s use of its collateral, *i.e.* accounts receivable, inventory and proceeds thereof, is ongoing, and it is unclear that such use is fully and adequately protected by virtue of the replacement lien granted by existing interim orders. Wheeling is entitled to examine the Trustee on all matters pertaining to the use of its collateral, its value, its adequate protection by

virtue of a replacement lien, and opportunities to recover the same. While the 2004 Motion does not ask for an exam until after the current deadline for use of cash collateral expires on October 2, 2013¹, the Debtor's budget calls for operations to continue at least through the end of 2013, and it is therefore inevitable that the Trustee will ask for further authority to use Wheeling's cash collateral. Adequate protection of Wheeling's interest requires, at a minimum, that Wheeling be permitted, at the earliest possible time, to examine the Trustee regarding the matters set forth in the 2004 Motion.

8. The Debtor submits that the foregoing is cause to grant the instant Motion to Expedite and requests that the Court hold a hearing on the Motion to Expedite and 2004 Motion on October 1, 2013 at 9:00 a.m., with objections due on or before September 30, 2013, at 4:00 p.m. EST.

9. *The Trustee does not consent to the relief requested in this Motion to Expedite.*

SERVICE OF THIS MOTION AND PROPOSED FORM OF ORDER

10. On September 23, 2013, the Motion to Expedite, proposed form of Order, and Notice of Hearing were served on the Trustee, the United States Trustee, and all parties receiving notice through the Court's electronic filing system. The Debtor hereby requests that this Court find that such service is sufficient notice to all parties in interest in this case.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an order:

- A. Finding that service of this Motion to Expedite, Proposed Order and Notice of Hearing in the manner described herein was sufficient notice to all parties in interest under the circumstances of this case;

¹ The frenetic pace of this case and the parties' schedules make it essentially impossible to first notice a hearing on the 2004 Motion, and then set up and conduct a deposition before October 1st, especially given the on-going discovery as to the Trustee's § 542(b) motion that is occurring this week.

- B. Granting this Motion;
- C. Setting a hearing on the 2004 Motion for October 1, 2013, at 9:00 a.m. and the objection deadline as to the same for September 30, 2013, at 4:00 p.m. EST; and
- D. Granting the Debtors such other and further relief as the Court deems just and proper.

Dated: September 23, 2013

/s/ George J. Marcus

George J. Marcus

David C. Johnson

Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

MARCUS, CLEGG & MISTRETТА, P.A.

One Canal Plaza, Suite 600

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207.828.8000

CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and caused a true and correct copy of the above document, proposed form of Order and Notice of Hearing to be served upon the parties and at the addresses set forth on the attached **SERVICE LIST**, either electronically or by first class U.S. mail, postage prepaid, on the 23rd day of September, 2013.

/s/ Holly C. Pelkey

Holly C. Pelkey

Legal Assistant

Mailing Information for Case 13-10670

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)	
)	
Montreal Maine & Atlantic Railway Ltd.,)	Case No. 13-10670
)	
Debtor.)	
)	

**ORDER GRANTING MOTION FOR *EXPEDITED* HEARING
ON MOTION OF THE WHEELING & LAKE ERIE RAILWAY COMPANY FOR
ORDER AUTHORIZING RULE 2004 EXAMINATION OF THE TRUSTEE AND
FOR ORDER REQUIRING THE TRUSTEE TO PRODUCE CERTAIN
DOCUMENTS AND TANGIBLE THINGS IN ACCORDANCE WITH
FED. R. BANKR. P. RULE 2004,
WITH INCORPORATED MEMORANDUM OF LAW**

UPON CONSIDERATION of the above-referenced Motion for *Expedited* Hearing Motion for Expedited Hearing on Motion of the Wheeling & Lake Erie Railway Company for Order Authorizing Rule 2004 Examination of the Trustee and for Order Requiring the Trustee to Produce Certain Documents and Tangible Things in Accordance with Fed. R. Bankr. P. Rule 2004, With Incorporated Memorandum of Law (the “Motion to Expedite”),¹ the Proposed Order and Notice of Hearing having been served as set forth in the Motion to Expedite, good cause having been shown and pursuant to § 105 of the Bankruptcy Code and Rule 9013-1(i) of the Local Bankruptcy Rules, it is hereby **ORDERED, ADJUDGED, and DECREED** that:

1. Service of the Motion to Expedite, Proposed Order, and Notice of Hearing in the manner described in the Motion was sufficient notice to all parties in interest under the circumstances of this case and the relief requested in the Motion;
2. The Motion is **GRANTED** in all respects;

¹ Capitalized terms not defined herein shall have the meaning set forth in the Motion to Expedite.

3. A hearing shall be set for on the 2004 Motion for October 1, 2013 at 9:00 a.m., and all objections to same shall be filed on or before September 30, 2013 at 4:00 p.m.

Dated: _____

Louis H. Kornreich., Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)	
)	
Montreal Maine & Atlantic Railway Ltd.,)	Case No. 13-10670
)	
Debtor.)	
)	

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Tuesday, October 1, 2013 at 9:00 a.m.** a hearing will be held at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine, on Debtor’s *Motion for Expedited Hearing on Motion of the Wheeling & Lake Erie Railway Company for Order Authorizing Rule 2004 Examination of the Trustee and for Order Requiring the Trustee to Produce Certain Documents and Tangible Things in Accordance with Fed. R. Bankr. P. Rule 2004, With Incorporated Memorandum of Law* (the “Expedited Motion”).

If any party in interest shall have an objection to the Expedited Motion, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before September 30, 2013 at 4:00 p.m.**, and concurrently serve (by facsimile and first class U.S. mail, postage prepaid) upon counsel for Wheeling & Lake Erie Railway Company, George J. Marcus, Esq., MARCUS, CLEGG & MISTRETTA, P.A., One Canal Plaza, Suite 600, Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party appears at the hearing to assert the basis for such objection before the Bankruptcy Court, and timely files a written statement, such objection shall be deemed to have been waived and abandoned.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE RELIEF REQUESTED IN THE EXPEDITED HEARING MOTION MAY BE GRANTED BY DEFAULT WITHOUT FURTHER NOTICE OR HEARING.

If the Expedited Hearing Motion is granted at that time, the Court will immediately thereafter conduct a preliminary hearing to consider, and may grant at that time the Motion of the Wheeling & Lake Erie Railway Company for Order Authorizing Rule 2004 Examination of the Trustee and for Order Requiring the Trustee to Produce Certain Documents and Tangible Things in Accordance with Fed. R. Bankr. P. Rule 2004, With Incorporated Memorandum of Law (the “2004 Motion”).

If any party in interest shall have an objection to the 2004 Motion, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before September 30, 2013 at 4:00 p.m.**, and concurrently serve (by facsimile and first class U.S. mail, postage

prepaid) upon counsel for Wheeling & Lake Erie Railway Company, George J. Marcus, Esq., MARCUS, CLEGG & MISTRETТА, P.A., One Canal Plaza, Suite 600, Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party appears at the hearing to assert the basis for such objection before the Bankruptcy Court, and timely files a written statement, such objection shall be deemed to have been waived and abandoned.

Dated: September 23, 2013

/s/ George J. Marcus

George J. Marcus, Esq.

David C. Johnson, Esq.

Andrew C. Helman, Esq.

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