

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

DEBTOR’S SUPPLEMENT TO MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 361, 362, AND 363: (I) AUTHORIZING DEBTOR TO USE OF CASH COLLATERAL ON INTERIM BASIS; AND (II) SCHEDULING A HEARING TO CONSIDER THE USE OF CASH COLLATERAL ON A FINAL BASIS

Montreal, Maine & Atlantic Railway Ltd. (“MMA” or the “Debtor”), debtor-in-possession, through its undersigned proposed counsel, hereby supplements its Motion for Order Pursuant to 11 U.S.C. §§ 361, 362, and 363: (I) Authorizing Debtor to Use of Cash Collateral on Interim Basis; and (II) Scheduling a Hearing to Consider the Use of Cash Collateral on a Final Basis (the “Cash Collateral Motion”) [Dkt. No. 5] by attaching a Budget that is slightly revised from the Budget that was attached to Cash Collateral Motion. The revised form of Budget (the “Revised Budget”) is attached hereto as Exhibit A.

The Revised Budget reflects the following changes:

- The inclusion of disbursements for “Transportation Revenue Offsets,” for the weeks ending August 16 and August 23, 2013, in the amounts of \$25,000 and \$22,000, respectively. In the original Budget, there were no scheduled disbursements for this item during those weeks.
- An upward adjustment of approximately \$101,000 in the projected beginning cash for the week ending August 16, 2013. This upward revision is made based on the Debtor’s actual cash as of the August 9, 2013.
- Changes to ending cash that correspond with the changes described above.

Counsel for the Debtor has discussed these changes with counsel for the Wheeling & Lake Erie Railroad (“**W&LER**”), whose cash collateral the Debtor proposed to use. Counsel for W&LER has agreed to these changes and consents to entry of an order that incorporates the Revised Budget. Counsel to the Debtor has also conferred with counsel for the New Brunswick Southern Railway Company, the Maine Northern Railway Company, and the Eastern Maine Railway Company (the “**JDI Railroads**”), who will be the recipients of the new proposed disbursements, and counsel for the JDI Railroads, of course, consents to the Revised Budget.

In light of: (i) the relatively minor changes described above; (ii) the consent of the party who claims an interest in the Debtor’s Cash Collateral; and (iii) the Debtor’s projected ending cash balance at the end of the two week cash collateral period of approximately \$357,000, the Debtor respectfully requests that this Court enter the revised form of Order (which has also been consented to by the foregoing parties) with the Revised Budget attached, without the need for further notice or hearing. If the Court desires to conduct a hearing on the matters described herein, however, counsel would be happy to provide notice to appropriate parties.

Dated: August 12, 2013

Respectfully submitted,

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

/s/ Roger A. Clement, Jr.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

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

On the Motion of Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”) 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**”), after a hearing conducted on August 8, 2013, upon finding by the Court that that: (i) the Debtor requires the use of Cash Collateral (as defined herein) for ordinary course operations; (ii) the Debtor’s ability to protect and preserve its 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 Debtor’s Cash Collateral; (iv) the Debtor’s offer of adequate protection to W&LER having 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 hearing on the Motion, the Court hereby 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**”). The Debtor is continuing in possession of its property, and operating and managing its business as a debtor-in-possession pursuant to this Court’s Order Authorizing the Debtor’s Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee. [Dkt. No. 34]. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED

1. The Debtor is authorized, effective as of August 7, 2013, to use Cash Collateral¹, including cash on hand and cash from collection of its pre-petition accounts receivables on an interim basis for ordinary course business purposes through close of business on August 23, 2013 (the “**Expiration Date**”), pursuant to the interim budget attached hereto as Exhibit A (the “**Revised Budget**”)² and incorporated herein by reference; and

2. Notwithstanding section 552(a) of the Bankruptcy Code, as and for adequate protection for the post-petition use by the Debtor of Cash Collateral in which W&LER claims an interest, including accounts and inventory of the Debtor and proceeds thereof, the Debtor 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

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

² The Revised Budget differs slightly from the Budget that was submitted with the Motion [Dkt. No. 5, Exhibit A]. The changes are described in the *Debtor’s Supplement to 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* filed contemporaneously herewith.

Debtor prior to the Petition Date (the “**Replacement Lien**”); provided, however, that the Replacement Lien shall not attach to funds collected by the Debtor on behalf of other carriers to the extent such funds are subsequently determined by the Court to be held by the Debtor 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 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. If, notwithstanding the grant of adequate protection provided in this Order, W&LER has a claim allowable under Sections 503(b), and 507(a)(2) of the Bankruptcy Code arising from the use of Cash Collateral pursuant to this Order, then, such claim shall have priority over all other claims allowable under Section 507(a)(2).

4. From the date of this Order and until the Expiration Date, the Debtor shall provide W&LER, the United States Trustee (“UST”), 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 19, 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. W&LER and the UST 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.

5. For so long as the Debtor is authorized under the terms of this Order to use Cash Collateral, the Debtor 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.

6. Unless cured within five (5) business days after W&LER provides written notice of default by electronic mail to the Debtor (rclement@verrilldana.com), and the UST (jennifer.h.pincus@usdoj.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 Debtor 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 Debtor's authority to use Cash Collateral;

- (e) the Debtor ceases the operation of substantially all of its 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 Debtor 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;
- (g) any material and/or intentional misrepresentation by the Debtor in the financial reporting or certifications required to be provided by the Debtor under this Order; and
- (h) non-compliance or default by the Debtor 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 Debtor's authority to use Cash Collateral pursuant to this Order shall immediately cease and terminate. Nothing in this Order shall prohibit the Debtor from filing motions with the Court seeking emergency and/or expedited hearing, and continued and/or renewed authority to use cash collateral.

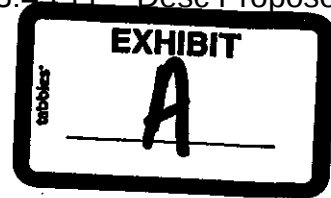
7. The terms and conditions of this Order shall be in effect and immediately enforceable upon its entirety by the Clerk of the Court and shall be binding against the Debtor, the estate and/or any trustee subsequently appointed in this case, whether under Chapter 7 or Chapter 11 of the Bankruptcy code, 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 United States Trustee;

8. A further and final hearing on Debtor's request to use Cash Collateral shall be held on the Motion on August 22, 2013 at 11:00 a.m. at the Kennebec County Superior Court, Augusta, Maine. Debtor shall promptly provide notice of such further hearing in accordance

with the applicable Bankruptcy Rules and Local Bankruptcy Rules. Objections, if any, to the proposed final order shall be filed and served on or before August 20, 2013 at 4:00 p.m.

Dated: August__, 2013

Hon. Louis H. Kornreich
United States Bankruptcy Judge



Montreal, Maine & Atlantic Railway*

Current Status	W/E 8/16/2013	W/E 8/23/2013
Receipts:		
Transportation Revenue		
Freight Revenue	\$ 215,000	\$ 225,000
ISS Receipt		45,000
Zone Switching		
Sub Total - Transportation Revenue	215,000	270,000
Other Operating Revenue		
Switching & Miscellaneous	20,000	20,000
Contract Shop & Car Repairs		
Car Hire Revenue		120,000
Sub Total - Other Operating Revenue	20,000	140,000
Non-Operating Revenue		
Scrap Sales		
Private & Gov't Re-imbursements		
Traveler Bill		
Sub Total - Non-Operating Revenue		
Total Cash Receipts	235,000	410,000
Disbursements:		
Transportation Revenue Offsets		
NBSR, MNR, SLO, CN	(25,000)	(22,000)
Sub Total - Transportation Revenue Offsets	(25,000)	(22,000)
Payroll & Related		
Salaries, Wages & Commissions US	(180,000)	
Salaries, Wages & Commissions CDN	(39,900)	(140,461)
Employee Benefits & Insurance	(25,000)	(25,000)
Sub Total - Payroll & Related	(244,900)	(165,461)
Materials & Supplies		
Diesel Fuel		
Material Costs US	(52,519)	(50,000)
Material Costs CDN	(50,681)	(48,250)
Sub Total - Material & Supplies	(103,200)	(98,250)
Freight Car & Locomotive Expense		
Leases - Car		
Leases - Locomotive		
Car Hire		
Car Repair Debits	(20,000)	
Sub Total - Freight Car & Locomotive	(20,000)	
Rent, Heat & Utilities		
Rent		
Electricity		
Heat		
Phone, Internet, Radio	(5,000)	(5,000)
Sub Total - Rent, Heat & Utilities	(5,000)	(5,000)
Other Indirect/Operating Costs		
Business Insurance Payments		
Credit card		
Fees and other (detail see below)		
Sub Total - Other Indirect/Operating Costs		
Total Disbursements	(398,100)	(290,711)
Net Cash Flow (Use) - Operations	(163,100)	119,289
INVESTING ACTIVITIES		
Capital Additions / Improvements		
Net Cash Flow (Use) - Investing Activities	(163,100)	119,289
SUMMARY		
Cash Beginning	401,485	238,365
Net Weekly Cash Flow	(163,100)	119,289
Cash Ending	\$ 238,385	\$ 357,654

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Collateral Analysis

Accounts Receivable		
Accounts Receivable A/R Trade Beg Balance	\$ 7,221,854	\$ 7,256,854
Add: Net Sales	250,000	250,000
Less: Collections	215,000	225,000
Less: sale of Receivable		
A/R Trade Ending	<u>7,256,854</u>	<u>7,281,854</u>
Less: Ineligible A/R	<u>(2,977,434)</u>	<u>(2,977,434)</u>
A/R - Ending - Eligible	4,279,420	4,304,420
A/R Advance Rate	<u>60%</u>	<u>80%</u>
A/R Collateral Value	3,423,536	3,443,536
Inventory value	1,181,097	1,181,097
Gross Collateral	<u>6,460,517</u>	<u>5,485,517</u>
Ending Line of Credit Balance	<u>6,000,000</u>	<u>6,000,000</u>
Excess (Over Advance)	<u>(539,483)</u>	<u>(514,483)</u>
Diesel Fuel	266,523	271,523

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MONTREAL MAINE & ATLANTIC)	Case No. 13-10670
RAILWAY, LTD.,)	
)	
Debtor.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August 2013, I caused to be served on the parties set forth below by first class U.S. mail, postage prepaid, Federal Express or electronic mail, a true and correct copy of the **Debtor’s Supplement to Motion for Order Pursuant to 11 U.S.C. §§ 361, 362, and 363: (I) Authorizing Debtor to Use of Cash Collateral on Interim Basis; and (II) Scheduling a Hearing to Consider the Use of Cash Collateral on a Final Basis,** together with a **proposed Order** with **Exhibit A** thereto.

All parties listed on the Electronic Mail Notice List have been served electronically through the Court’s ECF system.

Dated: August 12, 2013

/s/ Marilyn J. Henderson
Marilyn J. Henderson

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