

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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In re:)	
)	Chapter 11
Montreal Maine & Atlantic Railway Ltd.,)	Case No. 13-10670
)	
Debtor.)	
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WHEELING & LAKE ERIE RAILWAY COMPANY’S OBJECTION TO CHAPTER 11 TRUSTEE’S MOTION FOR ORDER: (A) APPROVING BID PROCEDURES FOR THE SALE OF THE DEBTOR’S ASSETS; (B) SCHEDULING AN AUCTION; (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES FOR CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING A BREAK-UP FEE, EXPENSE REIMBURSEMENT AND OVERBID PROTECTION; AND (E) APPROVING A FORM OF NOTICE OF SALE

NOW COMES the Wheeling & Lake Erie Railway Company (“Wheeling”) and objects to a portion of the Chapter 11 Trustee’s Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor’s Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Unexpired Leases; (D) Approving a Break-Up Fee, Expense Reimbursement and Overbid Protection; and (E) Approving a Form of Notice of Sale (the “Bid Procedures Motion”) [D.E. # 488], filed by Robert J. Keach, the chapter 11 trustee in this case (the “Trustee”), for the reasons set forth herein.

In general, with the exception noted herein, Wheeling supports the auction sale to be held at Bernstein, Shur, Sawyer & Nelson on January 21, 2014, and the bid procedures proposed by the Trustee in respect thereof. Among other things, the Bid Procedures Motion purports to describe the parties that will be permitted to attend the auction. Wheeling is excluded from that list, although it claims a binding, valid and enforceable security interest in and to a portion of the assets to be sold at the auction, in particular, inventory of the Debtor, and certain contracts that produce payment rights in favor of the Debtor. These contracts create either or both of

“accounts” or “payment intangibles” within the meaning of the Maine Uniform Commercial Code, and, as such, constitute collateral for Wheeling. Reference is made to the Security Agreement between Wheeling and the Debtor annexed hereto as **Exhibit A**, and the UCC-1 financing statements perfecting the same annexed hereto as **Exhibit B**. Other secured lenders, including the Federal Railroad Administration, are permitted to attend the auction; Wheeling should be permitted to attend as well because of its security interest in assets to be sold at auction.

WHEREFORE, Wheeling respectfully requests that the Bid Procedures be modified so as to permit it to attend the auction, on the same terms that other secured lenders are permitted to attend, in order to adequately protect its interest in collateral that is being sold.

Dated: December 17, 2013

/s/ George J. Marcus

George J. Marcus

David C. Johnson

Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

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CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and that I caused a true and correct copy of the above document to be served upon the parties and at the addresses set forth on the Service List attached hereto either electronically or via first class mail, postage prepaid, on 17th day of December, 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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