

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:	)	
	)	
Montreal Maine & Atlantic Railway Ltd.,	)	Case No. 13-10670
	)	
Debtor.	)	Related to Docket No. 611
	)	

**WHEELING & LAKE ERIE RAILWAY COMPANY’S OBJECTION TO THE  
CHAPTER 11 TRUSTEE’S MOTION FOR INTERIM AND FINAL ORDERS (A)  
AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING AND (B)  
GRANTING TO CAMDEN NATIONAL BANK POST-PETITION PRIORITY LIENS**

Now comes the Wheeling & Lake Erie Railway Company (“Wheeling”) and, on the grounds set forth below, objects to the Chapter 11 Trustee’s Motion for Interim and Final Orders (A) Authorizing Debtor to Obtain Post-Petition Financing And (B) Granting to Camden National Bank Post-Petition Priority Liens (the “Second Borrowing Motion”) [D.E. # 611].<sup>1</sup>

1. Wheeling does not object to the relief requested in the Second Borrowing Motion as a general matter, based on the representation of the Trustee that the collateral securing the proposed additional post-petition financing to be provided by Camden National Bank, as described in the Second Borrowing Motion, is the same collateral that secures the original financing provided by Camden National Bank.

2. Wheeling does object, however, to the Second Borrowing Motion insofar as the relief requested therein was modified by the revised form of order filed by the Trustee on Friday, February 7, 2014 (the “Revised FOO”) [D.E. 623]. Under the Revised FOO, the Trustee proposes to provide to FRA a lien, subject to Wheeling’s interests, in and to the Debtor’s interest in the Travelers’ Proceeds and the 45G Proceeds (as such terms are defined in the Revised FOO). See Revised FOO, ¶ 4. [D.E. 623, ¶ 4.] Specifically, the Revised FOO states that “in the event that it is determined that Wheeling does not have an interest in all or any part of the Travelers’

<sup>1</sup> Capitalized terms not defined herein shall have the meaning set forth in the Second Borrowing Motion.

Proceeds and/or the 45 Proceeds, the FRA shall have a first-priority lien on such of the otherwise unencumbered Travelers' Proceeds and the 45G Proceeds and a second priority lien junior to Wheeling in all other such proceeds." [*Id.*]

3. This Court, in several prior "cash collateral" orders has granted Wheeling a superpriority administrative claim, with priority over all other claims arising under § 507(b) of the Bankruptcy Code and allowable under § 507(a)(2) of the Bankruptcy Code, to the extent that Wheeling holds such an administrative claim allowable by reason of the failure of the Trustee to provide Wheeling adequate protection for the post-petition use of its cash collateral. *See, e.g.,* Sixth Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection, ¶ 10. [D.E. 376.] While Wheeling believes that it will be successful in establishing its first priority security interest in both the Travelers' Proceeds and the 45G Proceeds, should the Court determine that Wheeling's security interest does not extend to any portion of the Travelers' Proceeds or the 45G Proceeds, the grant of a junior lien to FRA will impair the superpriority administrative claim granted to Wheeling by several prior orders of this Court. Upon information and belief, Wheeling will have a superpriority administrative claim arising from the Trustee's use of its cash collateral.

4. Further, the proposed security interest in the Travelers' Proceeds and the 45G Proceeds is not permitted under the Bankruptcy Code. Section 364(c) of the Bankruptcy Code authorizes the grant of a security interest in unencumbered property of the estate, or the grant of a security interest in encumbered property, junior to pre-existing encumbrances, in order to secure "the obtaining of credit or the securing of debt". The grant of a security interest in the Travelers' Proceeds and the 45G Proceeds to FRA, as proposed by the Trustee, does not secure the obtaining of any credit from, or the extension of any debt by, FRA. Accordingly, the security interest proposed to be granted by the Trustee to FRA is not permitted under § 364(c) of the Bankruptcy Code.

WHEREFORE, Wheeling respectfully requests that the Court deny the Second Borrowing Motion insofar as it seeks to grant to FRA a security interest in the Travelers' Proceeds or the 45G Proceeds, or any other unencumbered asset of the estate, and that the Court grant such other and further relief as it deems just and proper.

Dated: February 10, 2014

/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

Portland, ME 04101

207.828.8000

**CERTIFICATE OF SERVICE**

I, Karen A. Stone, 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 10<sup>th</sup> day of February, 2014.

/s/ Karen A. Stone

Karen A. Stone  
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.

- D. Sam Anderson sanderson@bernsteinshur.com, [acummings@bernsteinshur.com](mailto:acummings@bernsteinshur.com); [sspizuoco@bernsteinshur.com](mailto:sspizuoco@bernsteinshur.com); astewart@bernsteinshur.com
- Aaron P. Burns aburns@pearcedow.com, rpearce@pearcedow.com, lsmith@pearcedow.com
- Richard Paul Campbell rpcampbell@campbell-trial-lawyers.com, mmichitson@campbell-trial-lawyers.com
- Roger A. Clement, Jr. rclement@verrilldana.com, nhull@verrilldana.com; bankr@verrilldana.com
- Daniel C. Cohn dcohn@murthalaw.com, njoyce@murthalaw.com
- Maire Bridin Corcoran Ragozzine mcorcoran@bernsteinshur.com, sspizuoco@bernsteinshur.com; astewart@bernsteinshur.com; acummings@bernsteinshur.com; kfox@bernsteinshur.com; kquirk@bernsteinshur.com
- Keith J. Cunningham kcunningham@pierceatwood.com, [mpottle@pierceatwood.com](mailto:mpottle@pierceatwood.com); rkelly@pierceatwood.com
- Debra A. Dandeneau, arvin.maskin@weil.com
- Joshua R. Dow jdow@pearcedow.com, rpearce@pearcedow.com; lsmith@pearcedow.com
- Michael A. Fagone mfagone@bernsteinshur.com, acummings@bernsteinshur.com; astewart@bernsteinshur.com; sspizuoco@bernsteinshur.com; kquirk@bernsteinshur.com; kfox@bernsteinshur.com
- Daniel R. Felkel dfelkel@troubhheisler.com
- Jeremy R. Fischer jfischer@dwmlaw.com, aprince@dwmlaw.com
- Isaiah A. Fishman ifishman@krasnowsaunders.com, ryant@krasnowsaunders.com; cvalente@krasnowsaunders.com
- Peter J. Flowers pjf@meyers-flowers.com
- Christopher Fong christopherfong@paulhastings.com
- Taruna Garg tgarg@murthalaw.com, cball@murthalaw.com; kpatten@murthalaw.com
- Jay S. Geller jgeller@maine.rr.com

- Craig Goldblatt craig.goldblatt@wilmerhale.com
- Frank J. Guadagnino fguadagnino@clarkhillthorpreed.com
- Michael F. Hahn mhahn@eatonpeabody.com,  
clavertu@eatonpeabody.com;dcroizier@eatonpeabody.com;jmiller@eatonpeabody.com
- Andrew Helman ahelman@mcm-law.com, bankruptcy@mcm-law.com
- Paul Joseph Hemming phemming@briggs.com, pkringen@briggs.com
- Seth S. Holbrook holbrook\_murphy@msn.com
- Nathaniel R. Hull nhull@verrilldana.com, bankr@verrilldana.com
- David C. Johnson bankruptcy@mcm-law.com, djohnson@mcm-law.com
- Jordan M. Kaplan jkaplan@zwerdling.com, mwolly@zwerdling.com
- Robert J. Keach rkeach@bernsteinshur.com,  
acummings@bernsteinshur.com;astewart@bernsteinshur.com;kquirk@bernsteinshur.com
- Curtis E. Kimball ckimball@rudman-winchell.com, jphair@rudman-  
winchell.com;cderrah@rudmanwinchell.com
- Thomas Addison Knowlton Thomas.a.knowlton@maine.gov
- Andrew J. Kull akull@mittelasen.com, ktrogner@mittelasen.com
- George W. Kurr gwkurr@grossminsky.com, tmseymour@grossminsky.com
- Alan R. Lepene Alan.Lepene@ThompsonHine.com,  
Cathy.Heldt@ThompsonHine.com
- Edward MacColl emaccoll@thomport.com,  
bbowman@thomport.com;jhuot@thomport.com;eakers@thomport.com
- Benjamin E. Marcus bmarcus@dwmlaw.com,  
hwhite@dwmlaw.com;dsoucy@dwmlaw.com
- George J. Marcus bankruptcy@mcm-law.com
- Patrick C. Maxcy patrick.maxcy@dentons.com
- John R McDonald jmcdonald@briggs.com, mjacobson@briggs.com
- Kelly McDonald kmcdonald@mpmlaw.com, kwillette@mpmlaw.com
- James F. Molleur jim@molleurlaw.com,  
all@molleurlaw.com;tanya@molleurlaw.com;jen@molleurlaw.com;barry@molleurlaw.c  
om;kati@molleurlaw.com;martine@molleurlaw.com;Jessica@molleurlaw.com
- Ronald Stephen Louis Molteni moltenir@stb.dot.gov
- Victoria Morales Victoria.Morales@maine.gov,  
rhotaling@clarkhillthorpreed.com,Toni.Kemmerle@maine.gov,ehocky@clarkhill.com,N  
athan.Moulton@maine.gov,Robert.Elder@maine.gov
- Dennis L. Morgan dmorgan@coopercargillchant.com,  
hplourde@coopercargillchant.com
- Stephen G. Morrell stephen.g.morrell@usdoj.gov
- Kameron W. Murphy kmurphy@tuethkeeney.com, gcasey@tuethkeeney.com
- Office of U.S. Trustee ustpregion01.po.ecf@usdoj.gov
- Richard P. Olson rolson@perkinsolson.com,  
jmoran@perkinsolson.com;lkubiak@perkinsolson.com
- Jeffrey T. Piampiano jpiampiano@dwmlaw.com,  
aprince@dwmlaw.com;hwhite@dwmlaw.com
- Jennifer H. Pincus Jennifer.H.Pincus@usdoj.gov
- William C. Price wprice@clarkhill.com, rhotaling@clarkhillthorpreed.com
- Joshua Aaron Randlett jrandlett@rwlb.com, kmorris@rwlb.com
- Elizabeth L. Slaby bslaby@clarkhillthorpreed.com
- F. Bruce Sleeper bankruptcy@jbg.com
- John Thomas Stemplewicz john.stemplewicz@usdoj.gov

- Deborah L. Thorne deborah.thorne@btlaw.com
- Timothy R. Thornton pvolk@briggs.com
- Mitchell A. Toups matoups@wgttlaw.com, jgordon@wgttlaw.com
- Jason C. Webster jwebster@thewebsterlawfirm.com, dgarcia@thewebsterlawfirm.com;hvicknair@thewebsterlawfirm.com
- William H. Welte wwelte@weltelaw.com
- Elizabeth J. Wyman liz.wyman@maine.gov, eve.fitzgerald@maine.gov

## 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.

Shaw Fishman Glantz & Towbin LLC,

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

Daniel Aube  
308 St-Lambert Street  
Sherbrooke, QU J1C0N9

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

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

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

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

Michael R. Enright

Robinson & Cole, LLP  
280 Trumbull Street  
Hartford, CT 06103

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

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

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

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

Terence M. Hynes  
Sidley Austin LLP  
1501 K. Street N.W.  
Washington, DC 20005

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

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

Thomas A. Labuda  
Sidley Austin, LLP  
One South Dearborn  
Chicago, IL 60603

Matthew E. Linder  
Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603

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

Paul McDonald  
Bernstein Shur Sawyer & Nelson, P.A.  
100 Middle Street  
PO Box 9729  
Portland, ME 04104-5029

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

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

Jeffrey C. Steen  
Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603

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

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

Robert D. Thomas  
49 Park Street  
Dexter, ME 04930

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



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

Frederick J. Williams  
74 Bellevue Street  
Compton, QU JOB 1L0

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

Wrongful Death, Personal Injury, Business, Property and Environmental  
Clients as of 9/1/13,