

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

**MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.**

Debtor

**Bk. No. 13-10670
Chapter 11**

**FIRST UNION RAIL CORPORATION'S APPLICATION FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIM**

NOW COMES First Union Rail Corporation (“FURC”), by and through its undersigned counsel, and, pursuant to 11 U.S.C. §§ 503, 507, and 1171(a), D. Me. LBR 3002-2 and 9013-1, and this Court’s Order Establishing the Deadline for Filing Administrative Claims and Approving the Form and Manner of Notice Thereof (Dkt. 1164, 10/22/14) (the “**Administrative Claims Bar Date Order**”), hereby applies for allowance and payment of an administrative claim as follows:

BACKGROUND

1. Upon information and belief, prior to Montreal Maine & Atlantic Railway Ltd. (the “**Debtor**”) filing its voluntary petition on August 7, 2013 (the “**Petition Date**”), the Debtor was a Class II freight railroad that operated in the U.S. states of Maine and Vermont and the Canadian province of Quebec. Upon information and belief, on July 6, 2013, a train operated by the Debtor derailed and caused catastrophic damage to the town of Lac-Magantic, Quebec, Canada (the “**Derailment**”).

2. FURC (as successor-in-interest to Trinity Industries Leasing Company) owned and leased railroad cars to Western Petroleum Company (“**Western**”) pursuant to that certain Railroad Car Lease Agreement (the “**Lease Agreement**”). Western sublet the cars to Dakota

Plains Marketing, LLC, under a Sublease Agreement (the “**Sublease Agreement**”). Upon information and belief, Western and/or Dakota Plains and/or the Debtor used FURC’s leased railway cars to carry crude oil produced from the Bakken Shale in parts of Montana and North Dakota. Upon information and belief, twelve of such railway cars were in use by the Debtor as part of the train in the Derailment.

3. Although the Debtor, Western and others are defendants in pending litigation arising from the Derailment, FURC has not been sued for any claims arising from the Derailment. Nevertheless, FURC has engaged in settlement discussions with the Trustee regarding possibly contributing money to a settlement fund to be distributed to the victims of the derailment (the “**Derailment Victims’ Settlement Fund**”). FURC and the Trustee have negotiated a proposed resolution of potential claims against FURC, but that proposed resolution is contingent and not final at this time.

4. FURC and the Debtor also were parties to other pre-petition contracts and dealings, some of which necessarily continued after the Petition Date. As to such dealings, FURC also has been engaged in discussions with the Trustee’s agent regarding the post-petition liabilities of (a) FURC to the estate and (b) the estate to FURC.

ADMINISTRATIVE CLAIMS ASSERTED

5. Although no party has asserted against FURC any claim arising from the Derailment, it is possible that third parties (including those with potential standing to assert claims under 11 U.S.C. §1171(a)) could initiate litigation against FURC for various causes of action arising from the Derailment. The extent of FURC’s exposure in this regard, and the extent to which such exposure will be eliminated or resolved by possible settlement between FURC and the Trustee, is uncertain at this time. As a result, FURC’s potential administrative expense claim

based upon such claims (including but not limited to a claim based upon of subrogation, indemnification, reimbursement, and/or contribution) is uncertain at this time.

6. Even though the Administrative Claims Bar Date Order expressly provides that it does not apply to claims arising under § 1171 of the Code, and despite the contingent and unliquidated nature FURC's claim as set forth above, FURC submits this application in order to preserve and protect its right and ability to liquidate and pursue such claims against the estate. In the event and to the extent that FURC is liable to third parties for claims arising from the Derailment on the basis of subrogation, indemnification, reimbursement, and/or contribution, FURC would be entitled to seek subrogation, indemnification, reimbursement, and/or contribution against the Debtor's estate with the same priority as the Derailment victims' claims against the Debtor's estate. Accordingly, FURC's contingent and unliquidated claim against the estate would be entitled to administrative priority pursuant to 11 U.S.C. §1171(a).

7. Outside the arena of claims arising out of or related to the Derailment, with respect to the various other post-petition liabilities of (a) FURC to the estate and (b) the estate to FURC, FURC respectfully asserts that the estate owes FURC (i) \$85,000 for amounts FURC pre-paid to the estate, (ii) approximately \$4,607.17 in post-petition car hire, (iii) approximately \$31,872.75 in post-petition car repairs and (iv) approximately \$1,738.70 in post-petition car rental. FURC further acknowledges that it also owes the estate certain post-petition amounts for storage and moving and for repair bills, which amounts are still being determined. FURC further acknowledges that such post-petition amounts FURC owes to the estate may equal or exceed such post-petition amounts the estate owes to FURC, such that, on a net basis and after setoff of such post-petition liabilities, FURC may owe the estate a post-petition balance. FURC anticipates being able to reach agreement with the Trustee as to these net post-petition liabilities.

8. Pursuant to D. Me. LBR 9013-1(b), prior to filing this Application, counsel for FURC consulted with the Trustee in a good faith effort to determine whether or not this Application is unopposed. Given the issues which remain unresolved at this time, as noted above, the Trustee understandably is unwilling to consent to this Application at this time. FURC and the Trustee each are reserving their respective rights regarding the relief requested herein.

9. By this Application, FURC seeks the allowance and payment of an administrative expense claim against Debtor and its bankruptcy estate pursuant to the terms of the Bar Date Order. All of the Trustee's rights with respect to this Application are hereby reserved and preserved in all respects.

REQUEST FOR RELIEF

WHEREFORE, FURC respectfully requests that this Court (a) allow and approve payment of FURC's claim as administrative expense claims against Debtor, Maine Montreal & Atlantic Railway, Ltd., and its bankruptcy estate, in an amount which is contingent and unliquidated at this time but which will be liquidated at a later date and (b) grant FURC such other and further relief as is just and equitable.

Dated: 12/1/14

/s/ Curtis E. Kimball, Esq.

CURTIS E. KIMBALL, ESQ. ~ Bar #6852

Rudman Winchell

Attorney for First Union Rail

84 Harlow St. – P.O. Box 1401

Bangor, Me 04402-1401

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CERTIFICATE OF SERVICE

I, Curtis E. Kimball, Esq., hereby certify that on the 1st day of December, 2014, I filed an Application for Allowance and Payment of Administrative Claim with the Clerk of the U.S. Bankruptcy Court using the CM/ECF system which will send electronic notification of the same to all parties of record.

Dated: 12/1/14

/s/ Curtis E. Kimball, Esq.

CURTIS E. KIMBALL, ESQ. ~ Bar #6852

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Attorney for First Union Rail

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**ORDER GRANTING APPLICATION
AND REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSES OF FIRST
UNION RAIL CORPORATION**

Upon the application of the claimant for entry of an order allowing the claimant's administrative claim against the Debtor with administrative expense status, all as more fully set forth in the application:

1. The application is granted.
2. The Administrative Claim held by the claimant is entitled to administrative expense status pursuant to sections 503 and 1171 of the Bankruptcy Code (as applicable) and is allowed in an amount to be determined after further hearing on a date mutually agreeable to the claimant and the trustee of the debtor's estate.
3. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

JUDGE, U.S. BANKRUPTCY COURT

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NOTICE OF HEARING

Please take notice that on December 1, 2014, First Union Rail Corporation, filed the Application for Allowance and Payment of Administrative Claim in the above captioned Chapter 11 matter.

Please take further notice that a hearing on the Application will be held on **March 10, 2015 at 10:00 a.m.** in the United States Bankruptcy Court for the District of Maine, 202 Harlow Street, Bangor, ME 04401.

Please take further notice that any objections to the Application must be filed and served in accordance with the Federal Rules of Bankruptcy Procedure and the District of Maine Local Bankruptcy Rules so as to be actually received on or before **March 3, 2015 at 5:00 p.m.**

Dated: 12/1/14

/s/ Curtis E. Kimball, Esq.

CURTIS E. KIMBALL, ESQ. ~ Bar #6852

Rudman Winchell

Attorney for First Union Rail Corporation

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