

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

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

On August 7, 2013, Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”) filed a 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 [D.E. 4] (the “**Motion**”). The Court previously entered an *Interim Order Authorizing the Debtor to Use Cash Collateral and Granting Adequate Protection* [D.E. 51], a *Second Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection* [D.E.98], and a *Third Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection* [Docket No. 173] (the “**Third Interim Order**”). Pursuant to the Third Interim Order, a further continued hearing on the Motion was set for September 13, 2013. On August 21, 2013, the United States Trustee appointed Robert J. Keach (the “**Trustee**”) as the chapter 11 trustee of MMA pursuant to 11 U.S.C. § 1163 [D.E. 64]. Based on the Court’s review of the Motion and the representations of counsel at the hearing on September 13, 2013, the Court finds that: (i) the Trustee requires the use of Cash Collateral (as defined herein) for ordinary course operations; (ii) the Trustee’s ability to protect and preserve MMA’s 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 Cash Collateral; (iv) the Trustee’s offer of adequate protection to W&LER has 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 continued hearing on the Motion, the Court hereby further 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**”). Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED

1. The Trustee is authorized, effective as of September 13, 2013, to use Cash Collateral,¹ including cash on hand and cash from collection of MMA’s pre-petition accounts receivables on an interim basis for ordinary course business purposes through close of business on October 2, 2013 (the “**Expiration Date**”), subject to extension of the Expiration Date pursuant to paragraph 9 of this Order, and pursuant to the interim budget attached hereto as Exhibit A (the “**Budget**”) 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 of Cash Collateral in which W&LER claims an interest,

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

including accounts and inventory of the Debtor and proceeds thereof, the Trustee 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 Debtor prior to the Petition Date (the “**Replacement Lien**”); provided, however, that the Replacement Lien shall not attach to funds collected on behalf of other carriers to the extent such funds are subsequently determined by the Court to be held by MMA 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 or the Trustee 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. In addition to the grant of a Replacement Lien as provided in the immediately preceding paragraph of this order, and as and for additional adequate protection for the post-petition use of Cash Collateral in which W&LER claims an interest, the Trustee shall provide the following additional consideration for the benefit of W&LER:

(a) On or before 5:00 pm on Monday, September 16, 2013, the Trustee shall cause the Debtor pay the sum of \$46,000 to W&LER, and W&LER shall be authorized to apply such payment in partial satisfaction of the obligations of the Debtor to W&LER in such manner

as Wheeling and the Trustee may agree upon, or, failing such agreement, as the Court may order;

(b) From the proceeds of any and all accounts owed or claimed by the Trustee or the Debtor to be owed by any of the Irving companies, so called, or any affiliate thereof, to the Debtor as of the Petition Date (the “**Irving Accounts**”), and paid to the Debtor or the Trustee on or after September 13, 2013, the first \$150,000 of any such payment of the Irving Accounts shall be deposited in an escrow account, with an escrow agent to be determined by agreement of W&LER and the Trustee, or failing such agreement, by this Court. The funds so deposited shall be and remain subject to the security interests claimed by W&ELR, and may be used by the Trustee as Cash Collateral only in accordance with a budget approved by the Court, after due and appropriate notice and hearing, or with the consent of W&ELR. After payment, on or after September 13, 2013, of \$150,000 to the Trustee on account of the Irving Accounts, all additional payments made on account of the Irving Accounts shall be delivered and turned over to W&ELR within two business days of receipt thereof, without deduction or offset of any kind, and W&LER shall be authorized to apply such payment in partial satisfaction of the obligations of the Debtor to W&LER, in such manner as Wheeling and the Trustee may agree upon, or, failing such agreement, as the Court may order;

(c) The Trustee shall not settle or compromise the Irving Accounts or any portion thereof without the written consent of W&LER, or an order of this Court, entered after due and adequate notice and hearing.

4. If, notwithstanding the grant of adequate protection provided in this Order, W&LER has a claim allowable under Section 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).

5. From the date of this Order and until the Expiration Date, the Debtor shall provide the Trustee, W&LER, the UST, the Federal Rail Administration (the “FRA”), and the Maine Department of Transportation (“MDOT”), 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 12, 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. These reports shall be transmitted via e-mail to FRA (John.Stemplewicz@usdoj.gov) and MDOT (Nathan.Moulton@maine.gov and Toni.Kemmerle@maine.gov). The Trustee, W&LER, UST, FRA and MDOT 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.

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

7. Unless cured within five (5) business days after W&LER provides written notice of default by electronic mail to the Trustee (rkeach@bernsteinshur.com), and the UST (jennifer.h.pincus@usdoj.gov), FRA (John.Stemplewicz@usdoj.gov); and MDOT (Nathan.Moulton@maine.gov and Toni.Kemmerle@maine.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 Trustee 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 Trustee’s authority to use Cash Collateral;
- (e) the Trustee ceases the operation of substantially all of MMA’s 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 Trustee 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; and
- (g) non-compliance or default by the Trustee 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 Trustee’s authority to use Cash Collateral pursuant to this Order shall immediately cease and terminate. Nothing in this Order

shall prohibit the Trustee from filing motions with the Court seeking emergency and/or expedited hearing, and continued and/or renewed authority to use cash collateral.

8. 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 Trustee, 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 UST.

9. The Expiration Date may be extended, one or more times and from time to time, by written agreement of the Trustee and W&LER. Any such extension shall be for such period of time and upon such budget for the Trustee's operations as the Trustee and W&ELR may agree upon, in writing. The period of time between the Expiration Date as originally set forth in this Order and any extended Expiration Date agreed upon by the Trustee and W&LER shall be referred to as the "Extension Period". All of the terms and conditions of this Order shall apply during the Extension Period, unless the Trustee and W&LER shall otherwise agree, in writing; and provided further that the budget for the operations of the Trustee during any such Extension Period shall be as agreed upon in writing by the Trustee and W&LER.

10. A further hearing on the Trustee's request to use Cash Collateral shall be held on the Motion on **October 1, 2013 at 9:00 a.m.** at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine; provided, however, that in the event that the Trustee and W&ELR shall, by mutual written agreement, agree to an Extension Period, a further hearing shall be held at such time as the parties shall agree and the Court shall be available to conduct

such hearing. The Trustee shall promptly provide notice of such further hearing in accordance with the applicable Bankruptcy Rules and Local Bankruptcy Rules. Objections, if any, to any proposed further order shall be filed and served not later than two business days prior to such hearing.

Dated: September 16, 2013

A handwritten signature in cursive script that reads "Louis H. Kornreich". The signature is written in black ink on a white background.

Hon. Louis H. Kornreich
United States Bankruptcy Judge



Cash Flow
Revised Budget 9/6/2013

	9/6/2013	9/13/2013	9/20/2013	9/27/2013	10/4/2013	10/11/2013	10/18/2013	10/25/2013	11/1/2013	11/8/2013	11/15/2013	11/22/2013	11/29/2013	12/6/2013	12/13/2013	12/20/2013	12/27/2013	Total
Receipts:																		
Transportation Revenue	\$ 150,000	\$ 150,000	\$ 175,000	\$ 175,000	\$ 380,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 3,225,000
Freight Revenue and Zone Switching																		\$ (146,970)
ISS Payable	\$ (146,970)																	\$ 77,882
Other Operating Revenue	250,000				180,000					237,904				237,904				250,000
Sub Total - Transportation Revenue	122,584	400,000	150,000	175,000	380,000	200,000	200,000	200,000	200,000	437,904	200,000	200,000	200,000	437,904	200,000	200,000	200,000	4,110,832
Other Operating Revenue																		
Switching & Miscellaneous	85,000		16,000		16,000							16,000				16,000		94,000
Railcar Storage																		80,000
Contract Shop & Car Repairs																		60,000
Equipment Rental	20,000		20,000		20,000													80,000
Car Hire Revenue			38,000		38,000													76,000
Sub Total - Other Operating Revenue	105,000		16,000	54,000	20,000	20,000	16,000	20,000	54,000	20,000	70,000	38,000	15,000	20,000	16,000		58,000	449,000
Non-Operating Revenue																		
Scrap Sales																		
Private & Gov't Re-imbursements																		
Traveler Business Interruption																		
Sub Total - Non-Operating Revenue	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts	227,584	400,000	166,000	229,000	400,000	200,000	216,000	254,000	220,000	437,904	200,000	270,000	200,000	457,904	200,000	216,000	258,000	4,559,832
Disbursements:																		
Transportation Revenue Offsets																		
NBSR, MNR, SLQ, CN	19,600	17,950	19,100	17,950	19,600	17,950	19,100	17,950	19,600	17,950	19,100	17,950	19,100	18,450	19,100	17,950	19,100	330,500
Sub Total - Transportation Revenue Offsets	19,600	17,950	19,100	17,950	19,600	17,950	19,100	17,950	19,600	17,950	19,100	17,950	19,100	18,450	19,100	17,950	19,100	330,500
Payroll & Related	68,721	150,076	150,076	150,076	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	2,262,929
Salaries, Wages & Commissions US	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	31,500	530,000
Employee Benefits & Claims - US	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	110,126	980,929
Salaries, Wages & Commissions CDN	43,400	11,400	11,400	11,400	31,400	31,400	11,400	11,400	31,400	-	11,400	11,400	11,400	20,000	11,400	-	11,400	185,400
Group Health, pension and union dues- CDN																		
Aetna Past Dues																		
Vacation pay arrears - CDN																		
Sub Total - Payroll & Related	251,747	181,576	153,026	181,576	173,026	81,500	303,102	31,500	323,102	31,500	303,102	31,500	303,102	51,500	303,102	31,500	303,102	3,338,563
Materials & Supplies																		
Diesel Fuel	5,000	5,000	5,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	290,000
Material Costs US	20,000	20,000	20,000	20,000	9,300	9,300	9,300	9,300	9,300	9,300	9,300	9,300	9,300	9,300	9,300	9,300	9,300	130,000
Material Costs CDN	25,000	25,000	25,000	29,300	66,050	29,300	66,050	29,300	66,050	29,300	66,050	29,300	66,050	29,300	66,050	29,300	66,050	740,500
Sub Total - Material & Supplies	50,000	50,000	50,000	69,300	95,350	58,600	95,350	58,600	95,350	58,600	95,350	58,600	95,350	58,600	95,350	58,600	95,350	1,160,500
Freight Car & Locomotive Expense																		
Leases - Car	10,000				10,000				10,000					10,000				20,000
Leases - Locomotive																		
Car Repair Net																		
Sub Total - Freight Car & Locomotive	15,000				15,000				15,000					15,000				30,000
Other Operating Costs																		
Rent	15,600				15,600				15,600					15,600				61,400
Electricity					9,000				9,000					9,000				36,000
Heat																		
Insurance Payments	21,346	43,500	20,400	20,400	21,346	43,500	21,346	25,000	21,346	43,500	21,346	26,250	26,250	21,346	43,500	26,250	26,250	282,344
Bank Charges / Interest Expense																		
Paris, gas, other general expenses																		
Phone, Internet, Radio, Other expenses	37,000	11,500	41,500	11,500	12,000	11,500	11,500	21,500	14,500	14,000	14,000	14,000	16,500	16,500	16,500	16,500	16,500	381,500
Sub Total - Rent, Heat & Utilities	75,946	55,000	61,900	11,500	57,946	55,000	37,750	46,500	60,446	57,500	94,250	14,000	46,500	62,446	60,000	42,750	16,500	863,334
Restructuring Costs																		
Utility Deposits - US																		
Utility Deposits - CDN	12,500		22,500	10,000														22,500
Notice in newspaper																		
Professional fees - CDN																		
Professional fees - US																		
Sub Total - Other Interest/Operating Costs	12,500		22,500	10,000														22,500
Total Disbursements	397,793	279,526	291,526	240,326	331,622	183,750	426,002	125,250	484,198	136,250	482,502	92,750	434,752	176,696	448,252	121,500	404,752	5,005,447
Net Cash Flow (Use) - Operations	(170,209)	120,474	(125,526)	(11,326)	68,378	16,250	(210,002)	128,750	(264,198)	301,654	(234,752)	177,250	(234,752)	281,208	(248,252)	94,500	(146,752)	(505,655)
SUMMARY																		
Cash Beginning	281,467	111,258	231,732	106,206	94,880	163,258	179,508	30,494	88,256	(165,942)	135,712	(146,790)	30,460	(204,292)	76,916	(171,336)	76,916	281,467
Net Weekly Cash Flow	(170,209)	120,474	(125,526)	(11,326)	68,378	16,250	(210,002)	128,750	(264,198)	301,654	(234,752)	177,250	(234,752)	281,208	(248,252)	94,500	(146,752)	(505,655)
Financing Receipts (Paydowns)																		

W/E	9/13/2013	9/20/2013	9/27/2013	10/4/2013	10/11/2013	10/18/2013	10/25/2013	11/1/2013	11/8/2013	11/15/2013	11/22/2013	11/29/2013	12/6/2013	12/13/2013	12/20/2013	12/27/2013	Total
\$	111,258	231,732	106,206	94,880	163,258	179,508	30,494	98,256	165,942	135,712	146,790	30,460	204,292	76,916	171,336	76,836	(223,588)

Collateral Analysis
 Accounts Receivable
 Accounts Receivable AR Trade Beg Balance
 Add: Net Sales
 Less: Collections
 AR Trade Ending
 Less: Ineligible AR
 A/R - Ending - Eligible

\$	4,884,193	4,835,149	4,898,159	4,966,369	5,005,029	4,861,368	4,891,507	4,926,846	4,957,635	4,983,974	4,786,209	4,821,548	4,852,337	4,887,676	4,660,911	4,716,250	4,747,039
	219,210	213,010	218,210	213,660	236,339	230,139	235,339	230,789	236,339	230,139	235,339	230,789	235,339	231,139	235,339	230,789	235,339
	288,254	150,000	150,000	175,000	380,000	200,000	200,000	200,000	200,000	437,904	200,000	200,000	200,000	437,904	200,000	200,000	200,000
	4,835,149	4,898,159	4,966,369	5,005,029	4,861,368	4,891,507	4,926,846	4,957,635	4,983,974	4,786,209	4,821,548	4,852,337	4,887,676	4,660,911	4,716,250	4,747,039	4,782,378
	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)	(4,041,946)
	793,203	856,213	924,423	963,083	819,422	849,561	884,900	915,689	952,028	744,263	779,602	810,391	845,730	638,965	674,304	705,093	740,432

Inventory Value

1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557	1,130,557
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Gross Eligible Collateral

1,923,760	1,986,770	2,054,980	2,093,640	1,949,979	1,980,118	2,015,457	2,046,246	2,082,585	1,874,820	1,910,159	1,940,948	1,976,287	1,769,522	1,804,861	1,835,650	1,870,989	1,870,989
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Line of Credit Maximum

6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
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Eligible Collateral

1,923,760	1,986,770	2,054,980	2,093,640	1,949,979	1,980,118	2,015,457	2,046,246	2,082,585	1,874,820	1,910,159	1,940,948	1,976,287	1,769,522	1,804,861	1,835,650	1,870,989	1,870,989
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Beginning Line of Credit Balance

6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
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Advances / (Payments) (incl write down)

(4,076,240)	(4,013,230)	(3,945,020)	(3,906,360)	(4,050,021)	(4,019,882)	(3,984,543)	(3,953,754)	(3,917,415)	(4,125,180)	(4,089,841)	(4,059,052)	(4,023,713)	(4,230,478)	(4,195,139)	(4,164,350)	(4,129,011)	(4,129,011)
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Ending Line of Credit Balance

6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
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Margin deficit

212,000	197,000	182,000	167,000	152,000	137,000	122,000	107,000	92,000	77,000	62,000	47,000	32,000	17,000	2,000	-13,000	-28,000	-28,000
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Diesel Fuel

212,000	197,000	182,000	167,000	152,000	137,000	122,000	107,000	92,000	77,000	62,000	47,000	32,000	17,000	2,000	-13,000	-28,000	-28,000
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Note: Above BBR Analysis does not discount eligible AR and Inventory by 15% and 50%, respectively

District/Off: 0100-1
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