

**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,<sup>1</sup> 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,

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<sup>1</sup> 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 black ink that reads "Louis H. Kornreich". The signature is written in a cursive style with a horizontal line underneath it.

Hon. Louis H. Kornreich  
United States Bankruptcy Judge





Cash Flow  
Revised Budget 9/16/2013

	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	Total
W/E	117,258	231,732	106,206	94,880	163,258	179,508	179,508	30,494	96,256	165,942	135,712	146,790	30,460	204,292	76,916	177,356	763,356
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

	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	Total
W/E	4,884,193	4,835,149	4,888,159	4,966,369	5,005,029	4,861,368	4,891,507	4,926,846	4,957,635	4,993,974	4,786,209	4,821,548	4,852,337	4,887,676	4,660,911	4,716,250	4,747,039
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

Cash Ending	117,258	231,732	106,206	94,880	163,258	179,508	179,508	30,494	96,256	165,942	135,712	146,790	30,460	204,292	76,916	177,356	763,356
Collateral Analysis																	
Accounts Receivable	4,884,193	4,835,149	4,888,159	4,966,369	5,005,029	4,861,368	4,891,507	4,926,846	4,957,635	4,993,974	4,786,209	4,821,548	4,852,337	4,887,676	4,660,911	4,716,250	4,747,039
Add: Net Sales	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
Less: Collections	268,254	150,000	150,000	175,000	380,000	200,000	200,000	200,000	200,000	437,904	437,904	200,000	200,000	437,904	200,000	200,000	200,000
A/R Trade Ending	4,835,149	4,898,159	4,966,369	5,005,029	4,861,368	4,891,507	4,926,846	4,957,635	4,993,974	4,786,209	4,821,548	4,852,337	4,887,676	4,660,911	4,716,250	4,747,039	4,782,378
Less: Ineligible A/R	(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)
A/R - Ending - Eligible	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
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
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
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
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
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)
Ending Line of Credit Balance	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

Margin deficit	(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)
Diesel Fuel																	
Note: Above BBR Analysis does not discount eligible AR and Inventory by 15% and 50%, respectively																	

Certificate of Notice Page 11 of 12  
United States Bankruptcy Court  
District of MaineIn re:  
Montreal Maine & Atlantic Railway Ltd.  
DebtorCase No. 13-10670-lhk  
Chapter 11**CERTIFICATE OF NOTICE**

District/off: 0100-1

User: kford  
Form ID: pdf900Page 1 of 2  
Total Noticed: 34

Date Rcvd: Sep 16, 2013

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Sep 18, 2013.

db +Montreal Maine & Atlantic Railway Ltd., 15 Iron Road, Hermon, ME 04401-1136  
 aty +Alan S. Gilbert, 233 South Wacker Drive, Suite 7800, Chicago, IL 60606-6459  
 aty Bernstein, Shur, Sawyer & Nelson, 100 Middle Street 6th Floor, PO Box 9729,  
 Portland, ME 04104-5029  
 aty +Craig D. Brown, Meyers & Flowers, LLC, 3 North Second Street, Suite 300,  
 St. Charles, IL 60174-1870  
 aty +Deborah L. Thorne, Esq., Barnes & Thornburg LLP, 1 North Wacker Drive, Suite 4400,  
 Chicago, IL 60606-2841  
 aty +Debra A. Dandeneau, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119  
 aty +Eric M. Hocky, Clark Hill Thorp Reed, 2005 Market Street, Suite 1000,  
 Philadelphia, PA 19103-7031  
 aty +Luc A. Despina, Paul Hastings, LLP, 75 East 55th Street, New York, NY 10022-3404  
 aty +Marcia L. Goldstein, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119  
 aty +Michael R. Enright, Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103-3597  
 aty +Michael S. Wolly, Esq., Zwerdling, Paul, Kahn & Wolly, PC, 1025 Connecticut Ave., N.W.,  
 Washington, DC 20036-5405  
 aty +Peter J. Flowers, Meyers & Flowers, LLC, 3 North Second Street, Suite 300,  
 St. Charles, IL 60174-1870  
 aty +Stefanie Wowchuck McDonald, 233 South Wacker Drive, Suite 7800, Chicago, IL 60606-6459  
 aty +Stephen Edward Goldman, Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103-3597  
 aty +Steven J. Boyajian, Robinson & Cole LLP, One Financial Plaza, Suite 1430,  
 Providence, RI 02903-2485  
 aty +Victoria Vron, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153-0119  
 aty +Virginia Strasser, Surface Transportation Board, 395 E Street, S.W.,  
 Washington, DC 20423-0012  
 aty +Wystan M. Ackerman, Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103-3597  
 tr +Robert J. Keach, Bernstein Shur Sawyer & Nelson, 100 Middle Street, P.O. Box 9729,  
 Portland, ME 04104-5029  
 smg +State of Maine, Bureau of Revenue Services, Compliance Division Bankruptcy Unit,  
 P.O. Box 1060, Augusta, ME 04332-1060  
 cr +Eastern Maine Railway Company, c/o Alan Lepene, 3900 Key Center, 127 Public Square,  
 Cleveland, OH 44114-1217  
 cr +Estates of Marie Alliance, et al, c/o Murtha Cullina LLP, 99 High Street,  
 Boston, ME 02110-2320  
 cr +Estates of Stephanie Bolduc, c/o Meyers & Flowers, LLC, 3 North Second Street, Suite 300,  
 St. Charles, IL 60174-1870  
 cr +First Union Rail, c/o Curtis Kimball, Esq., P.O. Box 1401, Bangor, ME 04402-1401  
 intp +Irving Paper Limited, c/o Pierce Atwood LLP, Attn: Keith J. Cunningham,  
 254 Commercial Street, Portland, ME 04101-4664  
 intp +Irving Pulp & Paper, Limited, c/o Pierce Atwood LLP, Attn: Keith J. Cunningham,  
 254 Commercial Street, Portland, ME 04101-4664  
 intp +J.D. Irving, Limited, c/o Pierce Atwood LLP, 254 Commercial Street, Portland, ME 04101-4664  
 cr +Maine Department of Transportation, c/o Victoria Morales, 16 State House Station,  
 Augusta, ME 04333-0016  
 cr +Maine Northern Railway Company, c/o Alan Lepene, 3900 Key Center, 127 Public Square,  
 Cleveland, OH 44114-1217  
 cr +New Brunswick Southern Railway Company, c/o Alan R. Lepene, 3900 Key Center,  
 127 Public Square, Cleveland, OH 44114-1217  
 intp +Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0012  
 cr +United States of America, c/o Department of Justice, Civil Divisio, 1100 L Street, N.W.,  
 Room 10052, Washington, DC 20005-4035

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

aty E-mail/Text: mhenderson@verrilldana.com Sep 16 2013 20:23:44 Verrill & Dana, LLP,  
 One Portland Square, P.O. Box 586, Portland, ME 04112-0586  
 cr E-mail/Text: bankruptcy@bangor.com Sep 16 2013 20:23:47 Bangor Savings Bank, P.O.Box 930,  
 Bangor, ME 04402-0930

TOTAL: 2

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

District/off: 0100-1

User: kford  
Form ID: pdf900

Page 2 of 2  
Total Noticed: 34

Date Rcvd: Sep 16, 2013

\*\*\*\*\* BYPASSED RECIPIENTS (continued) \*\*\*\*\*

**I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: Sep 18, 2013

Signature: /s/Joseph Speetjens

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### CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on September 16, 2013 at the address(es) listed below:  
NONE.

TOTAL: 0