

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**ORDER APPROVING COMPROMISE AND SETTLEMENT AGREEMENT  
WITH IRVING PAPER LIMITED, IRVING PULP & PAPER, LIMITED,  
AND J. D. IRVING, LIMITED**

This matter came before this Court on the Chapter 11 Trustee's Motion for Order Approving Compromise and Settlement with Irving Paper Limited, Irving Pulp & Paper, Limited, and J.D. Irving, Limited [D.E. 307] (the "Motion").<sup>1</sup> This Court held a hearing on the Motion on December 11, 2013 (the "Hearing") and, during the Hearing, the Court admitted the Trustee's Exhibit 1 (the "Exhibit") in evidence without objection. At the Hearing, the sole party objecting to the Motion, Wheeling & Lake Erie Railway, Co. ("Wheeling"), withdrew its objection to the Motion and consented to the entry of this Order, based on the modification to the settlement described on the record during the Hearing and in this Order. Based on the foregoing and based on the Court's independent review of the allegations in the Motion, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. Service of the Motion was proper, and all parties in interest were given adequate notice and opportunity for hearing with respect to the Motion and the relief sought thereby;

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<sup>1</sup> Capitalized terms used, but not defined in this Order, have the meanings ascribed to such terms in the Motion.

2. The Motion is granted upon the terms and conditions set forth herein. Pursuant to Fed. R. Bankr. P. 9019, the terms of the compromise and settlement, as modified on the record during the Hearing and as set forth herein, are approved;

3. The Irving Companies shall pay a total of \$581,000 to MMA's estate on the following terms: (a) \$150,000 within 2 business days after the entry of this Order on the docket; and (b) \$431,000 to MMA's estate within 2 business days after this Order becomes final and non-appealable;

4. The Trustee shall be entitled to use the \$150,000 paid by the Irving Companies without further order of the Court. The Trustee's use of said \$150,000 shall be deemed to be a use of cash collateral pursuant to the Sixth Interim Order Authorizing Debtor to use Cash Collateral and Granting Adequate Protection [D.E. 376] (the "Sixth Interim Order"). For the avoidance of doubt, for the purpose of determining the amount of the "Replacement Lien" as defined in paragraph 9 of the Sixth Interim Order, such amount shall be limited to the amount of any diminution in cash that constitutes Wheeling's collateral as of the Closing, as defined in the Sixth Interim Order, without considering the use of said \$150,000, plus the sum of \$150,000. The Trustee and Wheeling reserve all of their respective rights and arguments regarding such use of cash collateral and the adequate protection granted by prior Orders of the Court;

5. The Irving Companies' payment of \$581,000 pursuant to this Order will be in full and final satisfaction of any and all claims and causes of action arising out of or related to the invoices that relate to the highlighted amounts on the Exhibit; and the Irving Companies shall be released from any and all liability arising out of or related to such invoices, including without limitation any liability to Wheeling;

6. The Trustee retains the right to bring any and all causes of action against the Irving Companies with respect to amounts owed by the Irving Companies to MMA that are not covered by the invoices that relate to the highlighted amounts on the Exhibit. The Irving Companies retain their rights to raise any and all defenses, setoffs or claims in recoupment with respect to amounts owed by the Irving Companies to MMA that are not covered by the invoices that relate to the highlighted amounts on the Exhibit;

7. The Trustee shall pay, to Wheeling, the first \$19,000 of the estate's net share of the amount paid by KM Strategic Investments for tax credits available under 26 U.S.C. § 45G for November and December 2013 (the "Payment"). "Net share" refers to the 47.5% share of the amounts paid by KM Strategic Investments to the estate after payment of the agreed-upon commission owed to the broker, Mickelson & Co. Said Payment shall be without prejudice to any party's rights to contest the nature, extent, validity, perfection or priority of Wheeling's asserted security interest in or any other right to such Payment or in or to any other portion of tax credits created by 26 U.S.C. § 45G or any contract rights related to the assignment of such credits (such credits, and contract rights related thereto, being referred to herein after as the "Section 45G Credits"). For the avoidance of doubt, the Trustee is not, by agreeing to make the Payment, waiving his right to seek an order of the Court determining, as to any portion of the Section 45G Credits other than the Payment, that Wheeling does not have an interest in any of the Section 45G Credits or that, if Wheeling had such an interest, that the interest is limited by operation of section 552 of the Bankruptcy Code. Wheeling, by accepting the Payment, is not waiving its right to seek an order of the Court determining

that Wheeling has a valid, perfected and enforceable security interest in the Section 45G Credits or any proceeds thereof, nor any other relief in respect thereof.

Dated: December 13, 2013



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The Honorable Louis H. Kornreich  
United States Bankruptcy Judge

District/Off: 0100-1

User: kford

Date Created: 12/13/2013

Case: 13-10670

Form ID: pdf900

Total: 101

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TOTAL: 1

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