

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**DEBTOR’S MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 361, 362, AND 363: (I)
AUTHORIZING DEBTOR TO USE OF CASH COLLATERAL
ON INTERIM BASIS; AND (ii) SCHEDULING A HEARING TO CONSIDER THE
USE OF CASH COLLATERAL ON A FINAL BASIS**

Montreal, Maine & Atlantic Railway Ltd. (“MMA” or “Debtor”), debtor-in-possession, through its undersigned proposed counsel, and pursuant to 11 U.S.C. §§ 363(c)(2)(B), as supplemented by Bankruptcy Rules 4001(b) & (c) and D. Me. LBR 4001-2 & 4001-3, hereby requests an order: (1) authorizing the Debtor to the use of cash collateral on an interim basis through August ____, 2013 and (2) setting a hearing to consider the use of cash collateral on a final basis (the “Motion”). The facts and circumstances supporting this Motion are set forth in the Affidavit of M. Donald Gardner, Jr. in Support of First Day Pleadings. In further support of this Motion, the Debtor states as follows:

I. Jurisdiction and Venue

1. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 & 1334 and D. Me. Local R. 83.6(a), pursuant to which all cases filed in Maine under the Bankruptcy Code are referred to bankruptcy judges of this district. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding over which the Court has the jurisdiction and Constitutional authority to enter a final order.

II. Procedural Background

2. On August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Petition Date**”).

3. The Debtor remains in possession and control of its property and continues to operate as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

III. Factual Background

4. Reference is made to the affidavit of M. Donald Gardner, Jr. for the factual background of MMA and the events leading to this bankruptcy case. Said facts are incorporated herein as if set forth in full.

IV. Preliminary Statement

5. The Debtor intends to preserve its business as a going concern through the use of Cash Collateral (as defined herein). In the near term, the use of Cash Collateral allows the Debtor to meet its payroll obligations to employees whose services benefitted (and created additional collateral for) the lender with a security interest in the accounts receivable and inventory, Wheeling & Lake Erie Railway Company (“**Wheeling**”). In the long term, the use of Cash Collateral will provide the Debtor liquidity to fund its operations during the course of this chapter 11 case.

6. The reason to approve the Debtor’s request for authority to use Cash Collateral is straightforward: the use of Cash Collateral will regenerate new cash collateral while simultaneously enhancing the Debtor’s ability to minimize disruption to its business and instill confidence in their various creditor constituencies, including customers, vendors, employees, and service providers, that the Debtor will continue to serve as a railroad carrier.

V. Prepetition Secured Debt, Pledged Assets and Cash Collateral

Secured Indebtedness¹

(a) The Federal Rail Administration

7. MMA is indebted to the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Rail Administration (“**FRA**”), under a \$34,000,000 Loan and Security Agreement dated March 24, 2005, as such agreement may have been amended, modified, renewed or extended from time to time (the “**FRA Credit Agreement**” or “**FRA Credit Facility**”). The outstanding balance under the FRA Credit Facility is approximately \$27.5 million.

8. To secure the obligations under the FRA Credit Agreement, the FRA holds a first priority lien against substantially all of MMA’s U.S. and Canadian real estate.

(b) Wheeling & Lake Erie Railway Company

9. MMA also has a \$6 million dollar line of credit with Wheeling & Lake Erie Railway Company (“**Wheeling**”) pursuant to a certain Line of Credit and Security Agreement dated as of June 15, 2009, as such agreement may have been amended, modified, renewed or extended from time to time (the “**Wheeling LOC**”), which, as of the Petition Date, was fully drawn. To secure the Wheeling LOC, Wheeling asserts an interest in the Debtor’s accounts receivable and inventory, along with the proceeds thereof, including insurance proceeds.

Wheeling has filed a UCC-1 Financing Statement in Delaware to perfect its security interest.

VI. Relief Requested

10. The Debtor seeks authority, pursuant to 11 U.S.C. § 363(c)(2)(B), Fed. R. Bankr.

¹ Nothing contained herein is intended or should be construed as an admission as to the existence of any claim or as an admission as to the validity, priority or extent of any lien purportedly securing such claim against the Debtor, nor is it a waiver of the Debtor’s rights to dispute any claim or lien.

P. 4001(b) and D. Me. LBR 4001-2, to use the income generated from the operation of the Debtor (*i.e.*, Wheeling's collateral) substantially in the manner and amounts reflected on the budget attached hereto as Exhibit A (the "**Budget**"). Pursuant to Local Rule 4001-2 and Fed. R. Bankr. P. 4001(b)(2), the Debtor seeks: (a) interim authority through _____, to use Cash Collateral in accordance with the Budget; and (b) an order setting a final hearing before the expiration of the interim period.

VII. Statutory Predicate for Relief Requested

The Cash Collateral.

11. Section 363(a) of the Bankruptcy Code provides the definition of cash collateral.

See 11 U.S.C. § 363(a). Cash collateral is defined by section 363 to mean:

cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property . . . subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

Cash collateral in this case consists of U.S.-based accounts receivable and inventory (the "**Cash Collateral**").

12. A debtor is authorized to use cash collateral if the party with an interest in the cash collateral consents to its use or the Court, after notice and hearing, authorizes its use. *See* 11 U.S.C. § 363(c)(2). A court can, however, authorize use of cash collateral even over the objection of the affected creditor where the debtor demonstrates that it can adequately protect the interests of the party holding an interest in the cash collateral. *See* 11 U.S.C. § 363(e).

VIII. Cause Exists to Grant the Relief Requested

13. MMA and MMA Canada requires cash to operate in an orderly fashion in order to preserve going concern value, serve its customer, and maximize the assets available to creditors. Without the use of Cash collateral, the Debtor would be unable to operate and unable to preserve the significant going concern value of its operations. MMA's remaining customers need to be assured that the Debtor will continue to operate. Additionally, the Bankruptcy Code itself recognizes the vital service rail provides in this country and embodies a policy of continuing the operation of the System.² Continuing to operate will allow the Debtor to generate new receivables in which Wheeling will receive a replacement lien (as described below), thereby preserving the value of Wheeling's collateral.

IX. Proposed Adequate Protection

14. As adequate protection, notwithstanding section 552(a) of the Bankruptcy Code, the Debtor proposes to grant Wheeling a replacement lien (the "**Replacement Lien**") in Cash Collateral arising post-petition to the same extent and in the same priority as such liens existed on the Petition Date, limited in amount to the amount of Cash Collateral that existed on the Petition Date and actually utilized by the Debtor on or after the Petition Date. The Replacement Lien will be granted without prejudice to the rights of the Debtor, creditors, trustee or other party-in-interest to challenge the validity, priority, enforceability, or perfection of Wheeling's liens, or the amount of the Wheeling's claim. Providing adequate protection by virtue of the Debtor's use of cash collateral in order to generate new accounts was recognized in both *In re T.H.B. Corp.*, 85 B.R. 192 (Bankr. D. Mass. 1988) (*overruled on other grounds*) and *In re Dynaco Corp.*, 162 B.R. 389 (Bankr. D.N.H. 1993).

15. In its request for approval to use Cash Collateral and grant Wheeling a

² Chapter 11 is the only vehicle for reorganization or liquidation of a railroad, which, pursuant to 11 U.S.C. § 109(b)(1) cannot avail itself of Chapter 7 relief.

replacement lien, the Debtor is not proposing to provide Wheeling a security interest in any of the Debtor's inventory and accounts receivable which are not already subject to perfected liens in favor of Wheeling. *The Debtor also proposes to offer Wheeling the additional adequate protections described more fully in the attached proposed form of order.*

X. Certification Pursuant to D. Me. LBR 9013-1(b)

16. *Debtor's undersigned counsel represents that it consulted with Wheeling prior to filing the motion and the parties agreed to the form of order and Budget presented.*

XI. Notice

17. The Debtor, through counsel, will cause this Motion, as well as the proposed Order, to be served by first class U.S. mail, postage prepaid and, as applicable, by electronic mail on (i) United States Trustee; (ii) the 20 largest unsecured creditors in this case; (iii) the Federal Rail Administration; (iv) Wheeling & Lake Erie Railway Company; (v) the United States Secretary of Transportation; (vi) the Surface Transportation Board; and (vii) all parties requesting notice in this case. The Debtor respectfully requests that the Court find such notice to constitute fair, adequate, and sufficient notice of all matters set forth in this Motion.

WHEREFORE, the Debtor respectfully requests that this Court enter an order:

A. Authorizing the Debtor's limited use of Cash Collateral in accordance with the Budget to avoid immediate and irreparable harm to the Debtor under 11 U.S.C. § 363(c)(2)(B) and Fed. R. Bankr. P. 4001(b)(2).

B. Finding that the payments and replacement liens proposed by the Debtor in this Motion constitute adequate protection;

C. Scheduling, as soon as practicable, a hearing to consider approval of the Motion on a final basis; and

D. Granting such other and further relief as the Court may deem proper.

Dated: August 7, 2013

Respectfully submitted,

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

/s/ Roger A. Clement, Jr.

Roger A. Clement, Jr., Esq.

Nathaniel R. Hull, Esq.

VERRILL DANA LLP

One Portland Square

P.O. Box 586

Portland, ME 04112-0586

207-774-4000 - Phone

207-774-7499 - Fax

rclement@verrilldana.com

nhull@verrilldana.com

bankr@verrilldana.com

| Current Status | W/E 8/9/2013 | W/E 8/16/2013 | W/E 8/23/2013 |
|---|------------------|------------------|------------------|
| Receipts: | | | |
| Transportation Revenue | | | |
| Freight Revenue | \$ 192,000 | \$ 215,000 | \$ 225,000 |
| ISS Receipt | | | |
| Zone Switching | | | 45,000 |
| Sub Total - Transportation Revenue | 192,000 | 215,000 | 270,000 |
| Other Operating Revenue | | | |
| Switching & Miscellaneous | 20,000 | 20,000 | 20,000 |
| Contract Shop & Car Repairs | | | |
| Car Hire Revenue | - | | 120,000 |
| Sub Total - Other Operating Revenue | 20,000 | 20,000 | 140,000 |
| Non-Operating Revenue | | | |
| Scrap Sales | | | |
| Private & Gov't Re-imbursements | | | |
| Traveler B/I | | | |
| Sub Total - Non-Operating Revenue | - | - | - |
| Total Cash Receipts | 212,000 | 235,000 | 410,000 |
| Disbursements: | | | |
| Transportation Revenue Offsets | | | |
| NBSR, MNR, SLQ, CN | | | |
| Sub Total - Transportation Revenue Offsets | - | - | - |
| Payroll & Related | | | |
| Salaries, Wages & Commissions US | | (180,000) | |
| Salaries, Wages & Commissions CDN | (133,000) | | (133,000) |
| Employee Benefits & Insurance | (25,000) | (25,000) | (25,000) |
| Sub Total - Payroll & Related | (158,000) | (205,000) | (158,000) |
| Materials & Supplies | | | |
| Diesel Fuel | | | |
| Material Costs US | (25,000) | (25,000) | (50,000) |
| Material Costs CDN | (24,125) | (24,125) | (48,250) |
| Sub Total - Material & Supplies | (49,125) | (49,125) | (98,250) |
| Freight Car & Locomotive Expense | | | |
| Leases - Car | | | |
| Leases - Locomotive | | | |
| Car Hire | | | |
| Car Repair Debits | | (20,000) | |
| Sub Total - Freight Car & Locomotive | - | (20,000) | - |
| Rent, Heat & Utilities | | | |
| Rent | - | | |
| Electricity | | | |
| Heat | | | |
| Phone, Internet, Radio | (5,000) | (5,000) | (5,000) |
| Sub Total - Rent, Heat & Utilities | (5,000) | (5,000) | (5,000) |
| Other Indirect/Operating Costs | | | |
| Business Insurance Payments | | | |
| Credit card | | | |
| Fees and other (detail see below) | - | - | - |
| Sub Total - Other Indirect/Operating Costs | - | - | - |
| Total Disbursements | (212,125) | (279,125) | (261,250) |
| Net Cash Flow (Use) - Operations | (125) | (44,125) | 148,750 |

SUMMARY

| | | | |
|----------------------|-------------------|-------------------|-------------------|
| Cash Beginning | 300,000 | 299,875 | 255,750 |
| Net Weekly Cash Flow | (125) | (44,125) | 148,750 |
| Cash Ending | \$ 299,875 | \$ 255,750 | \$ 404,500 |

Collateral Analysis

Accounts Receivable

| | | | |
|---|--------------|--------------|--------------|
| Accounts Receivable A/R Trade Beg Balance | \$ 7,163,854 | \$ 7,221,854 | \$ 7,256,854 |
| Add: Net Sales | 250,000 | 250,000 | 250,000 |
| Less: Collections | 192,000 | 215,000 | 225,000 |
| | - | - | - |
| A/R Trade Ending | 7,221,854 | 7,256,854 | 7,281,854 |
| Less: Ineligible A/R | (2,977,434) | (2,977,434) | (2,977,434) |
| A/R - Ending - Eligible | 4,244,420 | 4,279,420 | 4,304,420 |

| | | | |
|------------------|-----|-----|-----|
| A/R Advance Rate | 80% | 80% | 80% |
|------------------|-----|-----|-----|

| | | | |
|-----------------------------|------------------|------------------|------------------|
| A/R Collateral Value | 3,395,536 | 3,423,536 | 3,443,536 |
|-----------------------------|------------------|------------------|------------------|

| | | | |
|-----------------|-----------|-----------|-----------|
| Inventory value | 1,181,097 | 1,181,097 | 1,181,097 |
|-----------------|-----------|-----------|-----------|

| | | | |
|-------------------------|------------------|------------------|------------------|
| Gross Collateral | 5,425,517 | 5,460,517 | 5,485,517 |
|-------------------------|------------------|------------------|------------------|

| | | | |
|--------------------------------------|------------------|------------------|------------------|
| Ending Line of Credit Balance | 6,000,000 | 6,000,000 | 6,000,000 |
|--------------------------------------|------------------|------------------|------------------|

| | | | |
|--|------------------|------------------|------------------|
| | (574,483) | (539,483) | (514,483) |
|--|------------------|------------------|------------------|

| | | | |
|-------------|--------|--------|--------|
| Diesel Fuel | 301523 | 286523 | 271523 |
|-------------|--------|--------|--------|