

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**DEBTOR’S MOTION FOR ORDER AUTHORIZING CONTINUED
BUSINESS OPERATIONS PENDING APPOINTMENT OF A
CHAPTER 11 RAILROAD TRUSTEE**

Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”), debtor-in-possession in the above captioned case, through its undersigned proposed counsel, hereby moves this Court (the “**Motion**”) for an *Order Authorizing Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee* and, in support hereof, 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. The Debtor is a “railroad” as defined in section 101(44) of the Bankruptcy Code.

5. Reference is made to the affidavit of M. Donald Gardner, Jr. (the “**Gardner Affidavit**”) 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. Relief Requested

A. The Debtor Requests Permission to Operate in the Ordinary Course of Business.

6. The Debtor requests that the Court authorize the Debtor to operate its business effective from and after the Petition Date and continuing until the appointment and qualification of a Chapter 11 Trustee pursuant to §§ 1163 and 322 of the Bankruptcy Code. The Debtor requests that it be authorized to carry on normal business operations, including, without implied limitation, continuing possession of its assets, collection of its accounts receivable, and expending funds in accordance with the budget attached to the separately filed motion to use Cash Collateral (as that term is defined by the Bankruptcy Code). The Debtor further requests standing and authority to be heard and to seek appropriate relief from this Court in furtherance of such authority.

B. Sections 105(a) and 1108, and 1170 Provide the Applicable Authority

7. Section 1166 provides: “Except with respect to abandonment under section 1170 of this title, or merger modification of the financial structure of the debtor, or issuance or sale of securities under a plan, the trustee and the debtor are subject to the provisions of subtitle IV of title 49 that are applicable to railroads.” 11 U.S.C. § 1166. Pursuant to 49 U.S.C. § 10903, a railroad cannot abandon its railroad lines or discontinue the operation of rail transportation over

any part of its railroad lines without authorization from the Surface Transportation Board (the “**Board**”). 49 U.S.C. § 10903. Pursuant to 11 U.S.C. § 1170:

The court, after notice and a hearing, may authorize the abandonment of all or a portion of a railroad line if such abandonment is –

- (1)(A) in the best interest of the estate; or
- (B) essential to the formulation of a plan; and
- (2) consistent with the public interest.

11 U.S.C. § 1170. Prior to the Petition Date, the Debtor had not sought and the Board had not authorized the Debtor to abandon its railroad line or discontinue the operation of rail transportation. This Court has not authorized the abandonment of all or a portion of the railroad line. Until authorized by the Court, the Debtor must continue its operations. Therefore, the Debtor must keep the railroad in operation.

8. Pursuant to 11 U.S.C. § 1107(a), a chapter 11 debtor automatically becomes a debtor-in-possession upon entry of the order for relief. 11 U.S.C. § 1107. Unless the court otherwise orders, 11 U.S.C. § 1108 authorizes a trustee, and thus a chapter 11 debtor in possession, to operate its business in the ordinary course. 11 U.S.C. § 1108. However, 11 U.S.C. § 1161 makes § 1107 inapplicable in chapter 11 railroad cases. 11 U.S.C. § 1161.

9. As soon as practicable after the order for relief, the Secretary of Transportation (the “**Secretary**”) is required to submit a list of five disinterested persons who are qualified and willing to serve as trustee in this case. 11 U.S.C. § 1163. The United States Trustee (the “**UST**”) then appoints one of the five persons submitted by the Secretary to serve as Chapter 11 Trustee. Several weeks may pass before a trustee is appointed in this case.

10. Although the Debtor may not have the authority provided a debtor-in-possession under § 1107, as described above, both bankruptcy and non-bankruptcy law require it to operate.

In addition, the Debtor must operate in order to serve the public interest and to preserve the going concern value of the MMA estate.

11. Section 1108 appears to contemplate that the Court may order that a person other than the trustee operate the Debtor's business. 11 U.S.C. § 1108 ("Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business."). Further, section 105(a) endows the court with the requisite equitable powers to issue any order "necessary or appropriate to carry out the provisions" of the Bankruptcy Code. As set forth above, both the Code and other Federal law require that MMA remain in operation unless a specific process is followed to cause the cessation of operations. Thus, the authority for this Court to enter an order providing that the Debtor operate its business pending the appointment of a Chapter 11 trustee resides squarely in section 105.

12. The continued operation of the MMA System is imperative to preserve the value of the Debtor's estate and the loss of the railroad would have a negative impact on the public interest, the businesses that the Debtor serves, and the counties in which it operates.

VI. Notice

13. 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 the entry of an Order, substantially in the form attached hereto, authorizing the Debtor to operate its business pending appointment of a Chapter 11 Railroad Trustee, and granting such other relief as is appropriate.

Dated: August 7, 2013

Respectfully submitted,

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

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