

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:	)	
	)	
Montreal Maine & Atlantic Railway Ltd.,	)	Case No. 13-10670
	)	
Debtor.	)	
	)	

**MOTION OF THE WHEELING & LAKE ERIE RAILWAY COMPANY FOR ORDER AUTHORIZING RULE 2004 EXAMINATION OF THE TRUSTEE AND FOR ORDER REQUIRING THE TRUSTEE TO PRODUCE CERTAIN DOCUMENTS AND TANGIBLE THINGS IN ACCORDANCE WITH FED. R. BANKR. P. RULE 2004, WITH INCORPORATED MEMORANDUM OF LAW**

**INTRODUCTION**

1. Pursuant to Rule 2004(a) of the Federal Rules of Bankruptcy Procedure and D. Me. LBR 2004-1(a), Wheeling and Lake Eire Railway Company (“Wheeling”) hereby requests that the Court enter an Order (1) authorizing it to take a Rule 2004 Examination of the Trustee, concerning the subject matters identified on Exhibit A attached hereto, on **October 10, 2013 at 10:00 a.m.**, or on such other date and at such other place as the parties may determine by agreement, at the offices of Marcus, Clegg & Mistretta, P.A. (“MCM”), One Canal Plaza – Suite 600, Portland, Maine, or other mutually agreeable location; and (2) requiring the Trustee to produce the documents and tangible things responsive to the request for production of documents and tangible things attached hereto as Exhibit B at the offices of MCM at the address identified above no later than 48 hours before the date and time of the examination.

2. In support of this Motion, Wheeling states as follows:

**JURISDICTIONAL STATEMENT**

3. On August 7, 2013 (the “Petition Date”), the Montreal, Maine & Atlantic Railway, Ltd. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of 11 U.S.C.

§ 101 *et seq.* (the “Bankruptcy Code”). On August 21, 2013, the United States Trustee appointed Robert J. Keach, Esq. (the “Trustee”) to serve as Chapter 11 Trustee in the Debtor’s Chapter 11 case (the “Case”) pursuant to 11 U.S.C. § 1163.

4. The Debtor is a Delaware corporation that has, since January of 2003, operated in an integrated, shortline freight railroad system with its wholly owned Canadian subsidiary, Montreal Maine & Atlantic Co. (“MMA Canada”). On August 7, 2013, MMA Canada filed for protection from creditors in a concurrent proceeding under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended.

5. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334 as well as the standing order of the United States District Court for the District of Maine (the “District Court”) dated August 1, 1984, pursuant to which all cases filed in Maine under the Bankruptcy Code are automatically referred by the District Court to this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested by the Motion is based upon, *inter alia*, 11 U.S.C. §§ 361, 363, 364, 1104(a)(1) and (2), and 1112(b). This is a core matter, pursuant to 28 U.S.C. § 157(b)(2)(A), (D) and (M).

#### **BACKGROUND INFORMATION AND LEGAL AUTHORITY**

5. On June of 2009, Wheeling provided the Debtor with a \$6,000,000 secured line of credit (the “LOC”) pursuant to the terms of a certain Line of Credit and Security Agreement dated June 9, 2009, as such agreement may have been amended, modified, renewed, or extended thereafter. In order to secure the Debtor’s obligations under the LOC, the Debtor granted Wheeling a first priority security interest in and to the Debtor’s accounts receivable, inventory, and the proceeds thereof, including insurance proceeds (collectively, the “Collateral”). Wheeling

timely and properly perfected its security interest in the Collateral by filing a UCC-1 Financing Statement with the Secretary of State of Delaware.

6. As of the Petition Date, the Debtor had fully drawn down the LOC. As a result, as of the Petition Date, the Debtor was indebted to Wheeling in the principal amount of \$6,000,000, plus interest, fees, costs of collection and other applicable charges.

7. Since the Petition Date, the Court has entered multiple orders permitting the Debtor to use Wheeling's cash collateral under specific terms and conditions. Currently, that use of cash collateral is governed by the Fourth Interim Order Authorizing Debtor to Use Cash Collateral and Granting Adequate Protection (the "Interim Cash Collateral Order") [D.E. # 255].

8. Among other things, the Interim Cash Collateral Order expressly contemplates the Debtor taking a Rule 2004 examination of the Debtor as to issues related to its collateral and its secured position. Interim Cash Collateral Order, ¶ 6. 11.

9. For the reasons set forth herein, Wheeling seeks Court authority to examine the Trustee as to the following issues:

(a) The existence of and scope of and director and officer liability insurance policies pursuant to which the Debtor, and/ or any of its directors or officers are insured, and covering any such insured entities for any periods of time between June 9, 2013 and the date of this Motion ("D&O Policies");

(b) Information held by the Trustee and related to the obligations of the Debtor or its affiliates—Montreal Maine & Atlantic Corporation ("MMA Corp."), MMA Canada, and LMS Acquisition Corporation ("LMS") and together with MMA Corp. and MMA Canada, the "Affiliates")—to Wheeling pursuant to that certain Line of Credit Note and Security Agreement

dated June 15, 2009, a copy of which is attached hereto as **Exhibit C**. Without in any way intending to limit the generality of the foregoing, this includes the following:

(i) The amount owed by the Debtor to any of its Affiliates as of the Petition Date and also as of the date hereof;

(ii) Accounts receivable of the Debtor in which some or all of its Affiliates are the account debtor as of the Petition Date and also as of the date hereof;

(iii) All accounts receivable held by any of the Debtor's Affiliates from any entity;

(iv) Financial statements issued by or on behalf of the Debtor's Affiliates, including all financial statements (which shall include balance sheets, income statements, and cash flow statements) issued in or with respect to calendars year 2012 and 2013;

(c) Cash Collateral of Wheeling as of the Petition Date, and the use by the Debtor or the Trustee of such Cash Collateral and the balances of separate items of Cash Collateral, since the Petition Date through the date of this Motion, and proposed use by the Trustee of Cash Collateral thereafter; and

(d) The replacement lien as ordered by the Court in the orders approving use of Cash Collateral.

10. In addition to examining the Debtor orally, Wheeling seeks production of any records relating to the specific areas enumerated above and those matters described on **Exhibit B**. In order to give it time to properly examine the requested documents and ensure that the examination is conducted in an efficient manner, Wheeling is requesting that the documents listed on **Exhibit B** be produced prior to that examination.

## SUMMARY OF GROUNDS FOR GRANTING RULE 2004 MOTION

11. Rule 2004 of the Federal Rules of Bankruptcy Procedure provides, in relevant part, that:

- (a) **Examination on Motion.** On motion of any party in interest, the court may order the examination of any entity.
- (b) **Scope of Examination.** The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.

Fed. R. Bankr. P. 2004(a)-(b) ("Rule 2004").

12. As a result of its claims against the Debtor, Wheeling is a party in interest within the meaning of Rule 2004(a), and may obtain examination pursuant thereto of a creditor. *See* 11 U.S.C. § 1109(b).

13. As a secured creditor and party in interest, Wheeling is entitled to examine the Trustee concerning the "property or ... the liabilities and financial condition of the debtor, or ... any matter which may affect the administration of the debtor's estate". The matters as to which Wheeling seeks examination relate to matters that are largely within the exclusive control of the Trustee and relate to the assets, liabilities and financial condition of the estate, and the conduct of the Debtor and the Trustee in the administration of this case, and the management of the estate's assets. Without limiting the generality of the foregoing, the Trustee is in possession of accounts receivable, inventory and proceeds thereof that constitute cash collateral of Wheeling, and is currently using the same to operate the business of the Debtor. Further, the Trustee proposes to use such assets beyond the expiration of the Interim Cash Collateral Order. Wheeling is entitled to examine the Trustee as to whether adequate protection has been provided regarding the use of

Cash Collateral to date, and as to whether the Trustee is capable of providing adequate protection going forward.

14. In addition, upon information and belief, the Debtor and/or officers and directors of the Debtor are either the owners of or are insureds under one or more director and officer liability insurance policies issued to or for the benefit of the Debtor, and its directors and officers. Wheeling may have claims that are covered and insured under such policies, and the existence of such insurance coverage may affect, indeed may mitigate, the liability of the estate for payment of Wheeling's claims. Wheeling is entitled to examine the Trustee regarding its ownership of such policies, which are or may be assets of the estate, or in the alternative, regarding the availability of coverage under such policies which may benefit the Estate and Wheeling.

15. Lastly, LMS Acquisition Corporation is an affiliate of the Debtor, and prior to and after the Petition Date, the Debtor and the Trustee have engaged in business transactions with LMS. Wheeling is entitled to examine the Debtor concerning its transactions with LMS and the effect of such transactions upon assets of the estate, and Wheeling's collateral.

16. In addition to Wheeling's right, pursuant to Rule 2004(a), to examine the Trustee concerning the matters set forth above, it is also entitled to production of documents that are in the possession or control of the Trustee and its agents and that relate to such matters.

#### **D Me. LBR RULE 2004-1 CERTIFICATION**

17. Pursuant to the requirements of D. Me. LBR 2004-1(a), counsel for Wheeling conferred with the Trustee's counsel about the relief requested herein. Trustee's counsel has declined to consent to this Motion or to agree to a date for an examination.

## CONCLUSION

Wheeling respectfully requests that this Court enter an order:

- A. Granting this Motion;
- B. Requiring the Debtor to submit to examination concerning the subject matters identified on **Exhibit A** hereto on October 10, 2013 at 10:00 a.m., or on such other date as the parties may determine by agreement, and to produce, no later than 72 hours before the examination, all of the documents and tangible things responsive to the request for production of documents and tangible things attached hereto as **Exhibit B** hereto; and
- C. Granting Wheeling such other and further relief as the Court deems just and proper.

Dated: September 23, 2013

/s/ George J. Marcus

George J. Marcus

David C. Johnson

Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway  
Company

MARCUS, CLEGG & MISTRETТА, P.A.

One Canal Plaza, Suite 600

Portland, ME 04101

207.828.8000

**EXHIBIT A**

Wheeling requests that the Debtor submit to examination concerning the subject matter identified below:

**Matters on Which Examination Requested**

(a) the existence of and scope of and director and officer liability policies pursuant to which the Debtor, and/ or any of its directors or officers are insured, and covering any such insured entities for any periods of time between June 9, 2013 and the date of this Motion (“D&O Policies”);

(b) Information held by the Trustee and related to the obligations of the Debtor or its affiliates—Montreal Maine & Atlantic Corporation (“MMA Corp.”), MMA Canada, and LMS Acquisition Corporation (“LMS” and together with MMA Corp. and MMA Canada, the “Affiliates”)—to Wheeling pursuant to that certain Line of Credit Note and Security Agreement dated June 15, 2009, a copy of which is attached to the Motion as **Exhibit C**. Without in any way intending to limit the generality of the foregoing, this includes the following:

(i) The amount owed by the Debtor to any of its Affiliates as of the Petition Date and also as of the date hereof;

(ii) Accounts receivable of the Debtor in which some or all of its Affiliates are the account debtor as of the Petition Date and also as of the date hereof;

(iii) All accounts receivable held by any of the Debtor’s Affiliates from any entity;

(iv) Financial statements issued by or on behalf of the Debtor’s Affiliates, including all financial statements (which shall include balance sheets, income statements, and cash flow statements) issued in or with respect to calendars year 2012 and 2013;

(c) Cash Collateral of Wheeling as of the Petition Date, and the use by the Debtor or the



Trustee of such Cash Collateral since the Petition Date through the date of this Motion, and proposed use by the Trustee of Cash Collateral thereafter; and

(d) The replacement lien as ordered by the Court in the orders approving use of Cash Collateral.

**EXHIBIT B**

Wheeling requests that the Debtor produce the following documents:

**Definitions and General Instructions**

A. “Debtor” shall mean Montreal Maine & Atlantic Railway Ltd, together with any affiliates (including MMA Canada), , together with their members, directors, officers, attorneys, agents, employees, and representatives.

B. “D&O Policies” shall mean any insurance policies relating to or purporting to cover or encompass the acts and omissions of the Debtor’s management.

C. “Bankruptcy Code” shall mean the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

D. “Document” or “documents” shall mean all objects, **tangible or intangible**, from which any information may be derived. By way of example, “document” or “documents” shall mean the original, or a copy when the original is not available, and each nonidentical copy, including those that are nonidentical by reason of notations or markings, of any books, pamphlets, periodicals, letters, reports, memoranda, handwritten notes, notations, messages, telegrams, cables, records, drafts, diaries, videotapes, studies, analyses, summaries, magazines, booklets, circulars, bulletins, instructions, minutes, photographs, purchase orders, bills, checks, tabulations, invoices, questionnaires, surveys, drawings, sketches, working papers, charts, graphs, indexes, tapes, correspondence, records of purchase or sale, contracts, agreements, leases, expense records, trip reports, statements, accounting records, income statements, releases, appraisals, valuations, estimates, opinions, financial statements, balance sheets, electronic or other transcriptions or taping of telephone or personal conversations or conferences, or any and all other written, printed, typed, punched, filmed or graphic matter or tangible thing, or

whatsoever description, however produced or reproduced (**including electronically stored or generated data, together with instructions and programs necessary to search or retrieve such data**), and shall include all attachments and enclosures to any requested item, which shall not be separated from the items to which they are attached or enclosed.

E. “Person” shall mean any live human being, individual, association, professional association, corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, company, limited liability company, sole proprietor, cooperative, business entity, or any public agency, department, or bureau, and is used to reflect both the singular and plural.

F. “Relating to” shall mean concerning, referring to, alluding to, responding to, in connection with, commenting on, in response to, with respect to, about, regarding, announcing, evidencing, embodying, explaining, discussing, showing, depicting, describing, studying, reflecting, analyzing or constituting.

G. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, the Debtor is required to produce all requested documents and tangible things in the possession, custody and control of the Debtor and its employees and agents.

H. This request for production of documents and tangible things is continuing in nature. The Debtor is requested and required to immediately produce to legal counsel for Wheeling any documents or tangible things that are requested below and that are discovered or located subsequent to its production of documents and tangible things in accordance with the Federal Rules of Civil Procedure, or on such other date and time as legal counsel for Wheeling and legal counsel for the Debtor may mutually agree upon in writing.

I. The documents and tangible things requested below are to be produced to legal counsel for Wheeling either as they are kept by the Debtor in the usual course of business or

shall be organized and labeled to correspond with the categories in this request for production, as required by Rule 34(b) of the Federal Rules Civil Procedure.

L. If the Debtor contend that any of Wheeling's requests for production of documents and/or tangible things seeks the identification or production of a document or a tangible thing that they believe is protected from discovery by any privilege, doctrine or immunity, please identify: (1) the date the document or tangible thing was created or transmitted; (2) the name of the author of the document or tangible thing; (3) the name of the person(s) to whom the document or tangible thing was addressed or sent; (4) the name of any person(s) to whom the document or tangible thing was disclosed, in whole or in part; (5) a brief description of the document's or tangible thing's subject matter; and (6) the nature of the claimed privilege or immunity, including, but not limited to, the attorney-client privilege or the attorney work product immunity.

#### **Requests for Documents and/or Tangible Things**

All Documents and tangible things related to the following matters:

(a) the existence of and scope of and director and officer liability policies pursuant to which the Debtor, and/ or any of its directors or officers are insured, and covering any such insured entities for any periods of time between June 9, 2013 and the date of this Motion ("D&O Policies");

(b) Information held by the Trustee and related to the obligations of the Debtor or its affiliates—Montreal Maine & Atlantic Corporation ("MMA Corp."), MMA Canada, and LMS Acquisition Corporation ("LMS" and together with MMA Corp. and MMA Canada, the "Affiliates")—to Wheeling pursuant to that certain Line of Credit Note and Security Agreement dated June 15, 2009, a copy of which is attached to the Motion as **Exhibit C**. Without in any

way intending to limit the generality of the foregoing, this includes the following:

(i) The amount owed by the Debtor to any of its Affiliates as of the Petition Date and also as of the date hereof;

(ii) Accounts receivable of the Debtor in which some or all of its Affiliates are the account debtor as of the Petition Date and also as of the date hereof;

(iii) All accounts receivable held by any of the Debtor's Affiliates from any entity;

(iv) Financial statements issued by or on behalf of the Debtor's Affiliates, including all financial statements (which shall include balance sheets, income statements, and cash flow statements) issued in or with respect to calendars year 2012 and 2013;

(c) Cash Collateral of Wheeling as of the Petition Date, and the use by the Debtor or the Trustee of such Cash Collateral since the Petition Date through the date of this Motion, and proposed use by the Trustee of Cash Collateral thereafter; and

(d) The replacement lien as ordered by the Court in the orders approving use of Cash Collateral.

**CERTIFICATE OF SERVICE**

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and caused a true and correct copy of the above document, proposed form of Order and Notice of Hearing to be served upon the parties and at the addresses set forth on the attached **SERVICE LIST**, either electronically or by first class U.S. mail, postage prepaid, on the 23<sup>rd</sup> day of September, 2013.

/s/ Holly C. Pelkey

Holly C. Pelkey

Legal Assistant

**Mailing Information for Case 13-10670**

**Electronic Mail Notice List**

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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## Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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767 Fifth Avenue  
New York, NY 10153

Michael S. Wolly  
Zwerdling, Paul, Kahn & Wolly, PC  
1025 Connecticut Ave., N.W  
Washington, DC 20036



## SECURITY AGREEMENT

AGREEMENT made this 15th day of June, 2009, by and between **MONTREAL, MAINE & ATLANTIC CORPORATION**, a Delaware corporation with a place of business in Hermon, Penobscot County, Maine, **MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.**, a Delaware corporation with a place of business in Hermon, Penobscot County, Maine, and whose mailing address is 15 Iron Road, Hermon, ME 04401, **MONTREAL, MAINE & ATLANTIC CANADA CO.**, a Nova Scotia corporation with a place of business in Montreal, Quebec, Canada, and **LMS ACQUISITION CORPORATION**, a Delaware corporation with a place of business in Hermon, Penobscot County, Maine (hereinafter collectively called "Debtor") and **WHEELING & LAKE ERIE RAILWAY COMPANY**, a Delaware corporation with a place of business at Brewster, Ohio, and whose mailing address is 10 East First Street, Brewster, OH 44613 (hereinafter called "Secured Party").

### Section I. Security Interest

A. Debtor hereby grants to Secured Party a security interest in the Collateral described in Section II of this Agreement to secure the payment and performance of the Obligations defined in this Agreement. This Security Agreement is entered into with respect to transactions involving business and commercial purposes.

B. This Security Agreement secures the following Obligations:

(1) all obligations of Debtor to Secured Party evidenced by a Line of Credit Note of substantially even date in the original principal amount of Six Million Dollars and No Cents (\$6,000,000.00), as the same may be amended or extended (hereinafter referred to as "the Note") and all instruments, documents or agreements referenced or defined therein (such Note and other agreements being hereinafter collectively referred to as the "Loan Documents");

(2) any and all other liabilities of Debtor to Secured Party of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and whether arising out of or under the Note, Loan Documents hereunder, or any other evidence of indebtedness of any kind or description;

(3) all costs incurred by Secured Party, directly or indirectly, for maintenance or preservation of the Collateral or to enforce any of Secured Party's rights under this Agreement or with respect to the Obligations or any of Secured Party's rights or remedies with respect to Debtor and/or any guarantor or other person liable for any of the Obligations, including, without limitation, reasonable attorneys fees and expenses incurred by attorneys for Secured Party;

(4) all obligations under any renewal, replacement, substitution, addition, modification, or extension of any of the foregoing; and

(5) any of the foregoing that arises after the filing of a petition by or against Debtor under the Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise.

"Obligations" include obligations to perform acts and refrain from taking action as well as obligations to pay money.

C. Any term used in the Maine Uniform Commercial Code (Title 11, Maine Revised Statutes Annotated) as amended from time to time ("UCC") and not defined in this Agreement shall have the meaning given to the term in the UCC.

D. To the extent Debtor uses proceeds of a loan from Secured Party to purchase Collateral, Debtor's repayment of the loan shall apply on a "first-in-first-out" basis so that payment will be made in the chronological order that Debtor purchased such Collateral.

## Section II. Collateral.

The Collateral of this Security Agreement is the following personal property of Debtor, wherever located, and inuring to the benefit of or owned by the Debtor now, or arising at any time in the future and wherever located as follows:

A. All Accounts and other rights to payment (including Payment Intangibles), whether or not earned by performance, including but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) that Debtor may have by law or agreement against any account debtor or obligor of Debtor.

B. All Inventory

C. All additions, accessions, substitutions, replacements, products to or for, and all cash or non-cash proceeds of any of the foregoing, including insurance proceeds.

## Section III. Debtor's Representations and Warranties.

Debtor represents and warrants as follows:

A. Debtor has rights in or the power to transfer the Collateral, and Debtor has good and marketable title to the Collateral, free from any adverse claims, liens, security interests, encumbrances, or restrictions on pledge or transfer, except as created by this Agreement.

B. All information furnished by Debtor to Secured Party concerning the Collateral is, or will be at the time the same is furnished, accurate and complete in all material respects.

C. The office where Debtor keeps its records concerning Accounts is Hermon, Maine. Debtor will not remove any such records from Hermon, Maine, without the written consent of Secured Party.

D. All Collateral is located solely in the State of Maine, and shall not be removed from that location without the prior consent of Secured Party.

E. Debtor's exact legal name, place of residence (if Debtor is an individual), chief executive office, and state of incorporation or registration (if applicable) are as set forth in the first paragraph of this Security Agreement.

F. Until the Obligations are satisfied in full, Debtor agrees that it will not merge into or consolidate with any other entity or otherwise change Debtor's business structure, or sell all or substantially all of Debtor's assets, or change the state where Debtor is located, or change Debtor's name, without prior written notice to and consent of Secured Party.

#### Section IV. Accounts.

A. So long as Secured Party does not request that the account debtors be notified of the assignment of Accounts to Secured Party, Debtor shall receive all amounts due for services rendered or goods sold and shall make collections of all Accounts, and Debtor shall have full dominion and control over such proceeds and Accounts. Debtor will use all reasonable and diligent effort to collect Accounts when due.

B. At any time before or after default by Debtor hereunder, Debtor, when requested in writing by Secured Party, shall assign or endorse the Accounts, and all amounts due to Debtor for services rendered or goods sold, to Secured Party; shall notify account debtors that the Accounts have been assigned and should be paid to the Secured Party; and shall deliver to Secured Party, promptly upon receipt, all amounts due for services rendered or goods sold received by Debtor. Debtor, shall upon request of Secured Party, account for and pay over or deliver to Secured Party all such sums received from account collections and, pending such payment or delivery to Secured Party, Debtor will hold all such money and other proceeds in trust for Secured Party separate and apart from, and without in any manner commingling the same with, Debtor's funds, and Debtor will not use the same in the conduct of Debtor's business or for any other purpose.

C. At the time any Account becomes subject to a security interest in favor of Secured Party, Debtor warrants that such Account shall be valid and undisputed and that there shall be no setoffs or counterclaims against such Account except for disputes that may arise in the ordinary course of business have no material effect (financial or otherwise) in the aggregate upon Debtor.

#### Section V. Taxes, Assessments and Governmental Charges.

Debtor will pay promptly when due all taxes, assessments and governmental charges imposed upon Debtor or Debtor's Collateral, including without limitation, income, excise, sales, and use taxes.

Section VI. Prohibition on Other Security Interests or Financing Statements.

Except as expressly permitted by Secured Party, Debtor will not permit or suffer to exist any other security interest in or lien upon the Collateral nor any financing statement covering the Collateral to be on file in any public office except the financing statement in favor of Secured Party. Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein. Secured Party, in the name of Debtor, may contest any claims made against Debtor wherein an adverse decision would impair Secured Party's security.

Section VII. Reports, Examinations, Inspections.

A. Debtor will immediately notify the Secured Party of any event causing loss or depreciation in value of the Collateral, and the amount of such loss or depreciation. Debtor will upon the request of Secured Party at any reasonable time furnish to Secured Party a report showing all Accounts and all other information relating to the Accounts as Secured Party may request.

B. Debtor will provide Secured Party with all such financial reports and data as required in the Loan Documents, and in addition, Debtor shall deliver such financial reports and data pertaining to the Collateral as Secured Party may reasonably request from time to time. Secured Party shall be entitled at its own expense to have audits made of Debtor during business hours by independent accountants, and to examine, inspect and make extracts from Debtor's books, electronically stored data, and other records.

C. Debtor and Secured Party may each inspect any Collateral in the other party's possession, at any time, upon reasonable notice.

Section VIII. Costs and Expenses Paid by Secured Party.

A. If Debtor fails to do so, Secured Party may, at its option, pay for, taxes, assessments or other charges on the Collateral; may discharge any security interest in or lien upon the Collateral. Any such payment made or expense incurred by Secured Party shall be added to the indebtedness of Debtor to Secured Party, shall be payable on demand, and shall be an Obligation secured by this Agreement.

B. Debtor shall pay to Secured Party on demand any and all expenses, including legal expenses and reasonable attorneys fees, incurred or paid by Secured Party for any purpose related to the Collateral or the Obligations, including, without limitation, expenses for (1) defending any claims against the Collateral; (2) enforcing any rights of Secured Party under this Agreement; (3) commencing, defending, intervening in or taking any other action in or with respect to any litigation or arbitration proceeding, including any bankruptcy, insolvency, or similar proceeding, relating to the Debtor or the Collateral.

Section IX. Financing Statements; Perfection.

A. Debtor authorizes Secured Party to file financing statements, amendments and continuations in its name at any time and from time to time until all Obligations secured hereby are paid in full, and in addition, Debtor agrees to execute a financing statement pursuant to the UCC in form satisfactory to Secured Party. Debtor shall pay all costs of filing any and all financing, continuation, or termination statements with respect to the security interest created by this Agreement.

B. So long as Debtor is not in default, Debtor shall have possession of the Collateral, except as expressly provided otherwise in this Agreement, and except to the extent Secured Party chooses to perfect its security interest in any Collateral by possession in addition to the filing of a financing statement. If any Collateral is in the possession of a third party, Debtor shall join with Secured Party in notifying the third party of Secured Party's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Secured Party.

C. Debtor will cooperate with Secured Party in obtaining control with respect to any Collateral consisting of Accounts.

Section X. Events of Default.

Debtor shall be in default under this Agreement upon the happening of any of the following events:

A. Any default by Debtor in the payment or performance of any of the Obligations, including the occurrence of any event of default as defined or set forth in the Loan Documents, subject to any applicable notice and cure provisions;

B. Debtor's failure to observe or perform any other covenant or agreement contained in this Security Agreement;

C. If applicable, any default under the terms of any guaranty held by or in favor of Secured Party of the indebtedness secured hereby, or under any agreement providing collateral for any such guaranty;

D. Breach by Debtor of, or the incorrectness of any representation or warranty contained in this Security Agreement, the Note, Loan Documents, or any of the other Obligations or any other agreement between Debtor and Secured Party;

E. Debtor shall be involved in financial difficulties as evidenced by:

(1) an attachment made on the Collateral or other assets of Debtor that is not discharged within thirty (30) days from the making thereof; or

- (2) an admission in a written notice by Debtor to Secured Party of Debtor's inability to pay Debtor's debts generally as they become due; or
- (3) the making of an assignment by Debtor for the benefit of creditors; or
- (4) Debtor consenting to the appointment of a receiver for all or a substantial part of Debtor's property; or
- (5) Debtor filing a petition in bankruptcy or for reorganization or the adoption of an arrangement under any federal or state bankruptcy or insolvency law, or the entry of an order for relief, or the entry of a court order without the consent of Debtor appointing a receiver or trustee for all or a substantial part of Debtor's property or for any other judicial modification or adjustment of the rights of creditors, which order is not vacated, set aside, or stayed within sixty (60) days of the date of its entry; or Debtor's insolvency meaning either that Debtor's liabilities exceed assets or that Debtor is unable to pay debts as the same come due;

F. Material uninsured loss, theft, substantial damage, destruction or encumbrance of any of the Collateral.

G. The encumbering or hypothecation or sale of any of the issued or authorized to be issued shares of stock of the Debtor, whether direct or indirect, and however occurring or arising.

H. Debtor or any guarantor of any of the Obligations is convicted of any offense that could result in the forfeiture of the Collateral, or the Collateral is subject to an order of forfeiture.

I. Secured Party receives a report from the Secretary of State of Maine or the Secretary of State of any other state where Debtor is located or where any Collateral is located indicating that Secured Party's security interest is not prior to all other security interests or other interests reflected in the report.

#### Section XI. Remedies.

A. If any event of default has occurred, the Secured Party may declare all Obligations secured hereby to be immediately due and payable and may exercise any and all rights and remedies available at law or in equity, including those available under the provisions of the Maine Uniform Commercial Code, and Secured Party shall have the right to pursue all such remedies separately, successively, or simultaneously. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party. Debtor shall not be entitled to possess any of the Collateral after default, and Secured Party may enter upon and into the premises where Collateral may be located and remove the same. Such repossession shall not affect Secured Party's right to retain all payments made by Debtor prior thereto. Secured Party's acceptance of any payment subsequent to Debtor's default shall not affect any rights or obligations hereunder with respect to any subsequent payments or defaults.



B. Secured Party shall give such notice of any private or public sale or other disposition of Collateral as may be required by the UCC. Any requirement of reasonable notice shall be met, if notice is sent to Debtor or other person entitled thereto at least ten (10) days before the time of any sale or disposition of the Collateral, or any act contemplated.

C. Debtor shall pay to Secured Party on demand any and all expenses, including legal expenses and reasonable attorneys' fees, incurred or paid by the Secured Party in protecting or enforcing any rights of the Secured Party hereunder, including expenses incurred in taking possession of the Collateral, storing, and disposing of the same, or collecting the proceeds thereof.

D. If Secured Party elects to take possession of the Collateral, Secured Party shall have the right to continue to operate and manage Debtor's business for such period of time as Secured Party deems necessary in order to attempt to sell all of the Collateral as a going business.

E. Any proceeds of collection or enforcement or sale or other disposition of Collateral shall be applied first to expenses and reasonable attorneys' fees incurred by Secured Party and then to the satisfaction of the Obligations in such order as Secured Party may, in its sole discretion, determine, and Debtor shall remain liable for any deficiency.

F. After default, Secured Party may sell, lease, or otherwise dispose of any of the Collateral in its then present condition and Secured Party has no obligation to clean or repair the Collateral prior to sale. Secured Party may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral. Secured Party may sell the Collateral without giving any warranties as to the Collateral. Secured Party may specifically disclaim any warranties relating to title, possession, quiet enjoyment and the like. Any procedures allowed by this paragraph shall not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

G. No delay in accelerating the maturity of any Obligation or in taking any other action with respect to any event of default shall affect the rights of Secured Party later to take such action, and no waiver as to one event of default shall affect Secured Party's rights as to any other default.

H. Secured Party has no obligation to attempt to satisfy the Obligations by collecting them from any other person liable for them. Secured Party may release, modify, or waive any collateral provided by any other person to secure any of the Obligations, all without affecting Secured Party's rights against Debtor. Debtor waives any rights it may have to require Secured Party to pursue any third party for any of the obligations.

I. Secured Party may exercise any rights or remedies set forth in the Loan Documents.

Section XII. Miscellaneous Provisions.

A. This Agreement may be amended only by the written agreement of Secured Party and Debtor. This Agreement, together with the Loan Documents, is the entire agreement of Debtor and Secured Party concerning the subject matter hereof. This Agreement restates the grant of security interests set forth in the Note and the other Loan Documents.

B. Debtor agrees to execute and deliver such additional documents and to do all such additional acts as Secured Party may reasonably request in order to evidence or perfect or maintain the priority of the security interest granted in this Agreement, or to effectuate the rights of Secured Party under this Agreement.

C. Any notice required by this Agreement shall be deemed to have been sufficiently given when a record has been (1) deposited in any United States postal box, with postage prepaid and properly addressed to the intended recipient, (2) received by telecopy, (3) received through the internet; or (4) personally delivered.

D. All rights of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party and all obligations of Debtor hereunder shall bind all persons who become bound as a debtor to this Security Agreement. Secured Party does not consent to any assignment by Debtor except as expressly provided in this Agreement.

E. This Security Agreement and all of the rights, remedies and duties of Secured Party and Debtor shall be governed by the laws of the State of Maine, except to the extent that the Maine Uniform Commercial Code provides for the application of the law of the state where Debtor is located.

F. If any provisions of this Agreement should be found to be void, invalid, or unenforceable by a court of competent jurisdiction, that finding shall only affect the provisions found to be void, invalid, or unenforceable, and shall not affect the remaining provisions of this Agreement.

Section XIII. Jury Trial Waiver.

DEBTOR AND SECURED PARTY AGREE THAT NEITHER OF THEM NOR ANY ASSIGNEE OR SUCCESSOR SHALL (A) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS AGREEMENT, ANY RELATED INSTRUMENTS, OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM, OR (B) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY DEBTOR AND SECURED PARTY, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER DEBTOR NOR SECURED PARTY HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under seal as of the day and year first above written.

WITNESS:

MONTREAL, MAINE & ATLANTIC CORPORATION

Norman Griffiths

By: M. Donald Gardner

M. Donald Gardner  
Its CFO  
Hereunto Duly Authorized

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

Norman J. Griffiths

By: M. Donald Gardner

M. Donald Gardner  
Its CFO  
Hereunto Duly Authorized

MONTREAL, MAINE & ATLANTIC CANADA CO.

Norman J. Griffiths

By: M. Donald Gardner

M. Donald Gardner  
Its CFO  
Hereunto Duly Authorized

LMS ACQUISITIONS CORPORATION

Norman J. Griffiths

By: M. Donald Gardner

M. Donald Gardner  
Its CFO  
Hereunto Duly Authorized  
DEBTORS

WHEELING & LAKE ERIE RAILWAY COMPANY

[Signature]

By: [Signature]

Its Hereunto Duly Authorized  
SECURED PARTY

LINE OF CREDIT NOTE

\$6,000,000.00

Bangor, Maine  
June 15, 2009

MONTREAL, MAINE & ATLANTIC CORPORATION, a Delaware corporation with a place of business in Hermon, Penobscot County, Maine, and its wholly owned subsidiaries, MONTREAL, MAINE & ATLANTIC RAILWAY, LTD., a Delaware corporation with a place of business in Hermon, Penobscot County, Maine; MONTREAL, MAINE & ATLANTIC CANADA CO., a Nova Scotia corporation with a place of business in Montreal, Quebec, Canada; and LMS ACQUISITION CORPORATION, a Delaware corporation with a place of business in Hermon, Penobscot County, Maine (hereinafter collectively called "Maker"), for value received, promise to pay on June 15, 2010, unless Wheeling & Lake Erie Railway Company at its sole option, extends the time for such payment, in which case the terms of this Note shall continue in full force and effect, to the order of WHEELING & LAKE ERIE RAILWAY COMPANY (hereinafter called "WLE"), at its offices at 10 East First Street, Brewster, OH 44613, such sums as WLE may loan or advance to or for the benefit of Maker on or after the date hereof in accordance with the terms hereof, together with interest on the unpaid principal balance outstanding from time to time hereon computed from the date of each advance at a fluctuating rate of interest equal to the prime rate, published in the Money Rates Section of The Wall Street Journal, Eastern Edition on the applicable day in question, plus Two Percent (2.00%), adjusting monthly on the first day of each month. Interest shall be calculated on a per annum basis of 360 days.

The unpaid principal balance hereof shall at no time exceed the sum of Six Million Dollars (\$6,000,000.00). Interest on this Note is payable in monthly installments of all interest having then accrued, which shall be due and payable on the 15<sup>th</sup> day of July, 2009, and on like date of each month thereafter during the term hereof and at maturity. If any payment of principal or interest on this Note shall become due on a Saturday, Sunday, or public holiday on which the WLE is not open for business, such payment shall be made on the next succeeding business day of the WLE.

Payment of this Note, in whole or in part, may be made at any time or from time to time before maturity without penalty or premium. Any payment shall be applied first to any accrued interest, second to the unpaid principal balance, and any remaining amount to unpaid late charges and collection costs.

The unpaid principal balance of this Note at any time shall be the total amount loaned or advanced by WLE, less the amount of payments or prepayments of principal made hereon by or for the account of Maker. It is contemplated that by reason of prepayments hereon there may be times when no indebtedness is owing hereunder; but notwithstanding such occurrences, this Note shall be in full force and effect as to loans or advances made pursuant to and under the terms of this Note subsequent to each occurrence. In the event that the unpaid principal amount hereof at any time, for any reason, exceeds the maximum amount hereinabove specified, Maker covenants and agrees to pay the excess principal amount forthwith upon demand; such excess principal amount shall in all respects be deemed to be included among the loans or advances made pursuant to the other terms of this Note and shall bear interest at the rate above stated.

Advances hereunder will be made by WLE pursuant to the terms of the SUMMARY OF

PROPOSED TERMS – Revolving Credit Facility dated April 14, 2009 by and between Maker and WLE. Advances will be based upon a monthly borrowing base certificate (example attached) prepared and submitted by the 20<sup>th</sup> of each month. Availability under the Revolving Credit Facility shall be subject to a borrowing base comprised of: (1) up to 85% against accounts receivable (excluding, without limitation, (i) accounts receivable remaining unpaid more than 90-days from invoice date, (ii) contra accounts receivable, (iii) affiliated accounts receivable, and (iv) all receivables from customers that have more than 25% of their account receivables over 90 days from invoice date) and (2) up to 50% against the value of inventory (materials and supplies). Borrower will prepare a summary of all advances and payments activity for the month on a daily basis, resulting in the new month end balance outstanding. From the activity report, Maker will compute the daily interest.

Advances hereunder made by WLE pursuant to the terms set forth above shall be in accordance with the terms of advance authorizations executed and delivered from time to time by an officer or agent of Maker. Once each week during the term of the facility, Maker will make payments or receive advances. Either Maker will request via e-mail on Wednesday an advance to be completed via a wire on the following Thursday or the Maker will state via e-mail on Wednesday the amount to be paid by Maker via wire on the following Thursday. All advances and payments will be in increments of One Hundred Thousand Dollars (\$100,000.00). The interest amount will be a separate wire for the exact amount.

Maker shall maintain a standard system of accounting, established and administered in accordance with GAAP consistently followed throughout the periods involved, and will set aside on its books for each fiscal year, the proper amounts or accruals for depreciation, obsolescence, amortization, bad debts, current and deferred taxes, prepaid expenses, and for other purposes as shall be required by GAAP. Maker will deliver or cause to be delivered to the WLE:

(1) As soon as practicable after the end of each fiscal year, and in any event within one hundred fifty (150) days thereafter, annual consolidated financial statements with an unqualified opinion, including income statement, balance sheet, statement of condition of the Maker as of the end of such year, and statement of cash flow and changes in financial position of the Maker for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared by an independent certified public accountant, selected by Maker and satisfactory to the WLE;

(2) Quarterly consolidated financial statements, prepared by management within 30 days after the end of the first, second and third quarters and within 60 days after the end of the fourth quarter (including balance sheet, income statement, and cash flow statement); and

(3) Monthly borrowing base certificates, including receivables aging.

Upon reasonable notice Maker shall make its books and records relating to those assets provided as security for this Note available for inspection by WLE or its authorized representatives, upon WLE's request. WLE agrees to conduct its inspection in a reasonable manner so as not to be disruptive to Maker's ongoing business.

If this Note is not paid at maturity whether by acceleration or otherwise and is placed in

the hands of an attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof or enforcement of rights hereunder, Maker and each liable party agree to pay WLE a reasonable amount as attorney's fees to the extent actually incurred. Maker and each other liable party are and shall be directly and primarily, jointly and severally, liable for the payment of all sums due hereunder, and Maker and each other liable party hereby expressly waive demand, notice of nonpayment, presentment, protest, notice of dishonor, bringing of suit and diligence in taking any action to collect any sums owing hereon and in the handling of any security, and Maker and each other liable party hereby agree to any and all renewals, extensions for any period, rearrangements and/or partial prepayments hereon and to any release or substitution of security herefor, in whole or in part, with or without notice, before or after maturity. Maker and each other liable party also waive, to the full extent permitted by law, all right to plead any statute of limitations as a defense to any action hereunder.

The indebtedness evidenced by this Note is secured by certain agreements between Maker and WLE executed and delivered in accordance with the terms of the SUMMARY OF PROPOSED TERMS - Revolving Credit Facility dated April 14, 2009 above referenced.

THE MAKER AND THE WLE AGREE THAT NEITHER OF THEM NOR ANY ASSIGNEE OR SUCCESSOR SHALL (A) SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER ACTION BASED UPON, OR ARISING OUT OF, THIS PROMISSORY NOTE, ANY RELATED INSTRUMENTS, OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG ANY OF THEM, OR (B) SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY DISCUSSED BY THE MAKER AND THE WLE, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER THE MAKER NOR THE WLE HAS AGREED WITH OR REPRESENTED TO THE OTHER THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

WITNESS:

MONTREAL, MAINE & ATLANTIC CORPORATION

Norma J. Griffiths By: [Signature]  
Its  
Hereunto Duly Authorized

WITNESS:

MONTREAL, MAINE & ATLANTIC RAILWAY, LTD.

Norma J. Griffiths By: [Signature]  
Its  
Hereunto Duly Authorized

WITNESS:

MONTREAL, MAINE & ATLANTIC CANADA CO.

Norma J. Griffiths

By: [Signature]  
Its  
Hereunto Duly Authorized

WITNESS:

LMS ACQUISITION CORPORATION

Norma J. Griffiths

By: [Signature]  
Its  
Hereunto Duly Authorized



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

<hr/>	)	
<b>In re:</b>	)	
	)	
<b>Montreal Maine &amp; Atlantic Railway Ltd.,</b>	)	<b>Case No. 13-10670</b>
	)	
<b>Debtor.</b>	)	
<hr/>	)	

**ORDER COMPELLING RULE 2004 EXAMINATION**

Upon consideration of the Wheeling and Lake Eire Railway Company's (the "Wheeling") motion (the "Motion") for entry of an order authorizing the Wheeling to examine the Trustee<sup>1</sup> and to compel the production of documents, filed in this Court on or about September 23, 2013, and pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. The Motion is granted.
2. Service of the Motion and form of order was sufficient notice to parties under the circumstances of this case.
3. The Trustee shall appear, through an authorized representative or representatives, for an examination at the offices of MCM at 10 a.m. on October 10, 2013, or on such other date and at such other place as the parties may determine by agreement. The representative or representatives of the Trustee shall be knowledgeable to testify concerning the matters identified on **Exhibit A** to the Motion.
4. In connection with said examination, the Trustee shall produce certain documents in the Debtor's possession, custody, or control, which documents are identified on **Exhibit B** to the Motion. The documents identified on **Exhibit B** shall be provided to counsel for the Wheeling at the address set forth in the Motion not less than 72 hours in advance of the date and

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning set forth in the Motion.

time of the examination.

5. This Order is without prejudice to other and further requests by the Wheeling for relief under Rule 2004 of the Federal Rules of Bankruptcy Procedure.

6. Notwithstanding anything to the contrary in the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, this Order shall become final when entered on the docket.

Date:

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Hon. Louis J. Kornreich  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:	)	
	)	
Montreal Maine & Atlantic Railway Ltd.,	)	Case No. 13-10670
	)	
Debtor.	)	
	)	

**NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **Tuesday, October 1, 2013 at 9:00 a.m.** a hearing will be held at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine, on Debtor’s *Motion for Expedited Hearing on Motion of the Wheeling & Lake Erie Railway Company for Order Authorizing Rule 2004 Examination of the Trustee and for Order Requiring the Trustee to Produce Certain Documents and Tangible Things in Accordance with Fed. R. Bankr. P. Rule 2004, With Incorporated Memorandum of Law* (the “Expedited Motion”).

If any party in interest shall have an objection to the Expedited Motion, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before September 30, 2013 at 4:00 p.m.**, and concurrently serve (by facsimile and first class U.S. mail, postage prepaid) upon counsel for Wheeling & Lake Erie Railway Company, George J. Marcus, Esq., MARCUS, CLEGG & MISTRETTA, P.A., One Canal Plaza, Suite 600, Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party appears at the hearing to assert the basis for such objection before the Bankruptcy Court, and timely files a written statement, such objection shall be deemed to have been waived and abandoned.

**IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE RELIEF REQUESTED IN THE EXPEDITED HEARING MOTION MAY BE GRANTED BY DEFAULT WITHOUT FURTHER NOTICE OR HEARING.**

If the Expedited Hearing Motion is granted at that time, the Court will immediately thereafter conduct a preliminary hearing to consider, and may grant at that time the Motion of the Wheeling & Lake Erie Railway Company for Order Authorizing Rule 2004 Examination of the Trustee and for Order Requiring the Trustee to Produce Certain Documents and Tangible Things in Accordance with Fed. R. Bankr. P. Rule 2004, With Incorporated Memorandum of Law (the “2004 Motion”).

If any party in interest shall have an objection to the 2004 Motion, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before September 30, 2013 at 4:00 p.m.**, and concurrently serve (by facsimile and first class U.S. mail, postage

prepaid) upon counsel for Wheeling & Lake Erie Railway Company, George J. Marcus, Esq., MARCUS, CLEGG & MISTRETТА, P.A., One Canal Plaza, Suite 600, Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party appears at the hearing to assert the basis for such objection before the Bankruptcy Court, and timely files a written statement, such objection shall be deemed to have been waived and abandoned.

Dated: September 23, 2013

/s/ George J. Marcus

George J. Marcus, Esq.

David C. Johnson, Esq.

Andrew C. Helman, Esq.

MARCUS, CLEGG & MISTRETТА, P.A.

One Canal Plaza, Suite 600

Portland, ME 04101

(207) 828-8000

Counsel for Wheeling & Lake Erie Railway  
Company