

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

**WHEELING & LAKE ERIE RAILWAY COMPANY’S LIMITED OBJECTION TO
CHAPTER 11 TRUSTEE’S MOTION FOR ORDER: (A) AUTHORIZING DEBTOR TO
OBTAIN POST-PETITION FINANCING; AND (B) GRANTING TO CAMDEN
NATIONAL BANK POST-PETITION SECURITY INTERESTS**

Now comes the Wheeling & Lake Erie Railway Company (“Wheeling”) and responds to the Chapter 11 Trustee’s Motion for Order (A) Authorizing Debtor to Obtain Post-Petition Financing; And (B) Granting to Camden National Bank Post-Petition Security Interests (the “Borrowing Motion”) [D.E. # 337]¹. Wheeling does not object to the relief requested in the Borrowing Motion as a general matter. However, Wheeling respectfully requests that certain additions be made to the proposed order approving the same (the “Borrowing Order”) to recognize and preserve certain rights and protections granted to Wheeling by the various Cash Collateral Orders (as that term is defined *infra*) that have been entered by the Court in this case.

Adequate Protection

1. As the Court is aware, the four interim cash collateral orders entered to date [D.E. ## 51, 98, 173, 255] as well as the fifth interim cash collateral order awaiting Court signature by the Court [D.E. # 323] (collectively, the “Cash Collateral Orders”) provided Wheeling, as adequate protection for the estate’s use of Wheeling’s Cash Collateral, with a replacement lien in the Debtor’s post-petition accounts, inventory, and cash proceeds of accounts to adequately protect Wheeling for the Debtor’s use of its pre-petition cash collateral (the “Replacement”

¹ Because the Trustee is seeking an expedited hearing on the Borrowing Motion with a concomitant decrease in the time for parties-in-interest to file objections or responses to the same, Wheeling has not provided a paragraph-by-paragraph response to the allegations therein pursuant to D. Me. LBR 9013-1(f).

Lien”). The Replacement Lien, *inter alia*, (a) secures all obligations of the Debtor to Wheeling; (b) is limited in amount to the amount of cash collateral actually utilized by the Debtor or the Trustee on or after the Petition Date; and (c) shall have the same validity, enforceability, and priority as the security interests of Wheeling had with respect to cash collateral as of the Petition Date.

2. While the Borrowing Motion does not propose that the Bank² be provided with a security interest in the same assets that serve as collateral with respect to the Replacement Lien, the Trustee, by continued operations (utilizing the proceeds of Bank loan), will collect accounts of Wheeling (including pre-petition accounts), utilize inventory which secures Wheeling’s claims, and expend cash that constitutes proceeds of Wheeling collateral. As such, any order authorizing the Trustee to borrow money, and to use such borrowed money to fund ongoing operations, must also provide continuing adequate protection for use of Wheeling’s collateral, whether it occurred prior to approval of post-petition loans or continues after such approval.

3. Without limiting the generality of the foregoing, Wheeling’s Replacement Lien should continue to attach to accounts and inventory of the estate (and the proceeds thereof) created after the closing of Bank loan and Wheeling should be compensated for any use of its inventory and/or cash collateral. As such, any order granting the Trustee authority to incur post-petition debt in order to fund continued operations should also condition such post-petition operations on the continued provision of adequate protection for use of Wheeling’s cash collateral, including the continuing operative effect of the Replacement Lien.

11 U.S.C. § 507(b) Superpriority Administrative Claims

4. The terms of the proposed transaction do not appear to contemplate providing the FRA or MDOT with 11 U.S.C. § 507(b) superpriority administrative claims in order to

² Defined terms shall have the same meanings as ascribed to them in the Borrowing Motion unless otherwise noted herein.

adequately protect their interests in the Collateral, asserting – apparently – that they are adequately protected notwithstanding the requested subordination. *See e.g.*, Borrowing Motion, ¶¶ 1(i) (Which specifically states that the terms of the Loan to the Bank do not contain provisions “providing . . . adequate protection . . . for a claim”); 2, 16, 17; Fed.R.Bankr.P. 4001(c)(1)(B)(ii).

5. However, notwithstanding the terms of the Motion, to the extent that FRA and/ or MDOT may, now or in the future, assert a claim under 11 U.S.C. § 507(b) by reason of the relief requested in the Motion, (a “superpriority claim”) claim, any such claim would be subject and subordinate to any superpriority claim of Wheeling arising under the Cash Collateral Orders

6. As set forth in the proposed fifth interim cash collateral order, in consideration of Wheeling’s consent thereto, Wheeling is entitled to a *first position* § 507(b) superpriority administrative claim as adequate protection for the use of its cash collateral, as provided in all of the Cash Collateral Orders previously entered by the Court and to be entered.

7. In order to ensure compliance with the terms of approval for use of cash collateral that Wheeling provided, and that the Court approved, and to ensure that Wheeling retains the benefits of such terms, Wheeling requests that any order entered by the Court pursuant to which FRA or MDOT could claim an administrative claim pursuant to § 507(b) of the Bankruptcy Code expressly make any such claim junior in right to the superpriority claim of Wheeling.

Adequate Protection

8. As the Court is aware, the Cash Collateral Orders also provided Wheeling, as adequate protection for the Estate’s use of Wheeling’s Cash Collateral, with a replacement lien in the Debtor’s post-petition accounts, inventory, and cash proceeds of accounts to adequately protect Wheeling for the Debtor’s use of its pre-petition cash collateral (the “Replacement Lien”). The Replacement Lien, *inter alia*, (a) secures all obligations of the Debtor to Wheeling; (b) is limited in amount to the amount of cash collateral actually utilized by the Debtor or the

Trustee on or after the Petition Date; and (c) shall have the same validity, enforceability, and priority as the security interests of Wheeling had with respect to cash collateral as of the Petition Date.

9. While the Borrowing Motion does not propose that the Bank be provided with a security interest in the same assets that serve as collateral with respect to the Replacement Lien, the Trustee, by continued operations (utilizing the proceeds of Bank loan), will collect accounts of Wheeling (including pre-petition accounts), utilize inventory which secures Wheeling's claims, and expend cash that constitutes proceeds of Wheeling collateral. As such, any order authorizing the Trustee to borrow money, and to use such borrowed money to fund ongoing operations, must also provide continuing adequate protection for use of Wheeling's collateral, whether it occurred prior to approval of post-petition loans or continues after such approval.

10. Without limiting the generality of the foregoing, Wheeling's Replacement Lien should continue to attach to accounts and inventory of the estate created after the closing of post-petition loans and Wheeling should be compensated for any use of its inventory and/or cash collateral. As such, any order granting the Trustee authority to incur post-petition debt in order to fund continued operations should also condition such post-petition operations on the continued provision of adequate protection for use of Wheeling's cash collateral, including the continuing operative effect of the Replacement Lien.

CONCLUSION

For the reasons set forth herein, Wheeling respectfully requests that the Court:

- A. Provide in the Borrowing Order continuing adequate protection to Wheeling for continued use of its Cash Collateral;
- B. Provide in the Borrowing Order that any § 507(b) superpriority claim which may be made FRA and/or MDOT by reason of the post-petition loans authorized by the Borrowing Order will be subordinate to the § 507(b) superpriority claim provided to Wheeling pursuant to the Cash Collateral Orders; and
- C. Grant such other relief as the Court deems just and appropriate.

Dated: October 7, 2013

/s/ David C. Johnson

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CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years of age and caused a true and correct copy of the above document to be served on the parties at the addresses set forth on the **SERVICE LIST** below either via electronically or first class U.S. mail, postage prepaid, on the 7th day of October, 2013.

/s/ Holly C. Pelkey
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