

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE**

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

**UNITED STATES OF AMERICA’S MOTION FOR AN ORDER (1) DETERMINING  
THE ALLOCATION OF THE PURCHASE PRICE FOR DEBTOR’S ASSETS  
AND (2) ENFORCING ORDER APPROVING CARVE-OUT**

The United States of America, through the Department of Transportation, Federal Railroad Administration (“FRA”), hereby moves this Court, pursuant to sections 105, 361, 363(b) and 506(c) of title 11 of the United States Code (the “Bankruptcy Code”), for an order (1) determining the allocation of the purchase price for the Debtor’s assets as contemplated in this Court’s *Order Granting Motion to Approve Third Amendment to Asset Purchase Agreement between Robert J. Keach, as Chapter 11 Trustee for the Estate of Montreal Maine & Atlantic Railway, Ltd., Montreal Maine & Atlantic Canada Co. and Railroad Acquisition Holdings LLC* entered May 8, 2014, (Docket No. 865) (the “Closing Authorization Order”); and (2) enforcing the Court’s *Order Approving Carve-Out* entered October 18, 2013 (Docket No. 392) (the “Carve-Out Order”).

JURISDICTION AND VENUE

1. On August 7, 2013, Montreal, Maine & Atlantic Railway, Ltd. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of 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 this case pursuant to 11 U.S.C. § 1163.

2. The Debtor is a Delaware corporation that, since January of 2003 until recently, operated an integrated, shortline freight railroad system with its affiliate, Montreal Maine & Atlantic Canada 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, in the Superior Court for the Province of Quebec, District of Montreal (the “Canadian Court”).

3. The 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. §§ 105(a), 361, 363, and 506(c). This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), (K), (M), and (O).

#### BACKGROUND

4. In September 2013, the Trustee negotiated a carve-out stipulation (the “Carve-Out”) with the FRA, in an amount not to exceed \$5 million, for the payment of the Trustee’s professional fees and expenses in administering the Debtor’s estate. The Court approved the Carve-Out by order dated October 18, 2013 (Docket No. 392) (the “Carve-Out Order”).<sup>1</sup> The Trustee has funded the Carve-Out from the proceeds of the FRA’s otherwise unassailable first-priority lien on the Debtor’s assets. *First Interim Application of Trustee Robert J. Keach for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period August*

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<sup>1</sup> The Carve-Out Order remains on appeal but is not subject to any stay and is fully enforceable. The Carve-Out stipulation was an exhibit to the motion (Docket No. 257) seeking the Court’s approval for it and is attached hereto as Exhibit A.

21, 2013 through April 30, 2014 (“First Interim Application”) (Docket No. 873) at Exhibit B (closing statement from sale of Debtor’s assets). As the Trustee has admitted, without the Carve-Out, this case could not have been effectively administered, to the detriment of all creditors, the state and regional economies, and, most of all, the derailment victims. *Id.* at para. 15.

5. In the Carve-Out, the Trustee “acknowledge[d] and agree[d] that: (a) the Debtor and the Debtor’s estate are indebted to the FRA in the approximate amount of \$27,999,703.72 as of the Petition Date (the ‘FRA Claim’); and (b) that the FRA Claim is secured by a valid, perfected, and unavoidable first priority security interests in and liens on the Collateral.” *Carve-Out* at para. 1. The Carve-Out’s definition of Collateral includes, among other things, substantially all of the Debtor’s real property. *Id.* at 2.<sup>2</sup>

7. The Trustee further “acknowledge[d] and agree[d] that the proceeds from any sale of the Collateral in excess of the Carve-Out shall be immediately disbursed to the FRA upon the Trustee’s receipt of such proceeds.” *Carve-Out* at para. 2.E.

8. Additionally, the Trustee negotiated two separate financings with Camden National Bank (“Camden”) to ensure that the Debtor possessed sufficient working capital to continue operations pending a sale and resolution of the case. The first, Court approved financing was a revolving, \$3 million line of credit secured by a first mortgage and security interest on all assets located in the United States that secured FRA’s Claim and subordinated the interests of the FRA in the Debtor’s assets to Camden’s. (Docket No. 367). Absent this financing, the Debtor would have run out of sufficient cash before the end of October 2013 and been forced to wind-down or abandon its operations. *First Interim Application* at para. 16.

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<sup>2</sup> The FRA Claim is also secured by all real property owned by MMA Canada located in the province of Quebec, Canada as well as all of MMA Canada’s personal property. *Carve-Out* at 2.

Through a series of orders (Docket Nos. 649, 672 and 742), the second, Court approved financing extended the first line of credit to \$4.8 million, which was again necessary to provide the Debtor sufficient working capital to continue operations pending a sale of the Debtor's assets and resolution of the case (the "Second Financing Order"). *First Interim Application* at para. 16. As part of his negotiations with the FRA regarding the Second Financing Order, the Trustee agreed to reduce the Carve-Out to \$4 million and provide other adequate protection to FRA in order to complete the financing.

9. The additional adequate protection provided FRA was a first-priority lien, subject to the interests, if any, of Wheeling & Lake Erie Railway Company ("Wheeling") in the Debtor's interests in (a) the proceeds of a settlement with Travelers Property Casualty Company of America, which settlement the Court approved December 24, 2013 (the "Travelers Insurance Settlement Proceeds") (Docket No. 550); and (b) the proceeds of the agreement relating to the assignment of 45G tax credits, which agreement the Court approved December 17, 2013 (the "45G Tax Credits") (Docket No. 511).

10. On January 24, 2014, the Court approved the sale of substantially all of the Debtor's assets to Railroad Acquisition Holdings LLC ("RAH") (the "Sale Order") (Docket No. 594) pursuant to an Asset Purchase Agreement dated December 12, 2013 (as amended, the "APA") between the Trustee, the Debtor, MMA Canada and RAH. In conjunction with this approval, the Canadian Court also approved a sale of substantially all of MMA Canada's assets to RAH on January 23, 2014.

11. On May 8, 2014, the Court entered the Closing Authorization Order approving a third amendment to the APA, which, among other things, authorized the Trustee, the Debtor and

RAH to close the sale of the Debtor's assets and MMA Canada's assets either simultaneously or separately (Docket No. 865). *Closing Authorization Order* at para. 4.

12. The Closing Authorization Order further provided that "the rights, if any, of any party holding a lien upon any of the MMA Assets to contest the allocation of the Purchase Price as among certain MMA Assets are hereby expressly preserved, and the rights, if any, of any party to contest the allocation of value as between the Debtor and MMA Canada are hereby expressly preserved." *Id.* at para. 10. The APA, as amended pursuant to the Closing Authorization Order, defined the Purchase Price. *Trustee's Motion for an Order Approving the Third Amendment to Asset Purchase Agreement* (Docket No. 847), Exhibit A at 4-5.

13. A closing of the sale of the Debtor's assets to RAH occurred on May 15, 2014. According to the purchaser's allocation: (a) \$3,200,000 of the gross purchase price under the APA was allocable to the assets of MMA Canada, with the balance allocable to the Debtor's assets; and (b) of the amount allocable to the Debtor's assets, \$288,000 was allocated to inventory in which Wheeling had a first security interest (the "Wheeling Inventory Allocation"). A closing of the sale of MMA Canada's assets closed on June 30, 2014, and the closing statement for that closing assumed that \$3,200,000.00 (U.S.) was allocated to the assets of MMA Canada.

14. As a result of the closing of the sale of the Debtor's assets, the Trustee received \$11,096,279.02 (the "Sales Proceeds"). *First Interim Application* at Ex. 2. From this amount, the Trustee has paid (1) closing expenses; (2) administrative expenses related to the sale; and (3) all amounts due Camden under the financing authorized under the Second Financing Order. *Id.* In addition, the Trustee has funded the \$4 million Carve-Out. *Id.* After these payments from the

Sale Proceeds, the Trustee holds net sales proceeds in escrow of \$1,286,186.36 (the “Net Escrow Sales Proceeds”). *First Interim Application* at Ex.2.

15. Moreover, the Court has issued orders determining the extent of the Debtor’s interest in both the Travelers Insurance Settlement Proceeds and the 45G Tax Credits (Docket Nos. 832 and 761, respectively).<sup>3</sup> As a result of these orders, the Trustee holds an additional \$1,478,000 in escrow (the “Other Escrowed Amounts”). *Id.*

#### RELIEF REQUESTED

16. As described above, FRA has valid first priority liens on both the Net Escrow Sales Proceeds and the Other Escrowed Amounts. Under the terms of the Carve-Out and the Second Financing Order, respectively, FRA is entitled to the distribution of the Net Escrow Sales Proceeds and the Other Escrowed Amounts. Moreover, the Closing Authorization Order permits FRA to request a determination of the allocation of (a) the Purchase Price as among the Debtor’s assets and (b) the value from the sale as between the Debtor and MMA Canada. Accordingly, pursuant to section 105 of the Bankruptcy Code and the Court’s inherent powers to enforce its own orders, FRA seeks entry of an order (a) determining the allocation of (i) the Purchase Price as among the Debtor’s assets and (ii) the value from the sale as between the Debtor and MMA Canada, such that \$3,200,000 is allocated to the assets of MMA Canada and the balance of the Purchase Price under the APA is allocated to the Debtor’s assets; and (b) authorizing the Trustee to disburse immediately to the FRA both the Net Escrow Sales Proceeds and the Other Escrowed Amounts, minus the Wheeling Inventory Allocation.

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<sup>3</sup> The order determining the Debtor’s interest in the Travelers Insurance Settlement Proceeds (Docket No. 832) remains on appeal but is not subject to any stay and is fully enforceable.

In accordance with Local Rule 9013-1, D. Me. LBR 9013-1, FRA has consulted with counsel to the Trustee who represented that the Trustee does not oppose the relief requested herein.

#### ARGUMENT

17. This Court has the well settled authority to interpret and enforce its own orders. *Negron-Almeda v. Santiago*, 528 F.2d 15, 22-23 (1<sup>st</sup> Cir. 2008) (unambiguous orders must be enforced as written); *Iskric v. Commonwealth Fin. Sys., Inc. (In re Iskric)*, 496 B.R. 355, 363 (M.D. Pa. 2013) (“Bankruptcy courts have the inherent power to enforce compliance with their lawful orders.”); *Rosen v. Breitner & Hoffman, P.C. (In re Flushing Hosp. and Medical Ctr.)*, 395 B.R. 229, 241 (E.D.N.Y. 2008) (“Section 105(a) may be invoked to enforce or implement the Court’s earlier orders, and to prevent abuses of process.”) (internal quotation omitted). Indeed, “[e]xercise of the Court’s section 105(a) authority in this manner, and for this purpose, vindicates the interests of the Court, as much as (and perhaps more than) it vindicates the interest of an individual litigant.” *In re Flushing Hosp. and Medical Ctr.*, 395 B.R. at 241 (emphasis in original).

18. The Carve-Out is clear – proceeds from any sale of the Debtor’s assets in excess of the Carve-Out “shall be immediately disbursed to the FRA upon Trustee’s receipt of such proceeds.” The FRA’s right to receive right now the Net Escrow Sales Proceeds could not be clearer. Moreover, in the Second Financing Order the FRA was granted a first priority lien on the Debtor’s interest in the Travelers Insurance Settlement Proceeds and the 45G Tax Credits, which interest, as described above, this Court has determined in separate, unstayed orders. Again, the FRA’s right to receive the Other Escrowed Amounts (representing the aggregate

amount of the Travelers Insurance Settlement Proceeds and the 45G Tax Credits) is superior to any other possible claim thereto, and the FRA should receive those amounts immediately.

19. Finally, the Closing Authorization Order explicitly affords (a) “any party holding a lien [on] the MMA Assets the right to contest the allocation” of the Purchase Price as among the Debtor’s assets and (b) any party generally the right to contest the value from the sale as between the Debtor and MMA Canada. As the undisputed first lien holder on the Debtor’s real estate, FRA meets both criteria for requesting the allocation determinations.

CONCLUSION

20. For all of the foregoing reasons, the FRA requests that the Court enter an order: (a) determining the allocation of (i) the Purchase Price as among the Debtor’s assets and (ii) the value from the sale as between the Debtor and MMA Canada, such that \$3,200,000 is allocated to the assets of MMA Canada and the balance of the Purchase Price under the APA is allocated to the Debtor’s assets; and (b) authorizing the Trustee to disburse immediately to the FRA both the Net Escrow Sales Proceeds and the Other Escrowed Amounts, minus the Wheeling Inventory Allocation.

Dated: July 18, 2014

Respectfully submitted,

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**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE**

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RAILWAY, LTD.,	)	
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Debtor.	)	
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**ORDER APPROVING UNITED STATES OF AMERICA’S MOTION FOR AN ORDER  
(1) DETERMINING THE ALLOCATION OF THE PURCHASE PRICE FOR  
DEBTOR’S ASSETS AND  
(2) ENFORCING ORDER APPROVING CARVE-OUT**

This matter came before this Court on the United States of America’s Motion for an Order (1) Determining the Allocation of the Purchase Price for Debtor’s Assets and (2) Enforcing Order Approving Carve-Out (the “Motion”), and sufficient notice of the Motion having been given, and the Court having held a hearing to consider the Motion, and upon consideration of the objections and/or responses to the Motion, if any, having been resolved or overruled, and after due deliberation and sufficient cause appearing therefor, the Court hereby **ORDERED, ADJUDGED** and **DECREED** as follows:<sup>1</sup>

1. The Motion is granted in its entirety.
2. The Purchase Price as among the Debtor’s assets and the value from the sale as between the Debtor and MMA Canada is allocated such that \$3,200,000 is allocated to the assets of MMA Canada and the balance of the Purchase Price under the APA is allocated to the Debtor’s assets.

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

3. The Trustee is authorized to disburse immediately to the Federal Railroad Administration both the Net Escrow Sales Proceeds and the Other Escrowed Amounts, minus the Wheeling Inventory Allocation.

Dated: August \_\_, 2014

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The Honorable Louis H. Kornreich  
United States Bankruptcy Judge for the  
District of Maine