

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

MOTION FOR ORDER PURSUANT TO 11 U.S.C. § 542(b)

Robert J. Keach, the chapter 11 trustee in the above-captioned case (the “Trustee”), hereby seeks an order pursuant to 11 U.S.C. § 542(b) directing certain customers of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”) to pay past due balances owed to the Debtor for services performed in the ordinary course of its operations. Specifically, the Trustee seeks an order compelling: (a) Irving Paper Ltd., Irving Pulp & Paper, Ltd., and J. D. Irving, Ltd. (collectively, “Irving”) to pay a past due balance of approximately \$885,733 (the “Irving Debt”);¹ and (b) Great Northern Paper (“GNP”) to pay a past due balance of approximately \$422,625 (the “GNP Debt” and, collectively with the Irving Debt, the “Debts”). As discussed more fully below, the Debts are past due and are currently payable to the Debtor’s estate. In further support of this motion, the Trustee states as follows:

JURISDICTION, VENUE AND STATUTORY BASIS

1. This Court has jurisdiction to entertain this application pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The Trustee requests relief pursuant to 11 U.S.C. §§ 541 and 542.

¹ The Trustee reserves the right to collect amounts owed to the Debtor’s estate by Irving affiliates and not included in this motion.

BACKGROUND

4. On August 7, 2013 (the "Petition Date"), 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 (the "U.S. Trustee") appointed the Trustee to serve in the Debtor's Chapter 11 case (the "Case") pursuant to 11 U.S.C. § 1163.

5. The Debtor is a Delaware corporation that, since January 2003, has operated in an integrated, international shortline freight railroad system (the "System") with its wholly-owned Canadian subsidiary, Montreal Maine & Atlantic Co. ("MMA Canada"). The Debtor and MMA Canada have fully-integrated business operations and accounting, with the Debtor collecting most of the generated revenue and transferring to MMA Canada the funds required to pay its expenses.² On or about 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.

6. The System has 510 route miles of track in Maine, Vermont and Quebec and operates from its head office in Hermon, Maine. The System is a substantial component of the transportation system of Northern Maine, Northern New England, Quebec, and New Brunswick. Prior to the Petition Date, the Debtor employed approximately 179 people and operated about 15 trains daily.

7. As set forth on the record by the Debtor's counsel during the August 8, 2013 hearing, and as discussed in the *Affidavit of M. Donald Gardner, Jr. in Support of First Day Pleadings* [Docket No. 11] (the "Gardner Affidavit"), the Case was precipitated by a derailment, on July 6, 2013, of an unmanned eastbound Debtor train with 72 carloads of crude oil and 5

² The historical facts relating to the Debtor are alleged upon the Trustee's current information and belief. The Trustee was recently appointed and has not yet completed his investigation of the Debtor, its assets and business, or any other circumstances, including those leading to the commencement of the Case. The Trustee reserves his right to allege different facts if and when he becomes aware of new or different information.

locomotive units, in Lac-Mégantic, Quebec (the “Derailment”). The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. Prior to the Petition Date, and as a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor both in the United States and Canada. The Trustee expects that the estate will face significant prepetition personal injury, wrongful death, and environmental claims.

8. As part of its ordinary course operations, the Debtor transports paper, pulp, wood products, and chemicals to or from Irving’s manufacturing and processing facilities. Irving is one of the Debtor’s largest customers and, as of August 28, 2013, owed the Debtor a past due, outstanding balance of approximately \$885,733.

9. In addition, the Debtor transports finished product from GNP’s facilities to that manufacturer’s customers and, to a lesser extent, also delivers raw materials to GNP for use in its pulp and paper operations. As of the Petition Date, GNP owed the Debtor a past due, outstanding balance of \$422,625.31 for services performed in the ordinary course of the Debtor’s operations.

10. There is no dispute that the Debts have matured and are payable on demand or on order.

RELIEF REQUESTED

11. Pursuant to 11 U.S.C. §§ 541 and 542, the Trustee seeks an order directing Irving and GNP to pay the Debts to the Debtor’s estate.

BASIS FOR RELIEF

12. Pursuant to 11 U.S.C. § 541, property of the estate includes “all legal or equitable interest of the debtor in property as of commencement of the case.” See 11 U.S.C. § 541. Section 542(b) in turn provides: “Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on

order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.” See 11 U.S.C. § 542(b). Sections 542(c) and 542(d) are inapplicable to the relief sought hereby.

13. Property of the estate includes a debtor’s right to collect accounts receivable. Real Estate Corp. v. Pearlman (In re Pearlman), 413 B.R. 27, 33 (Bankr. D.R.I. 2009). Accounts receivable are considered to be mature debts, and are therefore subject to turnover. Allegheny, Inc. v. Laniado Wholesale Co., 68 B.R. 183, 193 (Bankr. W.D. Pa. 1986).

14. In this case, there is no legitimate dispute over what is owed to the Debtor.³ Irving and GNP each owe money to the Debtor’s estate and have been under an obligation to pay the past due balances they have respectively accrued. The Irving Debt and the GNP Debt are payable to the Debtor’s estate on demand or order.

15. Payment of the Debts is important to the operation of the Debtor’s railroad in the short term. The Trustee expects current discussions to result in post-petition financing sufficient to allow the proper operation of the railroad for the foreseeable future. However, pending such financing, the Trustee requires payment of the Irving Debt and the GNP Debt.

16. The Trustee requested that Irving and GNP pay their respective outstanding balances, but both customers have refused to do so. Irving and GNP should be directed to make these past-due payments.

NOTICE

17. Notice of this motion was served on the following parties on the date and in the manner set forth in the certificate of service: (1) the United States Trustee; (2) the Debtor’s

³ GNP has alleged certain offsets with respect to a portion of the GNP Debt. The Trustee disputes the validity of these offsets but, even if GNP were to prevail in establishing their legitimacy, the GNP Debt far exceeds the amount of the alleged offsets. Irving has also alleged offsets to the Irving Debt on a “triangular setoff” theory based on debts owed by the Debtor to an Irving affiliate, but not to Irving. If these offsets are legitimate—and the Trustee does not believe they are as a matter of law—they would exceed the amount of the Irving Debt.

counsel; (3) the non-insider holders of the twenty (20) largest unsecured claims against the Debtor or, if applicable, the lawyers representing such holders; (4) applicable federal and state taxing authorities; (5) the holders of secured claims against the Debtor, or if applicable, the lawyers representing such holders; (6) others who have, as of the date of this Motion, entered an appearance and requested service of papers in the Case; (7) counsel for Irving; and (8) counsel for GNP.

WHEREFORE, the Trustee requests that the Court enter an Order: (1) compelling Irving to immediately pay the Irving Debt in the approximate amount of \$885,733; (2) compelling GNP to immediately pay the GNP Debt in the approximate amount of \$422,625; and (3) granting such other further relief as may be appropriate.

Dated: August 30, 2013

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MAINE
MONTREAL & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Michael A. Fagone
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In re:

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Bk. No. 13-10670
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ORDER

Upon consideration of the Motion for Order Pursuant to 11 U.S.C. § 542(b) (the “Motion”) filed by Robert J. Keach, the chapter 11 trustee in the above-captioned case (the “Trustee”), seeking an order compelling payment by Irving Paper Ltd., Irving Pulp & Paper, Ltd., and J. D. Irving, Ltd. (collectively, “Irving”) and Great Northern Paper (“GNP”) of certain past-due balances owed by those customers to the estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), and after a hearing held before the Court, the Court finding that the Trustee has shown sufficient cause for the relief sought by the Motion; it is hereby

ORDERED, ADJUDGED AND DECREED:

1. The Motion is granted;
2. Irving is directed to immediately pay to the Debtor’s estate \$885,733.04; and
3. GNP is directed to immediately pay to the Debtor’s estate \$422,625.31.

Dated:

The Honorable Louis H. Kornreich
U. S. Bankruptcy Judge for the District of Maine