

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)
)
Montreal Maine & Atlantic Railway Ltd.,) **Chapter 11**
) **Case No. 13-10670**
)
Debtor.)

**WHEELING & LAKE ERIE RAILWAY COMPANY’S MOTION TO ENFORCE
PAYMENT OF ALLOWED ADMINISTRATIVE CLAIM PURSUANT TO ORDER
CONFIRMING TRUSTEE’S REVISED FIRST AMENDED PLAN OF LIQUIDATION
DATED JULY 15, 2015 (AS AMENDED ON OCTOBER 8, 2015)
AND INCORPORATED MEMORANDUM OF LAW**

Now comes the Wheeling & Lake Erie Railway Company (“Wheeling”) and requests that the Court enter an order enforcing its Order, dated October 9, 2015 (“Confirmation Order”), confirming the Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015 (As Amended On October 8, 2015) (the “Plan”). In particular, Wheeling requests that the Court order the Trustee promptly to comply with the provisions of Section 2.1(b) of the Plan and the Confirmation Order, which call for the Trustee to pay in full Wheeling’s Allowed Administrative Expense claim on the Effective Date of the Plan. The Effective Date has occurred, and the Trustee, without lawful justification and in derogation of the Confirmation Order the Plan has failed and refused to pay Wheeling’s Allowed Administrative Expense Claim. In further support of this Motion, Wheeling states as follows:

JURISDICTIONAL STATEMENT

1. On August 7, 2013, 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.

2. On October 9, 2015, this Court confirmed the Plan.

3. 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. §§ 105(a), 361, 363, 364. This is a core matter, pursuant to 28 U.S.C. § 157(b)(2)(A), (D), (K), and (M).

4. Pursuant to the Plan and the Confirmation Order, the Court has retained jurisdiction to enforce the provisions of the Plan.

ANALYSIS

5. Under Section 1.11 of the Plan, the term “Allowed Administrative Expense Claim” is defined as follows:

Allowed Administrative Expense Claim means an Administrative Expense Claim a request for payment of which was timely filed with the Bankruptcy Court on or before the Administrative Expense Claims Bar Date and which has been allowed pursuant to a Final Order of the Bankruptcy Court, including, without limitation, the Confirmation Order, but Derailment Claims and Claims under 11 U.S.C. § 1171(b) shall not be or become Allowed Administrative Expense Claims.

6. Further, under Section 2.1(b) of the Plan, “Allowed Administrative Expense Claims” are to be paid and treated in the following manner:

Payment of Allowed Administrative Expense Claims. Except to the extent that a Holder of an Allowed Administrative Expense Claim (other than a Claim covered by Section 2.2 or 2.3 of the Plan) agrees to a less favorable treatment, each Allowed Administrative Expense Claim (including any Allowed Claim asserted under section 503(b)(9) of the Bankruptcy Code) shall be paid in full, in Cash, in an amount equal to the unpaid portion of such Allowed Administrative Expense Claim within thirty (30) days following the later to occur of (a) the Effective Date, or (b) the date on which such Administrative Expense Claim shall become an Allowed Claim;

7. Wheeling holds an Allowed Administrative Expense Claim by virtue of the Order of this Court entered on July 14, 2015 entitled “Amended Order on Wheeling & Lake Erie Railway Company’s Motion to Enforce Cash Collateral Orders” (the “Cash Collateral Order”). Reference is made to Docket Entry #76 on the docket of this case.

8. Pursuant to the Cash Collateral Order, Wheeling was granted an allowed administrative expense claim in the amount of \$695,640.93, and that claim was granted a “superpriority” status; that is, to be paid ahead of all other allowed administrative expense claim.

9. The Cash Collateral Order has become a final order, as no appeal or motion for reconsideration was filed.

10. Pursuant to the Plan, and the Confirmation Order, Wheeling was entitled to payment of its allowed administrative expense claim within thirty days of the later to occur of (a) The Effective Date (as defined in the Plan) and (b) the date upon which its Administrative Claim became an allowed claim. As such, Wheeling was entitled to payment of its Allowed Administrative Expense Claim pursuant to the Cash Collateral order entered on July 14, 2015, on the date which was thirty (30) days after the occurrence of the Effective Date of the Plan.

11. The Effective Date of the Plan occurred on December 22, 2015, and more than thirty days has elapsed, but Wheeling has not been paid the amount of its allowed administrative expense claim. Moreover the Trustee has, without proper justification, expressly refused to pay the same, notwithstanding the express provisions of the Cash Collateral Order, the Plan and the Confirmation Order.

12. Further, in derogation of Wheeling’s superpriority status, upon information and belief, holders of administrative claims of a lower priority have been paid.

CONCLUSION

WHEREFORE, Wheeling prays that this Court enter its order:

- A. Requiring the Trustee forthwith to pay the full amount of Wheeling's allowed Administrative Expense Claim;
- B. Requiring the Trustee to pay all of Wheeling's costs and expenses in filing this Motion; and
- C. Granting such other and further relief as the Court deems just and proper.

Dated: January 29, 2016

/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.
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CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and that I caused a true and correct copy of the above document, proposed Order and Notice of Hearing to be served upon the parties electronically at the addresses set forth on the Service List below on 29th day of January, 2016.

/s/ Holly C. Pelkey

Holly C. Pelkey

Legal Assistant

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)
)
Montreal Maine & Atlantic Railway Ltd.,) **Chapter 11**
) **Case No. 13-10670**
)
Debtor.)

**ORDER ON WHEELING & LAKE ERIE RAILWAY COMPANY'S MOTION TO
ENFORCE PAYMENT OF ALLOWED ADMINISTRATIVE CLAIM PURSUANT TO
ORDER CONFIRMING TRUSTEE'S REVISED FIRST AMENDED PLAN OF
LIQUIDATION DATED JULY 15, 2015 (AS AMENDED ON OCTOBER 8, 2015)**

A hearing having been held on the aforesaid Motion (the "Motion"), the Court having heard the arguments of counsel and good cause having been demonstrated to the Court for entry of this Order, it is therefore ORDERED, ADJUDGMENT AND DECREED that:

1. Service of the Motion was adequate and timely in all respects;
2. The Motion is GRANTED;
3. The Trustee shall be and hereby is required, within two (2) business days of entry of this Order, to pay Wheeling's allowed administrative expense claim, in the amount set forth in the Motion, in cash, in full;
4. Wheeling shall be entitled to reimbursement of its reasonable legal fees and expenses incurred in connection with the Motion, and shall, within fourteen days of the date of entry of this Order, submit to the Court for its review and allowance the claimed amount of such legal fees and expenses.

Dated: _____, 2016

Peter G. Cary, United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)
)
Montreal Maine & Atlantic Railway Ltd.,) **Chapter 11**
) **Case No. 13-10670**
)
Debtor.)

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Tuesday, February 23, 2016, at 9:00 a.m.** a hearing will be held at the United States Bankruptcy Court, 537 Congress Street, Portland, Maine, on *Wheeling & Lake Erie Railway Company's Motion to Enforce Payment of Allowed Administrative Claim Pursuant to Order Confirming Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015 (As Amended On October 8, 2015)* (the "Motion").

If any party in interest shall have an objection to the 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 Thursday, February 12, 2016**, and concurrently serve (by 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. 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 MOTION MAY BE GRANTED BY
DEFAULT WITHOUT FURTHER NOTICE OR HEARING.**

Dated: January 29, 2016

/s/ George J. Marcus

George J. Marcus
David C. Johnson
Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

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