

RELIEF REQUESTED WITHOUT A HEARING

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**APPLICATION FOR ORDER, PURSUANT TO SECTIONS 327 AND 328
OF THE BANKRUPTCY CODE, AUTHORIZING THE EMPLOYMENT
OF BERNSTEIN, SHUR, SAWYER & NELSON, P.A., AS
ATTORNEYS FOR THE TRUSTEE**

Robert J. Keach (the “Trustee”), the chapter 11 trustee in the above-captioned case hereby requests that this Court enter an order approving the Trustee’s employment of Bernstein, Shur, Sawyer & Nelson, P.A. (“BSSN”) as counsel for the Trustee.

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). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates and applicable rules for the relief sought herein are §§ 327(a) and 328(a) of the United States Bankruptcy Code, Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (hereinafter “Fed. R. Bankr. P.”) and Rules 2014-1 and 2014-2 of this Court’s local rules (the “Local Rules”).

BACKGROUND

2. On August 7, 2013 (the “Petition Date”), Montreal Maine & Atlantic Railway, Ltd., the above-captioned debtor (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.

3. 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.¹ 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 (the “Canadian Case”).

4. 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.

5. As set forth on the record by the Debtor’s counsel during the First Day Hearing, and as discussed in the *Affidavit of M. Donald Gardner, Jr. in Support of First Day Pleadings* [Docket No. 11] (the “Gardner Affidavit”), MMA’s bankruptcy case was precipitated by a derailment, on July 6, 2013, of an unmanned eastbound MMA train with 72 carloads of crude oil and 5 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

¹ 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 his information changes.

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.

6. Post-Derailment, the Debtor's aggregate monthly gross revenues dropped to approximately \$1 million. As a result of the Derailment, the Debtor has lost much of its freight business, and faces litigation claims and extraordinary environmental clean-up liability. These issues precipitated the filing.

RELIEF REQUESTED

7. Subject to the approval of this Court, the Trustee seeks to employ BSSN to serve as his counsel in connection with the Case, with the retention being effective on August 21, 2013. Accordingly, pursuant to §§ 327(a) and 328(a) of the Bankruptcy Code and Fed. R. Bankr. P. 2014(a), the Trustee requests that this Court approve the employment of BSSN effective August 21, 2013 to perform necessary legal services on his behalf during the Case.

BASIS FOR RELIEF

8. Under section 327(a) of the Bankruptcy Code, a trustee is authorized to employ one or more attorneys that do not hold or represent an interest adverse to the estate and that are "disinterested persons," as that term is defined in section 101(14) of the Bankruptcy Code, to represent or assist the trustee in carrying out the trustee's duties under the Bankruptcy Code. 11 U.S.C. §§ 101(14) and 327(a). Section 1107(b) of the Bankruptcy Code modifies sections 101(14) and 327(a) in cases under chapter 11 of the Bankruptcy Code, providing that a person is not disqualified for employment under section 327(a) of the Bankruptcy Code by a debtor in possession solely because of such person's employment by, or representation of, the debtor

before the commencement of the case. 11 U.S.C. § 1107(b). Under section 328(a) of the Bankruptcy Code, an attorney retained under section 327(a) may, with the Court's approval, be employed on any reasonable terms and conditions, including on retainer or on an hourly basis. 11 U.S.C. § 328(a).

9. Upon the Trustee's appointment, the Trustee selected BSSN to serve as his general counsel. The Trustee selected BSSN because of its recognized expertise in the field of business reorganizations under Chapter 11 of the Bankruptcy Code, as well as all areas of law that typically arise in the context of a case under Chapter 11. Accordingly, BSSN (a) has the necessary background to deal effectively with the potential legal issues and problems that may arise in the context of the Case, and (b) is well-qualified to represent the Trustee in the Case in an efficient and timely manner.

10. In accordance with Local Rule 2014-3, the professional services that BSSN will render to the Trustee may include some or all of the following:

- (a) Advising the Trustee with respect to his powers and duties in the Trustee's continued management and operation of the Debtor's business and property;
- (b) Representing the Trustee at all hearings and matters pertaining to the Trustee's affairs as Trustee;
- (c) Attending meetings and negotiating with representatives of the Debtor's creditors and other parties-in-interest, as well as responding to creditor inquiries;
- (d) Taking all necessary action to protect and preserve the Debtor's estate;
- (e) Preparing on behalf of the Trustee all necessary and appropriate motions, applications, answers, orders, reports and papers necessary to the administration of the estate;
- (f) Reviewing applications and motions filed in connection with the Case;
- (g) Negotiating and preparing on the Trustee's behalf any plans of

reorganization, disclosure statements, and all related agreements and/or documents, and taking any necessary action on behalf of the Trustee to obtain confirmation of such plans;

- (h) Advising the Trustee in connection with any potential sale or sales of assets or business, or in connection with any other strategic alternatives;
- (i) Reviewing and evaluating the Debtor's executory contracts and unexpired leases, and representing the Trustee in connection with the rejection, assumption or assignment of such leases and contracts;
- (j) Consulting with and advising the Trustee regarding labor and employment matters;
- (k) Representing the Trustee in connection with any adversary proceedings or automatic stay litigation which may be commenced by or against the Debtor;
- (l) Reviewing and analyzing various claims of the Debtor's creditors and treatment of such claims, and preparing, filing or prosecuting any objections thereto;
- (m) Performing necessary legal services and providing necessary legal advice to the Trustee in connection with the Canadian Case, and the coordination of the Case with the Canadian Case; and
- (n) Performing all other necessary legal services and providing all other necessary legal advice to the Trustee in connection with the Case.

11. To the best of the Trustee's knowledge, the shareholders and employees of BSSN do not have any connection with or any interest adverse to the Trustee, the Debtor, the Debtor's creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, except to the extent certain connections are set forth herein or in the Affidavit of Michael A. Fagone, Esq. in Support of the Application of the Trustee for Authority to Retain Bernstein, Shur, Sawyer & Nelson, P.A., as Attorneys for the Trustee (the "BSSN Statement") filed contemporaneously herewith. Accordingly, the Trustee believes that BSSN does not hold or represent any interest adverse to the Trustee, or the Debtor's estate and that BSSN is a "disinterested person" as that phrase is

defined in § 101(14) of the Bankruptcy Code, as modified by § 1107(b) of the Bankruptcy Code.

12. Any pre-retention fees and costs relating to the Case will be paid subject to the applicable sections of the Bankruptcy Code, the Fed. R. Bankr. P. and this Court's Local Rules.

13. The Trustee understands that BSSN intends to apply to the Court for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Case in accordance with the applicable provisions of the Bankruptcy Code, the Fed. R. Bankr. P., the Local Rules, the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330, and any applicable orders of the Court.

14. In accordance with Local Rule 2014-3, the Trustee, subject to approval by this Court, proposes to pay BSSN its customary hourly rates for representation of parties in reorganization cases in effect as set forth in the BSSN Statement. These hourly rates are subject to change from time to time in accordance with BSSN's established billing practices and procedures. The Trustee submits that such rates are reasonable and should be approved by the Court, subject to a determination of amounts to be paid to BSSN upon application for allowance of compensation. The Trustee, subject to Court approval, and if approved by the Court, also proposes to reimburse BSSN for its actual and necessary expenses incurred in representing the Trustee. BSSN professionals will maintain detailed records of time spent and any actual and necessary expenses incurred in connection with the rendering of their services by category and nature of the services rendered. BSSN also reserves the right to seek fee enhancements or bonuses to the extent permitted under applicable law.

15. BSSN's hourly rates are set at a level designed to fairly compensate it for the work of its attorneys and paralegals, and to cover fixed and routine overhead expenses. Hourly

rates vary with the experience and seniority of the individuals assigned and may be adjusted by BSSN from time to time. It is BSSN's policy in all areas of practice to charge its clients for all other expenses incurred in connection with a client's case. The expenses charged to clients include, among other things, witness fees, travel expenses, filing and recording fees, postage, express mail and messenger charges, computerized legal research charges and other computer services. BSSN will charge the Trustee for these expenses in a manner and at rates consistent with charges made generally to its other clients, consistent with its standard practices and consistent with applicable local and administrative rules. BSSN believes that it is more equitable to charge these expenses to individual clients who incur them, rather than increasing the hourly rates and spreading the expenses among all clients.

16. Local Rule 2014-3 requires that a good faith estimate of a range of fees be set forth in retention applications, unless the range of fees is impossible to forecast. Based on regulatory, mass tort and environment matters at issue in this Case, a fee range is impossible to forecast.

NOTICE

17. Notice of this Application 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 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; and (5) others who have, as of the date of the Application, entered an appearance and requested service of papers in the Case.

CONCLUSION

18. The services of BSSN are necessary to enable the Trustee to execute faithfully his duties under the Bankruptcy Code. Based upon BSSN's extensive experience and expertise, BSSN is both well-qualified and uniquely able to represent the Trustee under the Bankruptcy Code in an efficient, cost-effective, and timely manner.

Dated: August 21, 2013

/s/ Robert J. Keach _____
Robert J. Keach
CHAPTER 11 TRUSTEE OF MAINE
MONTREAL & ATLANTIC RAILWAY,
LTD.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER GRANTING APPLICATION FOR ORDER, PURSUANT TO
SECTIONS 327 AND 328 OF THE BANKRUPTCY CODE,
AUTHORIZING THE EMPLOYMENT OF BERNSTEIN,
SHUR, SAWYER & NELSON, P.A., AS ATTORNEYS FOR THE TRUSTEE**

Upon consideration of Robert J. Keach's (the "Trustee") Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Bernstein, Shur, Sawyer & Nelson, P.A. as Attorneys for the Trustee (the "Application"), and upon consideration of the Affidavit of Michael A. Fagone, Esquire In Support of the Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Bernstein, Shur, Sawyer & Nelson, P.A. as Attorneys for the Trustee (the "BSSN Statement"), and it satisfactorily appearing that attorney Michael A. Fagone and the firm of Bernstein, Shur, Sawyer and Nelson. P.A. ("BSSN") are disinterested and do not represent or hold any interest adverse to the Debtor or the estate in the matters upon which BSSN is to be engaged, and it satisfactorily appearing that the employment of BSSN will be in the best interest of the Trustee and the Debtor's estate, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as follows:

1. The Application is granted.
2. The Trustee be and hereby is authorized to employ BSSN as his attorneys in all matters which require the services of such counsel on the terms set forth in the Application.

3. Service of the Application, the BSSN Statement and proposed order was sufficient notice to parties under the circumstances of the Case.¹

4. The legal services rendered or to be rendered by BSSN may include, without limitation, the following:

- (a) Advising the Trustee with respect to his powers and duties in the Trustee's continued management and operation of the Debtor's business and property;
- (b) Representing the Trustee at all hearings and matters pertaining to his affairs as Trustee;
- (c) Attending meetings and negotiating with representatives of the Debtor's creditors and other parties-in-interest, as well as responding to creditor inquiries;
- (d) Taking all necessary action to protect and preserve the Debtor's estate;
- (e) Preparing on behalf of the Trustee all necessary and appropriate motions, applications, answers, orders, reports and papers necessary to the administration of Debtor's estate;
- (f) Reviewing applications and motions filed in connection with the Case;
- (g) Negotiating and preparing on the Trustee's behalf any plans of reorganization, disclosure statements, and all related agreements and/or documents, and taking any necessary action on behalf of the Trustee to obtain confirmation of such plans;
- (h) Advising the Trustee in connection with any potential sale or sales of assets or business, or in connection with any other strategic alternatives;
- (i) Reviewing and evaluating the Debtor's executory contracts and unexpired leases, and representing the Trustee in connection with the rejection, assumption or assignment of such leases and contracts;
- (j) Consulting with and advising the Trustee regarding labor and employment matters;
- (k) Representing the Trustee in connection with any adversary proceedings or automatic stay litigation which may be commenced by or against the Debtor;

¹ Capitalized terms not specifically defined herein shall have the meaning ascribed to such terms in the Application.

- (l) Reviewing and analyzing various claims of the Debtor's creditors and treatment of such claims, and preparing, filing or prosecuting any objections thereto;
- (m) Performing necessary legal services and providing necessary legal advice to the Trustee in connection with the Canadian Case; and
- (n) Performing all other necessary legal services and providing all other necessary legal advice to the Trustee in connection with the Case.

5. This Order shall become final in fourteen (14) days unless a party in interest sooner objects, in which case the matter shall be set for hearing and considered by the Court as if this Order had not been entered.

Dated:

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