

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**MOTION PURSUANT TO SECTIONS 327 AND 328 OF THE BANKRUPTCY  
CODE TO AMEND THE TERMS OF RETENTION OF DEVELOPMENT  
SPECIALISTS, INC., AS FINANCIAL ADVISOR TO THE TRUSTEE  
NUNC PRO TUNC TO AUGUST 11, 2014**

Robert J. Keach (the “Trustee”), the chapter 11 trustee in the above-captioned case hereby requests that this Court enter an order amending the terms of the Trustee’s retention of Development Specialists, Inc. (“DSI”) as financial advisor to the Trustee, as contained in the Court’s *Order Granting Application to Employ Development Specialists, Inc. as Financial Advisor for the Trustee* [D.E. 119] (the “DSI Retention Order”), *nunc pro tunc* to August 11, 2014.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to entertain the Motion 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.

2. The statutory predicates and applicable rules relating to the relief sought herein are 11 U.S.C. §§ 327(a) and 328(a), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2014-1, 2014-2, and 2014-3 of the District of Maine Local Bankruptcy Rules (the “Local Rules”).

### **BACKGROUND**

3. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Maine. Simultaneously, the Debtor’s wholly-owned subsidiary, Montreal Maine & Atlantic Canada Co. (“MMA Canada”) filed for protection under Canada’s Companies’ Creditors Arrangement Act. On August 21, 2013, the United States Trustee appointed the Trustee to serve as trustee in the Debtor’s chapter 11 case pursuant to 11 U.S.C. § 1163. [D.E. 64].

4. On August 26, 2014, the Trustee filed his *Application to Employ Development Specialists, Inc. as Financial Advisor* [D.E. 100], and on August 29, 2014, the Court entered the DSI Retention Order granting the Trustee’s requested relief.

5. On May 15, 2014, the Trustee closed a sale of substantially all of the Debtor’s assets (the “Sale”) to Central Maine & Quebec Railway US Inc. (the “Purchaser”), a subsidiary of Fortress Investment Group LLC. In connection with the Sale, the Purchaser requires certain transition services on an ongoing basis, which DSI is in the best position to provide. The Purchaser, DSI, and the Trustee have reached an agreement as to the scope and terms of such services to be provided to the Purchaser by DSI, which agreement is reflected in the letter (the “Agreement Letter”) annexed hereto as **Exhibit A**.

### **RELIEF REQUESTED**

6. Pursuant to §§ 327(a) and 328(a) of the Bankruptcy Code and Fed. R. Bankr. P. 2014(a), the Trustee requests that the Court enter an order approving an amendment of the terms of DSI’s retention as reflected in the Agreement Letter and discussed herein *nunc pro tunc* to August 11, 2014.

7. A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit B.**

**BASIS FOR RELIEF**

8. Under section 327(a) of the Bankruptcy Code, a trustee is authorized to employ one or more professional persons 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). Under section 328(a) of the Bankruptcy Code, a professional person retained under section 327(a) may, with the Court’s approval, be employed on any reasonable terms and conditions. 11 U.S.C. § 328(a).

9. In addition to the professional services currently provided to the Trustee by DSI as approved in the DSI Retention Order, the Trustee requests that DSI be authorized to render transition services to the Purchaser in connection with the Sale, on behalf of the Trustee, pursuant to the following terms:

- a. DSI shall be authorized to provide financial reporting and other services to the Purchaser in connection with the transition in ownership and operation of the Sale assets;
- b. DSI shall create a separate time category for providing financial reporting services or other requested services to the Purchaser;
- c. DSI shall provide weekly time details to the Purchaser for its review by Friday of the following week;
- d. DSI shall invoice the Purchaser for services rendered on a monthly basis at the previously-approved rate of \$635.00 per hour, plus reasonable out of pocket travel

expenses to the extent such travel expenses are approved in advance in writing by the Purchaser;

- e. the Purchaser shall remit to the Debtor payment on each monthly invoice within thirty (30) days of receipt of such invoice;
- f. DSI shall include any services rendered, and any fees and expenses invoiced to the Purchaser in connection with the same, in its interim and final applications for compensation and reimbursement in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any order of this Court;
- g. the Debtor shall use payments received from the Purchaser as described in paragraph (e) above to pay the associated fees and expenses requested by DSI in an interim or final application for compensation and reimbursement to the extent approved by the Bankruptcy Court; and
- h. the Agreement Letter is subject to cancellation by the Purchaser or DSI upon three (3) days' notice to the other parties thereto.

10. Based on its work with the Trustee and the Debtor, DSI is in a unique position to provide the financial and other services required by the Purchaser to complete the transition in operation of the Sale assets. The Trustee submits that the additional terms and conditions for the retention of DSI as reflected herein and in the Agreement Letter are fair and reasonable and are in the best interests of all parties.

11. Furthermore, a bankruptcy court has the discretion to grant a post facto application provided extraordinary circumstances justify the untimeliness of the application. In re Jarvis, 53 F.3d 416, 421 (1st Cir. 1985). Such factors include “whether the applicant was

under time pressure to begin service without approval.’’ Jarvis, 53 F.3d at 420-21 (*quoting In re F/S Airlease II, Inc.*, 844 F.2d 99, 105-06 (3d. Cir. 1988)). DSI began providing the additional services described herein in August 2014 after the Purchaser and the Trustee concluded that such services were necessary to complete the transition in operation of the Sale assets. The Trustee believes that, if it applies, Jarvis supports the relief requested.

### **NOTICE**

12. Notice of this Motion was served on the following parties on the date and in the manner set forth in the certificate of service: (a) the United States Trustee; (b) MMA’s counsel; (c) the non-insider holders of the twenty (20) largest unsecured claims against MMA or, if applicable, the lawyers representing such holders; (d) applicable federal and state taxing authorities; (e) the holders of secured claims against MMA, or if applicable, the lawyers representing such holders; and (f) others who have, as of the date of the Motion, entered an appearance and requested service of papers in the chapter 11 case.

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**CONCLUSION**

13. WHEREFORE, the Trustee respectfully requests that the Bankruptcy Court enter an order: (i) approving an amendment of the terms of DSI's retention as reflected in the Agreement Letter and discussed herein, *nunc pro tunc* to August 11, 2014; and (ii) granting such other relief as Court deems just and appropriate.

Dated: October 1, 2014

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

By his attorneys:

/s/ D. Sam Anderson

Michael A. Fagone, Esq.

D. Sam Anderson, Esq.

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August 11, 2014

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Development Specialists, Inc.  
Three First National Plaza  
70 West Madison Street  
Suite 2300  
Chicago, Illinois 60602

John Giles  
Central Maine & Quebec Railway US Inc.  
1345 Avenue of the Americas  
46th Floor  
New York, New York 10105

**Re: Agreement for Development Specialists, Inc. to Provide Transition Services to Central Maine & Quebec Railway US Inc.**

Dear Fred and John:

This letter acknowledges the agreement (the “Agreement”) between Development Specialists, Inc. (“DSI”), Central Maine & Quebec Railway US Inc. (the “Purchaser”), and Robert J. Keach, as chapter 11 trustee (the “Trustee”) for the estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), with respect to DSI’s provision of transition services to the Purchaser in connection with the sale of substantially all of the Debtor’s assets to the Purchaser (the “Sale”).

By executing this agreement letter, the parties hereto agree to the following:

- (a) DSI shall be authorized to provide financial reporting and other services to the Purchaser in connection with the transition in ownership and operation of the Sale assets;
- (b) DSI shall create a separate time category for providing financial reporting services or other requested services to the Purchaser;
- (c) DSI shall provide weekly time details to the Purchaser for its review by Friday of the following week;
- (d) DSI shall invoice the Purchaser for services rendered on a monthly basis at the previously-approved rate of \$635.00 per hour, plus reasonable out of pocket travel expenses to the extent such travel expenses are approved in advance in writing by Purchaser;

August 11, 2014  
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- (e) the Purchaser shall remit to the Debtor payment on each monthly invoice within thirty (30) days of receipt of such invoice;
- (f) DSI shall include any services rendered, and any fees and expenses invoiced to the Purchaser in connection with the same, in its interim and final applications for compensation and reimbursement filed with the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court");
- (g) the Debtor shall use payments received from the Purchaser as described in paragraph (e) above to pay the associated fees and expenses requested by DSI in an interim or final application for compensation and reimbursement to the extent approved by the Bankruptcy Court; and
- (h) this Agreement is subject to cancelation by the Purchaser or DSI upon three (3) days' notice to the other parties hereto.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Dated: August \_\_\_, 2014

DEVELOPMENT SPECIALISTS, INC.

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By: Fred C. Caruso  
Title: Chief Operating Officer

Dated: August \_\_\_, 2014

CENTRAL MAINE & QUEBEC  
RAILWAY US INC.

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By: John Giles  
Title: Chief Executive Officer

Dated: August \_\_\_, 2014

ROBERT J. KEACH, as chapter 11  
Trustee for the estate of Montreal Maine  
& Atlantic Railway, Ltd.

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By: D. Sam Anderson, Esq.  
Title: Counsel for Trustee



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**ORDER GRANTING MOTION PURSUANT TO SECTIONS 327 AND 328 OF THE  
BANKRUPTCY CODE TO AMEND THE TERMS OF RETENTION OF  
DEVELOPMENT SPECIALISTS, INC., AS FINANCIAL ADVISOR  
TO THE TRUSTEE NUNC PRO TUNC TO AUGUST 11, 2014**

This matter having come before the Court on the *Motion Pursuant to Sections 327 and 328 of the Bankruptcy Code to Amend the Terms of Retention of Development Specialists, Inc., as Financial Advisor to the Trustee Nunc Pro Tunc to August 11, 2014* (the “Motion”)<sup>1</sup> of Robert J. Keach, as Chapter 11 Trustee (the “Trustee”) for the estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”) for an order pursuant to 11 U.S.C. §§ 327(a) and 328(a) amending the terms and conditions of the retention of Development Specialists, Inc. (“DSI”) as financial advisor to the Trustee, all as more fully described in the Motion; and the Court having reviewed the Motion and any objections thereto; and due and proper notice of the hearing on the Motion having been provided; and all parties in interest having been afforded an opportunity to be heard with respect to the Motion and all of the relief related thereto; and it appearing, based upon the record before the Court (if any), that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest, and is in the public interest; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED, and DECREED** that:

<sup>1</sup> Unless otherwise indicated, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

1. The Motion is granted on the terms set forth herein, effective as of August 11, 2014.

2. The terms of DSI's retention as financial advisor to the Trustee shall be amended to include the following:

- a. DSI shall be authorized to provide financial reporting and other services to the Purchaser in connection with the transition in ownership and operation of the Sale assets;
- b. DSI shall create a separate time category for providing financial reporting services or other requested services to the Purchaser;
- c. DSI shall provide weekly time details to the Purchaser for its review by Friday of the following week;
- d. DSI shall invoice the Purchaser for services rendered on a monthly basis at the previously-approved rate of \$635.00 per hour, plus reasonable out of pocket travel expenses to the extent such travel expenses are approved in advance in writing by the Purchaser;
- e. the Purchaser shall remit to the Debtor payment on each monthly invoice within thirty (30) days of receipt of such invoice;
- f. DSI shall include any services rendered, and any fees and expenses invoiced to the Purchaser in connection with the same, in its interim and final applications for compensation and reimbursement in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any order of this Court;
- g. the Debtor shall use payments received from the Purchaser as described in

paragraph (e) above to pay the associated fees and expenses requested by DSI in an interim or final application for compensation and reimbursement to the extent approved by the Bankruptcy Court; and

- h. the Agreement Letter is subject to cancelation by the Purchaser or DSI upon three (3) days' notice to the other parties thereto.

3. 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: \_\_\_\_\_, 2014

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

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**NOTICE OF HEARING**

Robert J. Keach (the “Trustee”), the chapter 11 trustee in the above-captioned case, has filed a *Motion Pursuant to Sections 327 and 328 of the Bankruptcy Code to Amend the Terms of Retention of Development Specialists, Inc., as Financial Advisor to the Trustee Nunc Pro Tunc to August 11, 2014* (the “Motion”).

**Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

A hearing on the Motion is scheduled for **October 28, 2014** at **10:00 a.m. ET** (the “Hearing”) at the United States Bankruptcy Court (the “Court”), 202 Harlow Street, 2<sup>nd</sup> Floor, Bangor, Maine. You are invited to attend the Hearing.

If you do not want the Court to approve the Motion listed above, then on or before **October 21, 2014** you or your attorney must file with the Court a response explaining your position via the Court’s CM/ECF system. If you are not able to access the CM/ECF system, you should serve your response on the Court as follows:

Alec Leddy, Clerk  
United States Bankruptcy Court for the District of Maine  
202 Harlow Street  
Bangor, Maine 04401

If you have to mail your response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the date stated above.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Dated: October 1, 2014

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

By his attorneys:

/s/ D. Sam Anderson

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**CERTIFICATE OF SERVICE**

I, Karla M. Quirk, being over the age of eighteen and an employee of Bernstein, Shur, Sawyer & Nelson, P.A. in Portland, Maine, hereby certify that on October 1, 2014, I filed the following pleadings via the Court's CM/ECF electronic filing system:

- *Motion Pursuant to Sections 327 and 328 of the Bankruptcy Code to Amend the Terms of Retention of Development Specialists, Inc., as Financial Advisor to the Trustee Nunc Pro Tunc to August 11, 2014, including Exhibit A, proposed form of Order and Notice of Hearing [D.E. 1130].*

I further certify that on October 1, 2014, I served the above referenced pleadings via CM/ECF, U.S. First Class Mail, or Electronic Mail on: (a) the United States Trustee; (b) MMA's counsel; (c) the non-insider holders of the twenty (20) largest unsecured claims against MMA or, if applicable, the lawyers representing such holders; (d) applicable federal and state taxing authorities; (e) the holders of secured claims against MMA, or if applicable, the lawyers representing such holders; and (f) others who have, as of the date of the Motion, entered an appearance and requested service of papers in the chapter 11 case.

Dated: October 1, 2014

/s/ Karla M. Quirk  
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