

**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 MOLLEUR LAW OFFICE AS SPECIAL COUNSEL 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 Molleur Law Office (“Molleur”) as special counsel for the Trustee *nunc pro tunc* to August 6, 2015.

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, 2014-2 and 2014-3 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. In carrying out his fiduciary duties, the Trustee, with the assistance of his financial advisors, Development Specialists, Inc., identified approximately 15 entities that may have received payments within 90-days of the Petition Date that would constitute preferential transfers pursuant to § 547(b) of the Bankruptcy Code (“Preferences”) in excess of the statutory minimum (the “Preference Recipients”).

4. On April 27, 2015, the Trustee sent demand letters to the Preference Recipients, including an explanation and accounting of the Preferences.

5. On August 6, 2015, the Trustee, through his counsel, Bernstein, Shur, Sawyer & Nelson, P.A. (“Bernstein Shur”), filed adversary proceedings against 13 of the Preference Recipients (*see* Adv. Proc. Nos. 15-1015-27), including Dead River Company (“DRC”) (*see* Adv. Proc. No. 15-1021, the “DRC Adversary”).

6. At the time of filing the DRC Adversary, the Trustee was unaware of any conflicts that would prevent Bernstein Shur from representing the Trustee in that matter. Since that time, it has come to the Trustee’s attention that such a conflict does exist.

7. Accordingly, the Trustee has the need for separate counsel to represent him in the DRC Adversary.

RELIEF REQUESTED

8. Subject to the approval of this Court, the Trustee seeks to employ Molleur to serve as special counsel in connection with the DRC Adversary, *nunc pro tunc* to August 6, 2015. 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 Molleur effective August 6, 2015 to perform necessary legal services on his behalf in connection with the DRC Adversary.

BASIS FOR RELIEF

9. Under section 327(a) of the Bankruptcy Code, a trustee is authorized to employ, with the court's approval, one or more attorneys who do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title. *See* 11 U.S.C. §327(a). 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. *See* 11 U.S.C. § 328(a).

10. "In many cases, the employment of conflicts counsel to handle issues where general bankruptcy counsel has an adverse interest solves most [conflict issues]." In re Project Orange Associates, LLC, 431 B.R. 363, 375 (Bankr. S.D.N.Y. 2010). "Conflicts counsel, limited engagement agreements, and ethical walls have been acceptable procedures to address conflict of interests issues." In re Enron Corp., 2002 WL 32034346, at *11 (Bankr. S.D.N.Y. May 23, 2002). Here, the matter for which the Trustee requires Molleur's services is not closely intertwined with other matters in this case, and can be handled separately without excessive complication or duplication.

11. Molleur is a recognized expert in the field of bankruptcy, including the prosecution (and related defense) of Preferences. The Trustee requires the services of Molleur because of its experience with bankruptcy and Preferences, and because of Bernstein Shur's inability to represent the Trustee due to a conflict.

12. As set out more fully in the Verified Statement of Attorney Filed By Molleur Law Office Pursuant to Fed. R. Bankr. P. 2014(a) and D. ME. LBR 2014-1(a) and 2014-2(b) (the "Molleur Statement") filed contemporaneously herewith, Molleur acts as local counsel to Shell

Oil Company (“Shell”) as well as the Brotherhood of Locomotive Engineers and Trainmen (the “Trainmen”) in connection with the above-captioned bankruptcy. The Trustee believes that Molleur’s representations of Shell and the Trainmen do not rise to the level of interests adverse to the Debtor or its estate with respect to the matters on which Molleur is to be employed.

13. To the best of the Trustee’s knowledge, the partners and employees of Molleur do not have any connection with or any interest adverse to the Trustee, 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 set forth herein or in the Molleur Statement. Pursuant to 11 U.S.C. §327(e), the Trustee, with the Court’s approval, may employ Special Counsel for a specified special purpose if it is in the best interest of the estate and if such attorney does not represent or hold any interest adverse to the Debtor or the estate *with respect to the matter on which the attorney is to be employed*. None of the matters disclosed in the Molleur Statement run awry of Section 327(e), or present any reason why Molleur should not be employed.

14. All of Molleur’s fees and expenses with respect to services rendered after the Petition Date will be paid subject to the applicable sections of the Bankruptcy Code, the Fed. R. Bankr. P. and this Court’s Local Rules.

15. In accordance with Local Rule 2014-3, the Trustee, subject to approval by this Court, proposes to pay Molleur its customary hourly rates for representation of parties in reorganization cases in effect as set forth in the Molleur Statement. These hourly rates are subject to change from time to time in accordance with Molleur’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 Molleur upon application for

allowance of compensation. The Trustee, subject to Court approval, and if approved by the Court, also proposes to reimburse Molleur for its actual and necessary expenses incurred in acting as special counsel to the Trustee. Molleur professionals will maintain detailed records of time spent and any actual and necessary expenses incurred in connection with the rendering of their services herein. The Trustee submits that, in light of the limited scope of Molleur's employment, separating the services by category and nature of the services rendered will not be necessary.

16. Molleur'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 Molleur from time to time. It is Molleur'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. Molleur 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. Molleur 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.

17. 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. 1995). Here, for the avoidance of doubt and conflict issues, Molleur should be retained as of August 6, 2015 (the date the Trustee filed the DRC Adversary). In support of such

relief, the Trustee notes that Molleur will not actually render any services herein until its employment is approved by the Court.

18. 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. The Trustee estimates, subject to the unpredictable nature of the DRC Adversary, that Molleur's fees will range from a relatively *de minimis* amount to \$10,000.00.

NOTICE

19. 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; (5) the holders of secured claims against the Debtor, or if applicable, the lawyers representing such holders; and (6) others who have, as of the date of the Application, entered an appearance and requested service of papers in the Case.

CONCLUSION

20. The services of Molleur are essential to the Trustee in prosecuting the DRC Adversary. Based upon Molleur's experience and expertise, Molleur is well-qualified to represent the Trustee as special counsel under the Bankruptcy Code in an efficient, cost-effective, and timely manner.

Dated: August 11, 2015

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

By his attorneys:

/s/ Robert J. Keach
Robert J. Keach, Esq.
BERNSTEIN, SHUR, SAWYER & NELSON
100 Middle Street
P.O. Box 9729
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Tel: (207) 774-1200
Fax: (207) 774-1127

**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 MOLLEUR LAW OFFICE AS
SPECIAL COUNSEL FOR THE TRUSTEE NUNC PRO TUNC TO AUGUST 6, 2015**

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 Molleur Law Office As Special Counsel for the Trustee (the "Application"), and upon consideration of the Verified Statement of Attorney Filed By Molleur Law Office Pursuant to Fed. R. Bankr. P. 2014(a) and D. ME. LBR 2014-1(a) and 2014-2(b) (the "Molleur Statement") and it satisfactorily appearing that attorney James F. Molleur, and the firm of Molleur Law Office ("Molleur") do not represent or hold any interest adverse to the Debtor or the estate in the matters upon which Molleur is to be engaged, and it satisfactorily appearing that the employment of Molleur will be in the best interest of the Debtor's estate, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as follows:

1. The Application is granted, nunc pro tunc to August 6, 2015.
2. The Trustee be and hereby is authorized to employ Molleur 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 Molleur Statement and proposed order was sufficient notice to parties under the circumstances of the case.

4. The legal services to be rendered by Molleur may include, without limitation, assisting the Trustee in prosecuting the DRC Adversary and substantially related matters regarding DRC.¹

5. Notwithstanding that Molleur's retention is hereby approved pursuant to 11U.S.C. § 328, Molleur shall 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 Federal Rules of Bankruptcy Procedure, 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.

Dated:

The Honorable Peter G. Cary
U. S. Bankruptcy Judge for the District of Maine

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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

**VERIFIED STATEMENT OF ATTORNEY FILED BY MOLLEUR LAW OFFICE
PURSUANT TO FED. R. BANKR. P. 2014(a) AND D. ME. LBR 2014-1(a) and 2014-2(b)**

1. Except as otherwise disclosed in paragraph 2 hereof, neither I nor any member of my firm hold or represent any interest adverse to the estate of Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”) or Robert J. Keach as Trustee (the “**Trustee**”).

2. My and my firm’s connections with the Trustee, Debtor, any creditors, or other parties-in-interest, their respective attorneys and accountants are as follows:

(a) Molleur Law Office (“Molleur”) currently represents Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters, a party in interest in this case (the “Brotherhood”), with respect to matters completely unrelated to the discrete preference matter (the “DRC Adversary”) on which the Trustee proposes to employ Molleur, including matters in which Molleur advises the Brotherhood generally with respect to potential claims of its members against the Debtor’s estate. The Brotherhood has many constituent members who may have been present or former employees of the Debtor, but Molleur represents the Brotherhood as an entity and not any individual constituent member in his or her individual capacity. Molleur is aware that one employee, Jeffrey C. Durant, has filed a claim against the estate (Claim No. 250-1, the “Durant Claim”), and another employee, Stephen C. Currie has also filed a claim against the estate (the “Currie Claim”). The Trustee filed objections to the Durant Claim and the Currie Claim on or about August 10, 2015. Because the Durant Claim and the Currie Claim are completely unrelated to the discrete DRC Adversary on which the Trustee proposes to employ Molleur, Molleur believes that its employment is authorized by 11 U.S.C. § 327(e), because the interests of the Brotherhood and the Trustee are completely aligned with respect to the DRC Adversary, because in that matter Molleur on behalf of the Trustee will be seeking to recover assets that would only serve to increase the amount of funds that may become available to creditors of the Debtor’s estate. Molleur will not be representing the Trustee generally, or with respect to the Durant Claim, the Currie Claim, or any claim of the Brotherhood or any of its other constituent members, or with respect to any matter other than the discrete unrelated preference matter at issue in the DRC Adversary for which special employment is being sought.

(b) Molleur also currently represents Shell Oil Company, a creditor and party-in-interest in this case, with respect to certain claims against the Debtor's estate that are completely unrelated to the DRC Adversary. For the same reasons set forth in paragraph (a) above, Molleur believes that its on-going representation of Shell Oil Company in this case does not run afoul of 11 U.S.C. § 327(e), which authorizes the Court to approve employment of special counsel if special counsel is not adverse to the Debtor or the estate with respect to the matters on which special employment is being sought.

3. Except as otherwise disclosed in this verified statement, I am, and each member of my firm is, a "disinterested person" as that term is defined in 11 U.S.C. § 101(14).

4. The Trustee proposes to employ Molleur and its attorneys at their normal hourly rates, upon approval of this Court.

6. The current hourly rates of attorneys that the Trustee expects to call upon in connection with this case are:

Attorneys:

<u>Attorney</u>	<u>Rate</u>
James F. Molleur, Esq.	\$320
Andrew R. Sarapas, Esq.	\$270

Paraprofessionals:

<u>Paraprofessional</u>	<u>Rate</u>
Deana L. Kariotis	\$115
Brenna J. Reali	\$115
Michelle N. Vallee	\$115

The hourly rates of all Molleur attorneys and paraprofessionals are subject to change from time to time in accordance with Molleur's established billing practices and procedures.

7. Molleur'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

Molleur from time to time. It is Molleur'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. Molleur 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. Molleur 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.

8. Molleur does not believe that its representation of the Trustee in this case would be adversely affected by Molleur's duties to any other current clients or former clients, including, without limitation, the clients listed herein.

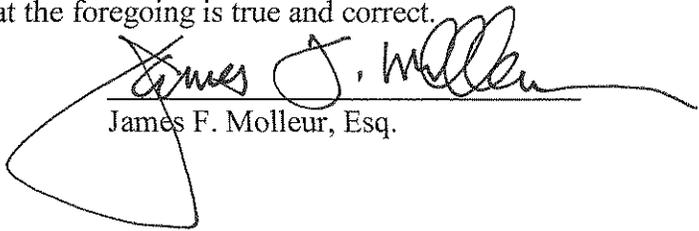
8. I have not agreed to share with any person (except members of my firm) the compensation to be paid for the services rendered in this case.

9. I shall amend this statement immediately upon my learning that (a) any of the within representations are incorrect, or (b) there is any change of circumstances relating thereto.

10. I have reviewed the provisions of D. Me. LBR 2016-1.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 10, 2015


James F. Molleur, Esq.

**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 chapter 11 trustee in the above-captioned case (the “Trustee”), has filed an *Application for Order, Pursuant to Section 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Molleur Law Office as Special Counsel for the Trustee* (the “Application”).

If you do not want the Court to approve the Application, then on or before **September 2, 2015 at 5:00 p.m.**, you or your attorney must file with the Court a response or objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be filed with the Court at:

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

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before September 2, 2015 at 5:00 p.m.**

You may attend the hearing with respect to the Application scheduled to be held at the Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine on **September 9, 2015 at 11:30 a.m.**

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

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Application, and may enter an order granting the requested relief without further notice or hearing, at any time after September 2, 2015.

Dated: August 11, 2015

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

By his attorneys:

/s/ Robert J. Keach
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