

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:	§	
MONTREAL MAINE & ATLANTIC	§	CHAPTER 11
RAILWAY, LTD.	§	CASE NO. 13-10670

**AMENDED [CORRECTED] MOTION FOR EXTENSION OF TIME
TO FILE PROOF OF CLAIM BY CREDITORS TAFISA CANADA, INC.; ISABELLE
BEAUDRY; GESSNER BLENKHORN; STEVEN HALLE AND JACQUES LAPRISE**

COMES NOW, Tafisa Canada, Inc.; Isabelle Beaudry; Gessner Blenkhorn; Steven Halle and Jacques Laprise (hereinafter collectively referred to as “Creditors” and individually referred to as “Creditor Last Name”), and moves this Court to grant an extension of time to file a Proof of Claim. In support of this amended [corrected] motion, Creditors state as follows:

1. Tafisa is the largest employer in the Lac-Megantic area after the local hospital. Tafisa relies on rail shipment for approximately 35% of their sales volume. Isabelle Beaudry is a co-owner of Ariko Restorant & Bar/9212-0610 Quebec inc. Gessner Blenkhorn; Steven Halle and Jacques Laprise are the owners of Societe en Commandite projet Shier. Proof of Claims have already been filed on behalf of Ariko Restorant & Bar/9212-0610 Quebec inc and Societe en Commandite projet Shier.

2. Tafisa participated in a program to help local businesses in the Fall of 2013 by Economic Development Canada. They did not know the extent of their losses at that time, but reached the maximum allowance stabled by the Federal Government and received \$500,000. Their additional costs for 2013 were millions more. Tafisa was unaware that it was able to file a claim after June, 2014. (See Affidavit of Louis Brassard – Exhibit “A”).

3. Creditor Isabel Beaudry is a co-owner of Ariko Restorant & Bar/9212-0610 Quebec inc. The other owners of Ariko Restorant & Bar/9212-0610 Quebec inc. previously timely filed their Proofs of Claim on June 12, 2014 (Claims 158, 159 and 160). Isabelle Beaudry also has an individual moral damage claim and did not realize she may need to file a separate claim form as an individual for those damages separate from her property/business claim previously filed on June 13, 2014 (Claim 236-2).

4. Creditors Gessner Blenkhorn; Steven Halle and Jacques Laprise are the owners of Societe en Commandite Projet Shier. Societe en Commandite Projet Shier previously timely filed its Proof of Claim on June 12, 2014 (Claim 157-2). Gessner Blenkhorn; Steven Halle and Jacques Laprise also have individual moral damages claim and did not realize they may need to file a separate claim forms as individuals for those damages separate from their property/business claim previously filed on June 12, 2014 (Claim 157-2).

5. All persons/Creditors herein are filing are as additional owners of businesses whose Proof of Claim have been timely filed. Said Proof of Claims have already been submitted through this Court's Efile System as Claim Nos. 510 (Tafisa); 512 (Blenkhorn); 513 (Beaudry); 514 (Halle); 515 (Laprise)

6. Counsel for Creditors are based in Beaumont, Texas, and presently represents other Creditors in this matter. Local Counsel is based in Bangor, Maine and presently represents other Creditors in this matter.

7. Counsel for Creditors have previously submitted 113 Proofs of claim in a timely fashion prior to the June 13, 2014 deadline.

8. Under Bankruptcy Rule 9006(b)(1), this Court can grant a motion for extension of time to file "where the failure to act was the result of excusable neglect." What constitutes excusable neglect is an equitable determination that allows this court to "accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control. *Pioneer Investment Services Co. v. Brunswick Associates, L.P.*, 507 U.S. 380, 388 (1993). Moreover, factors to be considered in determining if excusable neglect standard has been met include length of delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith. *Id.* Excusable neglect requires an inquiry into the actions of both the creditor and their counsel. *Id.* Here, Creditors should be allowed to move forward because they already have timely filed claims on behalf of their business or the Estate under which they are claiming. These Creditors did not know that they had separate individual claims for moral damages or a separate claim for the estate of the deceased sibling until after June, 2014. Courts generally consider four factors in deciding whether a claimant has established excusable neglect. *In re Garden Ridge Corp.*, 348 B.R. at 645, citing *Hefta v. Official Comm. Of Unsecured Creditors (In re American Classic Voyages Co.)*, 405 F.3 133 (3d Cir. 2005). These factors include (i) the

danger of prejudice to the debtor; (ii) the length of delay and its impact on the judicial proceedings; (iii) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (iv) whether the creditor acted in good faith. *Id.* “All factors must be considered and balanced; no one factor trumps the others.” *Id.* Certainly, there is no prejudice to the debtor here and there will be no delay at all. The Creditors have acted in good faith since they did not know of its additional damages, costs and losses until after June, 2014.

9. Further, the impact on the Tort Trust will be minimal. The inquiry into excusable neglect is an equitable one. Balancing the equities of the Tort Trust’s costs against Creditor’s complete bar to recover clearly weights in favor of Creditors. Moreover, Creditors will likely only qualify for a small percentage of the total awarded to all moral damage and property/economic loss claims or less. In fact, it is Counsel’s understanding that the money allocated to the property and business loss claims is overfunded (i.e., there may be money left over). Therefore, its impact on the Tort Trust settlement would be zero. This will not dilute the claims at all.

10. In addition, the Court in Canada has already allowed approximately 200 late claims and is considering another 400 late claims to be heard on November 26, 2015 (See email attached as Exhibit “B” from Class Counsel, Joel Rochon, regarding same). It is the understanding of counsel that Judge Dumas will likely allow the filing of another 400 claims as well for a total of almost 600 late filed claims. It would not be equitable to allow these 600 non-priority claims and deny these Creditors’ claim in Lac-Megantic.

WHEREFORE, Creditors respectfully request this Honorable Court grant this Motion and allow them to submit a Proof of Claim within ten (10) days of the granting of this motion, or such other later date as the Court deems proper, and any further relief this Court deems just.

Date: January 26, 2016

Respectfully submitted,

/s/ George W. Kurr, Jr.

George W. Kurr, Jr.
Gross, Minsky & Mogul, P.A.
23 Water Street, Suite 400
P.O. Box 917
Bangor, ME 04402-0917
(207) 942-4644
gwkurr@grossminsky.com

/s/ Mitchell A. Toups

MITCHELL A. TOUPS

TEXAS BAR NO. 20151600

WELLER, GREEN, TOUPS & TERRELL, L.L.P.

Post Office Box 350

Beaumont, Texas 77704

(409) 838-0101/Fax: (409) 832-8577

Email: matoups@wgttlaw.com

ATTORNEYS FOR PLAINTIFFS/CREDITORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been furnished to all counsel of record listed below by e-file on January 26, 2016.

/s/ Mitchell A. Toups

Mitchell A. Toups

EXHIBIT "A"

**AFFIDAVIT OF LOUIS BRASSARD
ON BEHALF OF TAFISA CANADA INC.**

Before me, the undersigned notary, on this day personally appeared Louis Brassard, the affiant, a person whose identity is known to me. After I administered an oath to affiant, affiant testified:

1. "My name is Louis Brassard. I am over 18 years of age, of sound mind, and capable of making this affidavit. I have never been convicted of a crime. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am the Chief Executive Officer of Tafisa Canada inc. We are the largest employer in the Lac-Mégantic area after the local hospital. Tafisa Canada relies on rail shipment for approximately 35% of our sales volume. Tafisa Canada is a subsidiary of a Portuguese company, one of the world leaders in wood-based panel production.

3. After the Lac-Mégantic tragedy, in order to maintain our customer base and to honor our orders, we had to put in place reload centers to ship our products by rail to customers that we could not reach economically by trucks. In addition, the train that had serviced the Lac-Mégantic industrial park did not return to even a limited service until December 18, 2013. Full Service was not restored before July/August of 2014. We never anticipated that it would take so much time to return to full service. As a result of the lack of train service, we had to find alternative delivery methods, which cost us hundreds of thousands of dollars more than we anticipated.

4. In the fall of 2013, Economic Development Canada created a special program to help local businesses. We did not know the extent of our losses at that time, but we finally reached the maximum allowance established by the Federal Government and we received \$500,000, yet our additional costs for 2013 were almost \$1,400,000. In addition, our business was affected due to the fact that some of our employees lost relatives and/or were displaced and/or were unable to work for long periods of time.

5. We were unaware that we were able to file a claim after June, 2014. It was not until just recently in 2015, that I learned that individuals were filing late claims and that hundreds of people had already been approved by the Court in Canada. We now have good monetary numbers with regard to our losses which we believe to be above ^b ~~to~~ \$3,5 Million (Canadian Dollars). We are very confident in these calculations and the only reason we did not file a claim in the Summer of 2014, is because (1) we did not know that we were able to file a claim after June, 2014 and (2) we did not know the extent of our losses and (3) we were continuing to deal with the tragedy and drama that affected our business, our employees and our town through 2013, 2014 and into 2015.

6. The facts and statements contained herein are true and correct to the best of my knowledge.”

Further, affiant sayeth not.



LOUIS BRASSARD, CEO
Tafisa Canada inc.

Signed and sworn before me on the 14th day of October, 2015.



Lise Pratte, Commissioner for Oaths



EXHIBIT "B"

Mitch Toups

From: Joel Rochon <jrochon@rochongenova.com>
Sent: Tuesday, October 13, 2015 11:07 AM
To: Mitch Toups
Subject: RE: Judge Dumas statements regarding the suicide claims

He has allowed our initial late claims (a couple hundred). Our second motion (for a further 400 or so) will be heard likely at the beginning of November

JOEL P. ROCHON
PARTNER



ROCHON|GENOVA LLP
900 • 121 Richmond St W, Toronto, ON M5H 2K1
D 416.363.1867 x 222 T 1.866.881.2292 F 416.363.0263 E jrochon@rochongenova.com

IN ASSOCIATION WITH:
LIEFF CABRASER HEIMANN & BERNSTEIN LLP | SAN FRANCISCO | NEW YORK | NASHVILLE

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NOTE: This communication is privileged and intended only for the addressee. Please advise us immediately of receipt in error.

♻️ PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL.

From: Mitch Toups [mailto:matoups@wgttlaw.com]
Sent: Tuesday, October 13, 2015 11:09 AM
To: Joel Rochon
Subject: RE: Judge Dumas statements regarding the suicide claims

Has the Judge allowed your late filed claims yet?

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:	§	
MONTREAL MAINE & ATLANTIC	§	CHAPTER 11
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**ORDER ON AMENDED [CORRECTED] MOTION FOR EXTENSION OF TIME TO
FILE PROOF OF CLAIM BY CREDITORS TAFISA CANADA, INC. ; ISABELLE
BEAUDRY; GESSNER BLENKHORN; STEVEN HALLE AND JACQUES LAPRISE**

Upon consideration of the Amended [Corrected] Motion for Extension of Time to File Proof of Claim by Creditors, Tafisa Canada, Inc.; Isabelle Beaudry; Gessner Blenkhorn; Steven Halle and Jacques Laprise, it is hereby ORDERED, ADJUDGED AND DECREED that

1. The Motion is granted.
2. Creditors Tafisa Canada, Inc.; Isabelle Beaudry; Gessner Blenkhorn; Steven Halle and Jacques Laprise, are hereby allowed to file their Proofs of Claims.

Dated: _____

U.S. BANKRUPTCY JUDGE PRESIDING