

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

**TRUSTEE'S CONSENTED TO MOTION TO
EXTEND THE PLAN MORATORIUM PERIOD**

Robert J. Keach, the trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd., by and through his undersigned counsel, hereby requests that this Court enter an order (the "Order"), substantially in the form attached hereto as **Exhibit A**, amending the *Order Regarding Trustee's Motion Pursuant to 11 U.S.C. § 105(d) and the Cross-Border Insolvency Protocol to Establish (I) a Moratorium on Plan Proceedings; (II) a Settlement Process; and (III) a Plan Process in the Event of Multiple Plans* [D.E. 825] (the "Moratorium Order") to extend the Moratorium Period (as defined herein) until the earlier of (a) September 30, 2014, or (b) ten (10) days following the Trustee's filing of a notice of termination of the Moratorium Period. In support of this motion (the "Motion"), which has been consented to by counsel to the individual wrongful death plaintiffs as well as the Official Committee of Derailment Victims, the Trustee states as follows:

JURISDICTION, VENUE AND STATUTORY BASIS FOR RELIEF

1. The United States District Court for the District of Maine (the "District Court") has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. §

1334(a) and over this Motion pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court's local rules, the District Court has authority to refer and has referred this chapter 11 case to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter judgment in this proceeding. To the extent required, the Trustee consents to the entry of a final order on this Motion.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Motion is predicated upon 11 U.S.C. § 105(a), 105(d), Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, and this Court's inherent authority to control its docket.

BACKGROUND

5. 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"). Simultaneously, the Debtor's wholly-owned subsidiary, Montreal Maine & Atlantic Canada Co. ("MMA Canada") filed for protection under Canada's Companies' Creditors Arrangement Act (the "Canadian Case") in Québec Superior Court in Canada (the "Canadian Court"). On or about August 21, 2013, the United States Trustee appointed the Trustee to serve in the Debtor's Chapter 11 Case (the "Case") pursuant to 11 U.S.C. § 1163. [D.E. 64].

6. Thereafter, on September 4, 2013, this Court entered the *Order Adopting Cross-Border Insolvency Protocol* [D.E. 168] whereby the Court adopted the *Cross-Border Insolvency Protocol* (the "Protocol"). The purpose of the Protocol is to, among other things, (a) harmonize

and coordinate the activities before this Court and the Canadian Court, (b) promote the orderly and efficient administration of the chapter 11 case and the Canadian Case to, among other things, maximize the efficiency of both proceedings, reduce the costs associated therewith and avoid duplication of effort, and (c) facilitate the fair, open and efficient administration of the proceedings for the benefit of both the Debtor's and MMA Canada's creditors and other interested parties, wherever located. *See Protocol*, ¶ 5.

7. The Protocol also contemplates that this Court and the Canadian Court will, as necessary and when appropriate, conduct joint hearings. Specifically, paragraph 11(d) of the Protocol provides that “[t]he U.S. Court and the Canadian Court may conduct joint hearings with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a joint hearing to be necessary or advisable.” *Protocol*, ¶ 11(d). The spirit of the Protocol is to promote, where possible, coordination of the cases and to avoid, where possible, conflicting rulings.

8. On February 14, 2014, the Trustee filed the *Trustee's (A) Proposed Agenda for Status Conference and (B) In the Alternative, Motion Pursuant to 11 U.S.C. § 105(d) and the Cross-Border Insolvency Protocol to Establish (I) a Moratorium on Plan Proceedings; (II) A Settlement Process; and (III) a Plan Process in the Event of Multiple Plans* [D.E. 658] (the “Moratorium Motion”). Therein, the Trustee requested that this Court enter an order establishing, *inter alia*, certain procedures with respect to the plan and confirmation process, including establishment of a 120-day moratorium on further plan activity.

9. The Trustee thereafter withdrew, without prejudice, all aspects of the Moratorium Motion except for the request for a 120-day moratorium on further plan activity. On April 11,

2014, the Court entered the Moratorium Order, granting, *inter alia*, the requested moratorium through and including June 30, 2014 (the “Moratorium Period”).

10. On June 16, 2014, this Court entered the *Order Pursuant to 11 U.S.C. §105(d) Amending the Moratorium on Plan Proceedings* [D.E. 989], which amended the Moratorium Order by extending the Moratorium Period until the earlier of (a) July 31, 2014, or (b) if after June 2014, ten (10) days following the Trustee’s filing of a notice of termination of the Moratorium Period in this case.

BASIS FOR RELIEF

11. Pursuant to sections 105(a) and 105(d) of the Bankruptcy Code, Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure, and this Court’s inherent authority to control its docket, the Trustee hereby requests that the Moratorium Period be extended to the earlier of (a) September 30, 2014, or (b) ten (10) days following the Trustee’s filing of a notice of termination of the Moratorium Period.

BASIS OF REQUESTED RELIEF

12. Section 105(a) of the Bankruptcy Code provides this Court with discretion to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(d), the Court can, *inter alia*, and as it did at the status conference at which the Moratorium Motion was presented, “[set] the date by which a party in interest other than a debtor may file a plan.” 11 U.S.C. §105(d)(2)(B)(iii). Once such an order is entered, the Court can, under the Rules and long-recognized inherent authority, amend or modify such an order. *See* Fed. R. Bankr. Proc. 9006(b)(1) (“[w]hen an act is required or allowed to be done at or within a specified time ... by order of court, the court for cause shown may at any time in its discretion ... order the period enlarged...”)

13. As the Trustee informed the Court at the hearing held on July 24, 2014, substantial progress has been made towards creating a settlement fund and finalizing proposed plans of reorganization in both the U.S. and Canadian cases. In order to allow the Trustee and his counterparts in the Canadian Case to continue, without expensive and disruptive diversions, their diligent efforts to resolve the numerous issues in this Case while working to finalize plans of reorganization, additional time is required before plans can be submitted to this Court and the Canadian Court.

14. Moreover, as the Trustee also informed the Court at the July 24, 2014 hearing, the Canadian Court recently entered an order extending the initial order stay in the Canadian Case to and including September 30, 2014 (the "Canadian Stay"). Given the importance of ensuring that this Case and the Canadian Case proceed on similar tracks, as intended by the Protocol, it is advisable that this Court extend the Moratorium Period to correspond with the extension of the Canadian Stay.

15. As noted above, this Motion has been consented to by the counsel to the forty-seven individual wrongful death plaintiffs, as well as the Official Committee of Derailment Victims, with whom the Trustee has consulted in connection with this Motion and the settlement process generally.

WHEREFORE, based on the foregoing, the Trustee requests that the Court enter the proposed order extending the Moratorium Period to the earlier of (a) September 30, 2014, or (b) ten (10) days following the Trustee's filing of a notice of termination of the Moratorium Period.

Dated: July 28, 2014

ROBERT J. KEACH
CHAPTER 11 TRUSTEE OF MONTREAL
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By his attorneys:

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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

**ORDER GRANTING TRUSTEE'S CONSENTED TO MOTION TO
EXTEND THE PLAN MORATORIUM PERIOD**

This matter having come before this Court on the Chapter 11 Trustee's Consented to Motion to Extend the Plan Moratorium Period (the "Motion"); sufficient notice of the Motion having been given; no hearing being necessary in connection with the Motion; after due deliberation; and the Trustee having demonstrated sufficient cause for the granting of the Motion, the Court hereby **ORDERS** as follows:¹

1. The Moratorium Period (as defined in the Moratorium Order) is hereby extended until the earlier of (a) September 30, 2014, or (b) ten (10) days following the Trustee's filing of a notice of termination of the Moratorium Period in this case;

2. Except as amended herein or by the *Order Pursuant to 11 U.S.C. §105(d) Amending the Moratorium on Plan Proceedings* [D.E. 989], the Moratorium Order shall otherwise remain in full force and effect;

3. The Trustee is authorized and empowered to take such steps and perform such acts as may be necessary to implement and effectuate the terms of this Order; and

4. Notice of this order and the Trustee's notice, if one is filed, of termination of the Moratorium Period shall be provided via the Court's online case management/electronic case

¹ Capitalized terms used, but not defined in this Order, have the meanings ascribed to such terms in the Motion.

files ("CM/ECF") system to those parties that have elected to receive CM/ECF notice. No further notice shall be required.

Dated:

The Honorable Louis H. Kornreich
United States Bankruptcy Judge

**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, Angela L. Stewart, being over the age of eighteen and an employee of Bernstein, Shur, Sawyer & Nelson, P.A. in Portland, Maine, hereby certify that on July 28, 2014, I filed the following pleading via the Court's CM/ECF electronic filing system:

- *Trustee's Consented to Motion to Extend the Plan Moratorium Period, with Exhibit A and the proposed form of Order.*

I further certify that on July 28, 2014, I served the above referenced pleadings via CM/ECF and Electronic Mail on the parties identified on the attached Service List.

Dated: July 28, 2014

/s/ Angela L. Stewart
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