

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

MOTION FOR EXTENSION OF TIME TO FILE PROOF OF CLAIM BY CREDITORS
ISABELLE BEAUDRY; SARAH CHAUVIN AS REPRESENTATIVE
OF THE ESTATE OF SUZANNE CUSTEAU; GESSNER BLENKHORN;
STEVEN HALLE AND JACQUES LAPRISE

COMES NOW, Isabelle Beaudry; Sarah Chauvin as Representative of the Estate of Suzanne Custeau, 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 motion, Creditors state as follows:

1. Isabelle Beaudry is a co-owner of Ariko Restaurant & Bar/9212-0610 Quebec inc. Suzanne Custeau, is the sister of Decedent Real Custeau, who died seven months after the death of Real Custeau. 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 Restaurant & Bar/9212-0610 Quebec inc; Estate of Real Custeau; and Societe en Commandite projet Shier.

2. All persons/Creditors herein are filing are as additional owners of businesses whose Proof of Claim have been timely filed or the deceased sibling of an Estate already timely filed.

3. Creditor Isabel Beaudry is a co-owner of Ariko Restaurant & Bar/9212-0610 Quebec inc. The other owners of Ariko Restaurant & 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. Creditor Custeau was a sibling of the Estate of Real Custeau. All siblings (Richard Custeau; Sylvie Custeau; Michel Custeau; Rejean Custeau) are represented by the undersigned counsel and all timely filed their claim forms on June 13, 2014 (Claims 178, 179, 180 and 181). This claim is being filed due to the fact Suzanne Custeau died.

6. Counsel for Creditors are based in Beaumont, Texas, 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. Custeau is making a claim as a sibling for the loss of her brother prior to her death. Her claim will not dilute the claims of the Wrongful Death Claimants other than the claims of her siblings, with whom their award would be divided.

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 "A" 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: November 20, 2015

Respectfully submitted,

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

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Beaumont, Texas 77704

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Email: matoups@wgttlaw.com

BY: /s/ Mitchell A. Toups

MITCHELL A. TOUPS

STATE BAR NO. 20151600

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 November 20, 2015.

/s/ Mitchell A. Toups
Mitchell A. Toups

EXHIBIT "A"

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



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IN ASSOCIATION WITH:
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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
RAILWAY, LTD.	§	CASE NO. 13-10670

**ORDER ON MOTION FOR EXTENSION OF TIME TO FILE
PROOF OF CLAIM BY CREDITORS ISABELLE BEAUDRY; SARAH CHAUVIN AS
REPRESENTATIVE OF THE ESTATE OF SUZANNE CUSTEAU; GESSNER
BLENKHORN; STEVEN HALLE AND JACQUES LAPRISE**

Upon consideration of the Motion for Extension of Time to File Proof of Claim by Creditors, Isabelle Beaudry; Sarah Chauvin as Representative of the Estate of Suzanne Custeau, Gessner Blenkhorn; Steven Halle and Jacques Laprise, it is hereby ORDERED, ADJUDGED AND DECREED that

1. The Motion is granted.
2. Creditors Isabelle Beaudry; Sarah Chauvin as Representative of the Estate of Suzanne Custeau, Gessner Blenkhorn; Steven Halle and Jacques Laprise, are hereby allowed to file their Proofs of Claims.

Dated: _____

U.S. BANKRUPTCY JUDGE PRESIDING

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

NOTICE OF HEARING
ON MOTION FOR EXTENSION OF TIME TO FILE PROOF OF CLAIM BY
CREDITOR TAFISA CANADA, INC.

On October 14, 2015, Creditor, Tafisa Canada, Inc. (hereinafter referred to as “Tafisa”), filed their Motion for Extension of Time to File Proof of Claim. With the consent of the Court, the hearing to consider the Motion has been scheduled for **December 15, 2015, at 9:00 a.m. ET.**

If you do not want the Court to approve the Motion, then **on or before December 8, 2015 at 5:00 p.m. (ET)**, 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 served upon 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 December 8, 2015 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Motion, which is scheduled to be held on **December 15, 2015 at 9:00 a.m.** at the Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine. If no objections are timely filed and served, then the Court may enter a final order approving the Motion without any further hearing.

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.

Date: November 20, 2015

Respectfully submitted,

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

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(409) 838-0101

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Email: matoups@wgttlaw.com

BY: /s/ Mitchell A. Toups

MITCHELL A. TOUPS

STATE BAR NO. 20151600

ATTORNEYS FOR PLAINTIFFS

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 November 20, 2015.

/s/ Mitchell A. Toups

Mitchell A. Toups