

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 CREDITOR TAFISA CANADA, INC.

COMES NOW, Tafisa Canada, Inc. (hereinafter referred to as “Tafisa”), and moves this Court to grant an extension of time to file a Proof of Claim. In support of this motion, Tafisa states 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.

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. Counsel for Tafisa are based in Beaumont, Texas, and presently represents other Creditors in this matter.

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

5. 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, Tafisa should be allowed to move forward because his failure to file a timely Proof of Claim is a result of the fact that Tafisa did not know that it had additional costs and expenses over and above the Federal Government assistance 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 Creditor has acted in good faith since it did not know of its additional costs and losses until after June, 2014.

6. 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 Tafisa. Moreover, Tafisa 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.

7. In addition, the Court in Canada has already allowed approximately 200 late claims and is considering another 400 late claims to be heard in November, 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 this very important employer’s claim in Lac-Megantic.

8. The Proofs of Claim Form for Tafisa is attached hereto as Exhibit “C”.

WHEREFORE, Tafisa respectfully requests 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: October 14, 2015

Respectfully submitted,

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

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 October 14, 2015.

/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



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

[Download my contact card \(vCard Format\)](#) | [View directions to our office \(Google Maps\)](#)

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?

EXHIBIT "C"

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT		District of Maine	PROOF OF CLAIM
Name of Debtor: MONTREAL MAINE & ATLANTIC RAILWAY, LTD.		Case Number: 13-10670	<p style="text-align:center;">COURT USE ONLY</p> <input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ <i>(If known)</i> Filed on: _____
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.			
Name of Creditor (the person or other entity to whom the debtor owes money or property): TAFISA CANADA, INC.			
Name and address where notices should be sent: Weller, Green, Toups & Terrell, L.L.P. P.O. Box 350 Beaumont, TX 77704		Telephone number: (409) 838-0101 email: matoups@wgttl.com; jgordon@wgttl.com	
Name and address where payment should be sent (if different from above):		Telephone number: email:	
1. Amount of Claim as of Date Case Filed: \$3,500,000.00 If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.			
2. Basis for Claim: Unliquidated Property and Economic Loss Claims (All Claims Unliquidated pursuant to 11 U.S.C. §1171) (See instruction #2)			
3. Last four digits of any number by which creditor identifies debtor: 3 7 1 2	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)	
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____	
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		Basis for perfection: _____	
Value of Property: \$ _____		Amount of Secured Claim: \$ _____	
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount Unsecured: \$ _____	
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(1)(1)(A) or (a)(1)(B)	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. §507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5)	Amount entitled to priority: \$2,000,000.00 plus (Estimated Amount Jury Might Award in U.S. – see Paragraph 1 above)
<input type="checkbox"/> Up to \$2,775 of deposits toward purchase, lease or rental of property or services for personal, family or household use – 11 U.S.C. 507(a)(7)	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 U.S.C. 507(a)(8)	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____)	
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)			

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) I am a guarantor, surety, endorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.


Print Name: Louis Brassard on behalf of TAFISA CANADA INC.

Title: _____

Company: c/o Weller Green Toups & Terrell

Address and telephone number (if different from notice address above):

P O Box 350
Beaumont, TX 77704-0350

(Signature)  (Date) 2015-10-13

Telephone number: (409) 838-0101 email: matoups@wgttlaw.com; jgordon@wgttlaw.com

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

Claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS	INFORMATION	
<p>Debtor A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>Creditor A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p> <p>Claim A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured</p> <p>Proof of Claim A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.</p> <p>Secured Claim Under 11 U.S.C. § 506 (a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.</p>	<p>A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>Unsecured Claim An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.</p> <p>Claim Entitled to Priority Under 11 U.S.C. § 507 (a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p> <p>Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.</p> <p>Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.</p>	<p>Acknowledgment of Filing of Claim To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.</p> <p>Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>

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 CREDITOR TAFISA CANADA, INC.**

Upon consideration of the Motion for Extension of Time to File Proof of Claim by Creditor Tafisa Canada, Inc., it is hereby ORDERED, ADJUDGED AND DECREED that

1. The Motion is granted.
2. Creditor Tafisa Canada, Inc., is hereby allowed to file their Proofs of Claims.

Dated: _____

U.S. BANKRUPTCY JUDGE PRESIDING