

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**TRUSTEE'S LIMITED RESPONSE TO THE MOTION OF OFFICIAL COMMITTEE
OF VICTIMS SEEKING MODIFICATION OF COMMITTEE APPOINTMENT
ORDER TO AUTHORIZE COMMITTEE TO FULLY PARTICIPATE IN
WRONGFUL DEATH PROCEEDINGS PENDING BEFORE
MAINE DISTRICT COURT**

Robert J. Keach, the trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd., by and through his undersigned counsel, hereby files this limited response (the "Limited Response") to the *Motion of Official Committee of Victims Seeking Modification of Committee Appointment Order to Authorize Committee to Fully Participate in Wrongful Death Proceedings Pending Before Maine District Court* [D.E. 1077] (the "Motion") filed by the Official Committee of Victims (the "Committee"). In support of this Limited Response, the Trustee states as follows:

BASIS FOR LIMITED OBJECTION

1. The Trustee does not object to the proposed modification of the Appointment Order¹ provided the modification is limited to merely clarifying that the Appointment Order does not, in and of itself, bar the Committee from filing a motion with the United States District Court for the District of Maine (the "Maine District Court") seeking a transfer of the cases previously transferred to the Maine District Court under 28 U.S.C. §157(b)(5) (the "Transferred Actions.”)

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Motion.

The Trustee does object to any modification to the Appointment Order to the extent such modification provides relief beyond this limited request, and the Trustee does not understand the Motion to be seeking broader relief. Specifically, the Trustee would object to any modification of the Appointment Order that would (a) grant the Committee the authority to fully participate in the Wrongful Death Proceedings; (b) purport to grant the Committee standing to file such a motion or to otherwise participate in the Wrongful Death Proceedings; or (c) purport to grant to the Committee intervener status in any of the Transferred Actions under Fed. R. Civ. P. 24. Further, neither the Trustee's conditional consent to the relief requested in the Motion nor anything contained herein shall be construed as the Trustee's admission or adoption of the Committee's characterization of the Committee members' claims asserted against the Debtor, or of any other allegation in the Motion. In other words, the Trustee consents to an amendment that would make it clear that filing such a motion would not be an *ultra vires* act under the Appointment Order; however, that is as far as the Trustee's consent goes. Moreover, the Trustee shares the belief expressed by others that the Maine District Court does not currently have jurisdiction to act with respect to the Transferred Actions pending the completion of the current appeal.

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"). 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").

3. Thereafter, on 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].

4. On October 18, 2013, the Court entered the Appointment Order. As the Motion notes, the Appointment Order limits the Committee's power to those acts described in 11 U.S.C. 1103(c)(1) and (3). *See* Motion, ¶ 10; *see also* Appointment Order, at 4.

5. On August 15, 2014, the Committee filed the Motion seeking a modification of the Appointment Order "to authorize the Committee to file any motion(s) and take any action(s) it deems appropriate before the Maine District Court with respect to the Wrongful Death Proceedings." Motion, ¶ 2. As the Motion notes,

For the avoidance of doubt, the Committee has no intention of getting involved in the litigation of the individual claims asserted in the Wrongful Death Proceedings (or in any discovery with respect to such claims) and the Court, if it deems it necessary, should feel free to impose whatever limitations it deems appropriate in that regard.

Motion, ¶ 2 n.2.

6. Nevertheless, the proposed order submitted by the Committee with the Motion would grant the Committee the authority "to file any motion(s) and to take any action(s) in the Wrongful Death Proceedings pending before the Maine District Court, subject to the Maine District Court's orders with respect to the propriety or merits of any such motion(s) or action(s)." Motion, Proposed Order, ¶ 2.

ARGUMENT

7. As noted above, the Trustee does not object to the Committee's request to modify the Appointment Order so that it would not be *ultra vires* to file a motion to transfer the Transferred Actions, at such time as the Maine District Court has jurisdiction to hear such a motion. Indeed, as noted in the Motion, the Trustee has consented to such very limited relief.

8. However, such consent is strictly limited to the Committee's singular request to have the Appointment Order so modified. In other words, the Trustee consents to modifying the Appointment Order to permit the Committee to attempt to file such a motion with the Maine District Court. Such consent, however, should not be construed as consenting to a request by the Committee for a finding by this Court that it is permitted to "fully participate in those proceedings." No such consent has been granted.

9. The Trustee objects to the Motion to the extent it seeks a modification of the Appointment Order that would authorize the Committee to fully participate in the Wrongful Death Proceedings. Specifically, the Trustee objects to any modification of the Appointment Order that would (a) purport to grant the Committee intervener status in the Transferred Actions under Fed. R. Civ. P. 24; (b) purport to grant the Committee standing to participate in the Wrongful Death Proceedings. Furthermore, the Trustee opposes the Motion to the extent it suggests that the Maine District Court currently has jurisdiction to rule on any motion the Committee might file. As this Court undoubtedly recognizes, this Court cannot grant such relief as all such issues are reserved for the Maine District Court, when and if it reacquires jurisdiction.

10. In an attempt to resolve the issues giving rise to this Limited Response, attached hereto as **Exhibit A** is a revised draft of an order on the Motion, which would alleviate the concerns raised herein.

RESERVATION OF RIGHTS

11. Although the Trustee does not object to a limited modification of the Appointment Order as described above, nothing herein should be construed as an adoption or acquiescence of the Motion's characterization of the Committee members' claims against the Debtor, or of any other allegation in the Motion.

12. Further, nothing in this Limited Objection should be construed as a waiver of any of the Trustee's rights, and the Trustee specifically reserves the right to object on any grounds to any motion or other filing filed by the Committee in connection with the Wrongful Death Proceedings, including on standing or jurisdictional grounds, or under Rule 24.

CONCLUSION

WHEREFORE, the Trustee requests that the Court limit any relief granted to the extent provided on **Exhibit A**.

Dated: September 5, 2014

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

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