

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

)	
In re)	Chapter 11
)	Case No. 13-10670
MONTREAL MAINE & ATLANTIC)	
RAILWAY, LTD.)	
)	
Debtor)	
)	

**STATEMENT OF THE UNITED STATES TRUSTEE IN RESPONSE
TO WRONGFUL DEATH CLAIMANTS’ MOTION FOR FORMATION OF
CREDITORS’ COMMITTEE AND MOTION OF INFORMAL
COMMITTEE OF QUÉBEC CLAIMANTS FOR APPOINTMENT OF CREDITORS’
COMMITTEE PURSUANT TO BANKRUPTCY CODE SECTION 1102(a)(2)**

The United States Trustee, by and through his undersigned counsel, hereby submits this Statement in response to the Wrongful Death Claimants’ Motion for Formation of Creditors’ Committee, dated August 22, 2103 (the “August 22 Motion”) and the Motion of Informal Committee of Québec Claimants for Appointment of Creditors Committee Pursuant to Bankruptcy Code Section 1102(a)(2), dated August 30, 2013 (the “August 30 Motion”) (together, the “Motions”).

PRELIMINARY STATEMENT

1. Those creditors directly impacted by the tragic events of July 6, 2013 at Lac- Mégantic (the “Accident”), which gave rise to the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (“MMA”), have a right to be heard.
2. Unlike a typical chapter 11 case, the formation of a committee of unsecured creditors is not automatic here, as Section 1102(a)(1) does not apply in railroad reorganization cases. The appointment of a trustee is automatic in all railroad reorganization cases and the trustee is an estate fiduciary. Accordingly, entities seeking the formation of a committee

must demonstrate that their interests are not adequately represented by the appointed trustee in railroad reorganization cases or otherwise and, thus, the formation of an additional committee is warranted pursuant to 11. U.S.C. § 1102(a)(2). The legislative history suggest that Congress deemed the mandatory appointment of a committee inappropriate in railroad reorganizations given the special role played by the trustees in railroad reorganizations. S. Rep. 95-989 (1978)

3. At present, each of the two competing Motions request the formation of “an additional committee”. The United States Trustee agrees that an additional committee is necessary to assure the victims of the Accident adequate representation. However, both Movants attempt to pre-ordain the composition of the committee by seeking to narrowly define the scope and/or membership of the same.

4. Limiting the scope in the manner suggested in the Motions would not be proper. Rather, as mandated by the Code, membership should be determined after the United States Trustee properly solicits creditor interest and evaluates creditor eligibility. This is the only way to ensure that all victims of the Accident have an adequate voice in this proceeding and that the integrity of the committee process is maintained. Accordingly, the Court should order the United States Trustee to form one committee comprised of creditors holding claims arising from the Accident.

BASIS FOR RELIEF

6. Subchapter IV of the United States Bankruptcy Code (the “Code”) governs railroad reorganizations, such as the present one. Section 1161 of this subchapter specifically excludes the provisions of section 1102(a)(1) from a railroad case. In other words, the United States Trustee, who, by virtue of section 1102(a)(1) of the Code, is required by section 1102(a)(1) to solicit and, where practicable, form a committee of unsecured creditors in chapter 11 cases, does not do so in a railroad case.
7. However, section 1102(a)(2), the Code provision upon which the Movants rely, applies in a railroad case. It permits the United States Trustee, if ordered by the Court, to appoint a committee to “assure adequate representation of creditors or of equity security holders.”
8. 11 U.S.C. § 1102(a)(2) provides:

On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders to assure adequate representation of creditors or of equity security holders. The United States Trustee shall appoint any such committee. 11 U.S.C. § 1102(a)(2).
9. The movant has the burden of proving that the appointment of an additional committee is necessary to ensure the adequate representation of the moving party. *In re Enron Corp.*, 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002). Courts generally have been reluctant to appoint additional committees notwithstanding the diverse and sometimes conflicting interest of such creditors. *In re Pub. Serv. Co. of N.H.* 89 B.R. 1014, (citing *In re Johns-Manville Corp.*, 68 B.R. 155 (Bankr. S.D.N.Y. 1986);
10. The primary issue before the Court is whether it is necessary to appoint a committee to assure that all of the victims of the Accident - not just the Movants - are adequately represented in this case.

THE MOTIONS

11. In the August 22 Motion (brought by a number of the wrongful death claimants), the Movants seek to limit committee membership to those holding claims for bodily injury or death while also excluding claimants whose property may have been damaged or contaminated as a result of the derailment. In the August 30 Motion (brought by the “Québec Claimants”), the Movants propose that a committee be formed of those persons and governmental entities who or which were harmed from the tragedy at Lac-Mégantic. In both Motions, the Movants advocate in a manner designed to favor their respective clients over other creditors who were victims of the accident.
12. The United States Trustee supports the formation of one committee to represent all of the victims of the Accident. A proliferation of committees in this case is entirely unnecessary because all Victims of the Accident can be given a voice and a place at the table through the composition of a single committee that adequately represents their diverse interests. The dispute between the Movants concerning the membership of a committee, which dispute is implicit in the Motions, is not appropriate or ripe for review.¹ Once the Court orders the formation of a committee and defines its scope, the United States Trustee is tasked with appointing such committee and selecting the membership from those interested and eligible² consistent with the requirements of the Code.

CONCLUSION

13. Viewed together, the Motions make clear that the family members, friends and loved ones of those lost in the tragedy at Lac- Mégantic, who now stand on their behalves,

¹ Once the members of a committee are selected by the United States Trustee, parties-in-interest may petition the Court to direct the United States Trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors. See 11 U.S.C. § 1102(a)(4).

² See § 1102(b) and § 101(41).

desire to be represented in connection with the administration of MMA's chapter 11 case. Likewise, the people of Lac- Mégantic and Quebec, as a whole, who live each day with the physical debris from this disaster and who may be asked to bear the cost of the same desire to participate. To the extent possible, all of these individuals deserve to be heard. More importantly, no victim should be excluded from representation.

14. Entry of an order directing the United States Trustee to appoint a committee in this case is the first step in giving these parties-in-interest a voice. The importance of maintaining the integrity of the committee selection process is also of paramount concern to the United States Trustee. Thus, the United States Trustee reiterates his support for the requests for the appointment of a committee representing the victims of the tragedy of Lac- Mégantic. To further this appointment and permit the United States Trustee to commence the process of selecting such a committee, attached hereto as **Exhibit A** is a proposed Order Authorizing the United States Trustee to Appoint a Committee Pursuant to 11 U.S.C. § 1102(a)(2) comprised of creditors holding claims arising from the accident.

WHEREFORE, the United States Trustee prays that the Court grant the parties relief consistent with the proposed Order attached hereto as **Exhibit A** and for such further relief as is just.

Dated at Portland, Maine this 11th day of September, 2013.

Respectfully submitted,

William K. Harrington
United States Trustee

By: /s/ Stephen G. Morrell
Stephen G. Morrell
Assistant U.S. Trustee

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CERTIFICATE OF SERVICE

I, Stephen Morrell, being over the age of eighteen and an employee of the United States Department of Justice, U.S. Trustee Program, hereby certify that on September 11, 2013, I electronically filed the above *Statement of the United States Trustee in response to wrongful death claimants' Motion for formation of Creditors' Committee and Motion of informal Committee of Québec claimants for appointment of Creditors' Committee pursuant to Bankruptcy Code section 1102(a)(2)* and this *Certificate of Service*, which were served upon each of the parties set forth on this Service List via U.S. mail, postage prepaid, on September 11, 2013.

All other parties listed on the Notice of Electronic Filing have been served electronically.

Dated at Portland, Maine this 11th day of September, 2013.

/s/ Stephen G. Morrell

Service List:

N/A

Exhibit A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor

Chapter 11

Case No. 13-10670 (LHK)

ORDER

Upon consideration of the motion (the “Motions”) ¹ including any response thereto; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein; and due notice of the Motion having been provided; and it appearing that no other or further notice need to be provided; and after due deliberation and sufficient cause appearing therefor; it is hereby **ORDERED** that:

1. The Motions are GRANTED, in part, as set forth herein,
2. The U.S. Trustee shall appoint an official committee comprised of creditors holding claims arising from the Accident.
3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2013

HONORABLE LOUIS H. KORNREICH
CHIEF UNITED STATES BANKRUPTCY JUDGE

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the statement of the United States Trustee in response to wrongful death claimants Motion for formation of creditors’ committee and Motion of informal committee of Quebec claimants for appointment of creditors’ committee pursuant to Code Sections 1102(a)(2)