

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

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In re	)	
	)	
MONTREAL MAINE & ATLANTIC	)	CHAPTER 11
RAILWAY, LTD.	)	CASE NO. 13-10670-LHK
	)	
Debtor	)	
_____	)	

**WRONGFUL DEATH CLAIMANTS' STATEMENT AND RESERVATION OF RIGHTS  
CONCERNING AMENDMENT TO INTERIM FINANCING ORDER**

The Unofficial Committee of Wrongful Death Claimants (the "Committee"), consisting of representatives of the estates of the 47 victims of the massive explosion in Lac-Mégantic, Quebec (the "Wrongful Death Claimants"), from the derailment of a train operated by the Debtor (the "Derailment"),<sup>1</sup> hereby responds to the Trustee's proposed form of Amendment to Interim Order Granting Chapter 11 Trustee's Motion for Order (A) Authorizing Debtor to Obtain Post-Petition Financing and (B) Granting Camden National Bank Post-Petition Priority Liens (the "Proposed Order"), which has been or shortly will be submitted to this Court for entry, as follows:

1. Without any discussion at the hearing on interim financing held by this Court on February 11, 2014, following which an order was entered granting on an interim basis an additional \$750,000 of financing [Docket No. 649] (the "Interim Financing Order"), the Proposed Order amends not only the Interim Financing Order but also this Court's Order Approving Carve-Out entered October 18, 2013 [Docket No. 392] (the "Carve-Out Order"). The Proposed Order reduces by at least \$500,000, and potentially as much as \$1,000,000, the carve-

<sup>1</sup> The victims and the representatives of their estates are listed in the Amended Verified Statement Concerning Representation of Unofficial Committee of Wrongful Death Claimants as Required by Fed. R. Bankr. P. 2019 filed by the Committee's counsel on January 28, 2014 [Docket No. 599]. Solely for the avoidance of doubt as to standing, this motion is filed on behalf of all members of the Committee as well as the Committee itself.

out from collateral of the Federal Railroad Administration (“FRA”) that is available to fund compensation and reimbursement of expenses of the Trustee and his professionals (“T&P Expense”). Thus, the carve-out may be reduced as low as \$4,000,000.

2. The Trustee has informed the Wrongful Death Claimants that his projection of accrued T&P Expense through next month’s closing of the sale of the railroad is approximately \$3,700,000. In the opinion of the Wrongful Death Claimants, the remaining \$300,000 of carve-out availability will be more than sufficient for the Trustee to conclude his responsibilities and close the case, if either the Wrongful Death Claimants’ proposed plan (the “Plan”) is confirmed or this case is otherwise concluded on an efficient and expeditious basis that resolves the estate’s interest in insurance policies, pursues avoidance actions only to the extent realistically projected to yield a net benefit (*i.e.*, after T&P Expense) to the estate, and leaves victims of the Derailment free to pursue their claims against non-Debtors alleged to have helped cause the Derailment disaster.

3. The Trustee, however, remains intent on wresting control of these claims from the victims and pursuing them on behalf of the estate. As more thoroughly explained elsewhere,<sup>2</sup> defenses available to the non-Debtors against the estate but not against the victims themselves could result in the estate having no recovery whatsoever from the Trustee’s litigation. In that event, the estate will be stuck with potentially huge unpaid T&P Expense that will exceed the remaining amount of the FRA carve-out as modified by the Proposed Order. For this reason, reduction in the carve-out pursuant to the Proposed Order is potentially disadvantageous to the estate.

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<sup>2</sup> See Wrongful Death Claimants’ Motion to Bar Trustee’s Prosecution of Derailment Claims against Non-Debtor Defendants of even date herewith.

4. Notwithstanding the foregoing, the Wrongful Death Claimants have concluded that it would be futile to object to the Proposed Order. If this Court were to reject the proposed reduction of the carve-out, the FRA could simply exercise its right under the Carve-Out Order to unilaterally terminate the carve-out, leaving the estate in the same financial position.<sup>3</sup> Moreover, the Wrongful Death Claimants cannot blame the FRA for refusing to fund the Trustee's ill-advised litigation program. To date the FRA has acted responsibly by leaving sufficient funds even under the reduced carve-out for the Trustee to complete sale of the railroad and wrap up the case in a prompt and orderly manner, if only he would adopt that course of action.<sup>4</sup>

5. Finally, this Court may lack jurisdiction to enter the Proposed Order insofar as it amends the Carve-Out Order, since the Carve-Out Order is on appeal. Regardless of whether the Proposed Order is entered, the Wrongful Death Claimants reserve the right to seek, as the fairest remedy if the appellate court reverses the Carve-Out Order, an order that the carve-out in its

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<sup>3</sup> When the carve-out was presented to the Court for approval, the Wrongful Death Claimants objected on the grounds, *inter alia*, that the FRA's unilateral right to terminate the carve-out, especially considered in combination with the Trustee's irrevocable waiver of rights under Section 506(c) of the Bankruptcy Code, left the potential for creditors to be saddled with unpaid T&P Expense. See Objection to Trustee's Motion for Approval of Stipulation with Federal Railroad Administration and Request for Evidentiary Hearing filed by the Wrongful Death Claimants on September 27, 2013 [Docket No. 292].

<sup>4</sup> While the Wrongful Death Claimants continue to be concerned that, in the context of the Plan, the carve-out should be available not only for T&P Expense but also for other priority expenses such as counsel to the official creditors' committee, the Wrongful Death Claimants do not request that the issue be addressed in the Proposed Order. The Plan itself permits the FRA to correct the problem by electing the "FRA Settlement" provisions of the Plan.

original amount shall be available on a *pro rata* basis for all claims having the priority of an administrative expense.

Marie Semie Alliance, *et al.*

By their attorneys,

Dated: February 19, 2014

/s/ George W. Kurr, Jr.  
George W. Kurr, Jr.  
GROSS, MINSKY & MOGUL, P.A.  
23 Water Street, Suite 400  
P. O. Box 917  
Bangor, ME 04402-0917  
Phone: (207) 942-4644 ext. 206  
Fax: (207) 942-3699  
gwkurr@grossminsky.com

Daniel C. Cohn, *pro hac vice*  
Taruna Garg, *pro hac vice*  
MURTHA CULLINA LLP  
99 High Street, 20th Floor  
Boston, Massachusetts 02110  
Phone: (617) 457-4000  
Fax: (617) 482-3868

#### CERTIFICATE OF SERVICE

I, George W. Kurr, Jr., Esquire, of the firm Gross, Minsky & Mogul, P.A., attorneys for the Estates of Marie Semie Alliance, et al, Wrongful Death Claimants hereby certify that on February 19, 2014, I electronically filed **WRONGFUL DEATH CLAIMANTS' STATEMENT AND RESERVATION OF RIGHTS CONCERNING AMENDMENT TO INTERIM FINANCING ORDER** with the Court via the CM/ECF electronic filing system which will send notification of such filing to the attorneys/parties of record who have registered as CM/ECF participants.

/s/ George W. Kurr, Jr., Esq.  
George W. Kurr, Jr., Esq.