

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

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

**WRONGFUL DEATH CLAIMANTS’ MOTION TO DETERMINE COMPLIANCE WITH FED. R. BANKR. P. 2019**

The Unofficial Committee of Wrongful Death Claimants (the “Committee”), consisting of representatives (the “Wrongful Death Claimants”) of the estates of the 47 victims of the massive explosion in Lac-Mégantic, Quebec, from the derailment of a train operated by the Debtor (the “Derailment”) as listed in the Amended Exhibit A filed on March 14, 2014 [Docket No. 756] in connection with the Second Amended Verified Statement Concerning Representation of Unofficial Committee of Wrongful Death Claimants as Required by Fed. R. Bankr. P. 2019 [Docket No. 754] (the “Second Amended 2019 Statement”), hereby moves this Court for an Order determining that the Committee has fully complied with the requirements of Fed. R. Bankr. P. 2019 (“Rule 2019”). The Committee submits that the Second Amended 2019 Statement more than adequately satisfies the requirements of Rule 2019, and therefore respectfully requests that the Committee be permitted to be heard on matters before this Court.

1. Rule 2019(b)(1) requires that:

- (1) In a chapter 9 or chapter 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are
  - (A) acting in concert to advance their common interests, and
  - (B) not comprised entirely of affiliates or insiders of one another.

Fed. R. Bankr. P. 2019(b)(1).

2. The Second Amended 2019 Statement explains that the Wrongful Death Claimants are a group and committee of multiple creditors acting in concert to advance their common interests. The Wrongful Death Claimants are represented, as such term is defined under Rule 2019(a)(2), by Murtha Cullina, LLP (“Murtha”) and Gross, Minsky, Mogul, P.A.

3. Under Rule 2019(c), the disclosures required in a verified statement are:

- (1) the pertinent facts and circumstances concerning:
  - (A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or
  - (B) with respect to an entity, the employment of the entity including the name of each creditor or equity security holder at whose instance the employment was arranged;
- (2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:
  - (A) name and address;
  - (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and
  - (C) with respect to each member of a group or committee that claims to represent any entity in

- addition to the members of the group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed;
- (3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee, other than a committee appointed under § 1102 or § 1114 of the Code:
    - (A) name and address; and
    - (B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and
  - (4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.

Fed. R. Bankr. P. 2019(c).

4. The Second Amended 2019 Statement provides proper disclosure of all items applicable to a group, committee or entity under Rule 2019(c):

- *Pertinent Facts and Circumstances Concerning Formation of the Group or Committee:*

“The facts and circumstances concerning the Group are: Although Personal Injury Counsel represent each Wrongful Death Claimant as a separate client, each of the Personal Injury Counsel represents multiple Wrongful Death Claimants, and in many instances a Wrongful Death Claimant is represented by two or all of the Personal Injury Counsel. Bankruptcy Counsel represent all of the Wrongful Death Claimants. The Personal Injury Claimants are coordinating their efforts on behalf of the Wrongful Death Claimants, including through Bankruptcy Counsel. Some of the meetings between Personal Injury Counsel and Wrongful Death Claimants have involved multiple Wrongful Death Claimants in the same meeting.”

“The facts and circumstances concerning the Committee are: After the hearing in this case that took place on September 13, 2013, Bankruptcy Counsel and Personal Injury Counsel agreed with the recommendation of Mr. Cohn that the effort to obtain formation of an official committee of wrongful death claimants be terminated, and that instead the Wrongful Death Claimants be designated as the Committee in such pleadings as were filed or actions taken by Bankruptcy Counsel in pursuit of collective interests of all Wrongful Death Claimants. Since that time, and as set forth in the Letter Agreement, Bankruptcy Counsel has submitted pleadings and has appeared in this Court on behalf of the Committee.

Except as set forth in the preceding paragraph concerning the Group, the Committee does not meet, confer or coordinate.”

- *For an “entity” (here, the law firms of Mr. Cohn and Mr. Kurr), the pertinent facts and circumstances of the employment of the entity, including at whose instance the employment was arranged:*

“The facts and circumstances concerning Bankruptcy Counsel are: In August 2013 Personal Injury Counsel contacted Daniel C. Cohn of Murtha to request that he participate in this case on behalf of the Wrongful Death Claimants then represented by Personal Injury Counsel, either as counsel to an official committee to be formed on behalf of all wrongful death claimants or otherwise. Murtha agreed to do so and recommended GMM as local bankruptcy counsel. Personal Injury Counsel then engaged GMM as local bankruptcy counsel on the understanding that GMM would take direction, subject to its own professional judgment, from Murtha. The understanding (then oral) between Murtha and Personal Injury Counsel was that Murtha would take direction, subject to its own professional judgment, from Personal Injury Counsel acting pursuant to their authority from the Wrongful Death Claimants. This understanding was reduced to writing in a letter agreement dated February 25, 2013, which was executed between February 25, 2014 and March 2, 2014, and attached as Exhibit A to the Supplement to Amended Verified Statement Concerning Representation of Unofficial Committee of Wrongful Death Claimants as Required by Fed. R. Bankr. P. 2019 filed by Bankruptcy Counsel on March 5, 2013 (the “Letter Agreement”). Neither Murtha nor GMM possesses any claims against or interests in the Debtor, nor do Bankruptcy Counsel have any other disclosable economic interest in the Debtor.”

- *Name and address of each member of the group or committee:* Listed in Amended Exhibit A the Second Amended 2019 Statement filed on March 14, 2014 [Docket No. 756].
- *Nature and amount of the each disclosable economic interest held in relation to the Debtor as of the date the group or committee was formed:* “The Wrongful Death Claimants hold unliquidated wrongful death claims against the Debtor’s estate arising from the Disaster. It is possible that certain of the Wrongful Death Claimants and/or certain beneficiaries of the decedents’ estates that they represent hold other types of claims against the Debtor’s estate, such as business interruption and property damage. Except as described in this paragraph, the Wrongful Death Claimants hold no disclosable economic interest in relation to the Debtor.”
- *Nature and amount of disclosable economic interests of an “entity” (here, the law firms of Mr. Cohn and Mr. Kurr) as of the date the entity was employed:* “Neither Murtha nor GMM possesses any claims against or interests in the Debtor, nor do Bankruptcy Counsel have any other disclosable economic interest in the Debtor.”

5. Finally, the fourth item required by Rule 2019(c) consists of “a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.” The Second Amended 2019 Statement makes reference a letter agreement dated February 25, 2014 (the “Letter Agreement”) between personal injury counsel and Murtha memorializing the understanding between Murtha and Personal Injury Counsel that Murtha would take direction, subject to its own professional judgment, from Personal Injury Counsel acting pursuant to their authority from the Wrongful Death Claimants. The Letter Agreement was attached as Exhibit A to the Supplement to Amended Verified Statement Concerning Representation of Unofficial Committee of Wrongful Death Claimants as Required by Fed. R. Bankr. P. 2019 filed by Bankruptcy Counsel on March 5, 2013 [Docket No. 710]. The Second Amended 2019 Statement further provides that: “There is no written instrument concerning authorization of Bankruptcy Counsel, the Group or the Committee except for the Letter Agreement.” In addition, affidavits of personal injury counsel submitted in support of the Second Amended 2019 Statement provide additional disclosure regarding the authorization provided to personal injury counsel to act on behalf of the Wrongful Death Claimants in all matters, including the authority to retain other counsel. The affidavits further describe the frequency and consistency of communications with the Wrongful Death Claimants about the status of their claims.

6. In sum, the disclosures made by the Committee in the Second Amended 2019 Statement fully comply with the requirements of Rule 2019. Accordingly, the Wrongful Death Claimants respectfully request that the Court issue an Order determining that Committee has fully complied with its obligations pursuant to Rule 2019, thus permitting the Committee to be

heard on matters before this Court.

Dated: March 17, 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  
[gwkurr@grossminsky.com](mailto: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

*Counsel for the Unofficial Committee of Wrongful  
Death Claimants*

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

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

**ORDER GRANTING WRONGFUL DEATH CLAIMANTS’  
MOTION TO DETERMINE COMPLIANCE WITH FED. R. BANKR. P. 2019**

Upon consideration of the Wrongful Death Claimants’ Motion to Determine Compliance with Fed. R. Bankr. P. 2019 (the “Rule 2019 Motion”), proper notice having been given, and the Court having reviewed and considered the Motion, and objections to the Motion, if any, having been resolved or overruled, and after due deliberation, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

- (i) the Wrongful Death Claimants have complied with their obligations pursuant to Fed. R. Bankr. P. 2019;
- (ii) the Rule 2019 Motion is GRANTED; and
- (ii) the Wrongful Death Claimants may be heard on all matters pending before this

Court.

Dated at Bangor, Maine, this \_\_\_\_ day of March, 2014.

\_\_\_\_\_  
Hon. Louis H. Kornreich  
United States Bankruptcy Judge