

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

**WRONGFUL DEATH CLAIMANTS' MOTION FOR EMERGENCY
DETERMINATION AND SHORTENED OBJECTION PERIOD OF
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")¹, hereby moves this Court for emergency determination of its Motion to Determine Compliance with Fed. R. Bankr. P. 2019 filed concurrently herewith ("Rule 2019 Motion") [Docket No. 762]. The Committee respectfully seeks immediate action on the Rule 2019 Motion to allow the Committee to seek, upon the Court's determination of the Committee's compliance with Rule 2019, the inclusion of a single paragraph in any bar order or bar notice entered by the Court, to provide fair notice to creditors of the consequences of filing a proof of claim in this case.² Sufficient cause exists for emergency determination of the Rule 2019 Motion due to the imminent entry of the bar date order.

¹ The victims and the representatives of their estates are 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]. 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.

² The language proposed by the Committee is attached hereto as Exhibit A.

Background

1. On January 27, 2014, the Trustee filed an Amended Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 502(b)(9), Fed. R. Bankr. P. 3002 and 3003(c)(3) and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof [Docket No. 596] (the “Trustee Bar Date Motion”). A competing Motion to Establish Claim Procedures was filed on February 9, 2014 by plaintiffs in a putative class action filed in Canada [Docket No. 625] (the “Class Rep Motion”).

2. On March 5, 2014, the Committee filed an objection (the “Objection”) to the Trustee Bar Date Motion and the Class Rep Motion [Docket No. 713].

3. Hearings on the Trustee Bar Date Motion, the Class Rep Motion and the Objection were scheduled for March 12, 2014.

4. At a hearing held on March 12, 2014, the Court barred the Committee from being heard on, among other things, the Objection due to the Committee’s non-compliance with Fed. R. Bankr. P. 2019 (“Rule 2019”). The Court ordered the Committee to file amended disclosures under Rule 2019 and scheduled a hearing on the adequacy of such disclosures for April 8, 2014, unless an earlier hearing date was requested by the Committee for cause shown.

5. At the hearing on the Trustee Bar Date Motion, the Trustee requested that the Court grant the motion but delay by one week the entry of an order establishing the bar date to allow a hearing to take place in Canada on the Canadian debtor’s motion to establish bar date. The Court approved the Trustee’s request for bar date and ordered the Trustee to submit a proposed form of order within seven (7) days. Counsel for the Committee requested that the Committee be permitted to seek, on an expedited basis and upon compliance with Rule 2019,

inclusion of its proposed language to the bar date order. The Court indicated that upon compliance with Rule 2019, the Committee could seek expedited treatment with respect to its proposed language in the bar date order.

Relief Requested

6. By this Motion, the Committee requests that the Court: (a) schedule a hearing on the Rule 2019 Motion for Wednesday, March 19, 2014 at 10:00 a.m.; (b) set a shortened deadline for objections to this Motion and the Rule 2019 Motion for March 19, 2014 at 10:00AM; and (c) approve service of this Motion and the Rule 2019 Motion in the manner set forth herein.

Basis for Relief

7. Given the imminent entry of the bar date order, sufficient cause exists for emergency determination of the Rule 2019 Motion to allow the Committee to be heard with respect to its proposed language for the bar order and notice. Especially in a case where most of the creditors are individuals or small business owners from outside the United States, it is only fair for them to receive reasonable notice of the consequences of filing a proof of claim in this case. The proposed insert to the bar order is a clear and correct statement of hornbook law based on multiple holdings of the U.S. Supreme Court, e.g. Granfinanciera v. Nordberg, 492 U.S. 33 (1989); Katchen v. Landy, 382 U.S. 323 (1966), and the proposed insert to the bar notice is a more concise but nevertheless correct statement of the law that non-lawyers should be able to understand and appreciate. Creditors have the right to understand that filing a claim may result in determination by this Court (or the District Court) of counterclaims by the Debtor, but that they need have no concern that filing a claim might result in determination by this Court (or the District Court) of claims that they might have against non-Debtor parties or having a finding or

ruling in the course of a summary claims adjudication be used against them in some other context.

8. The Committee contacted the Trustee in an effort to obtain consent to this Motion but did not receive a response prior to filing.

Notice

9. Notice of the Motion and the Rule 2019 Motion together with a Notice of Hearing and proposed forms of order, was served on the (a) Trustee; (b) the United States Trustee's Office; (c) Debtor's counsel; (d) counsel to the Official Committee of Derailment Victims; and (e) and all other parties receiving notice through the Court's electronic filing system. The Committee hereby requests that this Court find that such service is sufficient notice to all parties in interest in this case.

Conclusion

For these reasons, the Committee respectfully requests that the Court enter an Order:

- (i) granting this Motion for an emergency hearing on the Rule 2019 Motion;
- (ii) setting a hearing on the Rule 2019 Motion for Wednesday, March 19, 2014 at 10:00AM;
- (iii) setting a deadline of Wednesday, March 19, 2014 at 10:00AM for any objections to this Motion and the Rule 2019 Motion; and
- (iv) finding that service of this Motion and the Rule 2019 Motion in the manner described herein was sufficient to all parties in interest under the circumstances of this case; and

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(v) granting such other relief as the Court deems just and appropriate.

Dated: March 17, 2014

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Death Claimants*

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NOTICE OF EMERGENCY HEARING WITH RESPECT TO WRONGFUL DEATH CLAIMANTS' MOTION FOR EMERGENCY DETERMINATION OF 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 Victims") 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")¹, have filed a *Motion for Emergency Determination of Motion to Determine Compliance with Fed. R. Bankr. P. 2019* (the "Emergency Motion") and a *Motion to Determine Compliance with Fed. R. Bankr. P. 2019* (the "Rule 2019 Motion"), which Rule 2019 Motion is attached hereto as Exhibit A.

If you do not want the Court to approve the Emergency Motion or the Rule 2019 Motion, then on or before **10:00AM on Wednesday, March 19, 2014**, you or your attorney must file with the Court a response or objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before March 19, 2014**.

You may attend the hearing with respect to the Emergency Motion scheduled to be held at the Bankruptcy Court, 202 Harlow Street, Bangor, Maine on **March 19, 2014 at 10:00 a.m.** If the Emergency Motion is granted at that time, the Court may immediately thereafter conduct hearings to consider, and may grant some or all of the relief sought by the Rule 2019 Motion.

¹ The victims and the representatives of their estates are 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]. 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.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Emergency Motion or the Rule 2019 Motion and may enter an order granting the requested relief without further notice or hearing.

Dated: March 17, 2014

/s/ George W. Kurr, Jr.

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COMPLIANCE WITH FED. R. BANKR. P. 2019**

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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

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

Upon consideration of the Wrongful Death Claimants’ Motion for Emergency Determination (the “Emergency Motion”) of Motion to Determine Compliance with Fed. R. Bankr. P. 2019 (the “Rule 2019 Motion”), the Proposed Order and Notice of Hearing having been served as set forth in the Emergency Motion, good cause having been shown and pursuant to Rule 9013-1(j) of the Local Bankruptcy Rules, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. Service of the Emergency Motion, Proposed Order, and Notice of Hearing in the manner described in the Motion was sufficient notice to all parties in interest under the circumstances of this case and the relief requested in the Motion;
2. The Motion is GRANTED in all respects;
3. A hearing shall be set for on the Rule 2019 Motion for March 19, 2014 at 10:00 a.m., and all objections to same shall be filed on or before March 19, 2014 at 10:00AM.

Dated at Bangor, Maine, this ____ day of March, 2014.

Hon. Louis H. Kornreich
United States Bankruptcy Judge