

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 VICTIMS' RESPONSE TO
PROPOSED ORDERS ESTABLISHING BAR DATE**

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, hereby requests that this Court, upon entry of an Order granting the Committee's Motion to Determine Compliance With Fed. R. Bankr. P. 2019 filed concurrently herewith ("Rule 2019 Motion") [Docket No. 762], enter an Order requiring the inclusion of a single paragraph in any bar order or bar notice entered by the Court as set forth in Exhibit A hereto, to provide fair notice to creditors of the consequences of filing a proof of claim in this case.

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

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.

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.

6. On March 13, 2014, the Committee filed a 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”).

7. On March 17, 2014, the Committee filed a motion to determine compliance with Fed. R. Civ. P. 2019 [Docket No. 762] (the “Rule 2019 Motion”) and concurrently moved for emergency determination of the Rule 2019 Motion.

Relief Requested

8. By this Motion, the Committee requests that the Court, upon entry of an Order allowing the Rule 2019 Motion, permit the inclusion of the language proposed by the Committee in any bar order and notice of bar date approved by this Court.

Basis for Relief

9. The proposed inserts provide reasonable notice to creditors of the consequences of filing a proof of claim. Such provisions are particularly crucial where most of the creditors are individuals or small business owners from outside the United States. 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.

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

- (i) granting this Motion;
- (ii) requiring the inclusion of the language proposed by the Committee in Exhibit A

in any order entered by the Court establishing a bar date and any notice of bar date; and

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

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

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*