

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**TRUSTEE’S OBJECTION TO DISCLOSURE STATEMENT FOR AMENDED
CHAPTER 11 PLAN DATED JANUARY 29, 2014 PROPOSED BY THE UNOFFICIAL
COMMITTEE OF WRONGFUL DEATH CLAIMANTS, AS AMENDED**

Robert J. Keach, the chapter 11 trustee (the “Trustee”), submits this objection (the “Objection”) to the *Disclosure Statement for Amended Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* [D.E. 728] (the “Amended Disclosure Statement”), as amended by the *Amendment to Disclosure Statement for Amended Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* [D.E. 798] (the “DS Amendment”), filed in relation to the *Amended Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* [D.E. 727] (the “Amended Plan”), as amended by the *Amendment to Amended Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* [D.E. 797] (the “Plan Amendment”). In support of this Objection, the Trustee states as follows:

1. On January 29, 2014, the so-called Unofficial Committee of Wrongful Death Claimants (the “Unofficial Committee”) filed the *Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* [D.E. 600] (the “Original Plan”) and the *Disclosure Statement for Chapter 11 Plan Dated January 29, 2014 Proposed by*

the Unofficial Committee of Wrongful Death Claimants [D.E. 601] (the “Original Disclosure Statement”).

2. The Trustee timely objected to the Original Disclosure Statement on the basis that the Original Disclosure Statement could not be approved because it described, and was filed in relation to, a patently nonconfirmable plan, and suffered from a lack of adequate disclosures. See D.E. 687 (the “Original Objection”). The Original Objection is fully incorporated herein by reference.

3. The Trustee also filed the *Chapter 11 Trustee’s Motion for an Order (I) Determining That the Unofficial Committee of Wrongful Death Claimants Failed to Comply with Fed. R. Bankr. P. 2019 and (II) Imposing Sanctions for Such Failure* [D.E. 667] (the “2019 Motion”). By the 2019 Motion, the Trustee sought, among other things, a determination that the Unofficial Committee had failed to comply with Rule 2019(e) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) in failing to adequately disclose the terms and nature of its representation. The Unofficial Committee objected to the 2019 Motion.

4. After a hearing held before this Court on March 19, 2014 (the “March 19 Hearing”) on the 2019 Motion, the Court entered an Order granting the 2019 Motion [D.E. 753] (the “2019 Order”). The 2019 Order provides that, as a result of the Unofficial Committee’s failure to comply with Bankruptcy Rule 2019, “the unofficial committee and its counsel will not be heard on any pending matter in this chapter 11 case” 2019 Order, ¶ 2. The 2019 Order also required counsel to the Unofficial Committee to file “one or more amended, verified Rule 2019 disclosures” Id. at ¶ 3.

5. As the Court explained on the record at the March 19 Hearing, “every pleading from now on will have to be in the names of those 47 people [represented by counsel to the

Unofficial Committee], every motion, every response, every plan and every disclosure statement” D.E. 777.

6. Presumably in response to this statement, counsel to the Unofficial Committee filed the DS Amendment and the Plan Amendment. The DS Amendment and the Plan Amendment indicate that the Plan and Disclosure Statement are “amended” to replace the original plan proponent—the Unofficial Committee—with the 47 individual “Wrongful Death Claimants.” (The Trustee does not agree, of course, that this was all that the Court had in mind in entering its prior orders under Rule 2019, and does not agree that simply changing the list of proponents has cured the basic standing issues raised by the Plan and Disclosure Statement.)

7. Accordingly, the Amended Plan is now allegedly being proposed by entirely different plan proponents and is, therefore, an entirely different plan. The new proponents of the Amended Plan must comply anew with all applicable provisions of the Bankruptcy Code relating to the plan process, including the disclosure requirements dictated by section 1125 of the Bankruptcy Code. In relation to the disclosure requirements of section 1125, Bankruptcy Rule 2002(b) requires that plan proponents provide creditors with 28 days’ notice of the deadline to file objections on the adequacy of a disclosure statement. *See* Fed. R. Bankr. P. 2002(b). The new proponents of the Amended Plan must, therefore, provide creditors with at least 28 days’ notice of the deadline by which they may object to the Amended Disclosure Statement, as further amended by the DS Amendment. The new proponents of the Amended Plan cannot simply go forward with the Amended Plan and Amended Disclosure Statement within the original timeline, given that they have proposed a wholly new plan; in other words, entirely new proponents cannot simply “amend” a plan filed by someone else. If not already re-set by prior “amendments”, the

plan process has officially been re-set as of the filing of the Plan Amendment and DS Amendment.

8. Additionally, the Amended Disclosure Statement cannot be approved because, in addition to all of the deficiencies identified in the Original Objection, it fails to disclose crucial facts that have developed before and after the time it was filed, facts which conclusively eviscerate the very basis of the underlying Plan, to the extent that one existed.

9. Specifically, on March 21, 2014, the United States District Court for the District of Maine (the “District Court”) entered the *Order on Motions to Transfer Cases and Motion to Strike* [D.E. 100, entered in Case No. 1:13-mc-00184-NT, D. Me.] (the “Transfer Order”). A true and correct copy of the Transfer Order is attached hereto as **Exhibit A**. Pursuant to the Transfer Order, the District Court transferred the personal injury and wrongful death actions (the “PI/WD Actions”) pending in the Northern District of Illinois (the “Illinois District Court”) to the District Court, pursuant to 28 U.S.C. § 157(b)(5). Transfer Order, p. 26. On March 26, 2014, the District Court entered the *Amendment to Order Transferring Cases and Order for Further Action* [D.E. 214, entered in Case No. 1:13-mc-00184-NT, D. Me.] (the “Transfer Order Amendment”). A true and correct copy of the Transfer order Amendment is attached hereto as **Exhibit B**. The Transfer Order Amendment clarifies that the Transfer Order applies to all 19 of the PI/WD Actions, including the one PI/WD Action that had been remanded to Illinois state court (“Illinois State Court”), and provides direction to the plaintiff in the remanded action regarding transfer to the District Court.

10. On March 26, 2014, the Clerk of the District Court sent a letter to the Clerk of the Illinois District Court, providing notification of the transfer of the PI/WD Actions to the District Court. A true and correct copy of this letter is attached hereto as **Exhibit C**. On March 27,

2014, the Clerk of the District Court sent a letter to the Clerk of the Illinois State Court, providing notification of the transfer of the PI/WD Action pending in Illinois State Court to the District Court. A true and correct copy of this letter is attached hereto as **Exhibit D**.

11. Pursuant to orders entered in the 18 PI/WD Actions pending in Illinois District Court on March 25, 2014, the Illinois District Court transferred those PI/WD Actions to the District Court. True and correct copies of such orders are attached hereto as **Exhibit E**. On March 26, 2014, counsel to the plaintiff in the PI/WD Action pending in Illinois State Court filed a Notice of Compliance with the District Court indicating that the plaintiff had complied with the Transfer Order Amendment. A true and correct copy of the Notice of Compliance is attached hereto as **Exhibit F**.¹ Accordingly, all of the PI/WD Actions have been transferred to the District Court pursuant to the Transfer Order and Transfer Order Amendment.

12. The Amended Plan directly conflicts with the Transfer Order, in that it expressly provides holders of personal injury or wrongful death claims arising out of the July 6, 2013 train derailment (the “**Derailment Claimants**”) with the ability to “commence or continue litigation in *any forum* against any Non-Debtor Entity alleged to have caused or contributed to causation of the Derailment, or injury or death or other damages resulting from the Derailment.” **Amended Plan**, § 5.6(a). Nowhere in the Amended Disclosure Statement do the proponents disclose the fact that the PI/WD Actions have been transferred to the District Court. Nor does the Amended Disclosure Statement discuss the effect of the Transfer Order on plan provisions, such as section 5.6(a). Given that the ability to commence and continue the PI/WD Actions in the Derailment Claimants’ chosen forum is a central aspect of the Amended Plan—indeed the central aspect of

¹ Shortly after the entry of the Transfer Order, the plaintiffs in the PI/WD Actions filed notices of voluntary dismissal under Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure in the Illinois District Court. Notwithstanding this attempt to circumvent the ruling of the District Court, the Illinois District Court transferred the PI/WD Actions to the District Court, as required under the Transfer Order.

the Amended Plan and its reason for being--the proponents of the Amended Plan are required to, at the very least, disclose and discuss the fatal effects of the Transfer Order. More to the point, the Transfer Order renders the Amended Plan wholly non-feasible as well as contrary to law.

13. In summary, in addition to the reasons set forth in the Original Objection, the Amended Disclosure Statement cannot be approved because the Amended Disclosure Statement fails to address, and the Amended Plan cannot be confirmed because the Amended Plan conflicts with, the Transfer Order. Further, even were that not the case, the “new” proponents of the Amended Plan and the Amended Disclosure Statement must provide creditors and parties in interest with the statutorily-mandated time within which to review the Amended Disclosure Statement, given that, by the Plan Amendment, the Amended Plan is a new plan proposed by allegedly different plan proponents.

Dated: April 4, 2014

ROBERT J. KEACH, CHAPTER 11 TRUSTEE
OF MONTREAL MAINE & ATLANTIC
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By his attorneys:

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