

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**JOINDER OF DERAILMENT WRONGFUL DEATH CLAIMANTS TO TRUSTEE'S
MOTION FOR ORDER DISBANDING THE OFFICIAL COMMITTEE OF VICTIMS**

The “Wrongful Death Claimants” (as such term is defined in the Statement of Jeffrey D. Sternklar Pursuant to Fed.R.Bankr.P. 2019 [D. E. 1479] and in the “Declaration of Mitchell A. Toups, Esq. [D. E. 756]) hereby join in the Trustee’s Motion for Order Disbanding the Official Committee of Victims (“Disbandment Motion”) [D. E. 1441], and respectfully submits the following:

1. The Wrongful Death Claimants request that the Court disband the Committee¹ and join the Trustee in requesting this relief, as well as in the alternative relief sought by the Trustee to rescind the Retention Order. As the Trustee avers, there can be no serious dispute that the Committee serves no legitimate purpose in this case and its “activities of late have served only to prolong and, indeed, to jeopardize the significant settlement negotiations that are paving the way for a distribution to the [Wrongful Death Claimants].” Disbandment Motion, at ¶22.

2. The Committee has sought from the beginning to advance the interests of entities other than the Wrongful Death Claimants, notwithstanding that the Wrongful Death Claimants

¹ Capitalized terms shall have the meanings ascribed to them in the Disbandment Motion unless otherwise indicated.

are by far the largest creditors receiving distributions in this case.² Indeed, rather than limiting its activities to its Scope of Powers, and rather than limiting its activities to advancing the interests of victims as a class,³ the Committee recently has sought to interfere with the efforts by the Wrongful Death Claimants to recover from non-debtor third parties for the harm they have suffered due to the Derailment. Undeterred by both the absence of supporting evidence and the absence of support of even one of the Wrongful Death Claimants, the Committee unsuccessfully sought in the District Court to delay the Wrongful Death Claimants from filing suit against non-debtor third parties who may be responsible to the Wrongful Death Claimants for monetary damages, on the false pretext that their attorneys are seeking improper and excessive contingency fees from them.⁴ That the Committee would inject itself into these matters, as to which it lacks standing and as to which creditors as a class are disinterested, and which at most serve only to benefit one group of creditors at the expense of the Wrongful Death Claimants,⁵ is a gross violation by the Committee of its fiduciary duties to the Wrongful Death Claimants and the Scope of Powers.

3. Moreover, the claims of Wrongful Death Claimants are entitled to administrative expense priority, as they are claims for personal injury to or death arising out of the operation of the debtor or the estate, regardless that such claims arose before the commencement of the case.

² If the Trustee's chapter 11 plan ultimately is confirmed, other classes of creditors will receive distributions exclusively in the CCAA Case.

³ Even without the limitations to the Scope of Services imposed by this Court, at most, the Committee has a fiduciary duty to the creditors for whom it was appointed generally as a class. See, In re SPM Mfg. Co., 984 F.2d 1305, 1315 (1st Cir. 1993) (citations omitted). At most the Committee "is charged with pursuing whatever lawful course best serves the interests of the class of creditors represented." Id. (citations omitted). The Wrongful Death Claimants are represented by their counsel of record, and not by the Committee or its counsel.

⁴ Docket Entry Number 171 in MED Case No. 1:14-cv-113-NT.

⁵ Although the Committee's motivations for its improper conduct are unclear, the only victims of the Derailment who appear to benefit if the recovery by Wrongful Death Claimants is reduced are those victims, such as, for example, members of the Committee, who may have claims in this case that are subordinate to the more senior administrative expense priority claims of the Wrongful Death Claimants under 11 U.S.C. §1171(a).

11 U.S.C. §1171(a). If the Trustee's chapter 11 plan is not confirmed, then the Committee's potential administrative expenses for fees of its professionals or pursuant to 11 U.S.C. §§503(b)(3)(D) and (4) (if allowed at all) would compete for payment from a limited pool of assets with distributions to Wrongful Death Claimants, who are the true victims of the Derailment. Allowing the Committee to continue, therefore, risks diluting recovery by Wrongful Death Claimants to pay for the Committee's acts, notwithstanding that those acts are directly contrary to the Wrongful Death Claimants' interests and are in violation of the Committee's fiduciary duties.

WHEREFORE, the Wrongful Death Claimants pray that the Court allow the Disbandment Motion, disband the Committee, alternatively rescind the Retention Order, and further grant the Wrongful Death Claimants such other and further relief to which they may be entitled.

Dated: July 8, 2015

Marie Semie Alliance, *et al.*
By their attorneys,

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CERTIFICATE OF SERVICE

I, George W. Kurr, Jr., Esquire, of the firm Gross, Minsky & Mogul, P.A., hereby certify that on July 8, 2015, I electronically filed **JOINDER OF DERAILEMENT WRONGFUL DEATH CLAIMANTS TO TRUSTEE'S MOTION FOR ORDER DISBANDING THE OFFICIAL COMMITTEE OF VICTIMS** 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.