

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

<p>In re:</p> <p>MONTREAL MAINE & ATLANTIC RAILWAY, LTD.,</p> <p style="text-align: center;">Debtor.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 1:13-MC-00184</p>
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NOTICE OF UNOPPOSED MOTION TO TRANSFER

Western Petroleum Corporation (“WPC”) and Petroleum Transport Solutions, LLC, (“PTS,” and together with WPC, the “WFS Entities”) file this notice to respectfully request that the Court grant the WFS Entities’ unopposed motion to transfer¹ to this district, pursuant to 28 U.S.C. § 157(b)(5), nineteen² wrongful death actions (the “U.S. Wrongful Death Actions”) that are related to the chapter 11 bankruptcy case of Montreal Maine & Atlantic Railway, Ltd. (“MMA”), currently pending in the United States Bankruptcy Court for the District of Maine.³ Eighteen of the U.S. Wrongful Death Actions are currently pending in the United States District Court for the Northern District of Illinois, and one is pending in the Circuit Court of Cook County, Illinois.

On September 11, 2013, Robert J. Keach, the chapter 11 trustee (the “Trustee”) for MMA’s bankruptcy estate, filed a motion in the Maine Bankruptcy Court seeking to transfer the U.S. Wrongful Death Actions to this district. That same day, the WFS Entities, defendants in

¹ [Dkt. No. 2.]

² Plaintiffs originally filed twenty (20) U.S. Wrongful Death Actions. Plaintiffs dismissed one such action without prejudice to reinstating on September 9, 2013, seemingly as part of their efforts to situate the U.S. Wrongful Death Actions in the Circuit Court of Cook County, Illinois, a jurisdiction with no material connection to the litigation. World Fuel Services Corp. was also named as a defendant in the U.S. Wrongful Death Actions but has not been properly served.

³ See *In re Montreal Maine & Atlantic Railway, Ltd.*, Case No. 13-10670 (LHK).

those actions, filed an independent transfer motion.⁴ Another defendant, CIT Group, Inc., joined in both of the earlier-filed motions.⁵ Soon thereafter, the Maine Bankruptcy Court “forwarded” all proceedings related to both motions to this Court;⁶ the motions were separately docketed and remain pending.⁷ On September 20, 2013, additional defendants joined the motions for transfer.⁸

Pursuant to this Court’s Procedural Order, dated September 24, 2013, *responses to all of the above-referenced motions were due by October 15, 2013.*⁹ Instead of responding to those motions, the plaintiffs in the U.S. Wrongful Death Actions (the “Plaintiffs”) filed an entirely new motion on October 11, 2013, which they styled as a “Motion of Wrongful Death Claimants to Stay Chapter 11 Trustee’s Motion to Transfer.”¹⁰

In that motion Plaintiffs argue, among other things, that this Court must (or should) stay proceedings on the Trustee’s transfer motion to allow the Illinois District Court to rule on Plaintiffs’ motion to remand the U.S. Wrongful Death Actions to Illinois state court. Plaintiffs also asked, almost as an aside, that their deadline for responding to the Trustee’s transfer motion, as established by this Court’s Procedural Order, *should be effectively tolled indefinitely*, and that, even if a stay is *denied* (as it should be), their time to respond should be tolled for a *further* period of two weeks. This is a transparent procedural gambit without foundation and does not justify delaying adjudication of the WFS Entities’ motion to transfer.

⁴ [Bankr. Dkt. No. 206.]

⁵ [Bankr. Dkt. No. 221.]

⁶ See Bankruptcy Court Docket Notation of September 12, 2013, forwarding Motions for Transfer to Maine District Court.

⁷ [Dkt. Nos. 1, 2, & 3.]

⁸ [Dkt. No. 4.]

⁹ See Procedural Order setting briefing deadline of October 15, 2013 [Dkt. No. 5.]

¹⁰ [Dkt. No. 8] (the “Stay Motion”).

First, as a formal matter, the *only* relief requested in Plaintiffs’ stay motion was for the Court “to stay further action on the motion to transfer . . . filed by the . . . Trustee.”¹¹ In their stay motion, Plaintiffs make no mention of the WFS Entities’ independent transfer motion, or of the two joinders, which in addition to fully incorporating the transfer motions by reference, also make independent arguments in favor of transfer. Therefore, even if Plaintiffs’ stay motion was interpreted as an ad hoc request for an extension of the October 15 deadline to respond to the Trustee’s transfer motion (which it should not be, as explained further below), the WFS Entities’ transfer motion stands unopposed. Given that the October 15 deadline is now well-past, the WFS Entities’ transfer motion can properly be decided at this time.

Second, and independently, Plaintiffs’ stay motion—in effect, at least in part, a motion to extend this Court’s briefing schedule on the Trustee’s separate motion to transfer—is procedurally defective and substantively without foundation. The WFS Entities’ are unaware of any rule that allows Plaintiffs to unilaterally ignore this Court’s briefing schedule by seeking a “stay.”

Had Plaintiffs filed a proper request for an extension of time to respond to the WFS Entities’ transfer motion because they needed more time to respond, the WFS Entities would have, as a matter of professional courtesy, consented to a reasonable extension, notwithstanding that the WFS Entities’ transfer motion is straightforward and relatively brief. But the WFS Entities cannot consent to Plaintiffs’ procedural gamesmanship in seeking to delay this Court’s adjudication of the WFS Entities’ transfer motion, particularly when that motion has not been opposed by any other party-in-interest in MMA’s bankruptcy case.

¹¹ Stay Motion at 1.

Plaintiffs' request appears to be driven by their belief that if the Illinois District Court (which has no knowledge of or interest in MMA's bankruptcy case) were to decide whether related-to bankruptcy jurisdiction exists under 28 U.S.C. § 1334, then that court would be more likely than this Court (which has ultimate oversight responsibility for MMA's bankruptcy case) to agree with Plaintiffs' position that such jurisdiction does not exist and so remand the U.S. Wrongful Death Cases to Illinois state court.

The WFS Entities' response to the stay motion, filed concurrently herewith, discusses at length Plaintiffs' misguided and legally incorrect jurisdictional arguments. And it sets forth myriad reasons why the stay motion should either be denied as procedurally improper or denied on the merits, if this Court addresses it on the merits despite its procedural defects. The WFS Entities will not restate those arguments here; rather, the WFS Entities incorporate their response by reference herein, and respectfully request this Court to rule on the WFS Entities' unopposed motion to transfer the U.S. Wrongful Death Actions to this Court.

In conclusion, the WFS Entities respectfully request that the Court either: (i) rule on the WFS Entities' unopposed motion to transfer pursuant to this Court's Procedural Order; or (ii) give the Plaintiffs a short time (e.g., three business days) to respond to the WFS Entities' motion to transfer, and the related joinders, and then adjudicate the WFS Entities' motion to transfer. Should the Court deem it appropriate to schedule a status conference in connection with any of the transfer motions, the WFS Entities would, of course, be pleased to participate.

Dated: October 23, 2013

/s/ Jay S. Geller

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CERTIFICATE OF SERVICE

I, **Jay S. Geller**, attorney for Western Petroleum Company and Petroleum Transport Solutions, LLC electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all persons registered for ECF. All copies of documents required to be served by Fed. R. Civ. P. 5(a) have been so served.

Dated: October 23, 2013

/s/ Jay S. Geller
*Attorney for Defendants Western Petroleum
Company & Petroleum Transport Solutions, LLC*