

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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In re)	
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MONTREAL MAINE & ATLANTIC)	CHAPTER 11
RAILWAY, LTD.)	CASE NO. 13-10670-LHK
)	
	Debtor)	
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**WRONGFUL DEATH CLAIMANTS’ MOTION TO MODIFY
ORDER CONCERNING FORMATION OF CREDITORS’ COMMITTEE**

The Unofficial Committee of Wrongful Death Claimants (the “WD Committee”),¹ consisting of representatives of the estates of the 46 victims of the massive explosion in Lac-Mégantic, Quebec (the “Wrongful Death Claimants”) caused by the derailment of a train operated by Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), with civil actions against parties other than the Debtor (the “Illinois Actions”), hereby moves for this Court to modify its Order Authorizing the Appointment of a Victims’ Committee entered October 18, 2013 [Docket No. 391] (the “Appointment Order”) so as to address fatal flaws in the committee appointed pursuant thereto. As grounds therefor, the WD Committee states:

1. Two motions seeking an official creditors’ committee were filed in this case. Certain of the Wrongful Death Claimants filed a motion seeking a committee to represent all wrongful death claimants [Docket No. 76]. An informal committee consisting of Canadian governmental units and a putative class representative in an uncertified Canadian class action lawsuit (the “Quebec Informal Committee”) sought appointment of a victims’ committee that would include its members and perhaps other persons [Docket No. 137].

¹ The Wrongful Death Claimants and the decedents whose estates they represent are set forth in Exhibit A hereto. In case pertinent for purposes of standing, the Wrongful Death Claimants individually as well as the WD Committee are movants hereunder.

2. At the preliminary hearing on both motions held on September 13, 2013, this Court expressed concerns about the cost of an official committee. The Court suggested that victims of the Disaster consider participating in this case through unofficial committees whose professional fees and other expenses would be considered for payment by the Debtor's estate only at the conclusion of the case. The Court scheduled a further hearing on both motions to take place on October 1, 2013. Accepting the Court's suggestion, the Wrongful Death Claimants withdrew their motion and formed the WD Committee.

3. After the October 1 hearing, this Court entered the Appointment Order. Noting that, in a railroad chapter 11 case, appointment of an official committee is an extraordinary remedy, this Court authorized appointment of a committee to serve these purposes:

(1) provide an extra-judicial forum for victims with claims of different kinds to develop a common approach to case administration, the development of a plan and any issue in the case; (2) allow victims to speak with one voice when appropriate on any issue in the case without hampering the rights of any individual party-in-interest; (3) give official standing and voice to victims who may be without one in these proceedings; and (4) give the trustee and other parties a point of contact and negotiating partner on a plan and any other issue in the case.

Appointment Order at 3.

4. This Court identified five types of victims' claims that the Court envisioned would be represented by the official committee:

- (1) wrongful death claims
- (2) "survivors with personal injury tort claims,"
- (3) claims of "people who have lost their homes, livelihoods and property,"
- (4) claims of Canadian governmental entities "that have contributed aid and shelter to the victims or devoted assets to the clean-up and restoration efforts," and
- (5) similar claims of non-governmental entities.

See Appointment Order at 2.

5. At the October 1 hearing, the Court stated:

[I]f I rule in favor of a committee, I'll charge the United States Trustee to form it and if he comes back with a committee that is really not going to make any contribution, then it's not likely to pass muster.

Transcript (Hr'g of October 1, 2013) at 94:4-7. The appointed committee most certainly does not pass muster. Despite the considerable efforts of the United States Trustee ("UST") in the committee formation process,² the UST was only able to appoint a three-person committee³ which, as further described below, bears no resemblance to the broadly representative committee that this Court appears to have had in mind.

6. One of the UST's appointees is a minor child and ineligible to serve. The young lady in question, Megane Turcotte, was requested by counsel for the uncertified Canadian class action, who knew she was a minor, to seek membership on the official committee. At his specific instruction, Ms. Turcotte did not disclose her age when she completed the UST's form to indicate a willingness to serve on the official committee. Ms. Turcotte herself did not attend the committee formation meeting, but instead, at the lawyer's request, executed a power of attorney that he had prepared designating the mayor of Lac-Mégantic (like the class action counsel, a member of the Quebec Informal Committee) to speak on her behalf at the committee formation meeting. At that meeting, no mention was made of Ms. Turcotte's age. Upon information and belief, the UST was unaware of Ms. Turcotte's legal incapacity, or that the power of attorney was fraudulent.

² The U.S. Trustee sent dozens of letters in English and French to residents of Lac-Mégantic and others whom the U.S. Trustee had identified as potential committee members, and rather than holding the usual committee formation meeting at its own offices, arranged for the meeting to take place in the town of Carrabassett Valley, Maine, close to the Canadian border.

³ A copy of the UST's appointment of the committee [Docket No. 460] is annexed hereto as Exhibit A.

7. Apparently the UST was also unaware that, even apart from Ms. Turcotte's legal incapacity, she does not hold a claim. Inquiry by the UST would have indicated that the wrongful death claim resulting from her mother's death is held by her aunt, Ms. Suzanne Bizier, as representative of her estate. (Ms. Bizier is a member of the WD Committee and, thus, a party to this motion.) Having been manipulated by the Canadian class action counsel in the midst of her overwhelming personal loss, Ms. Turcotte will of course step down or be removed from the official committee.

8. In the sound belief that committees of fewer than three members do not effectively serve the purposes of official committees under the Bankruptcy Code, the UST has a policy of appointing an official committee only if at least three qualified creditors are willing to serve. That policy may lead the UST to terminate the official committee in this case because it will have only two members once Ms. Turcotte is gone. Whether or not the UST does so, this Court should. The committee's numerical insufficiency, in itself problematic, points to an even more serious defect: The committee does not fulfill this Court's mandate for a "big tent" committee including a broad spectrum of victim constituencies.

9. Besides Ms. Turcotte, there were two other appointees to the official committee. Both are adult residents of Lac-Mégantic who, on information and belief, are legitimate claimants in category 3 above (economic damages). With Ms. Turcotte's departure, the committee will contain representatives of only a single category of claim. Worse yet, the particular category of claim has neither security nor priority, and appears to be out of the money under any foreseeable scenario for this case. The committee cannot adequately represent wrongful death claimants or governmental entities that assert statutory priority in this Chapter 11

case and (in the case of governmental entities in the Canadian CCAA proceeding) a statutory lien.

10. The case cannot afford the expense of a committee ill-positioned to make a contribution. This Court has repeatedly expressed its concern about professional fees. It would be particularly unfair to permit a committee of out-of-the-money creditors to deplete funds of the estate, which would otherwise be distributed to other victims.

11. Termination of the official committee would not matter even to the category 3 claimants, who have manifested no meaningful support for the committee. Despite the notice widely circulated by the UST, only two of the hundreds of category 3 claimants volunteered for the official committee – probably a sensible reaction, given that these claimants have a meaningful chance of recovery through the Canadian CCAA proceeding or through governmental largesse, but not through this Chapter 11 case.

12. In sum, the experiment of trying to form a broadly-representative official committee has not borne fruit. And ironically, given that one of this Court's purposes in ordering formation of an official committee was to promote negotiations among the various victim constituencies, continuous jousting about issues of committee formation has become a distraction from such negotiations, which alone would have the potential to make this case a success for the victims. (The WD Committee acknowledges that for the public and certain non-victim constituencies, the case will be a success if the railroad is sold on acceptable terms, even if the case were to be dismissed right after the sale.) If sound case management argued two months ago for trying to form an official committee, today it argues for quickly and decisively ending the committee experiment so as to encourage key victim constituencies to get down to the real business of this case.

Marie Semie Alliance, *et al.*

By their attorneys,

/s/ George W. Kurr, Jr.

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Phone: (409) 838-0101

Exhibit A

1. The estate representatives are Seraphin Alliance (on behalf Alliance, Marie Semie); Elise Dubois Couture (on behalf of Beaudoin, David Lacroix); Pascal Charest (on behalf of Begnoche, Alyssa Charest); Pascal Charest (on behalf of Begnoche, Bianka Charest); Gaston Begnoche (on behalf of Begnoche, Talitha Coumi); Suzanne Bizier, Alain Bizier (on behalf of Bizier, Diane); Caroline Tremblay (on behalf of Bolduc, Guy); Lisette Fortin-Bolduc, (on behalf of Bolduc, Stephane); Genevieve Dube (on behalf of Bouchard, Yannick); Michel Boulanger (on behalf of Boulanger, Eliane Parenteau); Louise Boulet (on behalf of Boulet, Marie-France); Colette Boulet, (on behalf of Boulet, Yves); Isabelle Boulanger, Rene Boutin, Sophie Boutin, Roxanne Boutin (on behalf of Frederic Boutin); Real Breton (on behalf of Breton, Genevieve); Yann Proteau (on behalf of Champagne, Karine); Cynthia Boule, Jean-Guy Boule, Alexandre Boule (on behalf of Sylvia Charron); Louise Courture (on behalf of Clusiault, Kathy); Sonia Pepin; Jeremy Custeau, Theresa Pouliot, Michael Cousteau, Rejean Custeau, Kathleen Bedard, Simon Custeau, Richard Custeau, Sylvie Custeau (on behalf of Real Custeau); Therese Dubois (on behalf of Dubois, Denise); Joannie Proteau, (on behalf of Dubois, Maxime); Maude Faucher (on behalf of Faucher, Marie-Noelle); Guylaine St-Laurent (on behalf of Natachat Gaudreau); Sandy Bedard (on behalf of Guertin Jr., Michel); Raymond Lafontaine, Pierrette Boucher Lafontaine (on behalf of Lafontaine, Gaetan); Pascal Lafontaine (on behalf of Lafontaine, Karine); Clermont Pepin (on behalf of Lajeunesse, Éric Pépin); Marie-Eve Lapierre (on behalf of Lapierre, Stéphane); Diane Belanger (on behalf of Lapointe, Joannie); Marie Josee Grimard (on behalf of Latulippe, Henriette); Georgette Martin (on behalf of David Martin); Karine Paquet (on behalf of Paquet, Roger); Alexia Dumas-Chaput (on behalf of Pelletier, Mathieu); Robert Picard (on behalf of Picard, Louise Poirer); Mario Poulin (on behalf of Poulin, Marianne); Herbert

Ratsch (on behalf of Wifrid Ratsch); Lily Rodrique (on behalf of Rodrique, Martin); Maxime Roy, Carol-Anne Roy (on behalf of Roy, Jean-Pierre); Lise Doyon (on behalf of Roy, Kevin); Rejean Roy (on behalf of Roy, Melissa); Mario Sévigny (on behalf of Sévigny, Andrée-Anne); Michel Sirois, Solange Belanger (on behalf of Sirois, Jimmy); Richard Turcotte, Christine Pulin (on behalf of Turcotte, Elodie); Suzanne Bizier (on behalf of Turmel, Joanie); Francois Poulin, Sylvia Vadnais and Jean Vadnais (on behalf of Lucie Vadnais); Annick Roy (on behalf of Veilleux, Jean-Guy); and Sophie Veilleux (on behalf of Veilleux, Richard).

2. The victims are Marie Semie Alliance, David Lacroix Beaudoin, Alyssa Charest Begnoche, Bianka Charest Begnoche, Talitha Coumi Benoche, Diane Bizier, Guy Bolduc, Stephane Bolduc, Yannick Bouchard, Eliane Parenteau Boulanger, Marie France Boulet, Yves Boulet, Frederic Boutin, Genevieve Breton, Karine Champagne, Sylvia Charron, Kathy Clusiault, Real Custeau, Denise Dubois, Maxime Dubois, Marie-Noelle Faucher, Natachat Gaudreau, Michael Guertin, Jr., Gaetan Lafontaine, Karine Lafontaine, Eric Pepin Lajeunesse, Stephane Lapierre, Joannie Lapointe, Henriette Latulippe, David Martin, Roger Paquet, Mathieu Pelletier, Louise Poirer Picard, Marianne Poulin, Wifrid Ratsch, Martin Rodrique, Jean Pierre Roy, Kevin Roy, Melissa Roy, Andree-Anne Sevigny, Jimmy Sirios, Elodie Turcotte, Joanie Turmel, Lucie Vadnais, Jean-Guy Veilleux and Richard Veilleux.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

)	
In re:)	
)	Chapter 11
MONTREAL, MAINE & ATLANTIC, LTD.)	Case No. 13-10670-LHK
)	
Debtor.)	
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**APPOINTMENT AND NOTICE OF APPOINTMENT
OF COMMITTEE OF CREDITORS**

Pursuant to 11 U.S.C. § 1102(a)(2), the undersigned hereby appoints the following creditors to serve on the Committee of Creditors holding claims arising from the July 6, 2013, derailment at Lac-Megantic:

Serge Jacques Frontenac, QC. Canada G6B-251 Jacinthe LaCombe Lac Megantic, QC. Canada G6B-226	Megane Turcotte Lac Megantic, QC. Canada G6B 2N7
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The United States Trustee reserves the right to modify this Appointment of Committee, if necessary.

Dated at Portland, Maine this 27th day of November, 2013.

Respectfully submitted,

William K. Harrington
United States Trustee

By: /s/ Stephen G. Morrell
Stephen G. Morrell, Esq.
Assistant U.S. Trustee
United States Department of Justice
Office of United States Trustee

537 Congress Street, Suite 303
Portland, ME 04101
PHONE: (207) 780-3564

CERTIFICATE OF SERVICE

I, Stephen G. Morrell, being over the age of eighteen and an employee of the United States Department of Justice, U.S. Trustee Program, hereby certify that on November 26, 2013, I electronically filed the forgoing Appointment and Notice of Appointment of Committee of Victims and this Certificate of Service, which were served upon each of the parties set forth on this Service List via U.S. mail, postage prepaid, on November 27, 2013. All other parties listed on the Notice of Electronic Filing have been served electronically.

Dated at Portland, Maine this 27th day of November, 2013.

/s/ Stephen G. Morrell

Service List:

Serge Jacques (via electronic mail)

Conrad LeBrun, Attorney-in-Fact
55 rue Frontenac
Lac Megantic, QC Canada G6B-1H6

Jacinthe LaCombe (via electronic mail)

Marie Turcotte (via electronic mail)

Madame Collette-Roy LaRoche, Attorney-in-Fact
55 rue Frontenac
Lac Megantic, QC Canada G6B-1H6

AFFIDAVIT

Je, soussigné, MÉGANE TURCOTTE, domiciliée et résidant au 4282, rue Mauger, Lac-Mégantic (Québec) G6B 1N7, déclare solennellement ce qui suit :

1. Je suis la fille de Diane Bizier qui est décédée lors de la tragédie ferroviaire ayant eu lieu à Lac-Mégantic, le 6 juillet 2013;
2. Je suis âgée de 17 ans et je suis donc mineure ;
3. Depuis le décès de ma mère, mon tuteur légal est mon père, René Turcotte;
4. La liquidatrice de la succession de ma mère a dûment engagé, le 30 août 2013, un groupe de firmes d'avocats dirigé par Meyers & Flowers LLC afin d'entreprendre des poursuites contre les responsables de la mort de ma mère;
5. Le 12 novembre 2013, Me Daniel Larochelle, avocat de Lac-Mégantic, en charge du recours collectif déposé mais non autorisé, m'a contactée pour me demander à quelle date j'aurais 18 ans et si je serais intéressée à être représentante pour le recours collectif;
6. Lors de cette conversation, Me Larochelle ne m'a jamais informée que je ne pouvais agir de la sorte par moi-même étant mineure et ne m'a également jamais informée que le fait que ma famille ait retenu les services d'avocats pour intenter un recours individuel m'empêchait de participer à un recours collectif pour la même cause;
7. Dans les circonstances, je lui ai répondu que cela pouvait m'intéresser mais que j'aimerais en savoir davantage;
8. Par la suite, j'ai eu plusieurs communications avec l'adjointe de Me Larochelle qui m'a demandé de me porter volontaire pour siéger sur le Comité des victimes, mis en place par le bureau du syndic des États-Unis et ce, même si j'étais mineure;
9. L'adjointe de Me Larochelle me fit parvenir le formulaire déjà partiellement rempli, un consentement devant être signé par mon père pour m'autoriser à siéger sur le Comité et finalement, une procuration autorisant la mairesse de Lac-Mégantic, Mme Colette Roy-Laroche, à me représenter sur ledit Comité;
10. J'ai fini de compléter le formulaire et l'ai signé, ignorant que je ne pouvais siéger comme personne mineure sur ce Comité;

11. L'adjointe de Me Larochelle m'a par la suite rappelée pour me dire qu'il n'était pas nécessaire que mon père signe le consentement puisque le formulaire du Bureau du syndic des États-Unis ne demandait pas l'âge de la personne qui postulait ou sa date de naissance;
12. Mon père n'a donc jamais été consulté ou même informé et n'a jamais signé de consentement à ce que je siège sur le Comité des victimes;
13. J'ai également signé la procuration et ce, ignorant que je ne pouvais pas légalement le faire si j'étais mineure;
14. J'ai été induite en erreur sur mes droits et la portée légale de mes gestes;
15. Mes intérêts légaux concernant la mort de ma mère Diane Bizier sont représentés par mes procureurs dûment engagés Meyers & Flowers LLC par toutes les personnes qui ont la capacité et l'intérêt légal requis pour le faire pour et en mon nom en tant que mineure;
16. Tous les faits allégués à la présente sont vrais.

ET J'AI SIGNÉ:

Mégane Turcotte
MÉGANE TURCOTTE

Déclaré solennellement devant moi,

A Lac-Mégantic

Le 6^e ième jour de *decembre* 2013

Lise Turcotte

COMMISSAIRE A L'ASSERMENTATION
POUR LE QUÉBEC # 206 115

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

I, Hans Mercier, esquire, hereby declare as follows:

1. I am an attorney with the law firm of Mercier & Morin, 11505, 1st avenue, suite 200, Saint-Georges-de-Beauce (Québec) Canada G5Y 7X3, duly admitted to practice before the courts of the province of Quebec.
2. I am local counsel to the representatives of the estates of the victims of the massive explosion in Lac-Mégantic, Quebec (the “Wrongful Death Claimants”).
3. I am fluent in French and English.
4. I hereby certify that the document attached hereto is a true and accurate English translation of the Affidavit of Megane Turcotte.

I declare under the penalty of perjury that to the best of my knowledge, the foregoing is true and accurate.

DATED THIS 9th DAY OF DECEMBER, 2013.



Hans Mercier

AFFIDAVIT

I, the undersigned, MÉGANE TURCOTTE, domiciled and residing at 4282, Mauger Street, Lac-Mégantic (Quebec) G6B 1N7, solemnly declare the following:

1. I am the daughter of Diane Bizier who passed away in the railway tragedy that occurred in Lac-Mégantic, on July 6th 2013;
2. I am 17 years old and therefore, I am a minor;
3. Since the passing of my mother, my legal guardian has been my father, René Turcotte;
4. The executor of my mother's estate duly engaged, on August 30th 2013, a group of law firms led by Meyers & Flowers LLC to take action against those responsible for my mother's death;
5. On November 12th 2013, Daniel Larochelle, the lawyer from Lac-Mégantic in charge of the class action filed but uncertified, contacted me to ask me at which date will I turn 18 years old and if I would be interested in being a representative for the class action;
6. During this conversation, Mr Larochelle never informed me that I could not do so because I am a minor, or that my family's retention of lawyers to bring an individual action precluded my family from participating in a class action;
7. In these circumstances, I replied that it could interest me but I would like to obtain more information;
8. Thereafter, I spoke with Mr Larochelle's assistant on several occasions, who then asked me to volunteer to sit on the Committee of Victims, implemented by the office of trustee of the United States and this, even if I was a minor;
9. Mr Larochelle's assistant, sent me a partially completed form and a consent agreement to be signed by my father to allow me to sit on the Committee, as well as a power of attorney authorizing the Mayoress of Lac-Mégantic, Mrs Colette Roy-Laroche to represent me on the said Committee;
10. I completed and signed the form, unaware that I could not sit as a minor on this Committee;

11. Mr Larochelle's assistant later called me and told me that it was not necessary for my father to sign the consent form as the office of trustee of the United States did not require the age of the person applying or their birth date;
12. My father was never consulted or even informed and he never gave his consent for me to sit on the Committee of Victims;
13. I also signed the power of attorney, unaware that as a minor I could not legally do so on my own;
14. I was misled about my rights and the legal significance of my actions;
15. My legal interests concerning the death of my mother Diane Bizier are represented by my attorneys Meyers & Flowers LLC and by all persons who have the ability and the legal interest required to do so and on my behalf as a minor;
16. All the facts alleged in the present are true.

AND I SIGNED:

MÉGANE TURCOTTE

Declared under oath before me,
At Lac-Mégantic,
The th day of

COMMISSIONER OF OATHS
FOR QUEBEC

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

**NOTICE OF HEARING WITH RESPECT TO WRONGFUL DEATH CLAIMANTS'
MOTION TO MODIFY ORDER CONCERNING
FORMATION OF CREDITORS' COMMITTEE**

The representatives of the probate estates of 46 victims¹ of the massive explosion in Lac-Mégantic, Quebec, from the derailment of a train operated by the Debtor (the "Wrongful Death Claimants") have filed a *Motion to Modify Order Concerning Formation of Creditors' Committee* (the "Motion").

A hearing on the Motion has been set to take place at the **United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine** on **January 9, 2014 at 10:00 a.m.** (the "Hearing").

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 do not have copies of the Motion or any related papers, you may contact the Wrongful Death Claimants' attorneys to obtain copies – Murtha Cullina LLP, Attention Taruna Garg, Esq., 177 Broad Street, Stamford, Connecticut 06901; (203) 653-5400; tgarg@murthalaw.com.**

If you do not want the Court to approve the Motion or any related papers, then on or before December 24, 2013, you or your attorney must file with the Court a response, an answer, or an objection explaining your position. If you are not able to access the CM/ECF Filing System, your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court
202 Harlow Street
Bangor, ME 04401

-and-

Taruna Garg, Esq.
Murtha Cullina LLP

¹ The names of the representatives and victims are listed on Exhibit A to the Motion to Modify.

177 Broad Street,
Stamford, Connecticut 06901

If you mail your response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the date and time stated above.

You may attend the Hearing with respect to the Motion, scheduled to be held, as noted above, at the **United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine** on January 9, 2013 at 10:00 a.m.

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

Dated: December 9, 2013

Marie S. Alliance, *et al.*

By their attorneys,

/s/ George W. Kurr, Jr.
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