

Date: 2/11/2014
Time: 10:00 a.m.
Place: Bangor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

	*	
In re:	*	
	*	
Montréal, Maine & Atlantic	*	Chapter 11
Railway, Ltd.	*	Case No. 13-10670
	*	
Debtor	*	

MOTION FOR EMERGENCY HEARING AND TO LIMIT NOTICE

NOW COME Yannick Gagné, Guy Ouellet, Serge Jacques and Louis-Serges Parent (the “Class Action Plaintiffs”), by and through their counsel, and move for an emergency hearing upon this Motion and upon their Motion to Establish Claim Procedures (the "Claims Motion"), as follows:

I. INTRODUCTION

1. On July 6, 2013, a train derailed in Lac-Megantic, Québec (the “Derailment”) on railroad track owned, operated, and maintained by Montreal, Maine & Atlantic Canada Co. (the “Canadian Debtor”). The Derailment set off multiple explosions, destroyed a significant portion of downtown Lac-Megantic, and resulted in the deaths of at least 47 people. Businesses, governments, and a large number of individuals suffered immense harm from the Derailment.

2. The Canadian Debtor is an unlimited liability company under Canadian law and is a subsidiary of the debtor in this case, the Montréal, Maine & Atlantic Railway, Ltd. (the “US Debtor”). See Amended Motion at ¶¶ 5, 8. As a result, the US Debtor, or its bankruptcy estate, may be liable for any deficiency in the payment of claims asserted against the Canadian Debtor. See Amended Motion at ¶ 8. Additionally, many, if not all, of the operations and actions of the Canadian Debtor were directed by the US Debtor. Accordingly, parties who suffered loss as a result of the Derailment have resulting claims (“Derailment Claims”) against not only the Canadian Debtor, but also the US Debtor.

3. On or about July 15, 2013, the Class Action Plaintiffs filed a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative (the “Authorization Motion”) in the judicial district of Mégantic, Quebec (temporarily, hearings are being heard in Sherbrooke). The Authorization Motion sought to commence a class action against the Canadian Debtor, as well as the US Debtor and other parties in connection with losses suffered as a result of the Derailment. See Affidavit of Yannick Gagné (the “Gagné Affidavit”) at ¶¶ 1-2; Affidavit of Guy Ouellet (the “Ouellet Affidavit”) at ¶¶ 1-2.

4. On August 7, 2013 (the “Petition Date”), the US Debtor filed a voluntary petition with this Court seeking relief as a debtor under 11 U.S.C. Chapter 11. On that same date, the Canadian Debtor filed for protection under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), with the Québec Superior Court of Justice (Commercial Division) (the “Superior Court”). On the following day, the Superior Court made an order granting the Canadian Debtor protection

under the CCAA. See Motion for Order Adopting Cross-Border Insolvency Protocol (the “Protocol Motion”), Docket No. 126 at ¶ 3. As a result, further action against the US Debtor and the Canadian Debtor (collectively, the “Debtors”) with respect to the Authorization Motion has been stayed.

5. Robert Keach (the Trustee”) is the duly appointed, acting, and qualified Chapter 11 trustee in this case. The Superior Court appointed the Richter Advisory Group Inc. (Richter Group Conseil Inc.) as monitor (the “Monitor”) and authorized foreign representative of the Canadian Debtor in the Canadian Debtor’s CCAA proceeding (the “CCAA Proceeding”). See Protocol Motion at ¶ 3.

6. On November 1, 2013, the Class Action Plaintiffs filed a motion (the “Representation Motion”) with the Superior Court in the CCAA Proceeding seeking an order appointing the Class Action Plaintiffs as representatives of the victims of the Derailment. The Representation Motion has yet to be heard by the Superior Court. Since the filing of the Representation Motion, the Class Action Plaintiffs have obtained over 1,500 proxies from victims of the Derailment, appointing the Class Action Plaintiffs as their representatives for all purposes in both this case and in the CCAA Proceeding, including the filing of proofs of claims and voting. See Gagné Affidavit at ¶ 3; Ouellet Affidavit at ¶ 3.

7. On December 13, 2013, the Canadian Debtor filed a Motion for an Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date (the “Canadian Motion”) in the CCAA Proceedings. See Amended Motion at ¶ 11, Exhibit A. On that same date, the Trustee filed his Motion of Chapter 11 Trustee 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 3001-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof (the “US Motion”) with this Court, along with a motion seeking an expedited hearing on that Motion. See Docket Nos. 496, 497. Hearings on these motions were scheduled to be held before this Court and the Superior Court on December 18, 2013, but were continued by agreement of the parties to February 11, 2014. See Docket Nos. 524, 525. On January 27, 2014, the Trustee filed his Amended Motion of Chapter 11 Trustee 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 3001-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof (the “Amended US Motion”) with this Court, replacing the US Motion, along with a motion requesting that an expedited hearing be held on the Amended Motion on February 11, 2014. See Docket Nos. 596, 597.

8. In opposition to the Canadian Motion, the Class Action Plaintiffs have filed a Plan of Argument of the Class Action Plaintiffs on the Debtor’s Claims Procedure Motion and on Their Revised Claims Procedure Cross-Motion (the “Argument”), and have also filed a Cross-Motion of the Class Action Plaintiffs for an Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date (the “Cross-Motion”) seeking an extension of the bar date requested by the Monitor, as well as replacement of the Monitor’s requested 78 page claim form, and modification of other claim procedures set forth in the Canadian Motion, in the CCAA Proceedings. True

copies of the Cross-Motion and of the Argument are attached to the Claims Motion as, respectively, Exhibit A and Exhibit B. Copies of the Cross-Motion and the Argument were served upon the Monitor, the Trustee, and other interested parties on February 4 and February 5, 2014, respectively.

9. Concurrently with the filing of this Motion and the Claims Motion, the Class Action Plaintiffs are filing their objection (the "Objection") to the relief sought by the Trustee in the Amended US Motion. In the Claims Motion, the Class Action Plaintiffs seek a procedure for the filing of claims in this case which differs from that proposed by the Trustee in the Amended US Motion. The primary reasons for requesting these different procedures are that the claim form which the Monitor has proposed for the CCAA Proceeding, which the Trustee seeks to adopt in the Amended US Motion, is overcomplicated, overly burdensome, and onerous, and the claim filing procedures proposed by the Monitor also contemplate the prohibition of filing class-action claims in the CCAA Proceeding. The procedure proposed by the Class Action Plaintiffs would permit class-action filings, would modify the forms required to file claims in the CCAA Proceedings to make those forms simpler and easier to use, and would address other concerns which those Plaintiffs have with the procedure proposed by the Trustee. Many of these proposals were contained in, or foreshadowed by, the Cross-Motion and the Argument. Thus, the Monitor, the Trustee, and most other interested parties were presented with the substance of the Claims Motion on February 4 and February 5, 2014.

II. DISCUSSION

10. Absent a request for an emergency or expedited hearing, parties seeking the type of relief set forth in the Claims Motion must provide at least 21 days notice of a hearing upon such a motion, and must permit objections to the motion to be filed no less than seven calendar days prior to that hearing date. See D. Me. LBR 9013-1(d)(5). A hearing upon such a motion can be held less than 48 hours after the filing of that document only if this Court grants a motion for an emergency hearing. See D. Me. LBR 9013-1(j).

11. Currently, other hearings in this case are scheduled to be heard before this Court at 10:00 AM on February 11, 2014, including a hearing upon the Amended US Motion. Furthermore, those hearings are to be held jointly with hearings being held in the Superior Court in the CCAA Proceeding, including a hearing upon the Canadian Motion and upon the Cross-Motion. Thus, the subject matter of the Claims Motion will already be before both this Court and the Superior Court at that time.

12. The Class Action Plaintiffs request that a hearing on the Claims Motion be held at the same time as the February 11, 2014 hearing on the Amended US Motion. For the reasons set forth above, as well as those set forth in the Claims Motion, and in the Amended US Motion, approval of the Claims Motion on an emergency basis will help ensure that this case and the CCAA Proceedings are administered efficiently, consistently, and in a manner beneficial to all interested parties.

13. No interested parties will be prejudiced should an emergency hearing on the Claims Motion be set for February 11. The subject matter of that Motion will already

be before both this Court and the Superior Court at that time. Additionally, the original US Motion was filed on December 13, 2013, so the subject matter of the Claims Motion has actually been before both courts and interested parties for approximately 2 months. Furthermore, it appears that the Monitor has filed an affidavit of the Trustee in the CCAA Proceedings opposing the relief sought in the Cross-Motion. Thus, all interested parties are, or should have been, aware of the position of the Class Action Plaintiffs in this matter before the filing of the Claims Motion in this case.

14. Copies of the Claims Motion and of this Motion were served as indicated on the certificate of service for both those Motions. As indicated there, efforts were made to provide immediate electronic notice of these Motions to interested parties.

WHEREFORE, the Class Action Plaintiffs pray that this Court:

1. Order that a hearing be held before this Court upon this Motion and the Claims Motion at 10:00 a.m. on February 11, 2014;
2. Order that notice of the Claims Motion and this Motion be limited to: (a) electronic notice through this Court's noticing system to the Debtor and the Office of the United States Trustee; (b) e-mail notice to those persons and parties to which such notice has been provided as set forth in the certificate of service for this Motion and the Claims Motion; and (c) notice by U.S. first class mail to the remaining persons and parties listed on that certificate of service; and
3. Grant the Class Action Plaintiffs such other and further relief as this Court deems just and proper.

DATED at Portland, Maine, this 9th day of February, 2014.

/s/ F. Bruce Sleeper
F. Bruce Sleeper
Attorney for Class Action Plaintiffs

JENSEN BAIRD GARDNER & HENRY
Ten Free Street
P.O. Box 4510
Portland, ME 04112
(207) 775-7271

**NOTICE OF MOTION TO FOR EMERGENCY HEARING AND TO LIMIT
NOTICE AND OF HEARING DATE**

Yannick Gagné, Guy Ouellet, Serge Jacques and Louis-Serges Parent (the “Class Action Plaintiffs”) have filed papers, including the above Motion for Emergency Hearing and to Limit Notice (the “Hearing Motion”), with the United States Bankruptcy Court for the District of Maine (the “Bankruptcy Court”) to obtain an emergency hearing upon their Motion to Establish Claim Procedures (the “Claims Motion”). In the Hearing Motion, the Class Action Plaintiffs are seeking to have the Bankruptcy Court hold an emergency hearing upon the Claims Motion at 10:00 a.m. on February 11, 2014 at the Bankruptcy Courtroom located in 202 Harlow Street, Bangor, Maine. In the Hearing Motion, the Class Action Plaintiffs are also seeking to limit the parties to whom, and the procedure by which, service of the Hearing Motion and the Claims Motion will be made.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Bankruptcy Court to grant the Class Action Plaintiffs an emergency hearing upon the Hearing Motion, or if you want the Bankruptcy Court to consider your views on the Hearing Motion, then you or your attorney must attend the hearing on the Hearing Motion which is scheduled to be held at 10:00 a.m. on February 11, 2014 at the Bankruptcy Courtroom located in 202 Harlow Street, Bangor, Maine. You or your attorney are also encouraged, but are not required to, file with the Court a written response to that motion, explaining your position. To be considered, this response must be received by the Court prior to the hearing on the Hearing Motion either through the Bankruptcy Court’s electronic filing system (if you are registered to use that system), or by mailing or delivery of the response to the following address:

Clerk, U.S. Bankruptcy Court
202 Harlow Street
Bangor, ME 04401

If you mail your response to the court for filing, you must mail it early enough so the Bankruptcy Court will **receive** it prior to the hearing scheduled on the motion seeking the emergency hearing. You must also mail or deliver a copy of your response to the following at the indicated addresses, or electronically through the Bankruptcy Court's electronic filing system (if you or your attorney are registered to use that system):

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Jensen Baird Gardner & Henry
Ten Free Street
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Portland, ME 04112

United States Trustee:

Office of the United States Trustee
537 Congress Street
Portland, ME 04101

Trustee for the Debtor:

Robert J. Keach
Bernstein Shur Sawyer & Nelson
100 Middle Street
P.O. Box 9729
Portland, ME 04104

Persons, or their attorneys, who are registered with the Bankruptcy Court to make electronic filings MUST file their responses with the Bankruptcy Court electronically and deliver them electronically to all other parties to whom such delivery is available through the Bankruptcy Court's electronic filing system.

If you or your attorney do not attend the hearing, then, even if you file a response to the motion seeking the emergency hearing, the Bankruptcy Court may decide that you do not oppose the relief sought in that motion and may enter an order allowing that hearing.

Date: February 9, 2014

/s/ F. Bruce Sleeper _____
F. Bruce Sleeper
Attorney for Class Action Plaintiffs

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

Montréal, Maine & Atlantic
Railway, Ltd.

Debtor

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Chapter 11
Case No. 13-10670

**ORDER REGARDING MOTION FOR EMERGENCY HEARING AND TO
LIMIT NOTICE**

This matter came before this Court upon the Motion for Emergency Hearing and to Limit Notice (the "Hearing Motion") filed by Yannick Gagné, Guy Ouellet, Serge Jacques and Louis-Serges Parent with respect to their Motion to Establish Claim Procedures (the "Claims Motion"). Upon consideration of the Hearing Motion and hearing, it is ORDERED that:

1. The Hearing Motion is granted and an emergency hearing shall be held on the Claims Motion before this Court at 10:00 a.m. on February 11, 2014.
2. Notice of the Claims Motion and the Hearing Motion was sufficient in light of the circumstances presented and the relief requested.

DATED:

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

	*	
In re:	*	
	*	
Montréal, Maine & Atlantic	*	Chapter 11
Railway, Ltd.	*	Case No. 13-10670
	*	
Debtor	*	

CERTIFICATE OF SERVICE

I certify that, on February 9, 2014, all parties listed on the Notice of Electronic Filing in this case were served electronically with a copy of the following documents (collectively, the “Documents”):

1. Objection to Amended Motion of Chapter 11 Trustee 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
2. Class Action Plaintiffs’ Motion to Establish Claim Procedures and proposed Order regarding same
3. Affidavit of Yannick Gagné dated February 7, 2014
4. Affidavit of Guy Ouellet dated February 7, 2014
5. Motion for Emergency Hearing and To Limit Notice and proposed Order regarding same

I further certify that on that same date the Documents were served by e-mail upon the parties listed in Exhibit A to this Certificate at the e-mail addresses indicated in that

Exhibit and that the Documents were served upon the parties listed in Exhibit B to this Certificate by United States first class mail, postage prepaid, to the addresses listed in that Exhibit.

/s/ F. Bruce Sleeper
F. Bruce Sleeper
Attorney for Class Action Plaintiffs

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