UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

WRONGFUL DEATH CLAIMANTS' MOTION TO BAR TRUSTEE'S PROSECUTION OF DERAILMENT CLAIMS AGAINST NON-DEBTOR DEFENDANTS

The Unofficial Committee of Wrongful Death Claimants (the "Committee"), consisting of representatives (the "Wrongful Death Victims") of the estates of the 47 victims of the massive explosion in Lac-Mégantic, Quebec, from the derailment of a train operated by the Debtor (the "Derailment"),[1] hereby requests pursuant to Section 105(a) and (d)(2)[2] of the Bankruptcy Code an order barring the Trustee's prosecution and/or settlement of any claims against non-debtor parties purporting to characterize as injuries and damages of the estate the injuries and damages suffered by victims of the Derailment, including the adversary proceeding against World Fuel Services Corporation and related entities ("World Fuel") recently commenced by the Trustee in this Court (Adv. No. 14-1001) (the "World Fuel Action"). As grounds therefor, the Committee states:

[1] The victims and the representatives of their estates are listed in the Amended Verified Statement Concerning Representation of Unofficial Committee of Wrongful Death Claimants as Required by Fed. R. Bankr. P. 2019 filed by the Committee's counsel on January 28, 2014 [Docket No. 599]. Solely for the avoidance of doubt as to standing, this motion is filed on behalf of all members of the Committee as well as the Committee itself.

[2] Section 105(d)(2) authorizes this Court to "issue an order . . . prescribing such limitations as the court deems appropriate to ensure that the [bankruptcy] case is handled expeditiously and economically."

INTRODUCTION

1. The World Fuel Action is barred by the long-standing principle that a bankruptcy trustee may only pursue causes of action of the bankruptcy estate, not the creditors. The Supreme Court's decision in Caplin v. Marine Midland Grace Trust Co. of New York, 406 U.S. 416, 32 L. Ed. 2d 195, 92 S. Ct. 1678 (1972), and a series of decisions in the First Circuit and elsewhere, establish the distinction between claims for damages of the Debtor (which are assets of the estate that a trustee may pursue) and claims for personal damages of creditors (which the trustee lacks standing to pursue). As will be shown below, the World Fuel Action not only violates the rule enunciated by Caplin and its progeny but serves as a perfect poster-child for the policy concerns that led the Supreme Court to preclude trustees from repackaging claims for harm done to creditors as claims of the bankruptcy estate.

BACKGROUND

2. The Committee certainly agrees with the Trustee that World Fuel and other non-debtor defendants bear joint and several responsibility to the Wrongful Death Victims for the catastrophe that befell the residents of Lac-Mégantic on July 6, 2013. However, the train derailment and resulting tragedy were not, as the Trustee suggests, solely caused by the mislabeling of the crude oil which was being transported by the Montreal, Maine & Atlantic Railway, Ltd. and its Canadian subsidiary (collectively, the "MMAR"). It is undisputed that: (i) MMAR operated the locomotive that was left unattended overnight on the main track on a hill above Lac-Mégantic on July 6, 2013; (ii) when he abandoned the train, MMAR's engineer was responsible for ensuring that hand-brakes had been applied to prevent the train from rolling downhill should the locomotive's air-brakes release, as they would if the locomotive's engine shut down; and (iii) after the locomotive's engine was turned off because it was on fire, another

employee of MMAR responsible for inspecting the train ignored the compromised air-brakes and left the train in that condition unattended.

3. Shortly after the accident, the Wrongful Death Victims filed civil actions against the Debtor and nine other defendants, including World Fuel, in the Circuit Court of Cook County, Illinois (the "Illinois Actions"). Venue lies in Cook County because, *inter alia*, it is the principal place of business and residence for Rail World, Inc. and Edward Burkhardt (defendants responsible for the Debtor's management and operations), the principal place of business and residence of Rail World Locomotive Leasing (alleged to have leased to the Debtor the locomotives involved in the Derailment), the headquarters of Union Tank Car Company (alleged to have manufactured some or all of the tank cars that punctured and burst into flame in the Derailment), and a place of business of World Fuel and CIT Group, Inc.

4. The Wrongful Death Victims dismissed the Debtor from the pending cases promptly upon learning that the Debtor had filed a chapter 11 case. Wrongful death actions commenced in Illinois state court after the Debtor's filing do not name the Debtor as a defendant. Accordingly, the Debtor is not a party in any of the Illinois Actions, and no claim against the Debtor by any party is pending in any of those actions.

5. Beginning in late August 2013 and prior to the Debtor's dismissal, World Fuel, claiming bankruptcy jurisdiction under 28 U.S.C. §1334(b), and diversity jurisdiction under 28 U.S.C. §1332,[3] filed its Notice of Removal which automatically transferred the Illinois Actions

[3] World Fuel has dropped its claim that federal diversity jurisdiction is available. The statute requires "complete diversity" including that none of the defendants is a citizen of Illinois. Some indisputably are. The defendants attempted to salvage diversity jurisdiction by alleging that the Illinois defendants were fraudulently joined, but have dropped this assertion in the face of a scathing decision by the Illinois District Court. See Grimard v. Western Petroleum Company, et al., Case No. 13-06197 (N.D. Ill.), Doc. # 27 ("This Court has reviewed Complaint Counts II and III, which charge each of those defendants with 'wrongful Death-Negligence,' and it finds that counsel's unsupported ipse dixit characterization of those defendants as 'fraudulently joined' is highly dubious.").

to the Illinois District Court. The day after World Fuel filed the Notice of Removal, the Trustee on behalf of the Debtor filed its Consent to the Removal in all of the pending Illinois Actions.[4]

6. On September 13, 2013, the Trustee in coordination with World Fuel filed separate motions to transfer the Illinois Actions to the United States District Court for the District of Maine pursuant to 28 U.S.C. § 157(b)(5) (the "Transfer Motions").[5] The Wrongful Death Victims opposed the Transfer Motions on the grounds that "related to" bankruptcy jurisdiction does not exist over their claims in the Illinois Action, that 28 U.S.C. § 157(b)(5) does not authorize transfer of the Illinois Actions, and that (in the alternative) the Maine District Court should exercise its discretion to abstain from hearing the Illinois Actions.

7. The Trustee has filed multiple pleadings and briefs with the Maine District Court in regard to the Transfer Motions all of which appear to be coordinated with the pleadings and briefs filed by World Fuel.[6]

8. The Maine District Court scheduled oral argument on the Transfer Motions to be held on January 31, 2014. The day before the hearing, the Trustee filed the complaint commencing the World Fuel Action.

9. On January 31, 2014, at the hearing before Judge Torresen in support of the Transfer Motions of the Trustee and World Fuel, the Trustee referred to this complaint as evidence for the existence of related-to bankruptcy jurisdiction.[7]

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[4] See, e.g., Grimard v. Western Petroleum Company, *et al.*, Case No. 13-06197 (N.D. Ill.), Doc. #17.

[5] In re Montreal, Maine & Atlantic Railway, Ltd., 1:13-MC-00184, Doc. #1 (Transfer Motion filed by Debtor); Doc. #2 (Transfer Motion filed by Western Petroleum Corporation).

[6] In re Montreal, Maine & Atlantic Railway, Ltd., 1:13-MC-00184, Doc. #16 (Response in Opposition to Motion Stay); Doc. #31 (Reply Memorandum in Support of Motion to Transfer); Doc. #46 (Reply to Response ot Motion to Transfer); #47 (Motion for Oral Argument); Doc. #60 (Response to Motion to Strike); Doc. #66 (Response to Motion to Sever).

[7] See Tr. of H'rg on Transfer Mot. at 20-21, attached hereto as Exhibit A.

ARGUMENT

The Trustee lacks legal authority to pursue the claims of Derailment victims against World Fuel or anyone else.

10. The Supreme Court's decision in Caplin v. Marine Midland Grace Trust Co. of New York, 406 U.S. 416, 32 L. Ed. 2d 195, 92 S. Ct. 1678 (1972), and its progeny hold that a bankruptcy trustee lacks standing to assert claims of creditors. Standing is a "threshold question in every federal case, determining the power of the court to entertain the suit." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). As one requirement of standing, "[a] party must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." Id., 422 U.S. at 499. In the bankruptcy context, it is well understood that the Bankruptcy Code "places a trustee in the shoes of the bankrupt corporation and affords the trustee standing to assert any claims that the corporation could have instituted prior to filing its petition for bankruptcy." E.g., In re CBI Holding Co., Inc., 529 F.3d 432, 454 (2d Cir. 2008). The Bankruptcy Code does not, however, authorize a trustee to assert causes of action that are personal to creditors. Caplin, 406 U.S. at 431-32.

11. Caplin addresses the very issue raised by the Trustee's commencement of the World Fuel Action, which seeks for the bankruptcy estate the same damages that the Wrongful Death Victims seek in the Illinois Actions and that the Canadian class action representatives seek on behalf of the remaining Derailment victims.[8] In Caplin, a Chapter X trustee under the former Bankruptcy Act, 52 Stat. 883 (1938), brought suit against the indenture trustee for the debtor's bonds, alleging "breach of duty." The Supreme Court held that while the bondholders themselves might sue the indenture trustee, the trustee could not. The Court provided three reasons:

[8] See footnote 10 below.

- First, "nowhere in the statutory scheme is there any suggestion that the trustee in reorganization is to assume the responsibility of suing third parties" on behalf of creditors. Caplin, 406 U.S. at 428. The bankruptcy statute under which the trustee was appointed empowered him to "collect and reduce to money the property of the estate," i.e., the debtor's property; it did not authorize him to collect the property of creditors. Id. at 429 (*quoting* 11 U.S.C. § 75 (1970), *replaced by* 11 U.S.C. § 704 (1982)).

- Second, the bondholders could bring their own action, as individuals or through a class action. The trustee's suit asserting the bondholders' claims was not needed to benefit them, was unlikely to have an effect on the debtor's reorganization, and would usurp the bondholders' right to determine whether and how their claims were to be litigated. Id. at 431-34. Explained the Court:

> It is difficult to see precisely why . . . the trustee in reorganization should represent the interests of the debenture holders, who are capable of deciding for themselves whether or not it is worthwhile to seek to recoup whatever losses they may have suffered by an action against the indenture trustee . . . . [T]he debenture holders, the persons truly affected by the suit against Marine, should make their own assessment of the respective advantages and disadvantages, not only of litigation, but of various theories of litigation.

Id. at 431. Leaving creditors to assert (or not) their litigation rights would avoid the need for consensus as to "the amount of damages to seek, or even on the theory on which to sue" id. at 432.

- Third, permitting the trustee to bring the bondholders' claims threatened to raise a host of complex legal issues involving such matters as whether he could fairly represent bondholders who wished to bring their own suits, and the extent to which the trustee could bind such bondholders to a settlement. Id.

12. Caplin remains good law in this Circuit and elsewhere. See, e.g., Boston Trading Group, Inc. v. Burnazos, 835 F.2d 1504, 1514-1515 (1st Cir. 1987); Nisselson v. Lernout, 2004 U.S. Dist. LEXIS 28655 (D. Mass. Aug. 9, 2004); Am. Bridge Prods. v. Decoulos, 328 B.R. 274, 351-352 (Bankr. D. Mass. 2005). Caplin figured prominently in a Second Circuit decision last year. Picard v. JPMorgan Chase Bank & Co. (In re Bernard L. Madoff Inv. Secs. LLC), 721 F.3d 54, 67 (2d Cir. 2013). No court has suggested that Caplin has been overruled or may be ignored.

13. In determining whether a claim belongs to the bankruptcy estate or personally to creditors, a court must look to the kind of harm alleged. City Sanitation, LLC v. Allied Waste Servs. of Mass., LLC (In re Am. Cartage, Inc.), 656 F.3d 82, 90 (1st Cir. 2011). "[W]hen the alleged injury to a creditor is indirect or derives solely from an injury to the debtor, the claim is general. Claims are deemed personal, rather than general, when a creditor himself is harmed and no other claimant or creditor has an interest in the cause." Id. (internal citation omitted). Since the claims of the Derailment victims arise from injuries to themselves or their loved ones, not to the Debtor, they are "personal" rather than "general" in the dichotomy established by Caplin. Indeed, the Trustee admitted during the hearing before Judge Torresen on the pending Transfer Motions that the damages he seeks in the World Fuel Action are precisely the same as those sought by the Derailment victims:

> As trustee I have sued the World Fuels entities or the Western entities, if you will, for all of the damages to the Canadian debtor and the U.S. debtor arising out of the derailment, including any amounts we would have to pay out in claims to these victims and to others. The theory behind that cause of action is the same theory being espoused on the same facts as is being espoused by the plaintiffs in the Illinois cases and the plaintiffs in the Canadian class action cases, and that is that a failure to appropriately disclose the specific content and volatility of the product led to the accident.

> Now, I expect those entities will very soon be filing responses denying those allegations, but that litigation involves the same operative facts and the same legal and scientific theories that are being used by the victims to recover money. We expect obviously World Fuels and its entities might disagree, but we believe that lawsuit is worth hundreds of millions, ***the same hundreds of millions that the victims claim.***

(emphasis added). See Tr. of Hearing on Transfer Motions at pg. 21.[9]

14. The Trustee's admission underscores not only the applicability of the Supreme Court's holding in Caplin but also its explanation why bankruptcy trustees are not allowed to expropriate creditors' claims. First, even though the complaint in the World Fuel Action seeks damages purportedly sustained by the Debtor, the primary recovery sought from World Fuel (and others to be sued later) are the damages of the Wrongful Death Victims and other victims of the Derailment, in other words, the very types of claims that "nowhere in the statutory scheme is there any suggestion that the trustee" may pursue. Caplin, 406 U.S. at 429. Second, like the bondholders in Caplin, victims of the Derailment can bring their own claims against World Fuel (indeed they already have[10]) seeking the same damages sought by the Trustee; the Trustee's action is wholly unnecessary to provide a recovery to the victims, and indeed interferes with their right to "make their own assessment of the respective advantages and disadvantages, not only of litigation, but of various theories of litigation." Id., 406 U.S. at 431. Third, the World Fuel Action plunges headlong into the same legal thicket as the trustee's lawsuit in Caplin, raising complex issues concerning whether the Trustee can fairly represent the interests of Derailment victims and the extent to which such victims will be bound by any settlement of the World Fuel

[9] See Tr. of H'rg on Transfer Mot. at 21.

[10] In addition to the Illinois Actions, a class action asserting similar claims to the Illinois Actions has been commenced in Canada on behalf of all victims of the Derailment. Although the Wrongful Death Victims will formally opt out as soon as permissible under Canadian procedure, the class action (if certified) will proceed on behalf of the other Derailment victims, or they can individually sue World Fuel just as the Wrongful Death Victims have.

Action. Indeed, the concerns over judicial efficiency and fairness that underlay the Supreme Court's decision in Caplin are already front and center in this case.

15. The waste of judicial and other resources that was *threatened* in Caplin has become a reality in this case. The Trustee asserts that he can settle the claims of the Wrongful Death Victims against World Fuel even over their objection. The Wrongful Death Victims say not. The first round of this fight is *sub judice* in the District Court proceedings concerning the Transfer Motions.[11] The Trustee commenced the second round by filing the World Fuel Action. Unless this Court puts an end to the fight by granting this motion, the collateral litigation spawned by the Trustee's attempted expropriation of the victims' claims against non-debtors will likely continue (as it has to date) to consume more money, time and judicial resources than litigation of the actual claims. For example, the Trustee's next step will likely be to negotiate a preemptive settlement of the Wrongful Death Victims' claims against World Fuel or propose a plan that authorizes such settlement over the Wrongful Death Victims' objection, notwithstanding the universal requirement of bankruptcy courts that any such settlement have the unanimous or near-unanimous consent of the holders of the claims, *i.e.*, the Wrongful Death Victims.[12]

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[11] Absent related-to bankruptcy jurisdiction over the Illinois Actions, the federal courts will lack jurisdiction to enjoin the Wrongful Death Victims' pursuit of those actions. E.g., W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.), 591 F.3d 164, 171 (3d Cir. 2009).

[12] See In re Master Mortgage, 168 B.R. 930 (Bankr. W.D. Mo. 1994) (establishing five-factor test by which injunctions or releases in favor of non-debtor parties may be accepted in a plan, including consent by a substantial majority of creditors impacted by such injunction or release). Courts in this circuit and elsewhere have applied the Master Mortgage test in rejecting releases of non-debtor entities absent unanimous consent of creditors whose claims were going to be released. See, e.g., In re Charles St. African Methodist Episcopal Church of Boston, 499 B.R. 66, 102 (Bankr. D. Mass. 2013) (denying confirmation of plan containing release of a third-party guaranty where single creditor objected to release); In re Zenith Electronics Corp., 241 B.R. 92, 111 (Bankr. D. Del. 1999) (holding that releases of non-derivative third-party claims against non-debtor "cannot be accomplished without the affirmative agreement of the creditor affected"); In re Salem Suede, 219 B.R. 922, 937 (Bankr. D. Mass. 1998) (sustaining judgment creditors' objection to confirmation of plan which contained broad release of those creditors' claims against the insurer and joint tortfeasors).

16. In addition to judicial efficiency, the paramount concern of the Supreme Court in Caplin was fairness to claimants. The Trustee's inability to fairly represent the interests of the Derailment victims is even more stark than when the Caplin trustee asserted the interests of bondholders. Here the Trustee has an actual conflict with victims because their claims have far less value as asserted by the Trustee than by the victims themselves.

17. Comparative negligence laws of many states, including Illinois and Maine, preclude any recovery by a joint tortfeasor who is determined to be more than 50 percent liable for the Derailment. See Me. Rev. Stat. Ann. tit. 14, § 156; 735 Ill. Comp. Stat. 5/2-1116. While the relative fault of the Debtor and World Fuel is at this point a matter of speculation, the Debtor's estate bears a significant risk of zero recovery from World Fuel given that on the night in question, the Debtor left its train totally unattended, on the long down-grade leading to Lac-Mégantic, with the hand-brakes not having been set and the air-brakes about to release because the compressor had been turned off. The Trustee's representation to the District Court that "we're not responsible for the accident"[13] (referring to the Debtor) reflects either a distinct lack of candor or an indistinct grasp of reality.

18. Even if a fact-finder were to determine that, as between the Debtor and World Fuel, the Debtor was less than 50% at fault, the Trustee's recovery against World Fuel would in any event be reduced by the percentage of the Debtor's fault.[14] By contrast, the Wrongful Death Victims and other victims who are blameless can recover 100 percent of their damages from World Fuel and other non-debtor defendants. This goes beyond the Supreme Court's concern with preserving the rights of creditors to decide the theory on which to sue. In the hands of the Trustee, a lawsuit on *any* theory will recover zero or a fraction of the damages that the victims

[13] See Tr. H'rg on Transfer Mot. at 30.

[14] See Me. Rev. Stat. Ann. tit. 14, § 156; 735 Ill. Comp. Stat. 5/2-1116.

could recover on their own. Under Caplin the Trustee cannot fairly represent the interests of the Derailment victims.

19. The Trustee's struggle to create even the appearance of a plausible route to recovery through the World Fuel Action led him to premise his complaint on a novel theory of negligence exoneration. Although the Trustee admits that the Debtor was negligent with respect to its handling of the crude oil which was disclosed by World Fuel as a Class 3 Hazardous Material falling within Packing Group I[15], the Trustee insists that the Debtor is exonerated from liability because it would have been much more careful if only World Fuel had disclosed that the cargo was in fact a Class 3 Hazardous Material falling within Packing Group II or III:

> 102. But for Defendants' negligent and careless acts and omissions, MMAR would have taken steps that would have prevented the Derailment and its resulting injury to MMAR and others.[16]

No precedent exists for a common carrier to avoid liability for a derailment in which the carrier was admittedly negligent, but uninformed of the danger of the cargo being transported. To establish this exoneration defense presupposes that the Trustee could introduce speculative opinion testimony which could portray a more informed Debtor as carefully manning its train and cargo safely through Lac-Mégantic to its ultimate destination. The Debtor, however, cannot change the tragic reality of the Derailment, nor rewrite its actual involvement in the tragedy. "Opinion testimony that is based purely on guess, surmise or conjecture is inadmissible and is tantamount to no evidence at all". City of Evanston v. City of Chicago, 279 Ill. App. 3d 255 (1st Dist, 1996). While the Trustee might be inclined to establish new law, Rule 12(b)(6) dictates that courts dismiss legal claims that are destined to fail regardless of whether they are nearly viable. Neitzke v. Williams, 490 U.S. 319, 326-327, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

[15] US Department of Transportation, Federal Motor Carrier Safety Administration regulations, 49 CRF pt. 173.121.
[16] See page 18 of Complaint.

20. The Trustee's selection of venue has also depressed the value of the Wrongful Death Victims' claims. The Trustee brought the World Fuel Action in this Court rather than in the Cook County superior court, where the Illinois Actions were filed. It is well established that foreign plaintiffs may recover against U.S. defendants in the Illinois courts under Illinois law. Vivas v. Boeing, *Co.*, 392 Ill. App. 3d 644 (1st Dist. 2009) (allowing wrongful death cases involving airline crash occurring in Peru involving citizens of Peru to be brought in Illinois courts). If the law of Maine or of Canada were to be applied in the World Fuel Action,[17] the wrongful death claims would be capped at amounts far lower than the likely verdict of a Chicago jury.

21. In Caplin the Supreme Court ruled against the trustee's assertion of bondholder claims against a third party despite the Court's apparent assumption that the trustee had every incentive to maximize recovery on those claims. By contrast, in this case the Trustee's interests (at least, as he has articulated them[18]) are in conflict with those of the Wrongful Death Victims on the issue of choice-of-law. True, the application of Maine or Canada law would decrease the recovery from World Fuel, but from the Trustee's perspective there is an off-setting benefit: a corresponding decrease in the allowed amount of the Wrongful Death Victims' claims against the Debtor's estate. This might answer a question that has perhaps puzzled the Court: Given the adversarial position of World Fuel in relation to the estate, why have the Trustee and World Fuel coordinated their efforts even to the point of creating the appearance of collusion? Why, for example, did the Trustee join with World Fuel in seeking to transfer the Illinois Actions to Maine? Why did World Fuel file proofs of claim in this case, without the compulsion of a

[17] See Me. Rev. Stat. Ann. tit. 18-A, § 2-804; Canadian caps developed under the common law, through a trilogy of cases: Arnold v. Teno, [1978] 2 S.C.R. 287; Andrews v. Grand & Toy Limited, [1978] 2 R.C.S. (S.C.C.); Thornton v. Prince George School District No. 57, [1978] 2 S.C.R. 267.

[18] While non-fiduciary obligors are incentivized to minimize the claims against them by means fair or foul, most bankruptcy trustees do not oppose, and indeed encourage, allowance of valid creditor claims.

pending bar date, when to do so would confer core jurisdiction of this Court over Derailment-related counterclaims that would otherwise be entirely beyond this Court's jurisdiction? Why didn't the Trustee simply (and cheaply) obtain disallowance of World Fuel's claims under Sections 502 and 509 of the Bankruptcy Code?[19] Why did the Trustee, who faced no deadline to respond to the claims at all, instead choose to respond by joining the issue of liability for the Derailment victims' claims even though (putting aside the issue whether the Trustee is even a proper party to pursue the claims) the bankruptcy estate lacks the resources to properly pursue those claims? This otherwise inexplicable course of conduct by the Trustee and World Fuel may or may not be attributable to a common interest in avoiding application of Illinois law to the Wrongful Death Victims' claims. All that matters for purposes of the policies underlying Caplin is that the Trustee's conflicting incentives render him unfit to fairly represent the interests of the Wrongful Death Victims in asserting their claims against World Fuel.

22. Yet another reason why the Trustee cannot fairly represent the interests of the Derailment victims is that any recovery by the Trustee will be distributed differently from any direct recovery by the victims, because of the priority accorded to wrongful death and personal injury claims under Section 1171(a) of the Bankruptcy Code.[20] (The Plan solves this problem in respect of insurance proceeds by dividing them with the Canadian bankruptcy estate, which clearly also has an interest in them; the same approach is unavailable for litigation proceeds in

[19] The proofs of claim filed by World Fuels assert claims for contribution, indemnity and subrogation premised on World Fuels paying judgments to Derailment victims. At a time when no such judgments have been paid, these claims must be disallowed under Section 502(e)(1) (applicable to contribution and indemnity claims) or under Section 509(a) (only an entity that "pays such claim," *i.e.*, the victim's claim, may assert a subrogation claim).

[20] If the Trustee's recovery does not exceed the aggregate amount of the Trustee's fees plus allowed wrongful death and personal injury claims, which have administrative expense priority, then property damage claimants will receive nothing, even though they could have recovered their full loss, net of counsel fees, in a direct action against World Fuel.

which only the U.S. bankruptcy estate has an interest.) The Court of Appeals for the First Circuit has invoked this type of distributional disconnect as an indication that Caplin applies:

> Finally, here, as in Caplin, a receiver's suit on behalf of these creditors could raise complex issues unnecessarily, for the interests of [the debtor] and its creditors may conflict. Under fraudulent conveyance law, an individual creditor bringing suit could satisfy his entire claim out of the assets recovered; the Receiver, however, would simply add any award he wins to the company's coffers for pro rata distribution among all creditors. Thus, any individual BTG creditor (or any group of creditors smaller than the set of all BTG's creditors) might fare better by bringing suit than by relying on the Receiver. Moreover, would it be fair to require these creditors to share the proceeds of what is in effect their lawsuit with other creditors, who, say, became creditors after the transfers took place? These potential difficulties suggest to us that the legal complexities here are similar enough to those involved in Caplin that, in light of the other similarities, we must reach a similar result.

Boston Trading Group, Inc. v. Burnazos, 835 F.2d 1504, 1514-1515 (1st Cir. 1987) (internal citation omitted).

23. In sum, both the holding of and the policies underlying Caplin and its progeny establish that the Trustee has no legal authority to pursue the World Fuel Action or any other action asserting Wrongful Death Victims' claims. Accordingly, the Wrongful Death Victims respectfully request this Court to order the Trustee to dismiss the World Fuel Action and not to

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bring and/or settle any action asserting the claims of Derailment victims.

Dated: February 19, 2014

/s/ George W. Kurr, Jr.
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

CERTIFICATE OF SERVICE

I, Taruna Garg, hereby certify that I caused a copy of the ***Wrongful Death Claimants' Motion to Bar Trustee's Prosecution Of Derailment Claims Against Non-Debtor Defendants*** and ***Notice of Hearing with Respect to Wrongful Death Claimants' Motion to Bar Trustee's Prosecution of Derailment Claims Against Non-Debtor Defendants*** to be served via the Court's CM/ECF system on February 19, 2014 and by U.S. First Class Mail, as indicated, upon the parties listed on the attached Service List.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

NOTICE OF HEARING WITH RESPECT TO WRONGFUL DEATH CLAIMANTS' MOTION TO BAR TRUSTEE'S PROSECUTION OF DERAILMENT CLAIMS AGAINST NON-DEBTOR DEFENDANTS

The representatives of the probate estates of the 47 victims 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 Bar Trustee's Prosecution of Derailment Claims Against Non-Debtor Defendants*** (the "Motion").

A hearing on the Motion has been set to take place at the **United States Bankruptcy Court, 537 Congress Street, Portland, Maine** on **March 12, 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 March 5, 2014, 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.
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177 Broad Street,
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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, 537 Congress Street, Portland, Maine** on March 12, 2014 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: February 19, 2014

/s/ George W. Kurr, Jr.

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