

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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WRONGFUL DEATH VICTIMS’ RESPONSE TO MOTION TO BAR 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 people killed in the massive explosion in Lac-Mégantic, Quebec, from the derailment of a train operated by the Debtor (the “Derailment”),¹ hereby submits this response to the Objection filed by the Chapter 11 Trustee on March 4, 2014 [Docket No. 698] (the “Objection”) to the Wrongful Death Claimants’ Motion to Bar Prosecution of Derailment Claims Against Non-Debtor Defendants filed on February 19, 2014 [Docket No. 674] pursuant to 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) (the “Caplin Motion”). As grounds to grant the Caplin Motion notwithstanding the Objection, the Committee states:

1. The Objection does not even attempt to respond to the central issue raised by the Caplin Motion, which whether the World Fuel Action (the Trustee’s recent adversary proceeding against World Fuel asserting the World Fuel caused the Derailment) asserts claims of the Derailment victims (barred under Caplin) or claims of the Debtor’s estate. After the obligatory

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 objection is filed on behalf of all members of the Committee as well as the Committee itself.

(to the Trustee, at least) reference to “massive contingent fees” sought by the Wrongful Death Claimants’ counsel, the Objection raises transparently meritless issues of procedure and standing, then string-cites a dozen cases citing Caplin as saying exactly what the Caplin Motion says it says, refuting an argument the Caplin Motion never made (“Simply because an action might benefit creditors does not convert the action into one brought solely on behalf of such creditors”), and responding to “accusations . . . so preposterous as to hardly warrant a response” In the midst of these distractions can be found two paragraphs (starting at the bottom of page 8 of the Objection) trying to argue that the World Fuel Action asserts claims of the estate.

2. The Trustee misses the mark by quoting snippets from the complaint in the World Fuel Action (the “Complaint”) referring to “a duty . . . to [the Debtor]” owed by World Fuel and stating “[the Debtor] seeks to recover damages” from World Fuel. The actual words of the Complaint are “a duty to *the public at large* and to [the Debtor].” And question is not whether the “[the Debtor] seeks to recover damages” from the defendant (what lawsuit doesn’t?) but *whose* damages the Trustee seeks to recover. The Objection says the damages are the estate’s, but the complaint belies this assertion. To establish that Derailment victims have the right to damages from World Fuel requires proof of a breach of duty by World Fuel causally related to the victims’ injuries. Paragraphs 39 through 72 of the Complaint, similar to the complaint of the Wrongful Death Victims against World Fuel filed in Illinois, supplies these allegations in copious and effective detail. To establish the estate’s right to damages from World Fuel requires something additional: That the Derailment would not have happened anyway.

3. This allegation appears solely in paragraph 74, and its tortuous wording is worth quoting in full:

Had Defendants made [the Debtor] aware that their crude oil cargo was, in fact, a Packing Group I or II hazardous substance, [the Debtor] would have implemented

safety procedures and protocols that would have prevented the Derailment. Among other things, these procedures and protocols would have required that the Train never be left unattended, always be parked on a blocked, side track, and never be parked on a main track.

The first sentence says the Debtor “would have implemented safety procedures and protocols,” leaving unanswered such questions as: Does “implemented” mean that procedures and protocols would have been developed, that they already existed but were not used, or that they already existed and were used but only in certain situations? If they already existed, were they in the form of a document? If so, is it a document of the Debtor? What was it called? How was it developed? Or were these “safety procedures and protocols” some kind of industry or government standard? In either case, did the Debtor consistently follow the requirements of this document in operating its business? And so on. The second sentence adds to the mystery. If “these procedures would have required” specific steps, does that mean that the procedures did not yet exist? If not, how does the Trustee know what they would have been? If so, what trigger “would have required” this particular set of steps? When, if at all, did the Debtor follow these particular requirements of not leaving the train unattended, etc.? How would these steps have prevented the Derailment, given that the train (while attended!) was stopped on a grade with its hand-brakes not set and its engine (powering the compressor necessary to keep the air brakes in operation) turned off? And so on.

4. In the context of a complaint that – presumably for sound strategic reasons – provides great detail on other issues, the paucity of detail indicating that the Complaint asserts the estate’s damages rather than the victims’ strongly suggests that the Trustee is in violation of Caplin. At the very least, the Trustee decided it served his purposes for the Complaint to be ambiguous on this point. In his argument to the District Court on related-to jurisdiction, where it served his purposes to dispel the ambiguity, he candidly acknowledged that the Complaint “seeks

the same hundreds of millions that the victims claim.”² Even if World Fuel were interested in defeating the World Fuel Action rather than preserving it as a vehicle for settlement, the federal system of notice pleading might be sufficiently forgiving for the Complaint to survive a motion to dismiss. But as explained in the Caplin Motion, the Supreme Court’s rationale in Caplin focuses not so much on the defendant as on the interests of creditors as the true owners of the claims usurped by the Trustee. Hence the Supreme Court’s expressed concern about whether the trustee could fairly represent the creditors *and whether it would be proper for the trustee to settle the creditors’ claims*. The Trustee has acknowledged that he intends to settle the Wrongful Death Victims’ claims without their consent. This Court should grant the Caplin Motion to assure that, as required by Caplin, the Trustee is barred from asserting or settling the claims of creditors. The Wrongful Death Victims’ urgently need this Court’s help to prevent the Trustee’s hubris in dictating what’s best for all parties to deprive the victims of this horrific disaster of the opportunity to seek justice where and how they see fit.

5. Finally, the Trustee’s objections on procedure and standing lack merit. The Trustee cites no authority for the curious notion that the only way to invoke Caplin is by motion to dismiss, which in this instance would require intervention in the World Fuel Action by the Wrongful Death Victims. Would he have them intervene as defendants or as plaintiffs? Surely not as defendants. Gratuitously adversarial though he has been toward the Wrongful Death Victims from the outset of his appointment, the Trustee has never suggested that the estate has claims against the Wrongful Death Victims. So the Trustee must contemplate that the Wrongful Death Victims will intervene as plaintiffs, earning a place in the history of civil procedure as the only plaintiffs ever to seek merits-based dismissal of their own complaint. This conundrum – namely, that the Wrongful Death Victims in their capacity as movants of the Caplin Motion do

² See Tr. of Hearing on Transfer Motions at pg. 21, quoted in Caplin Motion at pg. 8.

not fit the paradigm of plaintiff or defendant in the World Fuel Action – indicates that intervention therein cannot possibly be a pre-condition for bringing the Caplin Motion.

6. Equally absurd is the Trustee's contention that the Wrongful Death Victims lack standing to bring the Caplin Motion. Even the Trustee would agree that the Wrongful Death Victims have standing to bring their own claims. *A fortiori* they have standing to bar someone from misappropriating their claims. In any event, it is well established that parties claiming an interest in property being wrongfully administered by the bankruptcy estate have standing to protect their interest in such property. E.g., *In re Gull Air, Inc.*, 890 F.2d 1255 (1st Cir. 1989)(holding that federal agency properly withdrew air slots owned by debtor airline for lack of use); *Abboud v. Ground Round, Inc. (In re Ground Round, Inc.)*, 335 B.R. 253 (B.A.P. 1st 2005)(affirming order granting landlord right to specific performance in liquor license owned by the debtor). It may be that the issue of standing is concomitant with the issue on the merits, that is, the Wrongful Death Victims have standing only to the extent that this Court determines, as requested by the Caplin Motion, that the claims being asserted by the Trustee in the World Fuel Action are those of the Wrongful Death Victims, that is, their property. This common occurrence does not deprive the Wrongful Death Victims of standing; otherwise, no plaintiff could ever bring a lawsuit for damages since losing would be a determination that the plaintiff lacked standing to begin with.

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7. For the reasons stated herein, the Court should grant the Caplin Motion and issue 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 World Fuel Action.

Dated: March 7, 2014

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