

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

*In re:*

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Chapter 11

Case No. 13-10670 (LHK)

**RESPONSE OF OFFICIAL COMMITTEE OF VICTIMS TO REPRESENTATIVES'  
OPPOSITION TO MOTION OF OFFICIAL COMMITTEE OF VICTIMS SEEKING  
MODIFICATION OF COMMITTEE APPOINTMENT ORDER TO AUTHORIZE  
COMMITTEE TO FULLY PARTICIPATE IN WRONGFUL DEATH PROCEEDINGS  
PENDING BEFORE MAINE DISTRICT COURT**

The Official Committee of Victims (the "Committee") appointed in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), by and through its undersigned counsel, hereby submits this response (the "Response") to the opposition [Docket No. 1100] (the "Opposition") filed by representatives of the estates of the 47 victims of the July 6, 2013 train derailment in Lac-Mégantic, Quebec (the "Representatives") to the *Motion Of Official Committee Of Victims Seeking Modification Of Committee Appointment Order To Authorize Committee To Fully Participate In Wrongful Death Proceedings Pending Before Maine District Court* [Docket No. 1077] (the "Motion"). In support of this Response and the Motion, the Committee states as follows:<sup>1</sup>

**RESPONSE**

1. The Committee files this brief Response to correct several inaccuracies set forth by the Representatives in their Opposition.

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<sup>1</sup> Capitalized terms used in but not otherwise defined shall have the meanings ascribed to them in the Motion.

**A. The Committee Is Not Asking This Court to Rule on Its Ability to Participate in the Wrongful Death Proceedings**

2. The Representatives wrongly interpret the Motion as asking this Court to rule on the Committee's ability to participate in the Wrongful Death Proceedings. *See* Opposition, at 9. The Committee is not asking this Court to usurp the authority of the Maine District Court to adjudicate any motions that the Committee may bring before it (if authorized to do so by this Court). Rather, as stated in the Motion, the Maine District Court retains jurisdiction to determine the terms and conditions, if any, imposed on the Committee to participate in the Wrongful Death Proceedings and whether any motion(s) filed or action(s) taken by the Committee has any legal merit. *See* Motion, at ¶ 4. The Maine District Court will determine, among other things, the intervention issues raised by the Representatives, as well as whether the stay imposed by the Consent Order bars the Committee from taking actions in the Wrongful Death Proceedings.<sup>2</sup> Accordingly, the concerns of the Representatives are unwarranted and the Motion should be granted.

**B. The Cases Cited by Representatives With Respect to Limitations Other Courts Have Placed on Official Committees are Inapposite**

3. The Representatives argue that the Motion should be denied because the Committee is asking the Court to grant it authority outside the scope of section 1103(c)(5) of the Bankruptcy Code. *See* Opposition, at 4. In support of that argument, the Representatives cite cases which are inapposite and, as explained below, address situations where the committee acted (or sought to act) in matters that were independent of, and separate from, the debtor's chapter 11 case. By contrast, here, the Committee is seeking authority to take action in the

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<sup>2</sup> A copy of the Consent Order is attached as Exhibit A.

Wrongful Death Proceedings, which Judge Torresen found to be “related to” the Debtor’s chapter 11 case.

4. In the Appointment Order, this Court authorized the formation of the Committee to perform those duties set forth in sections 1103(c)(1) and (3) of the Bankruptcy Code. However, the Appointment Order contemplates that the powers of the Committee could be expanded if “leave of court” was sought. *See* Appointment Order, at 4. In accordance with the Appointment Order, the Committee filed the Motion seeking authority from this Court to file any motion(s) and take any action(s) it deems appropriate before the Maine District Court with respect to the Wrongful Death Proceedings. The purpose of the Motion is to enable the Committee to take actions in the Wrongful Death Proceedings to adequately represent the victims of the derailment.

5. In the Transfer Order, Judge Torresen found that the Wrongful Death Proceedings were “related to” the Debtor’s bankruptcy case. *See* Transfer Order, at 26. Several courts have determined that a creditors’ committee has authority to intervene in a “related to” proceeding pending before a district court. *See Phar-Mor, Inc. v. Coopers & Lybrand*, 22 F.3d 1228, 1241 (3d Cir. 1994) (holding that creditors’ committee has unconditional right to intervene in non-core, “related to” proceeding before federal district court); *Wakefern Food Corp. v. C&S Wholesale Grocers, Inc. (In re Big V Holding Corp.)*, 2002 U.S. Dist. LEXIS 12609, at \*6-10 (D. Del. July 11, 2002) (finding that creditors committee had unconditional right to intervene in “related to” proceeding which was removed from state court and transferred under 28 U.S.C §157(a)).<sup>3</sup>

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<sup>3</sup> The Committee reiterates that the Motion is solely a procedural Motion and the Committee is not asking the Court to pre-approve any motion(s) or action(s) that the Committee may file or take before the Maine District Court in the Wrongful Death Proceedings.

6. In the face of such authority, the Representatives attempt to paint the Committee's Motion as overreaching the bounds of a committee's power under the Bankruptcy Code by citing to several distinguishable cases. For example, in *Official Comm. of Tort Claimants v. Dow Corning Corp. (In re Dow Corning Corp.)*, 1998 U.S. App. LEXIS 7123, at \*1 (6th Cir. Apr. 6, 1998), the Sixth Circuit affirmed the decision of the bankruptcy court denying the motion of an official committee of tort claimants seeking to expand the scope of its retention to include lobbying and legislative services. The Sixth Circuit held that section 1103 "does not grant a committee blanket authority to represent its constituency in matters outside and independent of the bankruptcy case. To extend the resources of the bankruptcy estate to support lobbying activities in response to those undertaken by the debtor in the course of its business expands the authority granted by § 1103(c)(5) too greatly." *Id.* at \*9. Here, by contrast, Judge Torresen has already found that the Wrongful Death Proceedings are "related to" the Debtor's chapter 11 case. Thus, those actions are not "matters outside and independent of" the Debtor's bankruptcy case" *Id.* The other cases cited by the Representatives are similarly distinguishable. *See In re Eagle-Picher Indus.*, 167 B.R. 102 (Bankr. S.D. Ohio 1994) (denying portion of equity committee fees related to proceedings before New York Stock Exchange opposing delisting of debtor stock); *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73 (2d Cir. 2006) (granting creditors' committee nonparty standing to appeal district court proceeding to which committee was not party and declining to address whether committee had statutory authority to bring appeal); *Manville Corp. v. Equity Sec. Holders Comm. (In re Johns-Manville Corp.)*, 801 F.2d 60 (2d Cir. 1986) (reversing lower court and questioning whether court had authority to enjoin official committee of equity security holders from bringing action in Delaware state court seeking to compel debtors to hold a shareholders' meeting).

7. As the bankruptcy court in *Dow Corning* noted:

a reasonable construction of § 1103(c)(5) is that a committee can perform such other services within the bankruptcy case as are in the interest of those represented. For example, § 1103(c) does not in so many words authorize a committee to make a motion to dismiss the case or to convert the case to chapter 7. Nor does it say that a committee may oppose a cash collateral agreement, or for that matter, any motion brought under § 362, § 363, § 364 or § 365. But these must be the kinds of “other services” that § 1103(c)(5) contemplates.

*In re Dow Corning Corp.*, 199 B.R. 896, 902 (Bankr. E.D. Mich. 1996). Accordingly, the Committee submits that it is permissible under the Bankruptcy Code for this Court to modify the Appointment Order to permit the Committee to file motion(s) and/or take action(s) before the Maine District Court with respect to the Wrongful Death Proceedings in order to zealously advocate for the victims. *See e.g., Phar-Mor*, 22 F.3d at 1241; *Big V Holding Corp.*, 2002 U.S. Dist. LEXIS 12609, at \*6-10; *see also In re Commer. Mortg.*, 414 B.R. 389, 400 (Bankr. N.D. Ill. 2009)(granting committee authority to impose liens and encumbrances against the indebted assets of debtor’s wholly owned subsidiaries and to restrict and limit the debtor’s loan transactions).

**WHEREFORE**, the Committee respectfully requests that the Court enter an order (i) overruling the Opposition, (ii) granting the relief requested in the Motion, and (iii) granting such other relief as this Court may deem just and proper.

Dated: September 10, 2014

Respectfully submitted,

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**EXHIBIT A**

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

1:13-mc-00184-NT  
1:14-cv-00071-NT  
1:14-cv-00113-NT  
through and including  
1:14-cv-00130-NT

**CONSENT ORDER STAYING PROCEEDINGS  
PENDING APPEAL IN 1:13-mc-00184-NT**

This matter having come before the Court on the *Motion for Stay of Proceedings Pending Appeal* [D.E 236] (the “Motion”), filed by Annick Roy (o/b/o Jean-Guy Veilleux) and Marie-Josée Grimard (o/b/o Henriette Latulippe) (together, the “Movants”) in case 1:13-mc-00184-NT, seeking the issuance of a stay pending appeal in this case; and due and appropriate notice of the Motion having been given; and the Court having reviewed the Motion and having considered the objections and/or responses to the Motion filed by (i) Robert J. Keach, the trustee of Montreal Maine & Atlantic Railway, Ltd. (the “Trustee”) [D.E. 241]; (ii) Rail World, Inc., Rail World Locomotive Leasing, LLC, and Edward A. Burkhardt [D.E. 242]; (iii) Dakota Petroleum Transport Solutions, LLC and DPTS Marketing, LLC [D.E. 243]; and (iv) Western Petroleum Company and Petroleum Transport Solutions [D.E. 244]; and with the express consent of the Movants, the Trustee, and the Official Committee Of Victims appointed in the above-captioned chapter 11 case; the Court hereby **ORDERS**, **ADJUDGES**, and **DECREES** that:

1. The Motion is granted to the extent and upon the terms set forth herein.
2. All of the civil actions transferred to this Court pursuant to the Court’s *Order on Motions to Transfer Cases and Motion to Strike* [D.E. 100] (the “Section 157(b)(5) Transfer”

Order”), and all proceedings therein, are hereby stayed. The civil actions subject to this stay include eighteen civil actions pending in this Court with the following assigned docket numbers:

1:14-cv-00113-NT	1:14-cv-00122-NT
1:14-cv-00114-NT	1:14-cv-00123-NT
1:14-cv-00115-NT	1:14-cv-00124-NT
1:14-cv-00116-NT	1:14-cv-00125-NT
1:14-cv-00117-NT	1:14-cv-00126-NT
1:14-cv-00118-NT	1:14-cv-00127-NT
1:14-cv-00119-NT	1:14-cv-00128-NT
1:14-cv-00120-NT	1:14-cv-00129-NT
1:14-cv-00121-NT	1:14-cv-00130-NT

By agreement with the plaintiff in Grimard v. Western Petroleum Company (which case was transferred pursuant to the 157(b)(5) Transfer Order, although the physical file has not been transferred by the Clerk of the Circuit Court of Cook County (Illinois)), that case is also subject to the stay contained in this Order. All nineteen of the civil actions described in this Paragraph 2 are referred to collectively as the “Transferred Actions.”

3. As of the date of this Order, all deadlines applicable to the Transferred Actions, whether imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the District of Maine or by applicable law, shall be tolled until the stay is terminated pursuant to Paragraph 6 of this Order. Upon the termination of the stay, the parties to the Transferred Actions shall confer upon an appropriate scheduling order. For the avoidance of doubt, the stay imposed by the Order is for procedural purposes only and shall not affect the substantive rights of any parties to the Transferred Actions.

4. Without limiting the foregoing, the stay imposed by this Order:

- a. the Court will not rule on the pending *Motion of Wrongful Death Claims for Mandatory Abstention* [D.E. 227], filed by Movants on or about April 4, 2014; and

- b. None of the plaintiffs or plaintiffs' counsel in the Transferred Actions may treat any of the Transferred Actions as dismissed and/or file, re-file or recommence any of the wrongful death cases (including new cases) relating to the derailment of one of MMA's trains in Lac-Mégantic, Québec on July 6, 2013 in their current, new, or any altered form against all or any subset of the current defendants in the Transferred Actions.

5. The stay imposed by this Order does not apply to proceedings or contested matters in the underlying chapter 11 bankruptcy case of Montreal Maine & Atlantic Railway, Ltd. ("MMA") currently pending before the United States Bankruptcy Court for the District of Maine, or any contested matters or adversary proceedings in that case. Similarly, the stay does not apply to the proceeding commenced by Montreal Maine & Atlantic Canada Co., MMA's wholly-owned subsidiary, under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended, currently pending before the Quebec Superior of Justice (Commercial Division), or any matters in that proceeding.

6. The stay imposed by this Order will terminate on the earlier of (i) the entry of an Order of this Court dissolving the stay, (ii) the final disposition of the appeal taken by the Movants, *inter alia*, of the Section 157(b)(5) Transfer Order currently pending before the United States Court of Appeals for the First Circuit, Case No. 14-1485, and (iii) 30 days after notice is filed on this Court's docket by any of the parties whose express consent the entry of this Order is premised on, provided, however, that termination of the stay pursuant to (iii) of this Paragraph shall be without prejudice to the rights of any party to seek to re-impose the stay and the Court to grant such request.

7. Nothing in this Order will prejudice the rights of any person or entity with respect to the contention that some of the Transferred Actions were or were not voluntarily dismissed by the plaintiffs pursuant to Fed. R. Civ. P. 41(a). All such rights are hereby preserved, but any acts with respect to such rights, if any, are stayed as set forth above.

Dated: June 17, 2014

/s/Nancy Torresen  
Nancy Torresen  
United States District Judge

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

*In re:*

**MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 13-10670 (LHK)**

**CERTIFICATE OF SERVICE**

I, Christopher J. Fong, hereby certify that I am over eighteen years old and caused true and correct copies of the following motion to be served electronically upon all interested parties as set forth in the ECF list on September 10, 2014:

- Response Of Official Committee Of Victims To Representatives' Opposition To Motion Of Official Committee Of Victims Seeking Modification Of Committee Appointment Order To Authorize Committee To Fully Participate In Wrongful Death Proceedings Pending Before Maine District Court [Docket No. 1102].

Dated: September 10, 2014

s/ Christopher J. Fong

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