UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD. Debtor.	Case No. 1:13-mc-00184-NT 1:14-cv-00113-NT

OBJECTION AND INCORPORATED MEMORANDUM OF LAW OF PLAINTIFFS ANNICK ROY (o/b/o JEAN-GUY VEILLEUX), MARIE-JOSEE GRIMARD (o/b/o HENRIETTE LATULIPPE) TO MOTION OF OFFICIAL COMMITTEE OF VICTIMS FOR ORDER, PURSUANT TO COURT'S MARCH 23, 2015 STAY ORDER, TO REIMPOSE STAY AND SCHEDULING HEARING

I. INTRODUCTION

1. Plaintiffs Annick Roy (o/b/o Jean-Guy Veilleux), Marie-Josee Grimard (o/b/o Henriette Latulippe) (collectively, "Existing Plaintiffs"), object to the efforts of the misnamed "Official Committee of Victims" ("Bankruptcy Committee"), which represents none of the wrongful death victims in this case, to interfere with decedent estate representatives ("Future Plaintiffs") who wish to follow the advice of their attorneys and file lawsuits to seek justice for the wrongful deaths of their loved ones before the expiration of certain statutes of limitation on July 6, 2015. The Bankruptcy Committee's Motion for Order to Reimpose the Stay ("Motion") is fatally flawed, meritless, is akin to tortious interference with the contractual relationships among the victims and their counsel and must be denied for at least the following reasons:

a. **Standing:** The Bankruptcy Committee lacks standing to seek injunctive relief against the Future Plaintiffs, to seek a stay pending appeal or to appear and be heard in this case on behalf of the bankruptcy estate of Montreal, Maine and Atlantic Rail Road ("MMA" or "Debtor"). The Bankruptcy Committee does not represent or speak for

any of the Future Plaintiffs, all of whom oppose the Motion. The Bankruptcy Committee does not own any claims or rights under the alleged retainer agreements. All such claims and rights can be asserted solely by the parties to the alleged retainer agreements. The Bankruptcy Committee has suffered and will suffer no "injury in fact" traceable to the conduct of the Future Plaintiffs or their counsel, let alone any injury in fact that can be redressed by the entry of the order it requests in the Motion. The Bankruptcy Committee lacks authority under the Bankruptcy Court orders appointing it to seek the relief it requests in the Motion. Accordingly, the Bankruptcy Committee's actions in filing the Motion otherwise involving itself in these cases is *ultra vires*.

b. **Injunction/Stay**: The Bankruptcy Committee fails to allege, let alone demonstrate, that it can satisfy any of the standards it has the burden of showing to enjoin the Future Plaintiffs or to impose a stay pending appeal, even assuming *arguendo* that it has standing. The Bankruptcy Committee seeks to prevent the Future Plaintiffs from filing wrongful death suits because of a flawed interpretation of alleged retainer agreements among the Future Plaintiffs and their counsel (i) which the Bankruptcy Committee has not provided to the Court, (ii) to which neither MMA nor the Committee are parties, and (iii) as to which none of the actual parties to the alleged retainer agreements – the Future Plaintiffs and their counsel - agree with or support the Bankruptcy Committee's interpretation. The Bankruptcy Committee does not, and indeed cannot, demonstrate it is likely to succeed on the merits of its claims or that it will suffer any harm, let alone irreparable harm, if the requested injunction is not granted. Nor can the Bankruptcy Committee demonstrate that the interests of the public justify its

interference with the attorney-client relationships among the Future Plaintiffs and their counsel.

c. **Bankruptcy Committee Breach of its Fiduciary Duties:** Even assuming *arguendo* the Bankruptcy Committee has standing, has authority to speak for the Future Plaintiffs it does not represent and has met its burden with respect to the issuance of an injunction or the reimposition of a stay pending appeal (none of which has occurred or exists), the Motion nevertheless should be denied due to the breach by the Bankruptcy Committee of its fiduciary duties. The Bankruptcy Committee at most has a fiduciary duty to the class of unsecured creditors in the MMA bankruptcy case for which it was appointed. Yet the Bankruptcy Committee at bottom seeks to benefit a subset of those creditors – the Future Plaintiffs – at the expense of the Existing Plaintiffs in a manner that is *ultra vires* of its lawful scope of duties. In the unlikely event the Bankruptcy Committee prevails, then it will have succeeded in bestowing upon the Future Plaintiffs the proverbial "free ride." The Future Plaintiffs will obtain recoveries in these cases without paying their attorneys, while the Existing Plaintiffs will bear the entire burden of paying those fees. Nowhere does the Bankruptcy Committee explain why conferring the Future Plaintiffs with such an unjust enrichment at the expense of the Existing Plaintiffs is proper or anything other than a breach by the Bankruptcy Committee, its members and its counsel, of their fiduciary duties, or is anything other than a tortious interference by the Committee, its members and its counsel, of the various alleged retainer agreements between and among the Future Plaintiffs, the Existing Plaintiffs and their respective counsel.

II. STATEMENT OF FACTS

A. *The Derailment, the MMA Bankruptcy and the CCAA Case*

2. On July 6, 2013, an unmanned MMA train with 72 carloads of crude oil and 5 locomotive units derailed in Lac-Mégantic, Quebec (the "Derailment"). The Derailment set off several massive explosions resulting in 48 deaths (the decedents hereinafter referred to as the "Victims"). The representatives of the decedents' estates – the only parties under applicable law who may assert claims for wrongful death – are the Future Plaintiffs and Existing Plaintiffs. None of the Existing Plaintiffs nor any of the Future Plaintiffs are members of the Bankruptcy Committee or have sought or obtained the assistance of the Bankruptcy Committee. Instead, at all material times, the Existing Plaintiffs and Future Plaintiffs have been represented in all proceedings by their counsel of record.

3. On August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the "Petition Date") in the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court"). See In re Montreal Maine & Atlantic Railway Ltd., Case No. 13-10670 (Bankr. D. Me.) (the "Chapter 11 Case"). On the Petition Date, the Debtor's Canadian affiliate, Montreal Maine & Atlantic Canada Co. ("MMA Canada"), also commenced proceedings (the "CCAA Case") in the Superior Court of Canada ("CCAA Court") pursuant to the Companies' Creditors Arrangement Act ("CCAA") and appointed a monitor (the "Monitor") to administer the CCAA Case.

B. *Appointment of the Committee and Entry of the Representation Order*

4. In the days following the Trustee's appointment, the so-called "Informal Committee of Québec Claimants" (the "Québec Committee"), comprising (i) the government of the Province of Québec, Canada ("Québec"), (ii) the municipality of Lac-Mégantic, Québec ("Lac-Mégantic"), and (iii) the representatives of a Canadian class action lawsuit brought by victims of the Derailment (the "QCAPs"), filed a *Motion of Informal Committee of Québec*

Claimants for Appointment of Creditors' Committee Pursuant to Bankruptcy Code Section 1102(a)(2) [D.E. No. 127],[1] seeking an order directing the U.S. Trustee to appoint an official committee in this Case pursuant to 11 U.S.C. § 1102(a)(2). The Trustee objected to this motion. After obtaining the agreement of counsel[2] to the Québec Committee that any committee appointed would have a limited scope of duties, however, the Trustee withdrew his objection. Thereafter, on October 18, 2013, the Bankruptcy Court entered the *Order Authorizing the Appointment of a Victims' Committee* [D.E. No. 391] (the "Appointment Order" a copy of which is attached as Exhibit A), pursuant to which the Court authorized the U.S. Trustee under Bankruptcy Code section 1102(a)(2) to appoint a victims' committee in the Chapter 11 Case. *See* Appointment Order at 4. The Appointment Order provided that the Committee "shall not be empowered to employ any professionals other than counsel or . . . to perform any duties beyond those enumerated in § 1103(c)(1) and (3)[3] without specific leave of court." *See* Appointment Order at 4.3 (such powers and duties, as amended,[4] the "Scope of Duties").

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[1] Unless otherwise indicated, "D.E. No." refers to the Bankruptcy Court docket number.

[2] In a typical chapter 11 case, the appointment of a committee of creditors by the U.S. Trustee is uncontroversial and is governed by Bankruptcy Code section 1102(a)(1). However, in a railroad reorganization, section 1102(a)(1) does not apply. *See* 11 U.S.C. §1165. The Committee Appointment Movants based their request on section 1102(a)(2), which allows the Court to order the appointment by the U.S. Trustee of "additional committees of creditors or of equity security holders . . . to assure adequate representation . . . ." *See* 11 U.S.C. § 1102(a)(2).

[3] Section 1103(c)(1) and (3) provide:

> A committee appointed under section 1102 of this title may—
>
> (1) consult with the trustee or debtor in possession concerning the administration of the case;
> . . .
> (3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan[.]

[4] On September 19, 2014, the Bankruptcy Court entered an order (the "Amended Scope Order" a copy of which is attached as Exhibit B) modestly expanding the Scope of Services to authorize the Committee to request permission from the Maine District Court, *inter alia*, to: (i) be heard on any issues related to the Original Consent Order (as defined below) or a stay of these cases; and (ii) be heard on any issues related to a global settlement of the claims asserted in these cases.

5. Thereafter, the Bankruptcy Committee was formed, and is comprised of Serge Jacques, Jacinthe LaCombe, and Megane Turcotte and Pierre Paquet. On December 10, 2013, the members of the Committee voted to make the government of Québec, Canada and the municipality of Lac-Mégantic, Québec *ex officio* members of the Committee.

6. On April 4, 2014, the Canadian Court entered the Representation Order in the Canadian Case, whereby victims of the Derailment with claims against MMA Canada were deemed to become members of a class represented by certain class members (collectively, the "Class Representatives") and counsel to such class ("Class Counsel"), unless such victims opted out of such representation. The only claimants who opted out were the WD Claimants, *i.e.*, the Existing Plaintiffs and Future Plaintiffs, who remain represented by U.S. counsel. As a consequence of entry of the Representation Order, all of the victims of the Derailment are represented by parties and counsel other than the Bankruptcy Committee and its counsel.

C. *The Pending Wrongful Death Cases*

7. The cases currently before this Court are wrongful death cases filed by the representatives of some of the Victims. These cases were commenced in Illinois state court and thereafter, on September 9, 2013, the Trustee filed the *Chapter 11 Trustee's Motion To Transfer Personal Injury Tort And Wrongful Death Claims Pursuant To 28 U.S.C. § 157(b)(5)* [District Court Docket No. 1] (the "Transfer Motion") in this Court. On March 21, 2014, this Court entered the *Order on Motions to Transfer Cases and Motion to Strike* [District Court Docket No. 100] (the "Transfer Order") holding that the nineteen wrongful death suits filed in Illinois (the "Transferred Actions") were "related to" the Debtor's bankruptcy case. See Transfer Order, at

26. Thereafter, all but two of the Transferred Actions were voluntarily dismissed pursuant to Fed.R.Civ.P. 41(a)(1)(A)(i).[5]

8. The Existing Plaintiffs timely and properly appealed the Transfer Order to the United States Court of Appeals for the First Circuit. That appeal remains pending and is docketed in the First Circuit as Case No.14-1485, Roy, et al v. Montreal Maine & Atlantic Rail, et al ("Appeal").

D. The Stay Pending Appeal

9. The Existing Plaintiffs filed their motion for stay of proceedings pending the Appeal ("Stay Pending Appeal Motion") in May, 2014[6] seeking a stay of these cases pending appeal pursuant to Fed.R.Civ.P. 62 and Fed.R.App.P. 8(a). A number of defendants and the Trustee (but not the Bankruptcy Committee) objected to the Stay Pending Appeal Motion. Ultimately, the Existing Plaintiffs and the objecting parties entered into a consent order "Staying Proceedings Pending Appeal. . . ."[7] ("Original Consent Order"). By agreement among the Trustee and the Existing Plaintiffs, the Original Consent Order was amended and restated into an "Order Amending and Restating Consent Order Staying Proceedings Pending Appeal" ("Amended Consent Order").[8]

10. In the Trustee's Response to the Stay Pending Appeal Motion ("Trustee's Response")[9] the Trustee contended, *inter alia*, that any stay imposed should stay all litigation and

[5] Thus the only pending Transferred Actions are case numbers 1:13-mc-00184-NT and 1:14-cv-00113-NT. The Existing Plaintiffs are the plaintiffs in these two cases. Hereinafter, these cases will be referred to as "Case 184" and "Case 113" respectively.

[6] Docket No. 236 in Case 184 (filed May 1, 2014) and Docket No. 131 in Case 113 (filed May 2, 2014).

[7] Docket No. 253 in Case 184 and Docket No. 147 in Case 113

[8] Docket No. 277 in Case 184 and Docket No. 147 in Case 113.

[9] Docket No. 241 in Case 184.

all cases. Consistently, as part of a negotiated, consensual arrangement embodied in the Original Consent Order and carried over to the Amended Consent Order, the Trustee and the Existing Plaintiffs (and their counsel) agreed to the following provision (at paragraph 4 b. of the Original Stay Order and paragraph 4 b. of the Amended Stay Order):

> 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.

11. Paragraph 6 of the Amended Consent Order governs the termination of the consented to stay pending appeal. That section provides three different "triggers" to terminate the stay pending appeal. Of relevance here is the trigger appearing at section 6. iii. which provides that the stay pending appeal will terminate

> 30 days after notice is filed on this Court's docket by any of the parties to any of the Transferred Cases or the Official Committee of Victims, provided, however, that termination of the stay pursuant to (iii) of this Paragraph shall be without prejudice to the rights of any party or the Official Committee of Victims to seek to reimpose the stay and the Court to grant such request.

12. In short, the Amended Consent Order implements a consensual stay of the these cases as against the Settling Defendants (as defined in the Amended Consent Order) and any additional wrongful death complaints that might be filed against the Settling Defendants related to the Derailment pending, among other things, the tolling of a 30-day period following filing of a notice of termination of such stay. It is uncontroverted that the Existing Plaintiffs filed notice of termination of the stay pending appeal in accordance section 6. iii. of the Amended Consent

Order on May 7, 2015.[10] Accordingly, by the terms of the Amended Consent Order the stay pending appeal expires automatically 30 days later, or on June 6, 2015.[11]

E. The Bankruptcy Committee's Motion

13. The Bankruptcy Committee claims it seeks an Order to delay the Future Plaintiffs from filing wrongful death cases in order to deprive counsel for the Future Plaintiffs of any fees from the Future Plaintiffs whatsoever. Relying upon an English translation of unknown origin of an unsigned document written in French that allegedly is a template for the retainer agreement among some, but not all, of the Future Plaintiffs and their counsel, the Bankruptcy Committee contends that the terms of this unsigned contract deprive counsel for the Future Plaintiffs the right to recover any fees whatsoever from the Future Plaintiffs if those Future Plaintiffs settle their wrongful death claims before the Future Plaintiffs file a complaint. Although the Bankruptcy Committee fails to provide any evidence that (i) the Future Plaintiffs have entered into any settlement agreements, or (ii) that the settlements are final and subject only to approval by the CCAA Court, the Bankruptcy Committee nevertheless argues the Future Plaintiffs should be enjoined from filing any litigation against any of the alleged "Settling Defendants" until after June 17, 2015, when the Bankruptcy Committee alleges the CCAA Court will approve the CCAA Plan.

III. ARGUMENTS AND AUTHORITIES

A. The Bankruptcy Committee's Motion Should Be Denied Because the Bankruptcy Committee Lacks Standing to Seek or Obtain the Relief Requested in the Motion

[10] Docket No. 280 in Case 184, and docket no. 163 in Case 113.

[11] The Bankruptcy Committee mistakenly relies on Fed.R.Bankr.P. 9006 to conclude that the stay pending appeal automatically is extended to the following Monday, June 8, 2015. However, the Bankruptcy Rules only apply to cases under the Bankruptcy Code (see 28 U.S.C. §2075 and Fed.R.Bankr.P. 1001), and have no applicability in this case. Thus, Fed.R.Bankr.P. 9006 does not extend the stay pending appeal from June 6 to June 8.

14. Standing is a "threshold question in every federal case, determining the power of the court to entertain suit." Warth v. Seldin, 422 U.S. 490, 498 (1975), In re W.R. Grace & Co., 475 B.R. 34, 176 (D. Del. 2012) (quoting, Warth). "[F]ederal courts are under an independent obligation to examine their own jurisdiction, and standing 'is perhaps the most important of [the jurisdictional] doctrines.'" Together Dev. Corp. v. Pappas (In re Together Dev. Corp.), 262 B.R. 586, 588 (Bankr. D. Mass. 2001), quoting, FW/PBS, Inc. v. Dallas, 493 U.S. 215, 231, 107 L. Ed. 2d 603, 110 S. Ct. 596 (1989)). Standing is both a Constitutional concern, arising under the "case or controversy" requirement of Article III of the Constitution, as well as a question of whether there is a statutory grant of authority to the Bankruptcy Committee under the Bankruptcy Code. In re W.R. Grace & Co., 475 B.R. at 177.

15. A committee in a chapter 11 case (such as the Bankruptcy Committee) does not have standing merely because it is a bankruptcy creditors committee. Official Comm. of Unsecured Creditors for the Bankr. Estate of Bos. Reg'l Med. Ctr., Inc. v. Ricks (In re Bos. Reg'l Med. Ctr., Inc.), 328 F. Supp. 2d 130, 143 (D. Mass. 2004). Unless the Bankruptcy Committee has been assigned the individual claims of the Existing Plaintiffs or Future Plaintiffs under the alleged retainer agreements, it lacks standing to assert any claim against third parties of the Existing Plaintiffs or Future Plaintiffs under those alleged retainer agreements. Id. Here, it is uncontroverted that none of the Future Plaintiffs or Existing Plaintiffs have assigned their rights or claims under the alleged retainer agreements to the Bankruptcy Committee.

16. Thus, in seeking to assert claims of the individual Existing Plaintiffs and Future Plaintiffs under the alleged retainer agreements, rather than claims, if any, of the Bankruptcy Committee, the Bankruptcy Committee cannot demonstrate either Constitutional or statutory standing. In re Bos. Reg'l Med. Ctr., Inc. is instructive. There, the Court held that a creditors

committee appointed pursuant to the Bankruptcy Code had standing to assert certain claims for breach of fiduciary duty of a non-profit debtor's officers and directors that (i) belonged to the non-profit's bankruptcy estate, and (ii) had been assigned to the committee from the bankruptcy estate under a confirmed chapter 11 plan, but had no standing to assert claims owned individually by the non-profit's beneficiaries that were not assigned to the committee. The beneficiaries' individual claims were not assigned to the committee, and thus the committee did not have standing to pursue those claims. *Id.* at 147.

17. Consistently, the Bankruptcy Committee here lacks standing to assert alleged claims of individual plaintiffs under their alleged retainer agreements with their counsel. Nor does the Committee have standing in its own right to seek the relief it requests. In order to have constitutional standing under Article III of the Constitution, a party must first satisfy three requirements. See Bennett v. Spear, 520 U.S. 154, 167, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997); Ne. Fl. Chapter of the Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fl., 508 U.S. 656, 663, 113 S. Ct. 2297, 124 L. Ed. 2d 586 (1993). Specifically, the party seeking constitutional standing must show that it has: (1) suffered an "injury in fact" that is "real and immediate" and not merely "conjectural or hypothetical," City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983) (citations omitted); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); (2) that the injury is fairly traceable to the defendant's conduct, United States v. Hays, 515 U.S. 737, 743, 115 S. Ct. 2431, 132 L. Ed. 2d 635 (1995); and (3) that a favorable federal court decision is likely to redress the injury. Linda R.S. v. Richard D., 410 U.S. 614, 617-18, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973); Warth v. Seldin, supra, 422 U.S. at 505-06; Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 45-46, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976).

18. The Bankruptcy Committee here has failed even to allege, let alone demonstrate, that it satisfies any of these tests. The Bankruptcy Committee, as an entity, has suffered no "injury in fact" of any kind. Indeed, the Bankruptcy Committee has no pending claims in these cases. The Bankruptcy Committee's involvement in this case was limited to being heard in support of the Transfer Motion, and the Bankruptcy Committee was not a movant under or objecting party to the Transfer Motion. The Transfer Order ended that limited matter, and the Appointment Order specifically prohibits the Bankruptcy Committee from participating in these wrongful death cases otherwise. Moreover, the Bankruptcy Committee's rights, powers, interests, pecuniary or otherwise, are entirely unaffected if the Court grants or denies its Motion. There is no injury, let alone one that is "traceable to the conduct" of the Existing Plaintiffs, the Future Plaintiffs or their counsel, and allowance of the Motion is not "likely to redress the injury."

19. Nor does the Bankruptcy Committee have any standing under the Bankruptcy Code. The Trustee, and not the Bankruptcy Committee, is the representative of the MMA bankruptcy estate and has the capacity to sue and be sued on behalf of the MMA bankruptcy estate pursuant to the plain language of 11 U.S.C. §323.[12] In some instances, where a bankruptcy trustee has refused to act after demand is made upon the Trustee to act, courts have found the power to confer a bankruptcy committee with derivative standing to assert claims owned by the bankruptcy estate for the benefit of creditors. See, e.g., Official Comm. of

[12] Section 323 of the Bankruptcy Code, 11 U.S. Code § 323, reads in its entirety as follows:

> §323 Role and capacity of trustee
>
> (a) The trustee in a case under this title is the representative of the estate.
>
> (b) The trustee in a case under this title has capacity to sue and be sued.

Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery, 330 F.3d 548 (3d Cir. 2003). Here, no such derivative standing has been sought or requested or could be granted as a matter of law, since here the Trustee is actively pursuing and defending claims that are property of the MMA bankruptcy estate.

20. To overcome its inability to demonstrate Constitutional or statutory standing, the Bankruptcy Committee instead alleges pursuant to the Appointment Order it "represents ***all*** victims of the [D]erailment." Motion, ¶10 (emphasis in original). This is a gross distortion and overstatement of the Bankruptcy Committee's role. Even without the limitations to the Scope of Services imposed by the Amended Scope Order, at most, the Bankruptcy Committee, has a fiduciary duty to the creditors for whom it was appointed generally as a class. See, In re SPM Mfg. Co., 984 F.2d 1305, 1315 (1st Cir. 1993) (citations omitted). At most the Bankruptcy Committee "is charged with pursuing whatever lawful course best serves the interests of the class of creditors represented." Id. (citations omitted). But, as In re Bos. Reg'l Med. Ctr., Inc. makes clear, the Bankruptcy Committee lacks standing to assert any claims owned by the individual Victims under the alleged retainer agreements. Those claims are owned by the individuals themselves, and can only be asserted, if at all, by those individuals. Assertion of those claims by individual members of the class of Victims is not a matter that benefits or implicates the interests of the Victims collectively as a class.

21. The Bankruptcy Committee's reliance on the Amended Scope Order and the Amended Consent Order for standing similarly is misplaced. Nothing in those orders or applicable law could, or purports to, overcome the Bankruptcy Committee's lack of Constitutional standing. Indeed, the Bankruptcy Committee's actions are narrowly circumscribed to the Scope of Duties. Notably absent from the Scope of Duties under the

Appointment Order are the open-ended duties typically bestowed upon official committees to (a) "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor . . . and any other matter relevant to the case or to the formulation of a plan" and (b) "perform such other services as are in the interest of those represented." *See* 11 U.S.C. § 1103(c)(2), (5). As narrowed by the Appointment Order, the Bankruptcy Committee's activities related to the relief requested in the Motion are not within the Scope of Duties, and hence are *ultra vires*.

22. The Amended Scope Order only expands modestly the Scope of Duties, and as relevant here authorizes the Bankruptcy Committee to seek permission to be heard with respect to any stay pending appeal of this case. There is no matter regarding the stay pending appeal brought by the Trustee or any other party in this case on which the Bankruptcy Committee can be "heard." Indeed, as the Bankruptcy Committee concedes in its Motion, it has failed to make any such required request, and instead bootstraps a request for standing to file the Motion in the Motion itself.[13]

23. The Amended Consent Order similarly provides no help to the Bankruptcy Committee. Paragraph 6 of the Amended Consent Order, which the Bankruptcy Committee mistakenly cites in support of its alleged standing, simply makes clear that termination of the stay pending appeal due to the filing by the Existing Plaintiffs of their notice of termination does not "prejudice the rights of" the Bankruptcy Committee to seek to reimpose the stay. Nothing in that order explicitly confers any such rights on the Bankruptcy Committee as a threshold matter.

[13] Even assuming *arguendo* this bootstrap request for standing is permissible or compliant with the Amended Committee Order that it seek permission to be heard, the Bankruptcy Committee's request for standing to advance the interests of individual Victims that it is not permitted to advance, and the Bankruptcy Committee's inability to establish Constitutional standing, are reasons enough why this Court should deny this request for to be heard.

24. In short, neither the Amended Scope Order, the Appointment Order or the Amended Consent Order purport to authorize the Bankruptcy Committee to seek affirmative relief, as it seeks in the Motion, since it is not a party in this case and has suffered no injury in fact traceable to the conduct of the Existing Plaintiffs that will be redressed by the order it seeks. For all of these reasons, the Bankruptcy Committee lacks standing to seek or obtain the relief it requests in its Motion. The Bankruptcy Committee improperly is arrogating to itself the rights of the individual Victims to enforce the alleged retainer agreements with their counsel, and its lack of standing to do so means the Motion should be denied.

B. The Motion Should Be Denied Because the Bankruptcy Committee Has Failed To Demonstrate Grounds Exist to Alter or Amend the Amended Consent Order Pursuant to Fed.R.Civ.P. 59 or for Relief from the Amended Consent Order Pursuant to Fed.R.Civ.P. 60(b)

25. A major uncertainty created by the Motion is that nowhere does the Committee assert the basis on which it believes it is entitled to extend the stay pending appeal to June 30, 2015. As written, the Amended Consent Order provides that the stay pending appeal terminates 30 days after filing of notice. Nothing in the Amended Consent Order permits a party to seek an extension of the 30 day period, and any alteration of the 30 day period is an alteration of the Amended Consent Order that can be accomplished, if at all, only under Fed.R.Civ.P. 59 or 60(b).

26. Since the Bankruptcy Committee fails to argue that amendment or alteration of the Amended Stay Order is proper under Fed.R.Civ.P. 59 or 60(b), those arguments should be considered waived. See, McCoy v. Mass. Inst. of Tech., 950 F.2d 13, 22 (1st Cir. 1991).[14] If not

[14] In language equally applicable here, the First Circuit wrote:

> [A] party has a duty "to spell out its arguments squarely and distinctly. . . . [rather than being] allowed to defeat the system by seeding the record with mysterious references . . . hoping to set the stage for an ambush should the ensuing ruling fail to suit." Paterson-Leitch Co. v. Massachusetts Mun. Wholesale Elec. Co., 840 F.2d 985, 990 (1st Cir. 1988); see also Kensington Rock Island Ltd. Partnership v. American Eagle Historic Partners, 921 F.2d 122, 124-25 (7th Cir. 1990) ("Arguments raised in the District Court in a perfunctory and underdeveloped . . . manner

waived, then suffice it to say that the Bankruptcy Committee's request to alter or amend the Amended Consent Order is untimely (Rule 59(e) required the Bankruptcy Committee to bring that motion within 28 days of the "judgment" *i.e.*, the Amended Consent Order[15]) and whether characterized as a Rule 59 or a Rule 60(b) motion, is unsubstantiated with any facts or law in the Motion to support such extraordinary relief. See generally, Perez-Perez v. Popular Leasing Rental, Inc., 993 F.2d 281 (1st Cir. 1993).

C. The Motion Should Be Denied Because the Committee is Not Entitled to Enjoin the Future Plaintiffs From Filing New Lawsuits or Staying the Commencement of New Lawsuits By Reimposing the Stay Pending Appeal

27. At bottom, what the Bankruptcy Committee seeks is an injunction restraining the Future Plaintiffs from filing new cases until June 30, or the imposition of a stay pending appeal that expires on June 30 and that, unlike the Amended Consent Order, is nonconsensual. Whether characterized as a motion for injunctive relief or a motion or a stay pending appeal, however, the Bankruptcy Committee has the burden of satisfying substantially identical factors. The Bankruptcy Committee nowhere in its Motion alleges or proffers any evidence sufficient for it to meet its burden.

28. The standards for granting a preliminary injunction are well known. "[F]irst, the likelihood that the party requesting the injunction will succeed on the merits; second, the potential for irreparable harm if the injunction is denied; third, the hardship to the non-movant if enjoined compared to the hardship to the movant if injunctive relief is denied; and fourth, the

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> are waived on appeal.") (quotation marks omitted); Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985) (appellate courts should not permit "fleeting references to preserve questions on appeal"), cert. denied, 475 U.S. 1088, 89 L. Ed. 2d 729, 106 S. Ct. 1475 (1986). ***Overburdened trial judges cannot be expected to be mind readers.***
>
> (emphasis added).

[15] Fed.R.Civ.P. 54(a) defines "judgment" for purposes of the Federal Rules of Civil Procedure as including "a decree and any order from which an appeal lies."

effect of the court's ruling on the public interest." Outside TV, Inc. v. Murin, 977 F. Supp. 2d 1, 8 (D. Me. 2013), quoting, Water Keeper Alliance v. U.S. Dept. of Defense, 271 F.3d 21, 30 (1st Cir. 2001). The standards governing stays pending appeal are substantially identical: Officemax Inc. v. Cnty. Qwik Print, Inc., 751 F. Supp. 2d 221, 253 (D. Me. 2011), rev'd on other grounds, 658 F.3d 94 (1st Cir. 2011). Thus, whether the Bankruptcy Committee seeks to enjoin the Future Plaintiffs from commencing new suits, or seeks a stay pending appeal of the Transfer Order that produces the identical result, the standards, and hence the analysis that follows below, is the same.

1. The Motion Should Be Denied Because the Bankruptcy Committee is Unlikely to Succeed on the Merits

29. "The *sine qua non* of [the preliminary injunction inquiry] is likelihood of success on the merits: if the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." Outside TV, Inc. v. Murin, 977 F. Supp. 2d 1, 8 (D. Me. 2013), (internal quotations omitted). Plaintiffs must show "more than mere possibility' of success" —rather, they must establish a 'strong likelihood' that they will ultimately prevail." Id. at 8. (internal quotations and citations omitted).

30. Here, there are two different disputes. The Bankruptcy Committee wholly ignores one and is unlikely to prevail on the merits of either. First, a dispute exists about the Transfer Order that is the subject of the Appeal. While the Bankruptcy Committee had a limited role and was heard in support of the Transfer Motion, it is difficult to envision on what basis the Bankruptcy Committee could be deemed likely to prevail on an Appeal where it was "heard" on that motion as an accommodation, and was not a movant or party to the contested matter that arose under the Transfer Motion.

31. Moreover, events occurring since the Transfer Order was entered likely will make the Appeal moot. Once the Trustee's chapter 11 plan, as it may be amended ("Chapter 11 Plan")[16] becomes effective, the factors that resulted in this Court's holding that these cases are "related to" the Chapter 11 Case will be eliminated. If approved, the settlements between the Trustee and the "Settling Defendants" in the Chapter 11 Plan will eliminate any and all claims against certain parties and assets, the existence of which was the basis of this Court's determination that these cases are "related to" the Chapter 11 Case. Consistently, section 10.7 of the Trustee's Chapter 11 Plan requires the Trustee to cooperate to transfer these cases to a jurisdiction of the plaintiffs' choosing when that plan is confirmed and becomes effective. The plaintiffs are likely to seek transfer to the state court of Illinois, from whence these cases originated, and thereafter the Appeal likely will be dismissed. Thus, confirmation of the Chapter 11 Plan likely will moot the Transfer Order. Whatever else these recent events mean, they cannot mean that the Bankruptcy Committee is likely to prevail on the merits of the Appeal or that the Appeal will be decided on the merits prior to confirmation of the Trustee's Chapter 11 Plan.

32. The second dispute, which is entirely unrelated to the Appeal or to any of the causes of action asserted by the Existing Plaintiffs in their complaints, is the alleged dispute regarding the alleged retainer agreement between the Future Plaintiffs and their counsel. It is impossible for the Bankruptcy Committee to prevail on those claims, since nowhere has it formally asserted those claims, against the Existing Plaintiffs or otherwise, and those claims

[16] The Chapter 11 Plan as originally filed appears at docket number 1384 of the docket of the Chapter 11 Case. Upon information and belief, the Chapter 11 Plan will be amended significantly, although the requirement that Victims receive funds in accordance with the matrix will not be altered by the contemplated amendments. The plaintiffs are in discussions with the Trustee regarding some of the required amendments.

neither directly or by implication are within the claims asserted in the Existing Plaintiffs' complaints.

33. Ignoring these fatal flaws, all the Bankruptcy Committee offers in support of its burden of demonstrating likelihood of success on the merits is an unsigned document, unsworn averments that the document is an authentic template for some, but not all, of the retainer agreements for all of the Future Plaintiffs, unauthenticated and informal translations of that alleged template from French into English and unsubstantiated averments regarding the impact of certain settlements between the Trustee and third parties on the parties' rights under the alleged retainer agreements. The Bankruptcy Committee argues the alleged retainer agreements provide that fees are owed to the Future Plaintiffs' counsel only if the Future Plaintiffs' cases are "resolved in the [Future Plaintiffs'] favor through a settlement after the filing of a formal complaint. . . ." Motion, at 2 n.3.[17] The Bankruptcy Committee alleges (i) the Future Plaintiffs' cases will be "settled" within the meaning of this alleged retainer agreement by the CCAA Court on June 17, and (ii) that once the CCAA Court approves these settlements, then the condition of payment (resolution of the Future Plaintiffs' cases "through settlement" prior to the filing of a complaint) will have occurred, and the Future Plaintiffs' counsel will have no payment obligations for fees to their counsel who obtained these results for the Future Plaintiffs.

34. There are several obvious deficiencies in the Bankruptcy Committee's reasoning and logic, even assuming *arguendo* that the Future Plaintiffs are parties to the form of retainer agreement alleged by the Bankruptcy Committee. First, it is uncontroverted that the Future Plaintiffs are not parties to any settlement agreements and have settled nothing. The only

[17] The Bankruptcy Committee avers that at least eight (8) of the Future Plaintiffs signed different retainer agreements, without the quoted language. Yet nowhere does the Bankruptcy Committee identify these eight (8) Future Plaintiffs. Undeterred, the Bankruptcy Committee nevertheless seeks to enjoin or stay even these eight unnamed Future Plaintiffs from commencing suit against alleged wrongdoers.

settlements that exist are settlements between the Trustee and the "Settling Defendants." The Chapter 11 Plan and the CCAA Plan contain nonconsensual injunctions and releases that would prevent the Future Plaintiffs from recovering against the Settling Defendants if the plans are confirmed and the settlements approved. That the Future Plaintiffs may, in their worst case, be bound by injunctions restraining them from pursuing the defendants who have settled with the Trustee hardly constitutes settlement of the Future Plaintiffs' claims, let alone settlement in favor of the Future Plaintiffs, within the meaning of the alleged retainer agreement. The Future Plaintiffs have settled nothing. Regardless whether the Future Plaintiffs vote for or against the Chapter 11 Plan, they will be bound by the nonconsensual injunctions in the confirmed plan that compel them to accept less than they believe they could recover in litigation against the defendants under these circumstances.

35. Second, the Trustee has not settled with all defendants and potential defendants. It is contemplated that the Future Plaintiffs' cases will remain unresolved and they will be required to commence litigation (once the stay pending appeal has expired) to obtain complete recovery. Thus, even if the plans are confirmed and the Trustee's settlements are approved, the Future Plaintiffs' cases will not be resolved by such confirmation and approval, even if on some theory some of their causes of action against some of the defendants are involuntarily "settled" upon confirmation of the Chapter 11 Plan.

36. Third, the CCAA Plan by its terms makes clear that the Trustee's settlements with the "Settling Defendants" are subject to numerous conditions, and will not be effective simply if, as and when the CCAA Court sanctions the CCAA Plan. Section 6.1 of the CCAA Plan specifically conditions implementation of the plan (which includes the Trustee's settlements) upon confirmation of the Chapter 11 Plan (which will not occur until late August, 2015 at the

earliest). The Trustee has represented further that his settlements with the Settling Defendants also are conditioned upon entry of an order pursuant to Chapter 15 of the Bankruptcy Code, in a Chapter 15 case to be commenced at a later date by MMA Canada in the United States.

37. Thus, even assuming *arguendo* the Bankruptcy Committee's allegations regarding the existence and construction of the retainer agreements is correct, and assuming *arguendo* the Trustee's settlements with Settling Defendants to which the Future Plaintiffs are not parties is a "settlement" of the Future Plaintiffs' cases in their favor within the meaning of the alleged retainer agreements, granting the Motion and imposing a new stay pending appeal will not eliminate the Future Plaintiffs' fee obligations under their alleged retainer agreements. Those "settlements" will remain inchoate and subject to the occurrence of additional conditions that will not occur for months after the expiration of the two year anniversary of the Derailment on July 6, 2015. Why and how delaying the commencement of new cases by the Future Plaintiffs until June 30 will have any effect on the rights of the separate parties to the retainer agreements under these circumstances is not explained by the Bankruptcy Committee.

38. Accordingly, the Bankruptcy Committee's cursory and conclusory presentation on the merits is insufficient to carry the Bankruptcy Committee's heavy burden of demonstrating a strong likelihood of success on the merits of either dispute. Accordingly, the Motion should be denied.

2. ***The Balancing of the Harms Favors Denial of the Motion***

39. The Bankruptcy Committee has the burden of demonstrating it will suffer irreparable harm if the injunction or stay is denied. The Bankruptcy Committee, however, has failed and is unable to allege or demonstrate it will suffer any harm whatsoever if the requested injunction or stay is denied. At most, the Bankruptcy Committee contends that the Future

Plaintiffs will be deprived of a "gotcha" to obtain a free ride and avoid paying any legal fees to their counsel if the injunction or stay request is denied. Not a single Future Plaintiff has appeared or has asserted such a bad faith intention of playing the Bankruptcy Committee's "gotcha" game. The Future Plaintiffs' counsel are working hard to recover substantial sums for the Victims, in amounts far greater than any Victim otherwise could receive under Canadian law on account of their claims for wrongful death. There is no reason in law or equity to deprive counsel of its fees, and the Future Plaintiffs are not seeking such an inequitable outcome here. In short, this entire "fee dispute" is contrived and nonexistent; none of the Future Plaintiffs has raised or is a party to the Bankruptcy Committee's obsessive attempts to interfere with the attorney client relationships between the Future Plaintiffs and their counsel.

40. In contrast, the Future Plaintiffs will suffer harm if the injunction or stay is granted. The Bankruptcy Committee disingenuously contends the six (6) days between June 30 and July 6 will be sufficient time for the Future Plaintiffs to file all claims against all defendants. These cases are complex. There is no reason the Future Plaintiffs should be forced to rush the filing of multiple lawsuits, against multiple defendants, with complex fact patterns, in the few days the Bankruptcy Committee argues is sufficient. In fairness, in light of the lengthy stay to which the Future Plaintiffs already agreed, and their good faith adherence to the agreed upon terms of the stay, they should not be delayed further from filing suit nonconsensually at the last moment by the Bankruptcy Committee's opportunistic efforts to deprive their counsel of their fees.

41. Moreover, at a more fundamental level, the Future Plaintiffs have waited almost two years to obtain justice. Their efforts to recover from non-bankrupt third parties for their horrific losses have been obstructed and interfered with at virtually every moment simply

because MMA filed bankruptcy and other parties in the Chapter 11 Case, such as the Bankruptcy Committee, have perceived some advantage in preventing the Future Plaintiffs from pursuing those responsible for the Derailment. Enough is enough. It turns the justice system on its head to allow the Bankruptcy Committee, for its own insidious purposes, to delay the Future Plaintiffs' recovery from non-bankrupt parties simply because it wants to deprive Future Plaintiffs' counsel of its lawful, reasonable and earned fees. Even if the Bankruptcy Committee can interfere with the Future Plaintiffs' recovery efforts and their attorney-client relationships with their counsel, there is no good reason why it should. The absence of any harm to the Bankruptcy Committee if the injunction or stay is denied, balanced against the continuing harm from delay to the Future Plaintiffs if the injunction or stay is granted, further supports denial of the Motion.

3. ***The Public Interest Supports Denial of the Motion***

42. The Bankruptcy Committee has the burden of demonstrating that there is "a fit (or lack of friction) between the injunction and the public interest." Outside TV, Inc. v. Murin, supra, 977 F.Supp.2d at 13 (citations and internal quotations omitted). Here the public interest clearly supports denial of the Motion. The only interest alleged by the Committee served by issuance of the injunction or stay is to deprive the Future Plaintiffs' counsel of the fees they would earn. There is no suggestion, let alone evidence, that counsel has not worked hard for and will not have earned its fees under applicable law, or that the fees are unreasonable. The Bankruptcy Committee cites no public interest in issuing a stay or injunction for it to use as a weapon to deprive counsel for the Future Plaintiffs of their agreed upon fees, and which the Future Plaintiffs have not questioned.

D. The Motion Should be Denied Because the Bankruptcy Committee is Breaching its Fiduciary Duties

43. As noted, the Bankruptcy Committee has a fiduciary duty to all members of the class of creditors it represents. In re SPM Mfg. Co., supra, 984 F.2d at 1315. Yet in filing the Motion, the Bankruptcy Committee seeks to benefit one group of Victims – some of the Future Plaintiffs – to the detriment of the Existing Plaintiffs. The Bankruptcy Committee seeks to relieve some of the Future Plaintiffs from paying their attorneys fees, but all other Victims will have to bear attorneys fees under the Bankruptcy Committee's course of action. Why bestowing such an unjust enrichment on a preferred but unidentified subset of Future Plaintiffs is within the Bankruptcy Committee's fiduciary duties and proper role is a mystery nowhere explained by the Bankruptcy Committee.

44. Moreover, the Bankruptcy Committee is interfering improperly with the attorney-client and contractual relationships between and among the Existing Plaintiffs, the Future Plaintiffs and their counsel. The Bankruptcy Committee's interference is *ultra vires* and not within the Scope of Duties authorized by the Amended Scope Order. The Existing Plaintiffs and the Future Plaintiffs reserve all of their rights and claims, including claims for breach of fiduciary duty and tortious interference with contractual relations, against the Bankruptcy Committee, its members and its counsel. The Existing Plaintiffs and the Future Plaintiffs reserve their right to seek to conduct examinations pursuant to Fed.R.Bankr.P. 2004 to investigate further this wrongful conduct by the Bankruptcy Committee.

WHEREFORE, the Existing Plaintiffs pray that the Court deny the Motion, and further grant them such other and further relief to which they may be entitled.

Dated: June 1, 2015

Respectfully submitted,

ANNICK ROY (O/B/O JEAN-GUY VEILLEUX) AND MARIE-JOSEE GRIMARD (O/B/O HENRIETTE LATULIPPE)

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CERTIFICATE OF SERVICE

I, George W. Kurr, Jr., Esquire, of the firm Gross, Minsky & Mogul, P.A., hereby certify that on June 1, 2015, I electronically filed **OBJECTION AND INCORPORATED MEMORANDUM OF ALW OF PLAINTIFFS ANNICK ROY (o/b/o JEAN-GUY VEILLEUX), MARIE-JOSEE GRIMARD (o/b/o HENRIETTE LATULIPPE) TO MOTION OF OFFICIAL COMMITTEE OF VICTIMS FOR ORDER, PURSUANT TO COURT'S MARCH 23, 2015 STAY ORDER, TO REIMPOSE STAY AND SCHEDULING HEARING** with the Court via the CM/ECF electronic filing system which will send notification of such filing to the attorneys/parties of record who have registered as CM/ECF participants.

/s/ George W., Kurr, Jr., Esq.
George W. Kurr, Jr., Esq.

EXHIBIT
A
Blumberg No. 5206

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

ORDER AUTHORIZING THE APPOINTMENT OF A VICTIMS' COMMITTEE

Pending before the court is the motion of certain victims of the July 6, 2013 train derailment in Lac-Megantic, Quebec seeking the appointment of victim's committee. Initially, two of three groupings of victims sought such recognition. The requests for a victims' committee were opposed initially by the trustee and the United States Trustee. Their objections were withdrawn when this court announced that, if authorized, the victims' committee would not be empowered to employ any professionals other than counsel or be empowered to perform any duties beyond those enumerated in § 1103(c)(1) and (3) without specific leave of court.[1] Prior to the hearing on this motion, two of the three victims' groups merged and formed their own "informal" or "unofficial" committee of 42 of the 47 wrongful death victims (the "Group of 42"). The Group of 42 has withdrawn its request for official committee designation, and for reasons discussed below, it opposes the appointment of an official committee. The proponents of the current motion include the Province of Quebec, the municipality of Lac-Megantic and the representatives of certain class action plaintiffs in civil actions pending elsewhere.[2]

In an ordinary commercial chapter 11 case the appointment of a committee of creditors by the United States Trustee is commonplace. See 11 U.S.C. §1102(a)(1). However, in a

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[1] Unless otherwise indicated, all statutory references are to title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended ("the Bankruptcy Code").

[2] The record indicates that there is doubt with respect to the certification of this class.

railroad reorganization, like the present case, § 1102(a)(1) does not apply. See 11 U.S.C. § 1165. This departure from common practice in this case has been accepted by the parties and is not in dispute. The present motion is grounded on § 1102(a)(2), which allows the court to order the appointment by the United States Trustee of "additional committees of creditors or of equity security holders . . . to assure adequate representation . . . . " See 11 U.S.C. § 1102(a)(2).

The authorization of an additional committee is an extraordinary remedy that courts are reluctant to grant. See In re Residential Capital, LLC, 480 B.R. 550, 557 (Bankr. S.D.N.Y. 2012); In re Garden Ridge Corp., 2994 WL 523129 at *3 (Bankr. D. Del. 2005). When faced with the issue, courts generally ask two questions: Is the appointment of an additional committee necessary to assure adequate representation of the proponents; and, if so, do the circumstances warrant the exercise of the court's discretion? Residential Capital, 480 B.R. at 557. The burden on each of these questions falls on the proponents.

No hard evidence was offered by the proponents on either question. Perhaps this is because it is apparent to all that the victims of the Lac-Megantic derailment are creditors and parties-in-interest, who have suffered great physical, psychological and economic harm. It is equally clear that the victims are not of a single type. Some, like the surrogates in the Group of 42, have wrongful death claims; others may be survivors with personal injury tort claims, or people who have lost their homes, livelihoods and property. Others may be non-governmental agencies or entities and agencies of the Canadian federal government, the Province of Quebec, and the municipality that have contributed aid and shelter to the victims or devoted assets to the clean-up and restoration efforts. All of these victims deserve a right to be heard in these proceedings as parties-in-interest. Yet, not all are capable of meaningful participation in this case for several reasons: Most are residents of Quebec; most speak French as their primary

language; many are unsophisticated in affairs of this type; and many may lack the resources to hire independent counsel. Surely some, like the agencies of government, and the Group of 42 have the wherewithal to appear and fully represent their peculiar interests; others do not.

The special concern of the Group of 42 is that the attorneys representing the group as a whole and each individual member are, and should remain, the sole spokesmen for their clients; and, if authorized, a victims' committee might come between the members of the group and their chosen representatives. This worry is legitimate; however, the contractual arrangements affecting the Group of 42 do not impact others beyond that group who may be deemed eligible for membership on a victims' committee. Moreover, if invited by the United States Trustee, the Group of 42, as such, or any member thereof, may chose to serve on the victims' committee along with non-group victims.

I conclude that the proponents of a victims' committee have met their burden on the need of representation in the formulation of a plan which will determine the extent to which victims may share in any distribution. An official committee will give them a voice at the table. I also conclude that there are several reasons for me to exercise my discretion in this instance. A victims' committee will (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.

For the above reasons, and for good cause shown; it is hereby

ORDERED

That the United States Trustee is authorized to appoint a victims' committee to assure adequate representation of victims of the Lac-Megantic derailment in this case. In so doing the United States Trustee shall exercise his discretion and appoint a committee of sufficient size and diversity so that the purpose of this authorization is fulfilled; and it is further

ORDERED

That the victims' committee shall not be empowered to employ any professionals other than counsel or be empowered to perform any duties beyond those enumerated in § 1103(c)(1) and (3) without specific leave of court.

DATED: October 18, 2013

Louis H. Kornreich, Chief Judge
U. S. Bankruptcy Court

EXHIBIT B
Blumberg No. 5208

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re: **MONTREAL MAINE & ATLANTIC RAILWAY, LTD.,** **Debtor.**	**Chapter 11** **Case No. 13-10670 (LHK)**

ORDER GRANTING 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

Upon consideration of the motion (the "Motion")[1] of the Official Committee of Victims (the "Committee") appointed in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), for entry of an order modifying the *Order Authorizing the Appointment of a Victims' Committee* [Docket No. 391] (the "Appointment Order") to authorize the Committee to take any and all actions in the Wrongful Death Proceedings currently pending before the United States District Court for the District of Maine (the "Maine District Court"); and upon consideration of the *Wrongful Death Claimants' 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. 1100] (the "Representatives' Objection"), the *Trustee's Limited Response 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. 1101] (the "Trustee Objection") and the reply of the

[1] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

Committee in support of the Motion [Docket No. 1102] (the "Reply"); and a hearing on the Motion, the Representatives' Objection, the Trustee Objection and the Reply having been held before the Court on September 12, 2014 (the "Hearing"); and it appearing that the Trustee withdrew the Trustee Objection at the Hearing in consideration of reaching an agreement with the Committee as to the terms of this Order; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein; and due notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor; it is hereby **ORDERED** that:

1. The Motion is GRANTED to the extent provided herein.

2. The Representatives' Objection is OVERRULED for the reasons set forth on the record at the Hearing and because, as set forth in the *Order on Motions to Transfer Cases and Motion to Strik*e [Torresen Docket No. 100] (the "Transfer Order"), the Maine District Court found that the Wrongful Death Proceedings are "related to" the Debtor's bankruptcy case. *See* Transfer Order, at 26. The Transfer Order is currently the subject of an appeal before the United States Court of Appeals for the First Circuit.

3. The Appointment Order is hereby modified, *nunc pro tunc* to January 1, 2014, to authorize the Committee to request permission from the Maine District Court to: (i) seek a transfer of the Wrongful Death Proceedings; (ii) be heard on any issues related to the Consent Order or a stay of the Wrongful Death Proceedings; and (iii) be heard on any issues related to a global settlement of the claims asserted in the Wrongful Death Proceedings (collectively, the "Permitted Actions"), subject to the Maine District Court's orders with respect to the propriety or merits of the Permitted Actions; provided, however, that the Committee shall not participate in any individual Wrongful Death Proceeding except with respect to the Permitted Actions.

4. Notwithstanding any other provision of this Order, nothing in this Order shall be construed as a finding that: (a) the Committee has any right to participate in the Wrongful Death Proceedings; (b) the Committee has standing to participate in the Wrongful Death Proceedings; or (c) the Maine District Court is compelled to permit the Committee to participate in the Wrongful Death Proceedings.

5. The Trustee (but not the Representatives who reserve all rights) hereby waives his right to assert the argument that the Committee lacks standing before the Maine District Court with respect to the Permitted Actions; provided, however, that (a) the Trustee may oppose the Permitted Actions on the merits, and nothing herein shall waive, diminish or otherwise affect the Trustee's right or capacity to challenge the Committee's standing to appear or participate with respect to any case, adversary proceeding or matter other than the Permitted Actions, and (b) any party to the Wrongful Death Cases may challenge the Committee's ability to intervene or otherwise participate in those cases before the Committee is permitted to seek to take any Permitted Action.

6. Nothing in this Order shall be construed as Court approval of any fees or expenses incurred by the Committee in connection with the Permitted Actions, and all such fees and expenses of the Committee are expressly subject to Court approval upon the Committee's filing of an application(s) for compensation and reimbursement of expenses.

7. The entry of this Order shall be without prejudice to the rights of the Committee, the Trustee or any party in interest to seek further modification of this Order or the Appointment Order upon five (5) days' written notice.

8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: September 19, 2014

Louis H Kornreich

HONORABLE LOUIS H. KORNREICH
CHIEF UNITED STATES BANKRUPTCY JUDGE