

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**JOINDER OF DERAILEMENT TOUPS CLAIMANTS TO TRUSTEE'S
MOTION FOR ORDER DISBANDING THE OFFICIAL COMMITTEE OF VICTIMS**

The "Toups Claimants" (as such term is defined in the Statement of Mitchell A. Toups Pursuant to Fed.R.Bankr.P. 2019 [Dkt. No. _]) hereby joins in the Trustee's Motion for Order Disbanding the Official Committee of Victims ("Disbandment Motion"), and respectfully submits the following:

1. The Toups Claimants¹ also request that the Court disband the Committee and join the Trustee in requesting this relief and the alternative relief sought by the Trustee to rescind the Retention Order. As the Trustee avers, there can be no serious dispute that the Committee serves no legitimate purpose in this case and its "activities of late have served only to prolong and, indeed, to jeopardize the significant settlement negotiations that are paving the way for a distribution to the victims of the Derailment." Disbandment Motion, at ¶22.

2. The Committee has sought from the beginning to advance the interests of entities other than the Toups Claimants, notwithstanding that the Toups Claimants and Wrongful Death Claimants are part of the largest creditors receiving distributions in this case.² Indeed, rather

¹ Capitalized terms shall have the meanings ascribed to them in the Disbandment Motion unless otherwise indicated.

² If the Trustee's chapter 11 plan ultimately is confirmed, other classes of creditors will receive distributions exclusively in the CCAA Case.

than limiting its activities to its Scope of Powers, and rather than limiting its activities to advancing the interests of victims as a class,³ the Committee recently has sought to interfere with the efforts by the Toups Claimants and the Webster/Flowers claimants to recover from non-debtor third parties for the harm they have suffered due to the Derailment. Undeterred by both the absence of supporting evidence and the absence of support of even one of the Toups Claimants, the Committee unsuccessfully sought in the District Court to delay all of the Wrongful Death Claimants (including the Toups Claimants) from filing suit against non-debtor third parties who may be responsible to the Toups Claimants for monetary damages, on the pretext that some of the attorneys are seeking improper and excessive contingency fees from them.⁴ That the Committee would inject itself into these matters, as to which it lacks standing and as to which creditors as a class are disinterested, and which at most serve only to benefit one group of creditors at the expense of the Toups Claimants and Wrongful Death Claimants,⁵ and the Webster/Flowers claimants is a violation by the Committee of its fiduciary duties to the Toups Claimants and the Scope of Powers.

3. Moreover, the claims of Toups Wrongful Death Claimants are entitled to administrative expense priority, as they are claims for personal injury to, death or other damages arising out of the operation of the debtor or the estate, regardless that such claim arose before the commencement of the case. 11 U.S.C. §1171(a). Allowing the Committee and its counsel to

³ Even without the limitations to the Scope of Services imposed by this Court, at most, the 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 Committee “is charged with pursuing whatever lawful course best serves the interests of the class of creditors represented.” Id. (citations omitted). The Wrongful Death Claimants are represented by their counsel of record, and not by the Committee or its counsel.

⁴ Docket Number 171 in MED Case No. 1:14-cv-113-NT.

⁵ Although the Committee’s motivations for its improper conduct are unclear, the only victims of the Derailment who appear to benefit if the recovery by Toups Claimants is reduced are those victims, such as, for example, members of the Committee, who may have claims in this case that are subordinate to the more senior administrative expense priority claims of the Toups Claimants and the Wrongful Death Claimants under 11 U.S.C. §1171(a).

continue to accrue potential attorney's fees and costs, for which the Committee or its counsel may seek allowance and payment as an administrative expense. If the Trustee's chapter 11 plan is not confirmed, then the Committee's administrative expenses (if allowed at all) would compete for payment from a limited pool of assets with distributions to Toups Claimants and Wrongful Death Claimants, who are the true victims of the Derailment. Allowing the Committee to continue, therefore, risks diluting recovery by the Toups Claimants and the Wrongful Death Claimants to pay for the Committee's acts, notwithstanding that those acts are directly contrary to the Toups Claimants and Wrongful Death Claimants' interests and are in violation of the Committee's fiduciary duties.

WHEREFORE, the Toups Claimants pray that the Court allow the Disbandment Motion, disband the Committee, alternatively rescind the Retention Order, and further grant the Toups Claimants such other and further relief to which they may be entitled.

Respectfully submitted,

WELLER, GREEN, TOUPS & TERRELL, L.L.P.

Post Office Box 350

Beaumont, Texas 77704

(409) 838-0101

Fax: (409) 832-8577

Email: matoups@wgttlaw.com

BY: /s/ Mitchell A. Toups

MITCHELL A. TOUPS

STATE BAR NO. 20151600

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been furnished to all counsel of record listed below by e-file on July 13, 2015.

/s/ Mitchell A. Toups

Mitchell A. Toups