

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

In re

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

Debtor.

CHAPTER 11
CASE NO. 13-10670-LHK

**MOTION TO TRANSFER CERTAIN PERSONAL INJURY TORT
AND WRONGFUL DEATH LAWSUITS TO THE MAINE DISTRICT COURT
PURSUANT TO 28 U.S.C. §§ 157(b)(5) AND 1334**

Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334, Western Petroleum Corporation (“WPC”) and Petroleum Transport Services, Inc. (“PTS,” and together with WPC, the “WFS Entities”) file this motion (the “Transfer Motion”) for entry of an order transferring to the United States District Court for the District of Maine (the “Maine District Court”) the nineteen (19) remaining personal injury tort and wrongful death lawsuits identified on Exhibit “A” to the accompanying memorandum of law (the “U.S. Wrongful Death Actions”).¹ While the Transfer Motion is being filed initially in the United States Bankruptcy Court for the District of Maine (the “Bankruptcy Court”) because there is no pending case in the Maine District Court, 28 U.S.C. § 157(b)(5) provides that the Maine District Court is vested with the exclusive authority to hear the Transfer Motion, which relates to personal injury and wrongful death claims. In support of the Transfer Motion, the WFS Entities state:

¹ World Fuel Services Corp (“WFSC”) was also named in the U.S. Wrongful Death Actions but has not been properly served. The plaintiffs originally filed twenty (20) U.S. Wrongful Death Actions. The Plaintiffs dismissed this first filed complaint on Sunday, September 9, 2013, seemingly as part of an effort to situate these cases in the Circuit Court of Cook County, Illinois, a jurisdiction with no material connection to this litigation.

1. The U.S. Wrongful Death Actions assert claims for damages for personal injuries and wrongful death arising out of the tragic derailment of Train 282 operated by Montreal, Maine & Atlantic Railway, Ltd. (“MMA,” or the “Debtor”) in Lac-Mégantic, Quebec, Canada on July 6, 2013 (the “Derailement”). Each of the decedents and each of the Plaintiffs in the U.S. Wrongful Death Actions (the “Plaintiffs”) is a Canadian citizen or resident.

2. The Plaintiffs filed the U.S. Wrongful Death Actions in the Circuit Court for Cook County, Illinois (the “Illinois State Court”). On August 7, 2013 (the “Petition Date”), MMA commenced a chapter 11 case (the “Chapter 11 Case”) in the Bankruptcy Court.² On August 21, 2013, the United States Trustee appointed Robert J. Keach, Esq. to serve as the chapter 11 trustee (the “Trustee”) of MMA.

3. The WFS Entities removed the U.S. Wrongful Death Actions to the United States District Court for the Northern District of Illinois pursuant to, among other things, Bankruptcy Rule 9027, because the U.S. Wrongful Death Actions are related to the Chapter 11 Case. The grounds for removal also included diversity jurisdiction, because the sole reason there is not complete diversity is the Plaintiffs’ fraudulent joinder of certain defendants.

4. The WFS Entities, WFSC, MMA, and others were originally named defendants in thirteen (13) of the U.S. Wrongful Death Actions, which were filed prior to the Petition Date. MMA was not named in the seven (7) U.S. Wrongful Death Actions that were filed after the Petition Date. The automatic stay imposed by section 362(a) of the Bankruptcy Code prohibited

² On August 7, 2013, Montreal Maine & Atlantic Canada Co. (“MMA Canada”), a wholly-owned subsidiary of MMA, also commenced a proceeding in the Superior Court (Commercial Division) of the Superior Court of the Province of Quebec, District of Montreal (the “Quebec Court”), pursuant to the Canadian Companies’ Creditors Arrangement Act (the “CCAA”) (In the Matter of the Plan of Compromise or Arrangement Relating of: Montreal, Maine & Atlantic Canada Co. (Debtor / Respondent), Case No. 500-11-045094-139 (Superior Court, Quebec, Dist. of Montreal)) (the “CCAA Case”).

the commencement of lawsuits against MMA once it was under bankruptcy protection.³ After the U.S. Wrongful Death Actions were removed to the Illinois District Court, the Plaintiffs dismissed their claims against MMA. This is irrelevant, however, because most or all of the named defendants hold claims against MMA for indemnification and contribution for any liability that they may have as the result of the Derailment, and will be subrogated to the rights of the Plaintiffs if the named defendants are found to be jointly liable with MMA.

5. Prior to dismissing MMA from the U.S. Wrongful Death Actions, the Plaintiffs had asserted that claims arising from the Derailment, including the claims alleged in the U.S. Wrongful Death Actions and both direct and derivative claims against MMA by the defendants named in the U.S. Wrongful Death Actions, represent the vast majority of claims against MMA's chapter 11 estate.

6. Section 157(b)(5) of title 28 of the United State Code provides that the U.S. Wrongful Death Actions "shall" be transferred to this District or the district in which the claim arose. The claims arguably arose in Quebec and there is no United States district court in Quebec. The Maine District Court is, therefore, the only available forum in the United States under subsection 157(b)(5). The Bankruptcy Court and the Quebec Court have adopted cross border protocols to coordinate the Chapter 11 Case with the CCAA Case. At this early stage in the litigation of personal injury and wrongful death claims, the Maine District Court can centralize the U.S. Wrongful Death Actions here without deciding whether they should ultimately be tried in the district where the Chapter 11 Case is pending (here) or in the Quebec Court.

³ In addition to the U.S. Wrongful Death Actions, there is a putative class action arising from the Derailment pending in the Quebec Court.

7. The WFS Entities have filed this Transfer Motion in this Court in accordance with 28 U.S.C. §§ 157(b)(5). The Trustee has informed the WFS Entities that he also intends to seek transfer of the U.S. Wrongful Death Actions to this Court under subsection 157(b)(5).

WHEREFORE, the WFS Entities request that the Court enter an Order: (a) granting the Transfer Motion; (b) transferring all of the U.S. Wrongful Death Actions to the Maine District Court; and (c) granting such other further relief as may be appropriate.

Respectfully submitted,

**WESTERN PETROLEUM CORPORATION
and PETROLEUM TRANSPORT SERVICES,
INC.**

By their attorney:

Dated: September 11, 2013

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**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

In re

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

Debtor.

CHAPTER 11
CASE NO. 13-10670-LHK

**MEMORANDUM OF LAW IN SUPPORT OF MOTION BY WESTERN PETROLEUM
CORPORATION AND PETROLEUM TRANSPORT SERVICES, INC. TO TRANSFER
CERTAIN PERSONAL INJURY AND WRONGFUL DEATH LAWSUITS TO THE
MAINE DISTRICT COURT PURSUANT TO 28 U.S.C. §§ 157(b)(5) AND 1334**

Western Petroleum Corporation (“WPC”) and Petroleum Transport Services, Inc. (“PTS,” and together with WPC, the “WFS Entities”)¹ file the *Motion to Transfer Certain Personal Injury Tort and Wrongful Death Lawsuits to the Maine District Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334* (the “Transfer Motion”) and this memorandum of law in support of the Transfer Motion, seeking entry of an order from the United States District Court for the District of Maine (the “Maine District Court”)² transferring to the Maine District Court the personal injury tort and wrongful death lawsuits identified on Exhibit “A” hereto (the “U.S. Wrongful Death Actions”). The WFS Entities seek the transfer of the U.S. Wrongful Death Actions to the Maine District Court because 28 U.S.C. § 157(b)(5) vests exclusive

¹ World Fuel Services Corp. (“WFSC”) was also named in the U.S. Wrongful Death Actions but has not been properly served.

² While the Transfer Motion is being filed initially in the United States Bankruptcy Court for the District of Maine (the “Bankruptcy Court”) because there is no pending case in the Maine District Court, 28 U.S.C. § 157(b)(5) provides that the Maine District Court is vested with the exclusive authority to hear the Transfer Motion, which relates to personal injury and wrongful death claims.

authority in the Maine District Court to determine where the U.S. Wrongful Death Actions should be tried.

BACKGROUND

A. Insolvency Proceedings in Maine and Canada

1. On August 7, 2013 (the "Petition Date"), Montreal, Maine & Atlantic Railway, Ltd. ("MMA," or the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), commencing Case No. 13-10670 (the "Chapter 11 Case") in the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court"). The Bankruptcy Court subsequently authorized MMA to continue to operate its business pending the appointment of a chapter 11 trustee.

2. On August 21, 2013, the United States Trustee appointed Robert Keach, Esq. (the "Trustee") to serve as the chapter 11 trustee for MMA. The Trustee is authorized to operate MMA's business.

3. On August 7, 2013, Montreal Maine & Atlantic Canada Co. ("MMA Canada"), a wholly-owned subsidiary of MMA, also commenced a proceeding in the Superior Court (Commercial Division) of the Superior Court of the Province of Quebec, District of Montreal (the "Quebec Court"), pursuant to the Canadian Companies' Creditors Arrangement Act (the "CCAA") (In the Matter of the Plan of Compromise or Arrangement Relating of: Montreal, Maine & Atlantic Canada Co. (Debtor / Respondent), Case No. 500-11-045094-139 (Superior Court, Quebec, Dist. of Montreal)) (the "CCAA Case"). Richter Advisory Group, Inc. was named as "Monitor" in the CCAA Case.

4. On August 8, 2013, the Quebec Court entered an Initial Order commencing a Canadian proceeding involving MMA Canada and staying all litigation against MMA and MMA Canada.³

B. The Derailment and Resulting Fire

5. Both the Chapter 11 Case and the CCAA Case were filed as the direct result of litigation arising from the derailment of Train 282 (the “Train”) early on the morning on July 6, 2013, in Lac- Mégantic, Quebec (the “Derailment”). The plaintiffs in the U.S. Wrongful Death Action (the “Plaintiffs”) make the following allegations:⁴

(a) Tragically, the Derailment resulted in a fire that killed 47 people. Cmplt. at ¶¶ 44-51. At the time of the Train’s derailment it was being hauled by MMA and/or MMA Canada.

(b) The Train was initially carried by Canadian Pacific Railway (“CP”) from New Town, North Dakota, to Cote Saint-Luc, Quebec, where it was transferred to MMA to complete the journey. *Id.* ¶¶ 27, 29.

(c) At about 11:25 p.m. on July 5, the Train stopped for the evening in Nantes, Quebec, and was parked on the main line. *Id.* ¶ 32.

(d) The engineer set the brakes and shut down all the Train’s locomotives except the lead engine before retiring for the evening. *Id.* ¶ 33.

³ The WFS Entities reserve their right to argue that the Initial Order, which includes a stay that is broader than the “automatic stay” of litigation that arose in the Chapter 11 Case pursuant to Bankruptcy Code § 362(a), bars the filing of the complaints in the seven (7) U.S. Wrongful Death Actions filed after the Petition Date.

⁴ The description of events set forth in this section is based on the first complaint filed in the Illinois State Court, which commenced the case entitled *Custeau et al. v. Montreal, Maine & Atlantic Railway, Ltd., et al.*, No. 2013-L-008506 (Cook County, Ill. July 26, 2013) (“Cmplt.”). After that suit was removed to federal court, the Plaintiffs dismissed this first filed complaint, without prejudice to reinstating it, on Sunday, September 8, 2013, seemingly as part of an effort to situate these cases in the Circuit Court of Cook County, Illinois, a jurisdiction with no material connection to this litigation. The other complaints filed in the Illinois State Court, and since removed to the federal court in Chicago, contain similar allegations. Although these allegations are the basis for the litigation that the WFS Entities seek to transfer, the WFS Entities do not concede their truth, and reserve all defenses.

- (e) The lead engine was left running to power the Train's air-brake system. *Id.* ¶ 41.
- (f) Shortly before midnight on July 5, a fire was noticed in one of the locomotives and the Nantes Fire Department was called to the scene. *Id.* ¶ 37.
- (g) The lead engine was powered down per MMA protocols so that the fire department could extinguish the fire. *Id.* ¶ 38.
- (h) The fire was extinguished by 12:15 a.m., and the firefighters left the scene in the custody of an MMA track maintenance employee who assured the fire department that further assistance was not required. *Id.* ¶ 39.
- (i) The MMA employee then left the scene without restarting the lead engine. *Id.* ¶¶ 40-41.
- (j) In the absence of power supplied by a running locomotive, the Train's air-brake system lost power, and the unattended Train began rolling downhill in the direction of Lac-Mégantic. *Id.* ¶¶ 41, 44.
- (k) At or about 1:15 a.m., the unattended MMA runaway train entered downtown Lac-Mégantic at a "high rate of speed" and over twenty of the tank cars carrying crude oil derailed. *Id.* ¶¶ 47-49.
- (l) Some of the tank cars ruptured in the Derailment and released their contents, which then ignited. *Id.* ¶¶ 50-52.

C. Litigation Arising from the Derailment

6. Litigation asserting claims arising from the Derailment has been filed in both Quebec, Canada, and Cook County, Illinois.

7. On July 15, 2013, a putative class action lawsuit (the “Canadian Class Action”) was instituted against MMA Canada and others in the Quebec Court, on behalf of victims of the Derailment.

8. Despite the pending Canadian Class Action, representatives of some of the individuals who died as the result of the Derailment filed the U.S. Wrongful Death Actions in the Circuit Court for Cook County, Illinois (the “Illinois State Court”). The U.S. Wrongful Death Actions allege that each of the decedents was a Canadian citizen who lived in Lac-Mègantic. The decedents’ representatives are also Canadian residents.

9. Although neither the accident, the injuries, nor any specific alleged wrongful conduct occurred in Illinois, the Plaintiffs chose to file the U.S. Wrongful Death Actions in the Illinois State Court, naming multiple defendants. Thirteen (13) of the U.S. Wrongful Death Actions were filed prior to the Petition Date against MMA⁵ and other parties, including WFSC⁶ and the WFS Entities. After MMA and MMA Canada filed their insolvency cases, seven (7) post-petition U.S. Wrongful Death Actions were filed, which did not name MMA. Section 362(a) of the Bankruptcy Code and the Initial Order issued in the CCAA barred the Plaintiffs from naming MMA in the post-petition U.S. Wrongful Death Actions.

10. The U.S. Wrongful Death Actions allege that the Derailment occurred in Lac-Mègantic, Canada. The only basis for the Illinois State Court’s alleged jurisdiction over the U.S.

⁵ In an attempt to deprive the Maine District Court of jurisdiction over the U.S. Wrongful Death Actions, which the plaintiffs have argued are part of the largest constituency of claims against MMA, the Plaintiffs dismissed MMA without prejudice from the U.S. Wrongful Death Actions on September 9, 2013, in response to the removal of the U.S. Wrongful Death Actions to the Illinois District Court. On Sunday, September 8, 2013, the Plaintiffs also dismissed, without prejudice to reinstating, this first filed complaint. (*Custeau v. Montreal, Maine & Atlantic Railway, Ltd., et al.*, 1:13-cv-06182 (N.D. Ill., Sept. 8, 2013), seemingly as part of an effort to situate these cases in the Circuit Court of Cook County, Illinois, a jurisdiction with no material connection to this litigation. There are now only nineteen (19) pending U.S. Wrongful Death Actions.

⁶ WFSC is a holding company which does no business in Illinois and did not own the crude oil in the tanker cars in Train 282. WFSC is not a moving party, because it has not been properly served in any of the U.S. Wrongful Death Actions.

Wrongful Death Actions appears to be the allegation that certain of the defendants are residents of Illinois.

D. Removal of U.S. Wrongful Death Actions to the Illinois District Court

11. The WFS Entities timely removed the U.S. Wrongful Death Actions to the United States District Court for the Northern District of Illinois (the "Illinois District Court"). The thirteen (13) U.S. Wrongful Death Actions that were originally filed prior to the Petition Date were removed on August 29, 2013. The seven (7) U.S. Wrongful Death Actions that were originally filed after the Petition Date were removed on September 3, 2013.

12. The WFS Entities properly removed the U.S. Wrongful Death Actions to the Illinois District Court pursuant to, *inter alia*, Fed. R. Bankr. P. 9027, which provides for removal of pending state court lawsuits to the district court in the jurisdiction where the state court litigation was pending. Similarly, removal based on diversity must be made to the Illinois District Court, because the Illinois District Court is the "district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). Following removal, the determination of the proper venue for the U.S. Wrongful Death Actions is to be made by the Maine District Court pursuant to 28 U.S.C. 157(b)(5).

E. The Defendants' Claims Against MMA

13. Many or all of the defendants in the U.S. Wrongful Death Actions have claims against MMA, including (i) direct claims arising from the Derailment and (ii) indirect claims by virtue of subrogation should the defendants be required to pay anything to the Plaintiffs. The WFS Entities were not operating the Train at the time of the Derailment; the WFS Entities deny

all liability to the Plaintiffs. If, however, the WFS Entities were found liable, then they would have the right to recover from MMA, to the extent they did not recover from another party.⁷

14. On September 9, 2013, after the U.S. Wrongful Death Actions were removed to the Illinois District Court, the Plaintiffs dismissed MMA without prejudice from the U.S. Wrongful Death Actions, in an apparent effort to impact the Maine District Court's jurisdiction over the U.S. Wrongful Death Actions. The Plaintiffs then moved in the Illinois District Court to remand the U.S. Wrongful Death Actions to the Illinois State Court. Because many or all of the defendants in the U.S. Wrongful Death Actions have claims against MMA arising out of the very same facts as the Plaintiffs' claims, the Plaintiffs' tactical dismissal of their direct claims against MMA without prejudice to renaming MMA does not change the fact that the U.S. Wrongful Death Actions are "related to" the Chapter 11 Case. *See* cases cited in Section A, below.

F. Importance of MMA Chapter 11 to Maine and Centrality of U.S. Wrongful Death Actions to Chapter 11 Case

15. The Maine Department of Transportation has filed a brief in the Chapter 11 Case arguing that the rail system operated by MMA is of "vital importance to the Maine economy." (Dkt. No. 60 ¶ 14.) Accordingly, the speedy and efficient reorganization of MMA and the resolution of the personal injury and wrongful death claims against MMA is in the public interest, as well as the interest of MMA's direct stakeholders, parties in interest, and parties to the U.S. Wrongful Death Actions.

16. Dealing with the U.S. Wrongful Death Actions is critical to the Chapter 11 Case. On August 22, 2013, before their tactical dismissal of MMA without prejudice from the U.S. Wrongful Death Actions and their remand motions, counsel representing most of the Plaintiffs

⁷ The WFS Entities reserve all rights to assert (a) contribution, indemnification, and subrogation claims against any other party, including, without limitation, Canadian Pacific, and (b) additional damage claims against all parties, including MMA and Canadian Pacific, for all losses suffered as the result of the Derailment.

in the U.S. Wrongful Death Actions filed their *Wrongful Death Claimants' Motion for Formation of Creditors' Committee* [Docket No. 76] in the Bankruptcy Court (the "Plaintiffs' Committee Motion"). In the Plaintiffs' Committee Motion, the Plaintiffs argue as follows:

Wrongful death and personal injury claimants will be by far the largest creditor constituency in this case. The Debtor has acknowledged \$33.5 million of secured debt together with unsecured trade payables of \$3.5 million. Given the horrific circumstances of the Disaster and the Debtor's role in it, wrongful death verdicts in the hundreds of millions of dollars can be expected.

Dkt. 76, Plaintiffs' Committee Motion ¶ 2 (emphasis in original).

17. Plaintiffs also argue that resolution of all wrongful death claims arising from the Derailment, including the U.S. Wrongful Death Actions, is central to MMA's ability to confirm a chapter 11 plan:

Confirmation of a Chapter 11 plan will require support from wrongful death and personal injury claimants. Section 1171(a) of the Bankruptcy Code provides that wrongful death and personal injury claims, including those arising prepetition, are entitled to payment as administrative claims. . . . If, as seems inevitable because of the amount they are owed, bodily injury claimants remain unpaid at the time a plan is considered for confirmation, the plan may not be confirmed without paying them the full amount they are owed, in cash, on the effective date of the plan *except to the extent that they otherwise agree*. 11 U.S.C. § 1129(a)(9)(A). There are many reasons why wrongful death and personal injury claimants might otherwise agree. . . . [F]ormation of an official committee will benefit the bankruptcy estate by providing a negotiating partner in connection with the Chapter 11 plan and other aspects of this case — thus enhancing the likelihood of a successful outcome.

Id. ¶ 5.

18. The Plaintiffs further describe the inherent inefficiencies of multiple lawsuits in multiple jurisdictions as a reason to centralize the resolution of all claims by and against all parties arising from the Derailment:

The prospect of being sued in the tort system, probably in many different lawsuits in multiple jurisdictions, cannot be comforting to the Debtor's affiliates and other parties that might share the Debtor's liability for claims arising from the Disaster. These constituencies will benefit by utilizing the orderly and efficient process, and the certainty of closure, that a consensual Chapter 11 plan can provide in the mass tort context, as a far superior alternative to the risk of being subject to uncertainty, duplication of effort,

inconsistent results, indefinite duration and ever-burgeoning expense in the tort system. In sum, parties that potentially share liability for the Disaster should welcome the opportunity to deal with bodily injury claimants inside the Chapter 11 tent, rather than outside.

Id. ¶ 6.

19. On August 30, 2013, the following parties filed two (2) additional motions in the Bankruptcy Court: (i) the government of the Province of Quebec, Canada; (ii) the municipality of Lac- Mégantic, Quebec; and (iii) the representatives of a Canadian class action lawsuit consisting of victims of the July 6, 2013 accident that led to the Chapter 11 Case (“Canadian Personal Injury Representatives”). The Canadian Personal Injury Representatives filed (a) the *Motion Of Informal Committee Of Quebec Claimants Pursuant To Local Rule 9013-1(i) For Expedited Hearing With Respect To Motion For Appointment Of Creditors' Committee Pursuant To Bankruptcy Code Section 1102(a)(2)* [Docket No. 128] (the “Motion to Shorten Time”), and (b) the *Motion Of Informal Committee Of Quebec Claimants For Appointment Of Creditors' Committee Pursuant To Bankruptcy Code Section 1102(a)(2)* [Docket No. 127] (the “Second Committee Motion”). Like the Plaintiffs, the Canadian Personal Injury Representatives allege that resolution of the personal injury and wrongful death claims is central to the resolution of the Chapter 11 Case and that “the creditors holding the largest claims against the Debtor, in the aggregate, consist of tort victims (asserting personal injury/wrongful death and property damage claims) and entities with subrogation rights and environmental claims.” Dkt. 127, Second Committee Motion ¶ 3.

20. The arguments by the Plaintiffs and the Canadian Personal Injury Representatives confirm that all of the personal injury and wrongful death claims arising from the Derailment, including, without limitation, the U.S. Wrongful Death Actions, should be resolved in a single forum in a consistent manner. Subsection 157(b)(5) provides for the centralization where

MMA's chapter 11 case is pending or, if appropriate, where the claims arose. The Bankruptcy Court has recognized the need to coordinate the two (2) insolvency cases currently pending: the Chapter 11 Case for MMA in the Bankruptcy Court and the CCAA proceeding for MMA Canada in the Quebec Court. On September 4, 2013, the Bankruptcy Court entered its *Order Adopting Cross-Border Insolvency Protocol* [Docket No. 168]. Centralization of the resolution of wrongful death and personal injury claims can be accomplished in either the Maine District Court or the Quebec Court.⁸

21. The WFS Entities have been informed that the Trustee also intends to seek transfer of the U.S. Wrongful Death Actions to the Maine District Court pursuant to 28 U.S.C. §§ 157(b)(5).

22. The Maine District Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The statutory bases for the relief requested herein are set forth in 28 U.S.C. § 157(b)(5).

⁸ The Plaintiffs dismissed MMA without prejudice from the U.S. Wrongful Death Actions and moved to remand the U.S. Wrongful Death Actions to the Illinois State Court. The WFS Entities respectfully submit that it would be inappropriate for the Illinois District Court to address the remand motions before the Maine District Court rules on the Transfer Motion, because subsection 157(b)(5) vests in the Maine District Court exclusive authority to decide whether the U.S. Wrongful Death Actions should be tried in the Maine District Court. Even if the Illinois District Court were to remand the U.S. Wrongful Death Actions to the Illinois State Court before the Maine District Court grants the Transfer Motion, the Maine District Court would have the authority to transfer the U.S. Wrongful Death Actions directly from the Illinois State Court to the Maine District Court. *See, e.g., In re Pan Am Corp.*, 16 F.3d 513 (2d Cir. 1994) ("Pan Am II") (affirming transfer of cases from the Florida state courts directly to the district court where Pan Am's chapter 11 case was pending); *In re New England Compounding Pharmacy, Inc.*, MDL No. 1813 –md-2419-FDS, 2013 U.S. Dist. LEXIS 76739 (D. Mass. May 31, 2013) (transferring lawsuits from multiple state courts to the district court where the debtor's bankruptcy case was pending).

ARGUMENT

A. Transfer of the U.S. Wrongful Death Actions to the Maine District Court is Appropriate.

23. 28 U.S.C § 157(b)(5) vests the Maine District Court with exclusive authority to determine where personal injury and wrongful death claims that are related to the Chapter 11 Case are to be adjudicated. Subsection 157(b)(5) provides as follows:

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C § 157(b)(5) (emphasis added). Subsection 157(b)(5) addresses two different concepts: (a) centralization of litigation in either the district court where the bankruptcy case is pending or in the location where the accident occurred; and (b) the district court in the district in which the bankruptcy case is pending is best situated to decide where such claims should be liquidated.

24. Courts have recognized that there are benefits to consolidating personal injury and wrongful death claims in the district in which the bankruptcy case is pending. In *In re New England Compounding Pharmacy, Inc.*, 2013 U.S. Dist. LEXIS 76739 (D. Mass. 2013), the Massachusetts District Court recently transferred personal injury cases to that district from multiple courts around the country, given that such cases were related to a bankruptcy case pending in Massachusetts:

If the court were to decline to assert jurisdiction over the state-court cases, it might make it difficult or impossible to resolve the entire litigation in an equitable or efficient manner. Any cases that remain pending in state court could ultimately result in large judgments and corresponding claims for contribution or indemnity against the estate of [the debtor].

...

Furthermore, allowing some state-court cases to proceed without consolidation [in the district court where the chapter 11 cases was pending], creates a possibility of inconsistent rulings or judgments on factual or scientific issues that may greatly complicate the resolution of these matters. And litigation in multiple courts also

threatens to impose significant discovery burdens, as discovery from many of the same people and entities may be sought on multiple occasions.

2013 U.S. Dist. LEXIS 76739, at *14-16.

25. Likewise, in *A.H. Robins v. Piccinin (In re A.H. Robins Co.)*, 788 F.2d 994, 1014 (4th Cir. 1986), the Fourth Circuit affirmed a decision that centralized thousands of personal injury cases in the district court where the bankruptcy case was pending, reasoning as follows:

No progress along estimating these contingent claims . . . can be made until all Dalkon Shield claims and suits are centralized before a single forum where all interests can be heard and in which the interests of all claimants with one another may be harmonized. (Citation omitted.) That undoubtedly was the purpose of the motion to fix venue and to transfer the pending suits to the district court sitting in bankruptcy before which the proceedings were pending. This unquestionably was the idea which prompted the district court to opt tentatively in his order fixing venue in the district court sitting in bankruptcy for all these claims. We approve of the idea and find it conducive of the interests of all concerned.

See also Lindsey v. O'Brien (In re Dow Corning Corp.), 86 F.3d 482, 497 (6th Cir. 1996) (“We agree with the Fourth Circuit that Section 157(b)(5) should be read to allow a district court to fix venue for cases pending against nondebtor defendants which are ‘related to’ a debtor’s bankruptcy proceedings pursuant to section 1334(b). This approach will further the prompt, fair, and complete resolution of all claims ‘related to’ bankruptcy proceedings, and harmonize Section 1334(b)’s broad jurisdictional grant with the oft-stated goal of centralizing the administration of a bankruptcy case.”)

26. Consolidation of the personal injury and wrongful death litigation against the non-debtor defendants and MMA in either the Maine District Court or the Quebec Court is also necessary to ensure that no one Plaintiff receives a windfall in the Chapter 11 Case due to the impact that the resolution of other pending causes of action will have on the estate. *See CPC Livestock, LLC v. Fifth Third Bank, Inc.*, --- B.R. ---, No. 1:12-cv-00204-JHM, 2013 WL 1411222, *12 (W.D. Ky. Apr. 8, 2013) (concluding that “related to” jurisdiction was appropriate

to avoid plaintiffs receiving a “double recovery” where plaintiffs filed proofs of claim with the bankruptcy estate and claims against co-defendants arising out of the same conduct); *Omega Tool Corp. v. Alix Partners, LLP*, 416 B.R. 315, 320 (E.D. Mich. 2009) (finding “related to” jurisdiction because the plaintiff sought to recover from the defendants for the same injuries as against the debtor); *In re Canion*, 196 F.3d 579, 586–87 (5th Cir. 1999) (finding “related to” jurisdiction in similar circumstances where resolution of lawsuits involving non-debtor third parties potentially would reduce the liabilities of the estate).

27. The plain language of 28 U.S.C. § 157(b)(5) is mandatory. It provides that the U.S. Wrongful Death Actions “shall” be transferred to the Maine District Court or to the district court for the district in which the claim arose. The Plaintiffs’ claims arguably arose in Quebec, where the Derailment occurred, and there is no United States district court in Quebec. The Maine District Court is, therefore, the only available forum in the United States under subsection 157(b)(5), though the Maine District Court does have the power to dismiss the U.S. Wrongful Death Actions based on *forum non conveniens*, to allow them to be litigated in Quebec, Canada, if the Maine District Court ultimately concludes that would be most efficient. *See* authorities cited in Section C, below.

B. The Plaintiffs’ and the Canadian Personal Injury Representatives’ Arguments in Support of the Formation of an Official Committee Demonstrate that Centralized Resolution of All Personal Injury and Wrongful Death Claims Arising from the Derailment is Appropriate.

28. The Plaintiffs contend that the wrongful death and personal injury claims arising from the Derailment are the largest claims in the Chapter 11 Case. Dkt. 76, Plaintiffs’ Committee Motion ¶ 2 (“*Wrongful death and personal injury claimants will be by far the largest creditor constituency in this case.*”) The Canadian Personal Injury Representatives agree. Dkt. 127, Second Committee Motion ¶ 3 (“[T]he creditors holding the largest claims against the

Debtor, in the aggregate, consist of tort victims (asserting personal injury/wrongful death and property damage claims) and entities with subrogation rights and environmental claims.”).

29. In seeking an official committee to advocate for the personal injury and wrongful death claimants, the Plaintiffs argue that the administrative priority status of their claims makes them key players in any plan process:

Confirmation of a Chapter 11 plan will require support from wrongful death and personal injury claimants. Section 1171(a) of the Bankruptcy Code provides that wrongful death and personal injury claims, including those arising prepetition, are entitled to payment as administrative claims. . . . If, as seems inevitable because of the amount they are owed, bodily injury claimants remain unpaid at the time a plan is considered for confirmation, the plan may not be confirmed without paying them the full amount they are owed, in cash, on the effective date of the plan except to the extent that they otherwise agree.

Dkt. 76, Plaintiffs’ Committee Motion ¶ 5. If this is true, then resolving the amount they are owed through a centralized claims resolution process is a necessary component of resolving the Chapter 11 Case.

30. Plaintiffs go on to argue that using the chapter 11 claims resolution process is far superior to multiple tort lawsuits in other jurisdictions:

These constituencies [referring to other defendants] will benefit by utilizing the orderly and efficient process, and the certainty of closure, that a consensual Chapter 11 plan can provide in the mass tort context, as a far superior alternative to the risk of being subject to uncertainty, duplication of effort, inconsistent results, indefinite duration and ever-burgeoning expense in the tort system.

Dkt. 76, Plaintiffs’ Committee Motion ¶ 6. It is precisely this need for centralized claims resolution that led to the enactment of 28 U.S.C. § 157(b)(5) and led the courts in the decisions cited above to transfer multiple personal injury and wrongful death cases to the district court where the chapter 11 case was pending.

C. Transferring the U.S. Wrongful Death Actions to the Maine District Court does not Require a Final Determination of Whether the U.S. Wrongful Death Actions Should Ultimately be Tried Here or in Quebec, Canada.

31. 28 U.S.C. § 157(b)(5) provides that the U.S. Wrongful Death Actions “shall” be transferred to this District or the district in which the claim arose. The claims arose in Quebec and there is no United States district court in Quebec. The Maine District Court is, therefore, the only available forum in the United States under subsection 157(b)(5). The Bankruptcy Court and the Quebec Court have adopted cross border protocols to coordinate the Chapter 11 Case with the CCAA Case. At this early stage in the litigation of personal injury and wrongful death claims, the Maine District Court can centralize the U.S. Wrongful Death Actions here without deciding whether they should ultimately be tried in the district where the Chapter 11 Case is pending (here) or in the Quebec Court.

32. Several courts have held that the district court where the bankruptcy case is pending can transfer personal injury and wrongful death cases from other courts to itself for the purpose of centralizing such cases, and thereafter decide whether to hear such cases or to dismiss them based on *forum non conveniens*, because 28 U.S.C. § 157(b)(5) vests exclusive authority to decide whether such claims should be tried in the district court where the bankruptcy case is pending or where the injury occurred.

33. In *In re Pan Am Corp.*, 16 F.3d 513 (2d Cir. 1994) (“*Pan Am II*”), the Second Circuit affirmed the judgment of the United States District Court for the Southern District of New York (the “Southern District”), holding that 28 U.S.C. § 157(b)(5) is intended to vest in the district court in the district in which a bankruptcy case is pending the authority to decide where related wrongful death and personal injury cases should be heard. In *Pan Am II*, the debtor asked the Southern District, where Pan Am’s chapter 11 case was pending, to transfer to itself wrongful death cases that were pending in the state court in Florida. The debtor informed the Southern

District that the debtor would then ask that the Southern District either dismiss the actions based on *forum non conveniens* (thereby requiring the plaintiffs to file in Scotland where the plane had crashed) or transfer the lawsuits to the Eastern District of New York, where other tort cases arising from the crash had been consolidated. The plaintiffs' objected that it was inappropriate for the district court where the bankruptcy case was pending to transfer cases to itself only to then transfer them again. The Second Circuit described the issue presented as follows:

With commendable candor, Pan Am also informed the district court that if the court granted its motion to transfer the cases from Florida to the Southern District, Pan Am would then either (1) move in the Southern District to dismiss the action on the ground of *forum non conveniens*, or (2) move in the Southern District for a transfer (under 28 U.S.C. § 1407) to the Eastern District of New York where the Judicial Panel of Multidistrict Litigation had earlier consolidated other tort cases against Pan Am. (Citation omitted.) Pan Am's stated goal was to have the cases ultimately heard in either Scotland or the Eastern District.

The plaintiffs objected to Pan Am's transfer motion. They pointed out that Section 157(b)(5) authorizes a district court to transfer a personal injury case from state court only to either of two federal districts: (1) the district where the bankruptcy is proceeding (here, the Southern District), or (2) the district where the cause of action arose (here, Scotland, which, of course, has no district court). Because Section 157(b)(5) does not authorize transfer directly to Scotland or the Eastern District, the plaintiffs argued that Pan Am should not be permitted to accomplish in two steps what it could not do in one.

Id. at 515. The Second Circuit affirmed the Southern District's rejection of the plaintiffs' contentions, holding as follows:

We are unpersuaded. Congress enacted Section 157(b)(5) to expand the district court's venue fixing powers with an eye to centralizing the adjudication of a bankruptcy case. (Citation omitted.) While Section 157 limits the courts to which the district court may transfer cases *under that section*, that restriction does not diminish the district court's other powers to change venue. (Citation omitted.) Accordingly, we find that a court may transfer a case under Section 157(b)(5) without considering any party's plans to relocate the case in the future. *See generally* [*Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 834 (5th Cir. 1993)] (“[s]pecific legislation would be necessary to abrogate the doctrine of *forum non conveniens*”).

Common sense compels our conclusion. If Pan Am's scheme to relocate the cases after the initial transfer proves nettlesome, the district court may simply refuse to transfer the cases from the Southern District.

Id. at 516; *accord, e.g., Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824 (5th Cir. 1993) (German residents filed lawsuits in the state courts in Texas for damages suffered from a plane crash in Germany. Fairchild filed a bankruptcy case. The lawsuits were removed to the Texas district court in the district where the bankruptcy was pending. That district court thereafter dismissed the lawsuits on *forum non conveniens* grounds, requiring the plaintiffs to seek recourse in Germany.); *Robert v. Bell Helicopter Textron, Inc.*, No. 3-01-cv-1576-L, 2002 U.S. Dist. LEXIS 7232, at *16 (N.D. Tex. Apr. 23, 2002) (Canadian citizens sued in Texas based on deaths in a helicopter crash that occurred in Canada. One of the defendants filed a bankruptcy case. The district court in the district where the bankruptcy case was filed first transferred the litigation to itself, and thereafter dismissed based on *forum non conveniens*.).

34. In both *Baumgart v. Fairchild Aircraft Corp.* and *Robert v. Bell Helicopter Textron, Inc.* the district court where the bankruptcy case was pending exercised its power to centralize multiple personal injury and wrongful death claims, and thereafter concluded that the policies underlying the enactment of section 157(b)(5) justified dismissal based on *forum non conveniens*. The Maine District Court need not determine where the U.S. Wrongful Death Actions will ultimately be adjudicated in order to exercise its power to centralize them in the Maine District Court pending a determination of the most efficient and appropriate forum.

CONCLUSION

WHEREFORE, the WFS Entities respectfully request that the Maine District Court enter an Order transferring the U.S. Wrongful Death Actions to the Maine District Court for further proceedings pursuant to 28 U.S.C. § 157(b)(5).

Respectfully submitted,

**WESTERN PETROLEUM CORPORATION
and PETROLEUM TRANSPORT SERVICES,
INC.**

By their attorney:

Dated: September 11, 2013

/s/ Jay S. Geller
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Exhibit A to Memorandum of Law
List of 19 Northern District Illinois Cases

<i>CaseNo</i>	<i>Plaintiffs</i>	<i>Defendants</i>	<i>Complt. Filed</i>	<i>Removal Filed</i>	<i>Judge</i>
1:13-cv-06192	ANNICK ROY, as special Administrator of the ESTATE OF JEAN-GUY VEILLEUX, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/22/2013	08/29/2013	Elaine E. Bucklo
1:13-cv-06193	SANDY BEDARD, as Special Administrator of the ESTATE OF MICHAEL GUERTIN, JR., Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC.,	7/29/2013	08/29/2013	Ronald Guzman
1:13-cv-06194	REAL BRETON, as Special Administrator of the ESTATE OF GENEVIEVE BRETON, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/25/2013	08/29/2013	Robert W. Gettleman
1:13-cv-06195	THERESE DUBOIS POULIN, as Special Administrator of the ESTATE OF DENISE DUBOIS, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Ruben Castillo
1:13-cv-06196	ALEXIA DUMAS-CHAPUT, as Special Administrator of the ESTATE OF MATHIEU PELLETIER, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Samuel Der-Yeghiayan
1:13-cv-06197	MARIE-JOSEE GRIMARD, as Special Administrator of the ESTATE OF HENRIETTE LATULIPPE, Deceased,	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Milton I. Shadur

<i>CaseNo</i>	<i>Plaintiffs</i>	<i>Defendants</i>	<i>Complt. Filed</i>	<i>Removal Filed</i>	<i>Judge</i>
1:13-cv-06198	LISETTE FORTIN-BOLDUC, as Special Administrator of the ESTATE OF STEPHANE BOLDUC, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Thomas M. Durkin
1:13-cv-06199	GEORGETTE MARTIN, as Special Administrator of the ESTATE OF DAVID MARTIN, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Charles R. Norgle, Sr.,
1:13-cv-06200	JOANNIE PROTEAU, as Special Administrator of the ESTATE OF MAXIME DUBOIS, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Charles R. Norgle
1:13-cv-06201	KARINE PAQUET, as Special Administrator of the ESTATE OF ROGER PAQUET, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Amy J. St. Eve
1:13-cv-06202	REJEAN ROY, as Special Administrator of the ESTATE OF MELISSA ROY, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/25/2013	08/29/2013	Virginia M. Kendall
1:13-cv-06203	SOPHIE VEILLEUX, as Special Administrator of the ESTATE OF RICHARD VEILLEUX, Deceased	MONTREAL, MAINE and ATLANTIC RAILWAY, INC.; RAIL WORLD, INC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC.; DAKOTA PLAINS MARKETING, LLC.; DPTS MARKETING, LLC	7/29/2013	08/29/2013	Rebecca R. Pallmeyer
1:13-cv-06257	GASTON BEGNOCHE, as Special Administrator of the ESTATE OF TALITHA COUMI BEGNOCHE, Deceased	RAIL WORLD, INC.; RAIL WORLD LOCOMOTIVE LEASING, LLC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS MARKETING, LLC; DPTS MARKETING, LLC; UNION TANK CAR, CO.; GATX CORPORATION; CIT GROUP, INC.; and TRINITY INDUSTRIES, INC.	8/14/2013	09/03/2013	Joan B. Gottschall

1:13-cv-06258	YANN PROTEAU, as Special Administrator of the ESTATE OF KARINE CHAMPAGNE, Deceased	RAIL WORLD, INC.; RAIL WORLD LOCOMOTIVE LEASING, LLC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS MARKETING, LLC; DPTS MARKETING, LLC; UNION TANK CAR, CO.; GATX CORPORATION; CIT GROUP, INC.; and TRINITY INDUSTRIES, INC.	8/14/2013	09/03/2013	Charles R. Norgle, Sr.
1:13-cv-06261	MICHEL BOULANGER, as Special Administrator of the ESTATE OF ELIANE PARENTEAU, Deceased	RAIL WORLD, INC.; RAIL WORLD LOCOMOTIVE LEASING, LLC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS MARKETING, LLC; DPTS MARKETING, LLC; UNION TANK CAR, CO.; GATX CORPORATION; CIT GROUP, INC.; and TRINITY INDUSTRIES, INC.	8/14/2013	09/03/2013	Amy J. St. Eve
1:13-cv-06262	ELISE DUBOIS-COUTURE, as Special Administrator of the ESTATE OF DAVID LACROIX-BEAUDOIN, Deceased	RAIL WORLD, INC.; RAIL WORLD LOCOMOTIVE LEASING, LLC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS MARKETING, LLC; DPTS MARKETING, LLC; UNION TANK CAR, CO.; GATX CORPORATION; CIT GROUP, INC.; and TRINITY INDUSTRIES, INC.	8/14/2013	09/03/2013	John Z. Lee
1:13-cv-06263	PASCAL CHAREST, as Special Administrator of the ESTATE OF ALYSSA CHAREST BEGNOCHE, Deceased	RAIL WORLD, INC.; RAIL WORLD LOCOMOTIVE LEASING, LLC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS MARKETING, LLC; DPTS MARKETING, LLC; UNION TANK CAR, CO.; GATX CORPORATION; CIT GROUP, INC.; and TRINITY INDUSTRIES, INC.	8/14/2013	09/03/2013	Samuel Der-Yeghiayan
1:13-cv-06264	LOUISE COUTURE, as Special Administrator of the ESTATE OF KATHY CLUSIAULT, Deceased	RAIL WORLD, INC.; RAIL WORLD LOCOMOTIVE LEASING, LLC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS MARKETING, LLC; DPTS MARKETING, LLC; UNION TANK CAR, CO.; GATX CORPORATION; CIT GROUP, INC.; and TRINITY INDUSTRIES, INC.	8/14/2013	09/03/2013	John F. Grady
1:13-cv-06266	PASCAL CHAREST, as Special Administrator of the ESTATE OF BIANKA CHAREST BEGNOCHE, Deceased	RAIL WORLD, INC.; RAIL WORLD LOCOMOTIVE LEASING, LLC.; EDWARD BURKHARDT, individually; WORLD FUEL SERVICES CORPORATION; WESTERN PETROLEUM COMPANY; PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS TRANSLOADING, LLC; DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC; DAKOTA PLAINS MARKETING, LLC; DPTS MARKETING, LLC; UNION TANK CAR, CO.; GATX CORPORATION; CIT GROUP, INC.; and TRINITY INDUSTRIES, INC.	8/14/2013	09/03/2013	George M. Marovich

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

In re

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

Debtor.

CHAPTER 11
CASE NO. 13-10670-LHK

**ORDER TRANSFERRING CERTAIN PERSONAL INJURY AND WRONGFUL DEATH
LAWSUITS TO THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MAINE PURSUANT TO 28 U.S.C. §§ 157(b)(5) AND 1334**

Upon consideration of the *Motion to Transfer Certain Personal Injury Tort and Wrongful Death Lawsuits to the Maine District Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334* (the “Transfer Motion”) in the above-captioned chapter 11 case by Western Petroleum Corporation (“WPC”) and Petroleum Transport Services, Inc. (“PTS,” and together with WPC, the “WFS Entities”), seeking entry of an order from the United States District Court for the District of Maine (the “Maine District Court”) transferring to the Maine District Court the personal injury tort and wrongful death lawsuits identified on Exhibit “A” hereto (the “U.S. Wrongful Death Actions”), pursuant to 28 U.S.C. §§ 157(b)(5) and 1334; and the Court having found that notice of the Transfer Motion is proper; and all interested parties having been afforded an opportunity to be heard with respect to the Transfer Motion and all relief related thereto; and the Court having reviewed and considered (i) the Transfer Motion and all relief related thereto, and (ii) the objections thereto; and the Court having heard statements of counsel and the evidence presented in support of the relief requested in the Transfer Motion at the hearing before the Court on [____], 2013; and it appearing that the Court has jurisdiction over this matter; and it further

appearing that the legal and factual bases set forth in the Transfer Motion establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

1. **ORDERED**, that the Transfer Motion is granted; and it is further
2. **ORDERED**, that pursuant to 28 U.S.C. § 157(b)(5), the clerk of the respective court for each of the U.S. Wrongful Death Actions shall transfer the case file pertaining to the respective U.S. Wrongful Death Action to the Maine District Court within __ days of entry of this Order; and it is further
3. **ORDERED**, that this Order shall not modify or in any way affect the automatic stay to the extent it is applicable to the U.S. Wrongful Death Actions.

Dated: _____, 2013

United States District Court Judge