UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

OBJECTION OF XL INSURANCE COMPANY LTD. AND INDIAN HARBOR INSURANCE COMPANY TO APPROVAL OF THE DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN DATED JANUARY 29, 2014 PROPOSED BY THE UNOFFICIAL COMMITTEE OF WRONGFUL DEATH CLAIMANTS

XL Insurance Company Ltd. ("XL Insurance") and Indian Harbor Insurance Company ("Indian Harbor" and together with XL Insurance, the "XL Companies") hereby object to the Disclosure Statement for Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants [D.E. 601] (the "Disclosure Statement") to the extent it seeks approval of the Disclosure Statement pursuant to section 1125 of title 11 of the United States Code (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 3017. In support hereof, the XL Companies state as follows:

PRELIMINARY STATEMENT

1. The XL Companies provided insurance to the Debtor (and its Canadian affiliate) under which a total of $25 million (CAN) in indemnity is available to compensate victims of the Derailment (as defined below). The policy issued by XL Insurance is applicable to claims arising from Derailment. As the Trustee described during Wednesday's joint hearing, the XL Companies have now reached an agreement-in-principle with the Trustee (subject, of course, to court approval) on a mechanism for making those proceeds available to victims.

2. The Trustee is now engaged in discussions with those who claim a right to coverage under the policies, as well as with the Official Victims' Committee appointed in this

bankruptcy case, over these issues. The XL Companies are hopeful that the Trustee will be able to reach agreements to permit the XL Companies to obtain the necessary releases and pay the agreed amount into the bankruptcy estates on a fully consensual basis. At the same time, if the Trustee is unable to reach the necessary agreements with one or more of those who claim a right to coverage under the policies, the Trustee and the XL Companies are prepared to proceed with their settlement over the objections of such third parties.

3. At this stage in the bankruptcy case, however, it is clear that the most constructive step would be for those negotiations to continue—and to continue on an expedited basis. The proposed plan filed by the so-called Unofficial Committee (as defined below) is as unhelpful to the process as it is unlawful. There is no reason to burden the estate with the cost, burden, or distraction associated with soliciting votes on its proposed plan—which is obviously unconfirmable on its face. The motion to approve the Disclosure Statement should be denied.

BACKGROUND

4. Montreal Maine & Atlantic Railway, Ltd. (the "Debtor") operates an integrated, international shortline freight railroad system with Montreal, Maine & Atlantic Canada Co. ("MMA Canada"), an unlimited liability Canadian company and the Debtor's wholly-owned subsidiary. On July 6, 2013, a train operated by MMA Canada derailed in Lac-Mégantic, Québec, Canada (the "Derailment"), causing numerous fatalities, bodily injury to hundreds of people, and extensive property and environmental damage.

5. The Debtor is an insured under a Railroad Liability Insurance Policy, bearing number RRL003723801 and in effect from April 1, 2013 to April 1, 2014, issued by Indian Harbor (the "U.S. Policy"). The U.S. Policy, subject to conditions, exclusions, and limitations,

provides insurance coverage for certain "covered injuries" arising from an "accident." The U.S. Policy is subject to a $25 million per occurrence limit, and a $50 million policy aggregate limit.

6. MMA Canada is an insured under a Railroad Liability Insurance Policy, bearing the number RLC003808301 and in effect from April 1, 2013 to April 1, 2014, issued by XL Insurance (the "Canadian Policy"). The Canadian Policy, subject to conditions, exclusions, and limitations, provides insurance coverage for certain "covered injuries" arising from an "accident." The Canadian Policy is subject to a $25 million (CAN) per occurrence limit, and a $50 million (CAN) policy aggregate limit. Under the terms of the Québec Civil Code, the terms of which have been incorporated into the Canadian Policy, payments made to satisfy the obligation to defend an insured against covered claims arising in Quebec do not erode policy limits.

7. The U.S. Policy and the Canadian Policy (the "Policies") each contains a "Mutual Policy Exclusion." Endorsement #007 to the U.S. Policy provides that the U.S. Policy "shall not apply to any loss, cost, or expense for which coverage is applicable under" the Canadian Policy. Endorsement #009 to the Canadian Policy provides that the Canadian Policy "shall not apply to any loss, cost, or expense for which coverage is applicable under" the U.S. Policy. As a result, with respect to any particular accident, only one of the policies may be deemed the "applicable" policy.

8. The Canadian Policy is the "applicable policy" in respect of "any loss, cost or expense" arising out of the Derailment. The Canadian Policy is applicable because, among other

things, the Derailment took place in Canada, all injuries and damage took place in Canada, and the Canadian and Québec governments are directly involved with respect to the derailment.[1]

9. Various claims and demands arising out of the Derailment have been made against the Debtor, MMA Canada, and other insureds. Losses arising out of the Derailment will substantially exceed the applicable Canadian $25 million (CAN) per occurrence limit.

10. On August 7, 2013, the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Proceeding"). On August 21, 2013, the United States Trustee appointed Robert J. Keach to serve as the Chapter 11 Trustee (the "Trustee") pursuant to section 1163 of the Bankruptcy Code. The Trustee's appointment terminated the Debtor's exclusive right to file a plan. See 11 U.S.C. § 1121(c)(1).

11. On August 6, 2013, prior to the commencement of the Chapter 11 Proceeding, MMA Canada filed a petition for the issuance of an initial order with the Québec Superior Court (the "Canadian Court") under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "CCAA," and the case commenced under the CCAA by MMA Canada, the "CCAA Proceedings"). Richter Advisory Group, Inc. has been appointed as Monitor in connection with the CCAA Proceedings.

12. On August 8, 2013, the Canadian Court issued an initial order (the "Initial Order") staying and enjoining certain actions against MMA Canada. In order to prevent claimants from accessing MMA Canada's insurance assets via direct actions or by claiming against non-debtors that may also claim coverage under MMA Canada's liability insurance, the Initial Order also stays actions against MMA Canada's liability insurers (including XL Insurance

[1] The Trustee has acknowledged that the "applicable policy" is the Canadian Policy. See Trustee's Objection to Disclosure Statement for Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants [D.E. 687] ¶¶ 12-13.

and Indian Harbor) and MMA Canada's directors and officers and employees to the extent such claims arise out of the Derailment.

13. On September 4, 2013, this Court entered an order adopting the Cross-Border Insolvency Protocol (the "Protocol") [D.E. 168], which was also adopted by the Canadian Court. The purpose of the Protocol is to, among other things: (a) harmonize and coordinate the Chapter 11 and CCAA Proceedings; (b) promote the orderly and efficient administration of the Chapter 11 and CCAA Proceedings to, among other things, maximize the efficiency of both Proceedings, reduce the costs associated therewith and avoid duplication of effort; (c) promote international cooperation and respect for comity among the Courts, the Debtors, and other parties in interest in the Chapter 11 and CCAA Proceedings; and (d) facilitate the fair, open and efficient administration of the proceedings for the benefit of all of the debtors' creditors and other interested parties, wherever located. See Protocol [D.E. 126-1] ¶ 5. The spirit of the Protocol is to promote, where possible, coordination of the cases and to avoid, where possible, conflicting rulings.

14. On January 29, 2014, the so-called Unofficial Committee of Wrongful Death Victims (the "Unofficial Committee"), allegedly comprised of the families of the 47 individuals killed in the Derailment, filed the Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants [D.E. 600] (the "Plan") and the Disclosure Statement.

15. The Plan's premise is that "the only material asset available to satisfy victims' claims appears to be the insurance policies of the U.S. and Canadian bankruptcy estates." Plan at 1. In addition, the Plan acknowledges that "[t]he insurance policies are intertwined in that any indemnity payment under either policy reduces the available amount under the other such that a

maximum of $25 million in indemnity is available under the policies collectively." Id. at 2; Disclosure Statement at 11.

16. The Plan provides three methods for obtaining the proceeds of the Policies for distribution to creditors. *First*, the Plan contemplates a settlement with the XL Companies regarding both Policies and provides that in the event of such a settlement, 75% of the proceeds from both the Canadian and U.S. Policies will be paid to the Debtor's estate for distribution holders of personal injury or wrongful death claims arising out of the Derailment, with the remaining 25% of the proceeds to remain with the Canadian estate for distribution to all other holders of Derailment-related claims, including holders of property damage and environmental claims. Plan § 5.4(b)(i). *Second*, the Plan provides for the possibility of "a settlement only of the U.S. Debtor's insurance coverage." Id. § 5.4(d); Disclosure Statement at 12. If the Plan Fiduciary only reaches a settlement regarding the U.S. Policy, 100% of the proceeds that Policy will be retained by the Debtor's estate. Plan § 5.4(d); Disclosure Statement at 12. *Third*, the Plan provides that if, prior to the Plan's effective date, the Plan Fiduciary is unable to reach a settlement with respect to both Policies and is unable to reach a settlement with respect to the U.S. Policy alone, then on the effective date, Indian Harbor is required "to turn over to the U.S. bankruptcy estate the sum of $18,750,000 on account of the U.S. Debtor's insurance policy, which will thereupon be cancelled." Plan § 5.4(f); Disclosure Statement at 12.

17. Among other things, the Plan also provides that upon the effective date, the automatic stay of section 362(a) of the Bankruptcy Code shall be lifted for to permit the holder of an alleged wrongful death claim against the Debtor unrelated to the Derailment (the "Troester Claim" and "Troester Claimant") to "commence or continue litigation against the U.S. Debtor in name only and/or bring a direct action against the issuer of any such insurance policy." Plan §

4.7; Disclosure Statement at 6-7, 12. The Plan also limits the Debtor's ability to participate in the litigation of the Troester Claim. Plan § 4.7; Disclosure Statement at 6-7, 12.

ARGUMENT

18. Approval of the Disclosure Statement should be denied because the Plan is not confirmable on its face. It is well settled that a bankruptcy court "has an independent obligation to determine whether a disclosure statement includes adequate information within the meaning of the Bankruptcy Code." In re E. Me. Elec. Coop., 125 B.R. 329, 333 (Bankr. D. Me. 1991). Such a determination requires two stages of analysis. First, the bankruptcy court must determine whether "the disclosure statement describes a plan that is so 'fatally flawed' that confirmation is 'impossible.'" Id. (quoting In re Cardinal Congregate I, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990)). Thereafter, the bankruptcy court should focus on the adequacy of disclosures themselves. Determining whether a plan is "fatally flawed" as a threshold issue "is appropriate because undertaking the burden and expense of plan distribution and vote solicitation is unwise and inappropriate if the proposed plan could never be legally confirmed." Id. If the disclosure statement describes an unconfirmable plan, the court should exercise its discretion and deny approval of the disclosure statement on that basis alone. Id. at 334 (declining to consider adequacy of disclosures and denying approval where "the disclosure statement describes a plan of reorganization the ultimate failure of which is assured. In light of the facts clearly established by a well developed record, [debtor's] plan exhibits defects that cannot be cured by balloting"); accord In re O'Leary, 183 B.R. 338, 338-39 (Bankr. D. Mass. 1995) ("Courts may refuse to approve disclosure statements that describe plans that cannot be confirmed."); In re Bjolmes Realty Trust, 134 B.R. 1000, 1002 (Bankr. D. Mass. 1991) ("It is permissible, moreover, for the court to pass upon confirmation issues where, as here, it is contended that the plan is so fatally

and obviously flawed that confirmation is impossible."); see also In re CRIIMI MAE, Inc., 251 B.R. 796, 799 (Bankr. D. Md. 2000) ("It is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed." (quoting In re Main St. AC, Inc., 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999)).

19. At least two sections of the Plan—sections 4.7 and 5.4—are patently unconfirmable, and their defects cannot be cured by creditor voting. Because these provisions (section 5.4 especially) serve as the lynchpin for the Plan, it is "fatally flawed." E. Me. Elec. Coop., 125 B.R. at 333. Approval of the Disclosure Statement must therefore be denied.

I. Section 5.4 of the Plan Unlawfully Alters Non-Bankruptcy Rights and Renders The Plan Unconfirmable

20. Section 5.4 of the Plan, which provides a mechanism for the payment of insurance proceeds into the estate for distribution to creditors, alters the parties' non-bankruptcy rights in a manner that is not contemplated or authorized by the Bankruptcy Code. The inclusion of this provision renders the plan unconfirmable on its face for three reasons.

21. *First*, section 5.4 attempts impermissibly to rewrite the XL Companies' obligations under the Policies. The rights of parties to an insurance contract are unaffected by bankruptcy and cannot be modified absent the consent of the parties in a bankruptcy plan. It is well-established that "[a] bankruptcy estate cannot succeed to a greater interest in property than the debtor held prior to bankruptcy." In re NTA, LLC, 380 F.3d 523, 528 (1st Cir. 2004). State law determines what interests a debtor has in property. Id. Accordingly, no party, including the debtor, may obtain greater rights in connection with a pre-petition insurance contract on account of a bankruptcy filing. See In re MF Global Holdings Ltd., 469 B.R. 177, 193 (Bankr. S.D.N.Y. 2012) ("Debtors' interest in [an insurance] policy is limited by its contractual provisions"); In re

Downey Fin. Corp., 428 B.R. 595, 607 (Bankr. D. Del. 2010) (Bankruptcy Code "'is not intended to expand the debtor's rights against others beyond what rights existed at the commencement of the case.' Courts generally closely examine the debtor's rights under the terms of the liability insurance policy at issue in order to determine whether holding that the policy proceeds are property of the estate would improperly 'expand the debtor's rights against others beyond what rights existed at the commencement of the case'"); In re Jones, 179 B.R. 450, 455 (Bankr. E.D. Pa. 1995) ("[T]he owner of an insurance policy cannot obtain greater rights to the proceeds of that policy than he would have under state law by merely filing a bankruptcy petition."); accord In re Locateplus Holdings Corp., No. 11-15791, 2011 WL 5240279 (Bankr. D. Mass. Oct. 31, 2011); cf. Butner v. United States, 440 U.S. 48, 55 (1979) (question regarding mortgagee's security interest in bankruptcy proceedings to be determined by reference to state law, not federal rule of equity; property interests are "created and defined" by state law, and "[u]nless some federal interest requires a different result," such claims should be treated uniformly, regardless of forum, "to prevent a party from receiving a windfall merely by reason of the happenstance of bankruptcy" (internal quotation marks omitted)).

22. Nor can the rights and obligations under a pre-petition insurance contract be altered by a plan of reorganization. Section 1123 of the Bankruptcy Code provides that a plan of reorganization shall, among other things, "provide adequate means for the plan's implementation" "*[n]otwithstanding any otherwise applicable nonbankruptcy law*." 11 U.S.C. § 1123(a) (emphasis added). However, "the preemptive effect of § 1123(a) cannot extend to laws defining and protecting the property rights of third parties." In re Irving Tanning Co., 496 B.R. 644, 664 (1st Cir. B.A.P. 2013) (debtors could not fund plan with money paid into self-insurance programs for workers' compensation claims in which the debtors had no present

interest). Thus, there is no basis in the Bankruptcy Code for this Court to rewrite, expand, alter, or affect the rights and obligations under the Policies, which is what the Plan purports to do.

23. As explained above, the applicable policy with respect to the Derailment is the Canadian Policy, not the U.S. Policy. Any claims arising from the Derailment are subject to indemnity only under the Canadian Policy. The Unofficial Committee has failed to identify a single claim, other than the Troester Claim, for which the Debtor would be entitled to reimbursement under the U.S. Policy. The Plan nevertheless provides that unless the XL Companies agree otherwise, the XL Companies are required to pay "the sum of $18,750,000 on account of the U.S. Debtor's insurance policy [*i.e.*, the U.S. Policy]" to the estate for distribution to holders of personal injury or wrongful death claims arising out of the Derailment in exchange for cancelation of the U.S. Policy. Plan § 5.4(f); Disclosure Statement at 12. Thus, the Unofficial Committee seeks to compel Indian Harbor to provide indemnity under the U.S. Policy for claims not covered by that Policy. If confirmed, the Plan would fundamentally expand the obligations of Indian Harbor under the U.S. Policy without Indian Harbor's consent. No such authority exists in the Bankruptcy Code.

24. *Second*, whatever obligations Indian Harbor has under the U.S. Policy cannot be determined in the context of plan confirmation without Indian Harbor's consent. Under the guise of its chapter 11 Plan, the Unofficial Committee seeks declaratory judgment against the XL Companies regarding the meaning of the state-law pre-petition Policies and the XL Companies' obligations thereunder. It seeks a determination by this Court that the XL Companies owe the Debtor $18.75 million under the U.S. Policy. Such a determination cannot be made as part of confirmation of a plan. Cf. Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993) (holding that bankruptcy court erred in

resolving dispute over pre-petition contract in the process of approving the debtor's assumption of an executory contract). To the contrary, any such determination would require an adversary proceeding. See Fed. R. Bankr. P. 7001; see also In re Harry C. Partridge, Jr. & Sons, Inc., 43 B.R. 669, 672 (Bankr. S.D.N.Y. 1984) (concluding that "debtor's cross-motion to obtain a declaratory judgment with respect to the efficacy of its contract with the County is procedurally deficient and ineffective" where debtor did not commence adversary proceeding). Moreover, this Court lacks the constitutional authority to adjudicate to final judgment the interpretation of the Policies or coverage issues thereunder. See Stern v. Marshall, 131 S.Ct. 2594, 2620 (2011) (matters of "private right," such as state-law contract disputes, may not be finally adjudicated by a bankruptcy court where the non-debtor party has not filed a proof of claim and the parties have not so consented); see also In re Felice, 480 B.R. 401, 422 (Bankr. D. Mass. 2012) (bankruptcy court could not enter final judgment in matter involving pre-petition interests in trust pursuant to trust documents); In re EMS Fin. Servs., LLC, 491 B.R. 196, 203 (E.D.N.Y. 2013) (bankruptcy court could not enter final judgment in dispute over coverage under pre-petition insurance contract). Section 5.4 of the Plan cannot be confirmed because it denies Indian Harbor its procedural rights under the Federal Rules of Bankruptcy Procedure and its right to an Article III tribunal.

25. *Third*, section 5.4 of the Plan cannot be confirmed because it violates the CCAA stay. Principles of comity support recognition of the Initial Order entered in the CCAA Proceedings staying and enjoining actions that would deplete the property of MMA Canada, including its insurance assets. United States courts have routinely granted comity to foreign bankruptcy and insolvency proceedings to ensure that "the assets of a debtor are dispersed in an equitable, orderly, and systematic manner, rather than in a haphazard, erratic, or piecemeal

fashion." Cunard S.S. Co. v. Salen Reefer Servs. AB, 773 F.2d 452, 458 (2d Cir. 1985). "[W]hen the foreign proceeding is in a sister common law jurisdiction with procedures akin to our own, comity should be extended with less hesitation, there being fewer concerns over the procedural safeguards employed in those foreign proceedings…. The U.S. and Canada share the same common law traditions and fundamental principles of law." In re Metcalfe & Mansfield Alt. Invs., 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010). Accordingly, under principles of comity, U.S. courts have recognized Canadian bankruptcy proceedings, including stays entered thereunder. See, e.g., Canada S. Ry. Co. v. Gebhard, 109 U.S. 527 (1883) (dismissing action challenging reorganization plan based on Canadian law and adopted in Canada); Metcalfe & Mansfield Alt. Invs., 421 B.R. at 698 (granting recognition of CCAA proceeding); Tradewell, Inc. v. Am. Sensors Elecs., Inc., No. 96-2474 1997 WL 423075 (S.D.N.Y. July 29, 1997) (extending comity to CCAA proceeding); Cornfeld v. Investors Overseas Servs., Ltd., 471 F.Supp. 1255, 1261 (S.D.N.Y. 1979) (dismissing indemnity action on basis of comity extended to liquidation proceedings in Canada), aff'd mem., 614 F.2d 1286 (2d Cir. 1979).[2]

26. Section 5.4 of the Plan blatantly violates the Initial Order entered in the CCAA Proceedings. That section of the Plan provides that in the absence of a settlement, the XL Companies shall pay $18.75 million to the Debtor's estate on account of the U.S. Policy, without the consent of the XL Companies or MMA Canada. Plan § 5.4(f). As noted above, the Initial

[2] Generally, a foreign bankruptcy proceeding may be recognized in the United States pursuant to chapter 15 of the Bankruptcy Code. See 11 U.S.C. §§ 1501 et seq. Due to an apparent drafting error, however, railroads are ineligible for relief under chapter 15. See 11 U.S.C. § 109(b)(1) ("A person may be a debtor under chapter 7 of this title only if such person is not— (1) a railroad…"); id. § 1501(c) ("This chapter does not apply to— (1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b)…"); see also Hon. Samuel L. Bufford, Tertiary and Other Excluded Foreign Proceedings Under Bankruptcy Code Chapter 15, 83 Am. Bankr. L.J. 165, 173 (2009) ("There appears to be no good policy reason for excluding a railroad, that is the subject of a foreign proceeding, from chapter 15 assistance. A foreign proceeding for a foreign railroad may benefit from a chapter 15 case in the United States, if it has assets or litigation in the United States. The exclusion of such cases from chapter 15 is inexplicable, except on the grounds of poor drafting.").

Order stays actions that would deplete the property of MMA Canada. Because MMA Canada is an insured under both the U.S. and Canadian Policies, to prevent claimants from accessing MMA Canada's insurance assets, that stay extends to actions against XL Insurance and Indian Harbor for claims arising out of the Derailment. By seeking to collect the insurance proceeds from Indian Harbor under the U.S. Policy for distribution to holders of Derailment claims, section 5.4 violates the stay entered in the Initial Order.

27. In view of the automatic stay in the Chapter 11 Proceeding and the stay entered in the Initial Order, neither a plan here nor in Canada could unilaterally resolve the insurance issues for claims arising from the Derailment. Yet that is exactly what the Plan seeks to do. This Court should not permit the Unofficial Committee to go forward with a plan that prejudices the rights of other parties in interest in violation of the Bankruptcy Code simply for the benefit of its own constituents.

II. Section 4.7 of the Plan Renders the Plan Unconfirmable

28. Section 4.7 of the Plan also renders the Plan unconfirmable because, like section 5.4, it impermissibly alters Indian Harbor's rights under the U.S. Policy without Indian Harbor's consent by purporting to create a right of direct action. "'As a general rule, one who suffers injury which comes within the provisions of a liability insurance policy, is not in privity of contract with insurer, and cannot reach the proceeds of the policy for the payment of his claim by an action directly against insurer, *unless such recovery is permitted by statute, or by the express provisions of the policy.*'" Adams v. Universal Underwriters Ins. Co., No. 10-00146, 2011 WL 1900043, at *6 (D. Me. May 19, 2011) (emphasis added). The U.S. Policy does not permit holders of claims against the Debtor covered by the U.S. Policy to bring direct actions against Indian Harbor. In addition, assuming Maine law applies, Maine does not have a "direct action"

statute. To the contrary, Maine law provides that a third-party to whom an insured may be liable may not commence a direct action against the insurer unless and until it has obtained judgment against the insured. See Allen v. Pomroy, 277 A.2d 727, 730 (Me. 1971) ("It, therefore, becomes apparent that it is proscribed practice in Maine to bring a direct action against an insurance company in a negligence case prior to final judgment, the only remedy being found in the 'Reach and Apply' statute. This statute, as we have said, cannot be utilized until twenty days have elapsed from the rendition of the final judgment against the insured, and the actions here are clearly in violation of our interpretation of the established Maine procedure."); accord Beane v. Me. Ins. Guar. Ass'n, 2007 ME 40, ¶ 12, 916 A.2d 204; Tungate v. Gardner, 2002 ME 85, ¶ 7, 797 A.2d 738; Adams v. Universal Underwriters Ins. Co., 2011 WL 1900043, at *6.

29. In contravention of Maine law and the U.S. Policy, section 4.7 of the Plan provides that upon the effective date, the automatic stay will be lifted to permit the Troester Claimant "to commence or continue litigation against the U.S. Debtor in name only and/or bring a direct action against" the Debtor's insurer. Plan § 4.7; Disclosure Statement at 6-7, 12. Thus, that section purports to authorize the Troester Claimant to bring a direct action against Indian Harbor without first obtaining judgment against the Debtor—a right that it does not have under state law. The Bankruptcy Code simply does not permit a plan of reorganization to so alter the rights of contracting parties. See supra ¶¶ 21-22.

CONCLUSION

For the foregoing reasons, the Court should enter an order denying approval of the Disclosure Statement.

Date: February 28, 2014

Respectfully Submitted,

XL INSURANCE COMPANY LTD. and INDIAN HARBOR INSURANCE COMPANY

By their attorneys:

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

CERTIFICATE OF SERVICE

I, Jeremy R. Fischer, being over the age of eighteen and an attorney at Drummond Woodsum in Portland, Maine, certify that on the February 28, 2014, I filed the *Objection of XL Insurance Company Ltd. and Indian Harbor Insurance Company to Approval of the Disclosure Statement for Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* (the "Objection") via the Court's CM/ECF system. I further certify that a true and correct copy of the Objection was served electronically on all parties requesting notice in the above-captioned case via the Court's CM/ECF system.

Date: February 28, 2014

/s/ *Jeremy R. Fischer*
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