UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re MONTREAL MAINE & ATLANTIC RAILWAY, LTD. Debtor	CHAPTER 11 CASE NO. 13-10670-LHK

WRONGFUL DEATH CLAIMANTS' RENEWED OBJECTION TO
BAR DATE MOTIONS OF TRUSTEE AND CLASS ACTION PLAINTIFFS

The Unofficial Committee of Wrongful Death Claimants (the "Committee"), consisting of representatives of the estates of the 47 victims of the massive explosion in Lac-Mégantic, Quebec, from the derailment of a train operated by the Debtor (the "Wrongful Death Claimants"),[1] renews its objection to the Trustee's Amended Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 502(b)(9), Fed. R. Bankr. P. 3002 and 3003(c)(3) and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof filed on January 27, 2014 [Docket No. 596] (the "Trustee Motion") and to the Class Action Plaintiffs' Motion to Establish Claim Procedures filed on February 9, 2014 [Docket No. 625] (the "Class Rep Motion"). As grounds therefor, the Committee states:

1. The Trustee Motion and the Class Rep Motion (collectively, the "Bar Date Motions") should be denied because they do not adequately address the needs of this case and the CCAA proceeding at this time. If the Committee's proposed plan is confirmed, a bar date in

[1] The victims and the representatives of their estates are listed in the Amended Verified Statement Concerning Representation of Unofficial Committee of Wrongful Death Claimants as Required by Fed. R. Bankr. P. 2019 filed by the Committee's counsel on January 28, 2014 [Docket No. 599]. Solely for the avoidance of doubt as to standing, this objection is filed on behalf of all members of the Committee as well as the Committee itself.

the chapter 11 case will be needed only for priority claims, including wrongful death and personal injury victims of the Derailment who wish to receive distributions through the Chapter 11 case rather than the CCAA (to the extent the CCAA continues). In the unlikely event of a distribution to non-priority claimants *pursuant to the plan*, a bar date may be established at that time, analogous to a chapter 7 no-asset case where no claims are required to be filed unless the trustee files a notice of assets available for distribution. The plan contemplates that claims of Derailment victims other than the Wrongful Death Victims and those personal injury claimants who choose to assert claims in the U.S. rather than Canada will be paid in Canada. Although the Canadian claims procedure is only of indirect concern to this Court, it is unclear at this time whether distributions in Canada will be paid through the CCAA proceeding or by some other means, most likely, a distribution made by the Province of Quebec. The reason for this is that, as this Court heard at the joint status conference on February 26, 2014, the CCAA case may well terminate for lack of funding.

2. This leads to the second reason why the Bar Date Motions should be denied at this time: lack of funds. At the status conference, counsel for the Monitor appointed in the CCAA proceeding advised that absent an immediate infusion of funding, the CCAA had no funds to proceed with the claims process. No proposal for such an infusion has yet come forward, and the future of the CCAA proceeding remains uncertain. On the U.S. side, there is a mounting risk that administrative costs will soon exceed the carve-out negotiated by the Trustee for himself and his professionals. Combined with the lack of any immediate need for a general bar date, lack of available funding for the extensive and expansive claims procedures proposed by the Trustee or even the more limited procedures proposed by the Class Rep warrants denial of the Bar Date Motions.

3. A claims process is also unnecessary because the "cross-border compromise" contemplated by the Trustee proposes to cede to the Canadian debtor any interest of the U.S. estate as a named insured under the Debtor's insurance policies. Although the Committee will oppose the abandonment of this valuable asset, if the Trustee succeeds in his approach, then any bar date for prepetition claims asserted against the U.S. estate would be meaningless. In the Committee's view, there are no other assets to be administered by the U.S. estate. Even accepting the Trustee's view that he should pursue litigation blaming other parties for the Derailment, the Trustee must acknowledge that his quest for litigation proceeds will not likely pay off in a time-frame that requires an immediate bar date.

4. In addition, the Committee opposes the Class Rep Motion because class certification pursuant to Fed. R. Civ. P. 23 is required before any such claim may be filed against the U.S. estate. Without repeating the reasons noted in the Trustee's objection to the Class Rep Motion regarding the high burden the class must satisfy under U.S. law, classes of personal injury/wrongful death claims are rarely (if ever) certified in the U.S. Further, a class containing such claims and also property damage claims can almost certainly not be certified and the litigation of these issues will be time-consuming and expensive without yielding a concomitant advantage to the estate. Given that class certification has not yet occurred even in Canada and will not be heard until June, there is no basis upon which to conclude that class certification would be permitted in this case. Thus, there is no reason why claimants cannot, and should not, file individual claims.

5. Finally, the Committee agrees with the Class Rep that the claims procedures proposed by the Trustee are unduly onerous and are likely to discourage the filing of claims. However, the procedures proposed by the Class Rep swing too far in the opposite direction by

proposing a process that will yield insufficient information regarding the number or amount of the claims asserted. Given that setting a bar date would be inappropriate at this time in any event, the parties should go back to the drawing board and develop a "Goldilocks" balance between too much and too little detail.

6. If, despite the foregoing, the Court is inclined to set a bar date at this time, the Committee requests that the Court's order include a provision that any written or oral statements of parties, and findings, rulings and orders of the court in connection therewith shall be binding and may be utilized solely in this case and solely for the purpose of determining allowance and the allowed amount of the claim for purposes of this case. Although this language has been under discussion with the Trustee for more than a month, the Trustee has declined to specify whether he will include it in his proposed form of bar order. Instead, the language proposed in the Trustee's Motion does only half the job, specifying that by submitting a Derailment Claim against MMA in this chapter 11 case or the CCAA, "a claimant shall be deemed to have submitted to this Court's jurisdiction with respect to the allowance of his/her/its claims against MMA and related matters" without specifying any limit.

7. Rather than being required to submit to the jurisdiction of this Court for allowance of a claim and "related matters" as proposed by the Trustee, the Committee requests that any bar date order make clear that jurisdiction over a Derailment claimant's claim is limited solely to the determination of the claim against the Debtor and potential defenses/counterclaims of the estate against such claimant asserted in this case. The requested clarification would allow claimants to participate in the bankruptcy process for purposes of determining their claims while protecting them from any prejudice that may result in their ability to assert claims against third

parties. Most importantly, the requested clarification will expressly bring the bar order into conformity with applicable law.

8. It is well established that claims proceedings in bankruptcy are summary in nature. The Supreme Court in Katchen v. Landy long recognized "that a chief purpose of the bankruptcy laws is to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period, and that provision for summary disposition, without regard to usual modes of trial attended by some necessary delay, is one of the means chosen by Congress to effectuate that purpose." 382 U.S. 323 (1966) (internal quotation marks and citations omitted). "It is equally clear that the expressly granted power to 'allow,' 'disallow' and 'reconsider' claims, [now embodied in 11 U.S.C. § 502], which is of basic importance in the administration of a bankruptcy estate, is to be exercised in summary proceedings and not by the slower and more expensive processes of a plenary suit." Id. at 329 (internal quotation marks and citations omitted)(parenthetical added).

9. Courts in this Circuit and elsewhere have refused to give effect under collateral estoppel to findings made by a bankruptcy court through summary proceedings. For example, in Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, 32 (1st Cir. 1994), the First Circuit held that the trustee's failure to assert an objection to a secured creditor's motion for relief from the automatic stay did not preclude the trustee from later challenging the secured status of such claim. Specifically, the court noted "[t]he limited grounds set forth in the statutory language, read in the context of the overall scheme of § 362, and combined with the preliminary, summary nature of the relief from stay proceedings, have led most courts to find that such hearings do not involve a full adjudication on the merits of claims, defenses, or counterclaims, but simply a determination as to whether a creditor has a colorable claim to property of the estate.… To allow

a relief from stay hearing to become any more extensive than a quick determination of whether a creditor has a colorable claim would turn the hearing into a full-scale adversary lawsuit, and would be inconsistent with this procedural scheme." Id. at 32-33 (internal citation omitted); see also Mullarkey v. Tamboer (In re Mullarkey), 536 F.3d 215, 226 (3d Cir. 2008)(holding that bankruptcy court erred in relying on stay proceedings to preclude, either on grounds of res judicicata or collateral estoppel, claims asserted by the debtor against creditors); Orion Pictures Corp. v. Showtime Networks (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993)(finding that a bankruptcy court's decision on a motion to assume executory contract did not constitute a formal ruling on underlying disputed issues, and thus lacked collateral estoppel effect).

10. Given the summary nature of a claims allowance proceeding, the requested clarification ensures that issues raised in connection with the determination of the claims of the Wrongful Death Claimants will not have preclusive effect upon claims brought against third parties. Accordingly, the Committee requests any order entered by the Court establishing a bar date for claims include the language requested herein.

11. In sum, the Committee requests that the Court deny the Bar Date Motions or, in the alternative, include in any order establishing a bar date an express provision that any written or oral statements of parties, and findings, rulings and orders of the court in connection therewith shall be binding and may be utilized solely in this case and solely for the purpose of determining allowance and the allowed amount of the claim for purposes of this case.

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Dated: March 5, 2014

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