UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

OBJECTION OF THE UNITED STATES TRUSTEE
TO DISCLOSURE STATEMENT
FOR THE TRUSTEE'S PLAN OF LIQUIDATION DATED MARCH 31, 2015

William K. Harrington, the United States Trustee for Region One (the "United States Trustee"), by and through his undersigned counsel, submits the following Objection to the Disclosure Statement for the Trustee's Plan of Liquidation, dated March 31, 2015 (the "Disclosure Statement"), filed by the Chapter 11 Trustee, Robert J. Keach (the "Trustee") at Docket Entry No. 1385, in the above-captioned chapter 11 case:

A. THE ROLE OF THE UNITED STATES TRUSTEE

1. Pursuant to 28 U.S.C. § 586, the United States Trustee ("UST) is charged with the administrative oversight of cases commenced pursuant to Title 11 of the United States Bankruptcy Code. This duty includes monitoring chapter 11 plans and disclosure statements and filing comments relating to the same. 11 U.S.C. § 586 (a)(3)(B). This duty is part of the United States Trustee's overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the Courts. *See United States Trustee v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys., Inc.),* 33 F.3d 294, 295-96 (3d Cir. 1994) (noting that United States Trustee has "public interest standing" under 11 U.S.C. § 307, which goes beyond mere pecuniary interest); *Morgenstern v. Revco D.S., Inc., (In re Revco D.S., Inc.),* 898 F.2d 498, 500 (6th Cir. 1990) (describing the United States Trustee as a "watchdog").

B. THE STANDARD FOR APPROVAL OF DICLOSURE STATEMENTS

2. The purpose of a disclosure statement is to provide adequate information to creditors to enable them to decide whether to accept or reject the proposed plan. *See,* In *re Ferretti*, 128 B.R. 16, 18 (Bankr. D. N.H. 1991). "Adequate information" has been defined in this district as "information of a kind, and in sufficient detail . . . [so as to enable] a hypothetical investor of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a); *see In re Oxford Homes*, 204 B.R. 264, 269 (Bankr. D. Me. 1997).

3. Some of the relevant factors that may be considered by a court evaluating the adequacy of any disclosure statement include, *inter alia*: (a) the events which led to the filing of a bankruptcy petition; (b) a description of the available assets and their value; (c) the source of the information stated in the disclosure statement; (d) a disclaimer; (e) the present condition of the debtor while in Chapter 11; (f) the scheduled claims; (g) the estimated return to creditors under a Chapter 7 liquidation; (h) the Chapter 11 plan or a summary thereof; (i) the estimated administrative expenses; (j) financial information relevant to the creditors' decision to accept or reject the Chapter 11 plan; and (k) information relevant to the risk posed to creditors under the plan. *See In re Metrocraft Publ'g Serv's, Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984); *In re Oxford Homes, Inc.*, 204 B.R. at 269 (citing *In re Ferretti*, 128 B.R. at 18-19).

4. "[D]isclosure requirements are crucial to the effective functioning of the federal bankruptcy system. Because creditors and the bankruptcy court rely heavily on the debtor's disclosure statement in determining whether to approve a proposed reorganization plan, the

importance of full and honest disclosure cannot be overstated." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.,* 81 F.3d 355, 362 (3d. Cir. 1996).

5. Before a plan can be confirmed, the plan proponent must advise interested parties of how it intends to alter their rights, if at all. Creditors whose rights are altered by the plan are entitled to vote to accept or reject the plan. The disclosure statement is intended to be the resource from which those creditors make informed choices with respect to the plan. "[I]n determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information, 11 U.S.C.§1125(a)(1).

C. SUMMARY OF UST'S POSITION

6. This is a very complex case. The relief sought pursuant to the plan is unique and tests the outer boundaries of the law and the Court's jurisdiction. There is information that would better inform the creditors, but which has yet to be disclosed. That information would inform the Court's consideration of the relief sought, inform creditors' decisions regarding the plan, enhance the solicitation of plan acceptance, facilitate the due process requirements of plan confirmation, and serve the public interest in transparent court proceedings.

7. The centerpiece of the Trustee's Plan is a proposed settlement of claims arising from the July 6, 2013, train derailment at Lac Megantic, which killed 47 people and destroyed a significant portion of the town. That event precipitated this case and a parallel proceeding under Canada's Companies' Creditors Arrangement Act ("CCCA") by the Debtor's Canadian subsidiary. The Trustee's settlement requires approval of this Court. The settlement fund is purported to involve contributions aggregating over $430,000,000.00 (Canadian). The settlement

would resolve the liability of approximately 23persons and entities-many of whom are named as defendants in a pending Canadian class action suit and numerous wrongful death cases, originally filed in Illinois state courts, and eventually transferred to the United States District Court for the District of Maine on March 21, 2014.

8. The proposed settlement is the product of considerable skill exercised by the Trustee, those representing the derailment victims and those representing the interests of the persons and entities alleged to be responsible for the derailment. The magnitude of the proposed settlement is testament to the injuries, losses and suffering which ensued. A comprehensive settlement of the claims arising from the derailment, in the context of a single bankruptcy case, would no doubt avoid further delay in addressing the unfathomable damage caused by the derailment, to say nothing of the risks and the enormity of costs which would attend further litigation, which arguably would provide no additional benefit to the victims of the tragedy at Lac-Megantic.

9. Despite the magnitude of the plan's potential benefits, however, the plan should move no closer to confirmation unless and until those who are entitled to participate in the plan approval process are fully informed of their rights and the consequences of plan confirmation.

10. Under the proposed Plan, if confirmed, innumerable third parties, will be the beneficiaries of third party releases and channeling injunctions which are overly broad, contrary to public policy, and are not in compliance with applicable law and First Circuit precedent. Many of those same parties have refused to disclose their contributions to the settlement fund. In addition, as set forth in greater detail below, the Disclosure Statement and Plan contain no opt-in or opt-out provisions for voting parties. If the Plan as proposed is confirmed, all creditors will be barred from asserting claims, debts, obligations, etc. against the debtor, its estate, the estate

representative(s), the shareholders and affiliated parties, and the parties to the Trustee's settlement, regardless of whether the claim holder votes in favor of the Plan, votes against the Plan or receives a distribution under the plan. *See, pages 73-79 of the Disclosure Statement*. All creditors in this bankruptcy case, including those whose claims are unrelated to the derailment and who will receive no portion of the settlement proceeds, will be subject to the same broad and wide-ranging releases bargained for by the settling defendants. Moreover, the controlling release provisions appear to be contained in the various "non-disclosed" settlement agreements and the specific plan provisions are said to merely supplement the releases and injunctions contemplated between and among the parties to the proposed settlement agreements.

11. Class 12 claims (wrongful death and certain other personal injury claims) will be administered in accordance with a yet to be executed Wrongful Death Trust. While a draft WD Trust Agreement was filed on June 5, 2015, at Docket Entry #1450, as a supplement to the Disclosure Statement on June 5, 2015, many questions remain unanswered regarding the trust and the operations of the trust post confirmation. All provisions, for that matter, remain subject to change. The parties in interest are unable to make an informed judgment with respect to administration of the WD Trust until the final version is executed and the executed WD Trust Agreement is disseminated.

12. The Class 12 claimants are not all in the same procedural posture. Some claimants filed suit against the Debtor before the date of the Debtor's petition. Other suits were filed afterward and do not name the Debtor. Not all complaints name the exact same defendants. The Disclosure Statement is silent as to such differences within Class 12. That task has, apparently, been delegated to the ill- defined and, as yet, unnamed Wrongful Death Trustee.

13. Certain other Derailment Claims (classes 8, 9, 10 and 11) will share, on a

percentage basis, the aggregate of all settlement proceeds, but their claims will be administered by the Canadian Monitor. How and why the Trustee allocated certain percentages of the total settlement to the WD Trustee and other percentages to the Canadian Monitor remains unexplained.

14. The Trustee's proposal to file the settlement agreements under seal[1], to which the UST has objected, aggravates the lack of information furnished to the creditors with respect to key aspects of the settlement.

15. Moreover, the creditor body includes non-English speaking Canadian residents. The Disclosure Statement anticipates unanimous consent among all derailment victims, but does not elaborate as to the form and substance of that consent. Notably, the record in the Canadian proceeding indicates that all creditors voting in Canada have voted in favor of the plan.[2] However, no further information is provided as to how such consent was manifested or provided. Thus, it is unclear as to what procedures were employed to verify the creditors consent and whether such procedures are consistent with the procedures to verify consent in United States Bankruptcy Courts. Consent of parties in interest is one important factor when evaluating the adequacy of the information contained in the Disclosure Statement. Given the vagaries inherent in the circumstances of this case, how the plan would impact dissenting creditors should be explained in straight forward language, and disseminated in a way that facilitates the rights of all affected parties to participate, meaningfully, in the plan approval process.

16. In short, the Disclosure Statement omits critical information. First, the Trustee has not offered any showing with respect to the necessity of the third party releases. Clearly, the

[1] The United States Trustee has filed an Objection to the Motion to Seal. *See* Docket Entry. No. 1459.

[2] See, **Reasons For Judgment Rendered From The Bench,** June 15, 2015, Superior Court, Province of Quebec, District of Saint-Francois, Case No. 450-11-000167-134, Hon. Gaetan Dumas, J.C.S. (June 17, 2015), p.4.

necessity of some form of release benefiting those making a substantial contribution to the plan can be inferred. What is missing is a showing of necessity for the breadth of the releases, the need to extinguish the claims of those not participating in the settlement, and the size of the individual contributions justifying the releases. Second, the Trustee has not shown why the granting of releases is truly necessary to the success of the plan and not a discharge granted to the benefited parties without the safeguards of the Code. As noted below, the mere fact that one party puts something into the plan and a creditor takes something out is not sufficient. The contributions to the settlement fund must be "substantial" and released claims should not be extinguished. They must be channeled to the settlement fund. Informed consent is also relevant. Unless and until the Trustee discloses, in plain language, all aspects of the settlement agreements, the supplemental releases and injunctions, and finalizes all terms of the Wrongful Death Trust, the Disclosure Statement will not contain adequate information.

D. Third Party Releases, Generally.

17. The First Circuit has not squarely addressed the issue of whether third-party, or non-debtor, injunctions and releases are permissible as a matter of law. A number of courts, including the Fifth, Ninth and Tenth circuits, have held that §524(e) prohibits nonconsensual, nondebtor releases.[3]

18. Other courts have upheld such provisions in chapter 11 plans or otherwise noted that they may be permissible in unique circumstances. *See*, *In re Ingersoll, Inc.*, 562 F.3d 856, 865 (7th Cir. 2009); *Deutsche Bank AG v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.),* 416 F.3d 136, 141 (2d Cir. 2005). First and foremost, a clear showing of

[3] *In re Zale Corp*. 62 F. 3d. 746, 760-61 (5th Cir. 1995), *In re Lowenschuss*, 67 F. 3d. 1394, 1401-2 (9th Cir. 1995); cert den. 517 U.S. 1243 (1996); *In re Western Real Estate Fund, Inc*. 922 F. 2d. 592, 601-2 (10th Cir. 1990).

necessity is required. *See In re Ingersoll*, 562 F.3d at 865 ("[I]t is important to note in all this what we are *not* saying. We are not saying that a bankruptcy plan purporting to release a [non-debtor] claim … is always-or even normally-valid. In the unique circumstances of this case, however, we believe it is"). These cases find authority to approve nonconsensual nondebtor releases in §105(a).

19. Notably, the First Circuit has cautioned that using section 105 of the Code to enjoin a non-debtor third party involves an extraordinary exercise of discretion. *In re G.S.F. Corp.*, 938 F.2d 1467, 1474 (1st. Circ. 1991).

20. The case of *In re Metromedia Fiber Network, Inc.*, 416 F.3d at 141, is particularly instructive. In *Metromedia*, the United States Court of Appeals for the Second Circuit held that non-debtor third-party releases are proper only in "rare cases." *Metromedia*, 416 F.3d at 141. The Second Circuit articulated at least two reasons for its reluctance to approve these releases:

> First, the only explicit authorization in the Code for non-debtor releases is 11 U.S.C. § 524(g), which authorizes releases in asbestos cases when specified conditions are satisfied, including the creation of a trust to satisfy future claims, [and] …
>
> Second, a non-debtor release is a device that lends itself to abuse. By it, a non-debtor can shield itself from liability to third parties. In form, it is a release; in effect it may operate as a bankruptcy discharge without a filing and without the safeguards of the Code. The potential for abuse is heightened when releases afford blanket immunity.

Id. at 142.

21. The Second Circuit held that "[i]n bankruptcy cases, a Court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the Debtors' reorganization plan." *Id.* at 141 (quoting *SEC v. Drexel Burnham Lambert Group,*

Inc. (In re Drexel Burnham Lambert Group, Inc.), 960 F.2d 285, 292 (2d Cir. 1992)). The appellate court cautioned, however, that a non-debtor third-party release is not considered to be adequately supported by consideration simply because the non-debtor contributed something to the reorganization and the enjoined creditor took something out. *Metromedia*, 416 F.3d at 143. Rather, "[a] non-debtor third-party release should not be approved absent a finding by the court that 'truly unusual circumstances' exist that render the release terms important to the success of the plan." *Id*.

22. Subsequent cases further clarify the *Metromedia* requirements. For example, in *In re DBSD North America, Inc.*, the Court stated:

> As the Second Circuit's decision in Metromedia and my earlier decision in Adelphia provide, exculpation provisions (and their first cousins, so-called "third party releases") are permissible under some circumstances, but not as a routine matter. They may be used in some cases, including those where the provisions are important to a debtor's plan; the claims are "channeled" to a settlement fund rather than extinguished; the enjoined claims would indirectly impact the debtor's reorganization by way of indemnity or contribution; the released party provides substantial contribution; and where the plan otherwise provides for full payment of the enjoined claims.

In re DBSD N. Am., Inc., 419 B.R. 179, 217 (Bankr. S.D.N.Y. 2009) (emphasis in original) (footnotes omitted); *In re Motors Liquidation Co.*, 477 B.R. 198, 220 (Bankr. S.D.N.Y. 2011) ("Although (since the Code is silent on the matter) third-party releases aren't 'inconsistent with the applicable provisions of this title,' the Second Circuit has ruled that they're permissible only in rare cases, *with appropriate consent or under circumstances that can be regarded as unique*, some of which the Circuit listed [emphasis added]. But, where those circumstances haven't been shown, third-party releases can't be found to be appropriate.") *See also, Master Mortgage Investment Fund*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994) (reviewing the courts' split on the issue of permanent injunctions and third party releases, discussing five

factors frequently considered, and adopting a permissive view in limited circumstances).

23. Therefore, the Trustee may have a very narrow channel within which to navigate. At the very least, he must chart a course which enables the bankruptcy court's finding of specific facts that would support the releases. At a minimum, the Disclosure Statement should recite the reasons necessitating the Releases granted to each of the parties identified in the Disclosure Statement (and to each party to be released pursuant to any amended or supplemented Plan) and justifying the Releases as appropriate and lawful. This is particularly so where, as here, there is no business to reorganize and the Debtor has already ceased its business operations.

24. There are, purportedly, dozens of contributors to the settlement fund. Some have publicized their participation in this settlement.[4] Others insist upon secrecy, at the risk of forfeiting the bargained for releases. *See, e.g., In re Washington Mutual, Inc. et al.*, 442 B.R. 314, 349-350 (Bankr. D. Del. 2011) (where the Bankruptcy Court held, *inter alia*, that under applicable law, there was no basis whatsoever for the debtors to grant releases to the debtors' directors and officers or any professionals, current or former, because no evidence was presented with respect to, among other things, a "substantial contribution" having been made to the case by the parties seeking such releases); *National Heritage Foundation, Inc. v. Highbourne Foundation,* 2014 WL 2900933 (4th Cir. June 27, 2014) (a chapter 11 plan's non-consensual, third party release of non-debtors was invalid because the release lacked adequate factual support).

25. This showing of actual proof should not be deferred to the hearing on plan confirmation. It is relevant to a creditor's vote to accept or reject the Plan. The ideal time for

[4] On June 8, 2015, the *Wall Street Journal* reported that World Fuel Services disclosed its $110,000,000.00 contribution to the settlement fund. The United States Trustee has also been informed of the contributions made or to be made by Irving Oil Co. or its affiliates, by CIT or its affiliates, and by certain agencies of the Canadian or provincial governments.

disclosure of the Releasees' "substantial contribution" to the plan and the necessity that "all Persons and entities" grant them releases and submit to an injunction of all claims, "in any way related to…the Debtor…", is when the votes are solicited. See, *In re Eastern Maine Electric Cooperative, Inc*. 125 B.R. 329 (Bankr. D. Me. 1991) (where the plan's inadequacies are patent, they may, and should be addressed at the disclosure statement stage.)

E. The Impact of the Motion to Seal on the Disclosure Statement.

26. As noted, the third party release and injunction provisions (collectively, the "Releases") are extremely broad and wide ranging. There are numerous parties who will receive the benefit of the releases and injunctions if the Plan is confirmed. Several have been forthcoming concerning their contributions on their own accord. However, others wish to keep their contributions secret.

27. Further, the Disclosure Statement provides that the releases included in certain Settlement Agreements with the Released Parties control – and that the Releases set forth in the Disclosure Statement and Plan "shall be in addition to and are intended to supplement any releases included in the Settlement Agreements as between the parties to such Settlement Agreements." Again, the contents of the Settlement Agreements are not provided. There is no indication of what additional provisions, if any, are included in the Settlement Agreements but not included in the Releases contained in the Plan. Without allowing interested parties an opportunity to review all the terms of the Settlement Agreements and compare them with the Releases, claimants are being deprived of a full and fair opportunity to evaluate the full extent of the releases contemplated in this case.

28. By way of a Motion for Entry of an Order Authorizing Filing of Settlement Agreements Under Seal, dated April 21, 2015 (Docket Entry No. 1397)(the "Motion to Seal"),

the Trustee seeks to seal from public viewing the Settlement Agreements.

29. Consequently, if the Trustee prevails on the Motion to Seal, there will never be any information provided about the amount the Released Parties paid in consideration for the broad releases and injunctive relief they are receiving nor will claimants be able to review the full extent of the releases being provided to the Released Parties.

30. Likewise, the Disclosure Statement contemplates that any Settlement Agreements not previously approved by the Court will be deemed approved as of the Effective Date of the Plan. While the Court will, presumably, have the full and complete Settlement Agreement(s) before it, claimants will not know whether or not the terms of them are objectionable unless they are able to review them in their entirety. Further, upon confirmation, there will be no clarity relating to what, exactly, the Court is deemed to have approved.

31. As stated by the United States Trustee in his June 11, 2015 Objection to Motion for Entry of an Order Authorizing Filing of Settlement Agreements Under Seal (Docket Entry No. 1459), which is incorporated herein by reference, "[t]here is a strong presumption and public policy in favor of public access to court records." *Togut v. Deutsche Bank AG, Cayman Islands Branch et al., (In re Anthracite Capital, Inc.)*, 492 B.R. 162, 170 (Bankr. S.D.N.Y. 2013). Section 107(a) of the United States Bankruptcy Code (the "Code"), codifying this strong public policy in favor of public access to documents filed in the bankruptcy court, provides that "a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a). The Settlement Agreements at issue in this case do not qualify under any of the exemptions to section 107(a) of the Code, and they should be made available to the creditors in this case so that they

may fully evaluate the Plan. Without their inclusion, the Disclosure Statement is materially deficient.

F. The Wrongful Death Trust

32. The Disclosure Statement provides that the WD Trust, established for the benefit of making distributions to Class 12 – the Wrongful Death claimholders – shall be governed by the WD Trust Agreement and "decisions with respect to matters shall be made by the WD Trustee, subject to the terms of the WD Trust Agreement." *Disclosure Statement* at pp. 54-55.

33. According to the Disclosure Statement, prior to the Effective Date of the Plan, the WD Trustee and the Trustee "shall execute" the WD Trust Agreement. *Disclosure Statement* at p. 54.

34. The terms of the WD Trust Agreement should be included in the Disclosure Statement to ensure that claimants fully understand how the WD Trust[5] will be administered.

35. Further, there is no discussion in the Disclosure Statement about who will be responsible for selecting the WD Trustee, when and how this selection will be made, and whether there will be any opportunity to object to the appointment. The Disclosure Statement should be amended to discuss the process by which the WD Trustee will be appointed.

36. Nor is there any discussion of whether there will be any administrative oversight of the WD Trustee. The scope of judicial oversight is not explicit. The Disclosure Statement should be amended to address this issue as well. The plan provision conferring "quasi-judicial" immunity upon the WD Trustee may be unenforceable if the WD Trustee is not expressly subject to judicial review and oversight.

[5] The United States Trustee is particularly concerned about what protections are included in the WD Trust Agreement to ensure that any investments into the WD Trust, post-confirmation, are appropriately collateralized.

37. The Disclosure Statement cannot be approved in its current form for lack of information necessary to make an informed decision with respect to the WD Trust.

G. GOVERNMENTAL CLAIMS

38. Numerous parties employed by the Debtor have recently been indicted on criminal charges in Canada. It is unclear whether enforcement actions in the United States are under consideration. The United States Trustee, therefore, requests that the following language be inserted into the Plan and Disclosure Statement relative to any actual or potential criminal liability:

> *No Governmental Releases.*
>
> *Nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including without limitation any claim arising under the Internal Revenue Code, the environmental* ***laws or any criminal laws of the United States or any state and local authority against any party or person****, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceedings against any party or person for any liability of such persons whatever, including without limitation any claim, suit or action arising under the Internal Revenue Code, the environmental* ***laws or any criminal laws of the United States or any state and local authority against such persons****, nor shall anything in the Confirmation Order or the Plan exculpate any party or person from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws* ***or any criminal laws of the United States or any state and local authority against any party or person.***

39. Even assuming the releases contained in the Plan as drafted may amount to a "discharge" for the subjects, section 523(a)(7) excepts from discharge any debt "to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty…" 11 U.S.C. §

523(a)(7); *see also Kelly v. Robinson*, 479 U.S. 36, 50 (1986) (it is "the established state of the law – that bankruptcy courts could not discharge criminal judgments."). Unlike other provisions of section 523 (including a2 and a4), subsection 523(a)(7) is self-executing. *See* 11 U.S.C. § 523(c)(1). Thus, the personal criminal liability (including any restitution) is non-dischargeable, even in chapter 11. *See* 11 U.S.C. § 1141(d)(2) (specifying that plan confirmation does not discharge a debtor who is an individual from any debt excepted from discharge under section 523).

40. Assuming that any governmental claims or other causes of action (including criminal charges and/or judgments) are nondischargeable for the reasons above, these governmental entities are not bound by the terms of a chapter 11 plan. *See Grynberg v. United States (In re Grynberg)*, 986 F.2d 367, 370 (10th Cir. Colo. 1993) ("Neither the rules nor the bar order prevent a creditor holding a nondischargeable debt who has not filed a proof of claim from collecting outside of bankruptcy."); *see also In re Amigoni*, 109 B.R. 341, 345 (Bankr. N.D. Ill. 1989) ("parties to whom [criminal restitution] debts are owed cannot have their rights under nonbankruptcy law restricted by a plan of reorganization"); *In re Howell*, 84 Bankr. 834, 836 (Bankr. M.D. Fla. 1988) ("no doubt that a creditor who has a debt excepted from discharge under §523 cannot be bound by the provisions of a confirmed plan"); *but see In re Mercado*, 124 B.R. 799 (Bankr. C.D. Cal. 1991) (finding a plan can enjoin nondischargeable claimholder's collection activities and distinguishing *Amigoni* given tension between bankruptcy law and restitution statute).

H. DEEMED ACCEPTANCE

41. The plan provides that if no creditors in a given class vote, the class will be deemed to have accepted the plan. Such provision is inconsistent with § 1126(c).

I. RELIEF REQUESTED

42. The U.S. Trustee has consulted with the Trustee with respect to the foregoing. These objections represent the unresolved issues with respect to the adequacy of the information contained in the March 31, 2015 Disclosure Statement.

43. Any and all objections with respect to confirmation of the Plan, whether or not they are identified herein, are hereby reserved.

WHEREFORE, the United States Trustee respectfully requests that approval of the March 31, 2015 Disclosure Statement be contingent upon this Court entering orders consistent with this Objection and further enter orders granting him such other and further legal and equitable relief to which he may be entitled.

Dated at Portland, Maine this _7th_ day of July, 2015.

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Stephen G. Morrell, Esq.
United States Department of Justice
Office of United States Trustee
537 Congress Street
Portland, ME 04101
Phone: (207) 780-3564

CERTIFICATE OF SERVICE

I, Stephen G. Morrell, being over the age of eighteen and an employee of the United States Department of Justice, U.S. Trustee Program, hereby certify that on July 7, 2015, I electronically filed the forgoing OBJECTION OF THE UNITED STATES TRUSTEE TO DISCLOSURE STATEMENT FOR THE TRUSTEE'S PLAN OF LIQUIDATION DATED MARCH 31, 2015. All parties listed on the Notice of Electronic Filing have been served electronically.

Dated at Portland, Maine this _7th_ day of July, 2015.

/s/ Stephen G. Morrell

Service List: