

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**STIPULATION AND ORDER RESOLVING TRUSTEE'S MOTION FOR AN ORDER
DISBANDING THE OFFICIAL COMMITTEE OF VICTIMS**

IT IS HEREBY STIPULATED AND AGREED by and among (i) Robert J. Keach, solely in his capacity as the chapter 11 trustee (the "Trustee") in the above-captioned chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), (ii) the official committee of victims (together with (a) each member of such committee appointed by the United States Trustee (the "U.S. Trustee"), solely in such member's capacity as such a member ("Committee Member"), and (b) such committee's counsel and counsel's agents and representatives, the "Committee") appointed by the U.S. Trustee pursuant to this Court's Orders dated October 18, 2013 and September 19, 2014 [D.E. Nos. 391, 1112] (together, the "Appointment Orders"), and (iii) the Wrongful Death Claimants (as defined below, and collectively with the Trustee and the Committee, the "Parties"), as follows (the "Stipulation"):

WHEREAS, on June 4, 2015, the Trustee filed the *Trustee's Motion for Order Disbanding the Official Committee of Victims* [D.E. 1441] (the "Motion to Disband");

WHEREAS, on July 8, 2015, the Wrongful Death Claimants¹ joined the Motion to Disband [D.E. 1501] (the “WD Joinder”);

WHEREAS, on July 13, 2015, the Toups Claimants² (a subset of the Wrongful Death Claimants) separately joined the Motion to Disband [D.E. 1510] (together with the WD Joinder, the “Joinders”);

WHEREAS, on July 15, 2015, the Trustee filed the *Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1495] (the “Plan”)³;

WHEREAS, also on July 15, 2015, counsel to the Wrongful Death Claimants represented on the record, among other things, that counsel to and the Wrongful Death Claimants reserved the right to sue the Committee (including counsel to the Committee) for, *inter alia*, tortious interference with contract, and that the Wrongful Death Claimants would object to the fees of Committee Counsel (the “WD Claimants’ Statement of Record”), *see* PDF with attached Audio File (court audio for hearing on July 15, 2015) [D.E. 1533]; At the July 15 hearing, the Trustee asserted that the Committee and/or its counsel had taken various *ultra vires* acts in this case or the CCAA Case (the “Trustee’s Ultra Vires Allegations”);

WHEREAS, the Committee, based on the Trustee’s representations made on the record at the July 15 hearing with respect to section 5.10 of the Plan, and because it has no standing to object to fee arrangements between the Wrongful Death Claimants and their counsel, is now

¹ The “Wrongful Death Claimants” has the meaning ascribed to such term in the *Statement of Jeffrey D. Sternklar Pursuant to Fed. R. Bankr. P. 2019* [D.E. 1479]. For purposes of the agreements set forth in this Stipulation, “Wrongful Death Claimants” shall also include counsel to the Wrongful Death Claimants.

² The “Toups Claimants” has the meaning ascribed to such term in the *Statement of Mitchell A. Toups Pursuant to Fed. R. Bankr. P. 2019* [D.E. 1514]. For purposes of the agreements set forth in this Stipulation, the “Toups Claimants” shall also include counsel to the Toups Claimants.

³ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan or the Motion to Disband, as applicable.

satisfied with the terms of the Plan and it believes that the terms of this Stipulation are appropriate;

WHEREAS, the Committee has not been made aware that any Wrongful Death Claimant has any basis to initiate or otherwise prosecute a Proceeding as defined in section 5.10 of the Plan, whether in the United States, Canada or elsewhere; and

WHEREAS, the Parties have agreed to resolve the Motion to Disband, the Joinders, and any dispute regarding the WD Claimants' Statement of Record on the terms set forth herein.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows, subject to approval of this Stipulation by the Court being obtained:

1. The Motion to Disband shall be deemed withdrawn without prejudice to (a) any party's right to re-file a similar motion and (ii) any other party's right to oppose such motion.

2. The Committee, each Committee Member and Committee Counsel shall:

- (a) not oppose the Plan, as same will be modified to reflect this Stipulation, including section 5.10 of the Plan (pertaining to distribution of the WD Trust Assets, as defined in the Plan);
- (b) not object to or seek to modify any provision of the Plan, as same will be modified to reflect this Stipulation, including section 5.10 of the Plan;
- (c) not represent any person or entity in a Proceeding, or, directly or indirectly solicit any Holder of a Derailment Claim or such Holder's representatives, including the Class Representatives and Class Counsel or their representatives, to (i) initiate a Proceeding as defined in section 5.10 of the Plan, whether in the United States, Canada or elsewhere, or (ii) object or otherwise seek to modify the Plan, including section 5.10 thereof; and, provided further, shall not participate in such a Proceeding unless (i) ordered by the tribunal to do so or (ii) such person is prosecuting a Proceeding on his or her own behalf, in such person's individual capacity; and
- (d) not make any further appearances in the CCAA Case with respect to matters related to section 5.10 of the Plan and/or any "Proceeding" (as that term is defined in section 5.10 of the Plan (together, the "Settled Matters")), whether by filing papers or making a statement on the record, or otherwise seek to intervene in the CCAA Case or any ancillary hearings

or appeals taken therefrom with respect to the Settled Matters, unless otherwise authorized by the Trustee.

3. The Trustee shall include in the proposed form of Confirmation Order the following revision to section 10.3 of the Plan (Exculpations and Limitations of Liability):

As of the Effective Date, none of (a) the Trustee, (b) *the Creditors' Committee*, (c) the Monitor, (d) MMA Canada, or (e) the members, representatives, accountants, financial advisors, consultants and attorneys of the entities described in (a) through (d) of this paragraph shall have or incur any liability to any person for any act taken or omission in connection with or related to the Chapter 11 Case, including but not limited to (i) formulating, preparing, disseminating, implementing, confirming, consummating or administrating this Plan (including soliciting acceptances or rejections thereof), (ii) the Disclosure Statement or any contract, release or other agreement or document entered into or any action taken or omitted to be taken in connection with this Plan or the Disclosure Statement, or (iii) any distributions made pursuant to this Plan, except for any acts determined by Final Order to have constituted willful misconduct, bad faith or gross negligence; *provided that in the event that the Creditors' Committee (including each member of the Creditor's Committee solely in such member's capacity, and the Creditor's Committee's counsel and counsel's authorized agents and representatives) violates or breaches the Stipulation and Order Resolving Trustee's Motion for an Order Disbanding the Official Committee of Victims [D.E. ___], this provision shall be void ab initio with respect to the Creditors' Committee (including each member of the Creditor's Committee in such member's individual capacity, such members' representatives and agents, and the Creditor's Committee's counsel and counsel's authorized agents and representatives).*

4. Upon approval of this Stipulation, the Wrongful Death Claimants shall, and are deemed to, release the Committee, the Committee Members and the Committee Counsel from any and all claims arising from the Committee's or Committee Counsel's actions or inactions in this case or the CCAA Case (and, with respect to Committee Members and their representatives and Committee Counsel and its authorized representatives, solely in their respective capacities as such), including matters described in the WD Claimants' Statement of Record (the "Release"); *provided that* in the event that the Committee, Committee Members and/or the Committee

Counsel violates or breaches this Stipulation, this Release shall be void ab initio, and, among other things, and without limiting the rights and remedies to which the Wrongful Death Claimants or their counsel may be entitled, with respect to any request by members of the Committee, their attorneys, or counsel to the Committee for allowance or payment of claims for compensation or fee reimbursement for professional services and reimbursement of expenses, including, without limitation, pursuant to 11 U.S.C §§ 330, 331, 503(b)(3)(D) and (4), the Wrongful Death Claimants and their counsel shall have the right to object to allowance or payment of any and all of the foregoing and to seek disgorgement of any and all amounts paid beforehand on account of any and all of the foregoing, and the Committee, Committee Members and Committee Counsel shall have the right to oppose such relief.

5. The Trustee hereby waives for all purposes in this case any claim or objection against the Committee and/or Committee Counsel based on the Trustee's Ultra Vires Allegations; *provided, however*, that the Trustee retains the right to challenge the reasonableness of fees and expenses incurred in connection with any of the activities constituting or related to the Trustee's Ultra Vires Allegations.

6. This Stipulation is subject to and effective upon approval of the Bankruptcy Court for the District of Maine (the "Court"). The Trustee shall promptly cause this Stipulation to be presented to the Court for approval. The Committee's deadline to object to the Plan shall be extended, without the need for entry of a separate order, until Court approval of this Stipulation.

7. Other than as modified pursuant to this Stipulation (or the terms of the Plan, once effective), the Committee shall continue in existence, but only with the powers and obligations conferred upon it pursuant to the Appointment Orders and subject to and in accordance with this Stipulation.

8. Nothing in this Stipulation shall affect or impair (i) any objections to the standing of the Committee to appear and be heard in the CCAA Case, and (ii) any and all rights and claims arising from any appearance, filing, argument or related or similar acts of the Committee in the CCAA Case in both (i) and (ii) occurring from and after the mutual execution of this Stipulation.

9. This agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Electronic or facsimile signatures shall be considered as valid signatures as of the date thereof.

[signature pages follow]

Dated: September 14, 2015

**ROBERT J. KEACH
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ Lindsay K. Zahradka
D. Sam Anderson, Esq.
Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)
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100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029
Tel: (207) 774-1200 / Fax: (207) 774-1127

Dated: September 14, 2015

**OFFICIAL COMMITTEE OF VICTIMS OF
MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.**

By its attorneys:

/s/ Luc A. Despins
Luc A. Despins, Esq. (admitted *pro hac vice*)
PAUL HASTINGS LLP
75 East 55th Street
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Tel: (212) 318-6001 / Fax: (212) 230-7771

Dated: September 14, 2015

WRONGFUL DEATH CLAIMANTS

By their attorneys:

/s/ Jeffrey D. Sternklar
Jeffrey D. Sternklar (admitted *pro hac vice*)
JEFFREY D. STERNKLAR LLC
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This Court having determined that the Stipulation is in the best interests of the Debtor, its estate and creditors, and it appearing that proper and adequate notice has been given and that no other or further notice is necessary, and upon the record herein, and after due deliberation thereon, and good and sufficient cause appearing therefore, it is hereby **ORDERED**, **ADJUDGED** and **DECREED** that:

1. The Stipulation and provisions thereof are **APPROVED** in their entirety.
2. Notwithstanding any provision of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or the Local Rules of this Court to the contrary, this order shall take effect immediately upon entry.

Dated: _____, 2015

The Honorable Peter J. Cary
Chief Judge, United States Bankruptcy Court
District of Maine