

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**TRUSTEE’S OBJECTION TO FIRST AMENDED MOTION FOR  
EXTENSION OF TIME TO FILE PROOF OF CLAIM BY CREDITOR ESTATE OF  
YVON RICARD AND ALL HEIRS OF THE ESTATE OF YVON RICARD**

Robert J. Keach, the chapter 11 trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”), hereby objects (the “Objection”)<sup>1</sup> to the *First Amended Motion for Extension of Time to File Proof of Claim by Creditor Estate of Yvon Ricard and All Heirs of the Estate of Yvon Ricard* [D.E. 1818] (the “Motion”) filed by the estate of Yvon Ricard and all heirs of the estate of Yvon Ricard (the “Ricard Creditors”). In support of this Objection, the Trustee states as follows:

**JURISDICTION, VENUE AND BASES FOR RELIEF**

1. The United States District Court for the District of Maine (the “District Court”) has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this chapter 11 case, and, accordingly, this Objection, to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter judgment in this action.

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<sup>1</sup> The Trustee requests a waiver of Rule 9013-1(f) of the Local Rules of the Bankruptcy Court for the District of Maine. In light of the compound nature of the allegations and legal conclusions set forth in each paragraph of the Motion, a simple “admit/deny” response is impractical and, in any event, each of the allegations set forth in the Motion is addressed in the body of this Objection.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

### **BACKGROUND**

#### **A. The Derailment and the Debtor's Bankruptcy Filing**

4. On July 6, 2013, an unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the "Derailment"). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian Pacific Railway ("CP") and MMA Canada later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

5. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was temporarily halted between Maine and Québec on the MMA Canada line, resulting in the Debtor losing much of its freight business. These effects of the Derailment caused the Debtor's aggregate gross revenues to fall drastically to approximately \$1 million per month.

6. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the "Case"). Simultaneously, MMA Canada filed for protection under Canada's Companies' Creditors Arrangement Act (Court File No. 450-11-000167-134). On August 21, 2013, the Office of the United States Trustee (the "U.S. Trustee") appointed the Trustee to serve as trustee in the Debtor's Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

**B. Confirmation of the Plan, the Bar Date, and Filing of the Motion**

7. On March 20, 2014, the Court entered the *Order Pursuant to 11 U.S.C. Sections 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* [D.E. 783] (the “Bar Date Order”), and a similar order was entered in the CCAA Case. The Bar Date Order set June 13, 2014 as the deadline to file proofs of claim (the “Bar Date”). On June 13, 2014, the Court entered the *Order Amending the Deadline for Filing Wrongful Death Proofs of Claim* [D.E. 974], extending the deadline to file proofs of claim for wrongful death until July 14, 2014.

8. On July 15, 2015, the Trustee filed the *Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1534].

9. On October 9, 2015, the Bankruptcy Court confirmed the Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015 (as Amended October 8, 2015) [D.E. 1801] (the “Confirmation Order,” and the plan confirmed thereby and attached thereto, the “Plan”).

10. On October 13, 2015—in the week following the Plan’s confirmation, sixteen months after the Bar Date, and 52 days after Mr. Ricard’s death, the Ricard Creditors filed the Motion.

11. On October 24, 2015, the Confirmation Order became a final, non-appealable order.

**OBJECTION**

**A. The Legal Standard for Relief from Bar Date Order**

12. The purpose of a claims bar date “is to provide the debtor and its creditors with finality and to ensure the swift distribution” of assets of the estate. *In re Aboody*, 223 B.R. 36, 38 (B.A.P. 1st Cir. 1998) (quoting Mercado-Boneta v. Administracion del Fondo de

Compensacion Al Paciente through the Ins. Com'r of Puerto Rico, 125 F.3d 9, 17 (1st Cir. 1997)). Indeed, a claims bar date is “necessary to the efficient functioning of the bankruptcy system.” In re Brooks, 370 B.R. 194, 203 (Bankr. C.D. Ill. 2007). Accordingly, under Federal Rule of Bankruptcy Procedure 9006(b), the failure to file a proof of claim by the claims bar date requires a showing that “the failure to act was the result of excusable neglect.” Fed. R. Bankr. P. 9006(b). The burden of proving the existence of excusable neglect is on the party seeking relief from the bar date, and the movant must prove it by a preponderance of the evidence. *See In re Wrenn Associates, Inc.*, No. 04-11408, 2005 WL 3369272, \*3 (Bankr. D.N.H. Nov. 29, 2005); In re Engage, Inc., 315 B.R. 217, 223 (Bankr. D. Mass. 2004).

13. A showing of excusable neglect is a two-part process. *First*, the movant must show that the delay in filing is a result of neglect. *See In re SPR Corp.*, 45 F.3d 70, 72 (4th Cir. 1995); Engage, 315 B.R. at 223. *Second*, the movant must show that such neglect was “excusable.” The determination of whether neglect is excusable “is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” Pioneer, 507 U.S. at 395. The “relevant circumstances” include (collectively, the “Pioneer Factors”): (a) the danger of prejudice to the debtor; (b) the length of the delay and its potential impact on judicial proceedings; (c) the reason for the delay, including whether it was within the reasonable control of the movant; and (d) whether the movant acted in good faith. *Id.*

**B. The Ricard Creditors Have Not Satisfied the Standards for Relief from the Bar Date**

14. In order to satisfy the standards set forth in Bankruptcy Rule 9006(b)(1), a party seeking an extension of a deadline must demonstrate, by a preponderance of the evidence, “excusable neglect.” Fed. R. Bankr. P. 9006(b), Wrenn Assocs., 2005 WL 3369272, at \*3; Engage, 315 B.R. at 223. In particular, the first and second factors relevant to the analysis—prejudice to the debtor and length of delay—weigh against an extension of the Bar Date for the

Ricard Creditors. The Motion should thus be denied at this time, or deferred pending the receipt of additional information.<sup>2</sup>

15. At least the first and second Pioneer Factors weigh against the Ricard Creditors. With regard to the first factor—prejudice to the debtor, courts have held that prejudice to a debtor is greater when the creditor’s delay in filing its claim “extends into the period in which the plan of reorganization is being negotiated, drafted, filed or confirmed.” In re Kmart Corp., 315 B.R. 718, 722 (N.D. Ill. 2004) (internal quotations omitted). This is because at that point in a debtor’s case, the trustee has already relied on the claims pool reflected by timely filed claims and negotiated a plan to treat those claims. The prejudice is intensified in this case, where this Court has already entered the Confirmation Order, and that order has become a final order. In voting on the Plan that has already been confirmed, parties relied on the estimated claims pool sizes, and determined their support for the Plan—at least in part—in accordance with same. The potential for a material enlargement of the amount of claims at this point would necessarily negatively impact the other constituents sharing in the affected pools—an outcome that would be unjust, given that the debtor’s other creditors timely filed proofs of claim and facilitated the plan negotiation process. Exacerbating the prejudice to the Debtor, the Ricard Creditors have asserted that the full asserted amount (if permitted to be filed)—nine \$5,000,000 claims for an aggregate amount of \$45,000,000—would be entitled to priority treatment. Mot., Ex. C. If valid, which the Trustee reserves all rights to contest, such a large priority claim would have a meaningful impact on general unsecured creditors and other wrongful death plaintiffs, and not simply dilute recoveries in a modest amount, as the Ricard Creditors assert. *See* Mot. ¶ 6.

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<sup>2</sup> In the event the Ricard Creditors are able to supply the Trustee with more information regarding the third Pioneer Factor—the reason for the delay, including information surrounding Mr. Ricard’s death and the relation of his death to the Derailment (and provided the Trustee is given sufficient time to analyze such information), the Trustee will negotiate in good faith with the Ricard Creditors regarding the Motion, as supplemented by such additional information.

Accordingly, the Debtor and its estate will be prejudiced by the grant of the Motion at this late stage in the case.

16. With regard to the second Pioneer Factor—the length of the delay and the potential impact on the proceedings, the Motion was filed sixteen months after the Bar Date, after the confirmation hearing, when the Trustee is in the process of administering the Plan. In addition, the Motion was filed 52 days after Mr. Ricard’s death. The delay is undeniably significant, and intrudes upon Plan consummation and the claims administration process. *See, e.g., Kmart*, 315 B.R. at 722 (finding the fact that the motion was not heard until after confirmation of the plan supported a finding of no excusable neglect). The length of the delay accordingly weighs against granting the Motion.

17. The Trustee takes no position on whether the Motion was filed in good faith, but even if it were, such good faith would not overcome the weight of those Pioneer Factors that weigh against granting the relief requested.

18. For all these reasons, the Trustee submits that the Motion should be denied.

**RESERVATION OF RIGHTS**

19. Nothing contained herein is or should be construed as: (i) an admission as to the validity or extent of any claim against the Debtor, (ii) a waiver of the Trustee’s right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

**NOTICE**

20. Notice of this Objection was served on the following parties on the date and in the manner set forth in the certificate of service: (a) Debtor’s counsel; (b) United States Trustee; (c) counsel to the Official Committee of Victims; and (d) counsel to the Ricard Creditors. The Trustee submits that no other or further notice need be provided.

**CONCLUSION**

**WHEREFORE**, for the reasons set forth herein, the Trustee requests that the Court:  
(i) sustain this Objection; (ii) deny the Motion in its entirety; and (iii) grant such other and further relief as may be just.

Dated: November 10, 2015

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

By his attorneys:

/s/ Lindsay K. Zahradka

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