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 MOTION FOR EXTENSION OF TIME TO FILE PROOF OF CLAIM BY CREDITORS ISABELLE BEAUDRY; SARAH CHAUVIN AS REPRESENTATIVE OF THE ESTATE OF SUZANNE CUSTEAU; GESSNER BLENKHORN; STEVEN HALLE AND JAQUES LAPRISE

Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), hereby objects (the "Objection")[1] to the *Motion for Extension of Time to File Proof of Claim by Creditors Isabelle Beaudry; Sarah Chauvin as Representative of the Estate of Suzanne Custeau; Gessner Blankhorn; Steven Halle and Jacques Laprise* [D.E. 1880] (the "Motion") filed by (a) Isabelle Beaudry (the "Ariko Owner"); (b) Gessner Blankhorn, Steven Halle and Jacques Laprise (collectively, the "Societé Owners," and together with the Ariko Owner, the "Business Owners"); and (c) Sarah Chauvin as Representative of the Estate of Suzanne Custeau (the "Custeau Representative," and together with the Business Owners, the "Movants"). 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.

[1] 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.

§ 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.

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").[2]

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

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

10. On November 20, 2015—seventeen months after the Bar Date and almost a month after the Confirmation Order became a final order, the Movants filed the Motion.

[2] 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.

OBJECTION

A. The Legal Standard for Relief from Bar Date Order

11. 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).

12. 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. To "neglect" means "to give little attention or respect to a matter, or, closer to the point for our purposes, to leave undone or unattended to especially through carelessness." Pioneer Invest. Servs.. Co. v. Brunswick L.P., 507 U.S. 380, 388 (1993) (internal quotations and citations omitted). ***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.

13. Although a court may consider all of the Pioneer Factors, the third—the reason for the delay, and whether it was within the movant's reasonable control—is often considered the most important factor. *See*, *e.g.*, Graphic Commc'ns Int'l Union, Local 12-N v. Quebecor Printing Providence, Inc., 270 F.3d 1, 5 (1st Cir. 2001) (stating that "the four *Pioneer* factors do not carry equal weight; the excuse given for the late filing must have the greatest import. While prejudice, length of delay, and good faith might have more relevance in a closer case, the reason-for-delay factor will always be critical to the inquiry.") (internal quotations omitted); In re Musicland Holding Corp., 356 B.R. 603, 607 (Bankr. S.D.N.Y. 2006) (stating that "[t]he other factors are relevant in close cases" and listing cases that focus primarily on the third Pioneer Factor).

14. In focusing on the third Pioneer Factor, courts have held that it is the creditor's responsibility to "explore and identify any potential claims" it might have against the debtor in a timely manner. *See* In re Nat'l Steel Corp., 316 B.R. 510, 518 (Bankr. N.D. Ill. 2004) (holding that creditor was not entitled to late file proof of claim, in part because failing to recognize existence of claim under applicable statute was within the creditor's reasonable control). Significantly, ignorance of the Bankruptcy Code, bankruptcy law or the Bankruptcy Rules does not excuse a creditor's failure to file a claim. *See* Graphic Commc'ns, 270 F.3d at 6 ("Even in the wake of *Pioneer* . . . when a party's or counsel's misunderstanding of clear law . . . is the reason for the delay in filing the notice of appeal, we have continued to uphold findings of 'no excusable neglect' where the court cited the absence of unique or extraordinary circumstances."); *see also* Jefferson v. Hicks, 364 Fed. Appx. 281, 283 (8th Cir. 2010) (stating

that "*Pioneer* 'did not alter the traditional rule that mistakes of law do not constitute excusable neglect'") (quoting Ceridian Corp. v. SCSC Corp., 212 F.3d 398, 404 (8th Cir. 2000)).

B. The Movants Have Not Satisfied the Standard for Relief from the Bar Date

15. 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. But a failure to comply with a deadline due to ignorance of the law is not excusable as a matter of law. In addition, the first and second factors relevant to the analysis—prejudice to the debtor and length of delay—all weigh against an extension of the Bar Date for the Movants. The Motion should thus be denied at this time, or with respect to the Custeau Representative, deferred pending the receipt of additional information.[3]

i. The Business Owners' Mistakes of Law Do Not Excuse Compliance with the Bar Date

16. Because the Business Owners' failure to timely file a proofs of claim were, taking the representations in the Motion as true,[4] due to their ignorance of the law, the Motion should be denied. As an initial matter, the Business Owners do not allege that they did not receive notice of the Bar Date. Instead, as justification for its failure to timely file a proof of claim, the Business Owners state that they "did not realize [that they] may need to file a separate claim form[] as [] individual[s] for those damages separate from [their] property/business claim[s] previously filed." Mot. ¶¶ 3, 4. As the Business Owners thus concede, they were aware of the Bar Date, and timely filed proofs of claim for

[3] In the event the Custeau Representative can supply the Trustee with more information regarding the third Pioneer Factor—the reason for the delay, including information surrounding Ms. Custeau's death and the relation of her 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 Custeau Representative regarding the Motion, as supplemented by such additional information.

[4] The Trustee reserves the right to challenge the facts alleged in the Motion, including the Business Owners' motivations or rationales for failing to timely file proofs of claim.

property/business claims. And as later stated in the Motion, since timely filing the property/business claims, the Business Owners have come to learn that "the money allocated to the property and business loss claims is overfunded." Mot. ¶ 8. It would thus appear that, upon learning that estate assets might be allocated away from the fund established for distribution on account of their property/business claims,[5] the Business Owners are simply attempting to recast certain of their claims in order to capture that asset reallocation, to the detriment of creditors designated to benefit from that reallocation under the Plan.

17. As set forth above, in assessing whether neglect is "excusable" under Bankruptcy Rule 9006, courts consider the four Pioneer Factors, weighing the third most heavily. Starting with this factor, the reason for the delay, including whether it was within the reasonable control of the movant, weighs strongly in favor of disallowing the Motion. As set forth above, the Business Owners knew of the Bar Date and timely filed proofs of claim for "property/business claims." *See* Mot. ¶¶4, 5. Putting aside their recent revelation of an alleged overallocation of assets to satisfy economic damages claims, it is irrelevant that the Business Owners did not *know* that they had to assert moral damages and personal injury claims in order to preserve their rights to pursue such claims. *See* Graphic Commc'ns, 270 F.3d at 6; Jefferson, 364 Fed. Appx. at 283 ("*Pioneer* did not alter the traditional rule that mistakes of law do not constitute excusable neglect.") (internal quotations omitted). At best, then, the Business Owners were ignorant of applicable law. Such ignorance does not constitute excusable neglect under Bankruptcy Rule 9006.

18. In a similar situation, where a creditor failed to understand that it had to file a proof of claim to protect its rights, a bankruptcy court declined to permit the late filing of a claim. In In re Agway, Inc., an employee of Agway, Inc. ("Agway"), had sued the

[5] The Trustee reserves all rights with respect to the property/business claims alleged to have been timely asserted (including to object to such claims on the merits).

manufacturer of a conveyor belt (the "Manufacturer") from which the employee had fallen during the course of his employ (the "Lawsuit"). 313 B.R. 22, 25 (Bankr. N.D.N.Y. 2003). The Manufacturer impleaded Agway, and Agway subsequently filed for chapter 11 protection. Id. at 26. The Lawsuit was stayed upon the chapter 11 filing, and Agway scheduled an unsecured claim for the Manufacturer of $0 value. Id. Agway served the Manufacturer with a notice of the bar date and a copy of a proof of claim evidencing the $0 claim, and providing that the Manufacturer need not file a proof of claim if it agreed with the amount scheduled. *See* id. After reviewing its books and records, the Manufacturer determined that Agway had a zero balance in the Manufacturer's accounts receivable. Id. Approximately three months after the bar date, the Manufacturer sought leave to file a claim to preserve its ability to recover from Agway in connection with the Lawsuit. Agway opposed the motion, arguing that the Manufacturer's failure to timely file a claim was inexcusable because the Manufacturer had received actual notice of the bar date and had had plenty of time to file a claim. Id. at 27. In applying the Pioneer Factors, the bankruptcy court found, in relevant part, that the Manufacturer's lack of understanding that "a potential judgment in a pending lawsuit was a claim for bankruptcy purposes and that failing to file a proof of claim listing the potential judgment would nullify any present or future right [ ] to collect any portion of the judgment" did not constitute "excusable neglect" because the Manufacturer's understanding of its rights, even if that required consulting an attorney, was in the Manufacturer's reasonable control. Id. at 29-30. Finding that the balance of the Pioneer Factors did not counteract this conclusion, the bankruptcy court denied the Manufacturer's motion. Id. at 31.

19. Similarly, the Business Owners' argument is essentially that they did not understand that they needed to file a proof of claim by the Bar Date (or include in their timely filed claim all claims they intended to assert) in order to preserve their ability to prosecute a

claim for moral damages arising from the Derailment.[6] But like the Manufacturer in Agway, the Business Owners' ignorance of the law (and/or their failure to timely consult counsel to assess what actions they needed to take to protect their rights) is insufficient to demonstrate excusable neglect. *See* 313 B.R. at 25; *see also* Nat'l Steel, 316 B.R. at 518 (creditor not entitled to late file proof of claim, in part because failing to recognize existence of claim under applicable statute was within the creditor's reasonable control).

20. As Bankruptcy Rule 9006 does not permit the Business Owners a "second bite" at the proverbial apple—seventeen months after the Bar Date—simply because they were ignorant of the law governing their actions to timely assert claims (and because by the Business Owners' own admission, this appears to be an attempt to merely re-characterize the genre of their claims in order to access additional estate assets), the Motion should be denied.

ii. The Balance of the Relevant Pioneer Factors Weigh Against Granting the Motion with Respect to All Movants

21. The rest of the Pioneer Factors do not cure the Business Owners' failure to demonstrate excusable neglect, and at least the first and second Pioneer Factors also weigh against the Custeau Representative. 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 exacerbated 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, parties relied on the

[6] The Trustee reserves the right to contest any claim asserted by the Business Owners should the Motion be granted.

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

22. With regard to the second Pioneer Factor—the length of the delay and the potential impact on the proceedings, the Motion was filed seveteen months after the Bar Date, after the confirmation order became a final order, when the Trustee is in the process of administering the Plan. 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 claimant filed its motion for leave to file a late claim *seven* months after the bar date, such that the motion was not heard until after confirmation of the plan, supported finding of no excusable neglect). The length of the delay accordingly weighs against granting the Motion.

23. Finally, the Trustee submits that, with respect to the Business Owners, the Motion was not filed in good faith. As indicated above, the Business Owners are simply attempting to recast certain of their claims in order to capture what they understand to be an asset reallocation, to the detriment of other creditors designated to benefit from that reallocation under the Plan. But even if the Business Owners had filed the Motion in good faith, such good faith would not overcome the weight of the other Pioneer Factors, each of which weigh against granting the relief requested by the Business Owners. The Trustee takes no position on whether the Custeau Representative filed the Motion in good faith, but even if it had, such good

faith would not overcome the weight of those Pioneer Factors that weigh against granting the relief requested.

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

RESERVATION OF RIGHTS

25. 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

26. 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 Movants. 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: December 8, 2015

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

By his attorneys:

/s/ Lindsay K. Zahradka

Sam Anderson
Lindsay K. Zahradka (admitted *pro hac vice*)
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127