

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**CHAPTER 11 TRUSTEE'S STATUS REPORT
ON DERAILMENT LITIGATION**

Robert J. Keach, the chapter 11 trustee in the above-captioned case, files this Status Report regarding certain filings in the United States District Court for the Northern District of Illinois and the United States District Court for the District of Maine pertaining to the litigation arising out of the July 6, 2013 derailment of a train owned by Montreal Maine & Atlantic Railway, Ltd. ("MMA").

INTRODUCTION

1. MMA's bankruptcy filing was precipitated by the train derailment in Lac-Mégantic, Québec on July 6, 2013 (the "Derailment"). The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people.

2. Beginning on July 22, 2013 and continuing for several days thereafter, the representatives and administrators of the estates of 20 of the victims commenced civil actions in the Circuit Court of Cook County, Illinois (the "Circuit Court"). Thirteen of the civil actions named MMA among the defendants. MMA was not named as a defendant in seven of the civil actions, although the other defendants in those seven actions are the same as the defendants in the previous thirteen cases, and the theories of liability are identical.

3. On August 7, 2013, MMA filed a voluntary petition for relief under 11 U.S.C. § 101 *et seq.* The Derailment also precipitated the filing by Montreal Maine & Atlantic Canada Co., MMA's subsidiary, Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

4. On August 21, 2013, Robert J. Keach (the "Trustee") was appointed as the chapter 11 trustee in MMA's case pursuant to 11 U.S.C. § 1163.

5. Starting on August 29, 2013, the civil actions were removed to the United States District Court for the Northern District of Illinois (the "Illinois District Court") pursuant to 28 U.S.C. §§ 1331, 1332, 1334(b), 1441, 1446, and 1452. The Trustee consented to the removal of these civil actions. Currently, 19 of the civil actions (collectively, the "Derailment Cases") remain pending in federal or state court in Illinois.¹

6. On September 9, 2013, each of the plaintiffs in the thirteen Derailment Cases naming MMA as a defendant, voluntarily dismissed MMA without prejudice. Also on September 9, 2013, one of the plaintiffs moved the Illinois District Court for an order remanding her case (the "Grimard Case") back to the Circuit Court. *See Grimard v. Montreal Maine and Atlantic Railway, Ltd. et al.*, 1:13-cv-06197 (N.D. Ill., Sept. 9, 2013).

7. On September 11, 2013, the Trustee filed the Chapter 11 Trustee's Motion to Transfer Personal Injury Tort and Wrongful Death Claims Pursuant to 28 U.S.C. § 157(b)(5) (the "Section 157(b)(5) Motion") in this Court for consideration in the United States District Court for the District of Maine (the "Maine District Court"). The Section 157(b)(5) Motion requests that the Derailment Cases be transferred to the Maine District Court.

¹ On September 8, 2013, the plaintiff voluntarily dismissed Custeau v. Montreal, Maine and Atlantic Railway, Ltd., et al., 1:13-cv-06182 (N.D. Ill., Sept. 8, 2013).

8. On September 12, 2013, the Illinois District Court remanded the Grimard Case back to the Circuit Court. In remanding the Grimard Case, the Illinois District Court assumed that there was “bankruptcy jurisdiction” under section 1334(b) and, during the course of announcing its ruling on remand, the Court stated its view that remand did not, in any way, limit or preclude the Maine District Court from granting relief under 28 U.S.C. § 157(b)(5).

9. On September 18, 2013, the plaintiff in Roy v. Western Petroleum Company et al., 1:13-cv-06192 (the “Roy Case”) filed a motion to remand his case back to the Circuit Court.² Given the filing of the Section 157(b)(5) Motion, on September 23, the Trustee filed the Chapter 11 Trustee’s Motion for Order (I) Staying Ruling on Abstention or Remand and (II) Granting Leave to Intervene for a Limited Purpose (the “Trustee’s Stay Motion”) in the Roy Case.

STATUS OF DERAILMENT CASES

10. The following charts provide a timeline of the venue-related filings pending in the Illinois District Court and Maine District Court regarding the Derailment Cases. In particular, the Trustee files this report to inform the Court of the activity with respect to (a) the Trustee’s Section 157(b)(5) Motion and (b) the Trustee’s Stay Motion, both of which remain pending as of the date of this report.

Maine District Court: Case No. 1:13-mc-00184-NT

<u>Document</u>	<u>Filed by</u>	<u>Date</u>	<u>Docket No.</u>	<u>Attached Exhibit</u>
Section 157(b)(5) Motion	Chapter 11 Trustee	9/13/2013	1	A
Supplemental Memorandum of Law in Support of the Chapter 11 Trustee’s Motion to Transfer Personal Injury Tort and Wrongful Death Claims Pursuant to 28 U.S.C. § 157(b)(5)	Chapter 11 Trustee	11/8/2013	31	B

² Similar remand motions have been filed in the other Derailment Cases pending in the Illinois District Court.

Motion to Transfer Certain Personal Injury Tort and Wrongful Death Lawsuits to the Maine District Court Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334	Western Petroleum Corporation and Petroleum Transport Services, Inc.	9/13/2013	2	C
Joinder to Motions to Transfer Personal Injury and Wrongful Death Lawsuits to the United States District Court for the District of Maine Pursuant to 28 U.S.C. §§ 157(b)(5) and 1334	The CIT Group, Inc.	9/13/2013	3	D
Defendants' Joinder to Motions to Transfer Personal Injury and Wrongful Death Lawsuits to the United States District Court for the District of Maine Pursuant to 28 U.S.C. §§ 157(B)(5) and 1334	Rail World, Inc., Rail World Locomotive Leasing, LLC, and Edward A. Burkhardt	9/20/2013	4	E
Motion of Wrongful Death Claimants to Stay Chapter 11 Trustee's Motion to Transfer	18 of the Derailment Case Plaintiffs	10/11/2013	8	F
Response in Opposition to Plaintiffs' Motion to Stay the Chapter 11 Trustee's Motion to Transfer	Western Petroleum Corporation and Petroleum Transport Services, Inc.	10/23/2013	11	G
Chapter 11 Trustee's (I) Objection to Motion of Wrongful Death Claimants to Stay Chapter 11 Trustee's Motion to Transfer and (II) Request for Expedited Status Conference on Same	Chapter 11 Trustee	10/25/2013	16	H
Joinder in the WFS Entities' Response in Opposition to Plaintiffs' Motion to Stay the Chapter 11 Trustee's Motion to Transfer	Dakota Plains Transloading LLC and Dakota Plains Marketing LLC	11/1/2013	23	I
Order Reserving Ruling	Maine District Court	11/04/2013	26	J

Illinois District Court: Case No. 1:13-cv-06192

<u>Document</u>	<u>Filed by</u>	<u>Date</u>	<u>Docket No.</u>	<u>Exhibit</u>
Motion for Remand	Annick Roy	9/18/2013	47	K
Motion for Order (I) Staying Ruling on Abstention or Remand and (II) Granting Leave to Intervene for a Limited Purpose	Chapter 11 Trustee	9/23/2013	50	L
Response Supporting Chapter 11 Trustee's Motion to Stay Ruling on Remand	Edward Burkhardt and Rail World, Inc.	10/8/2013	54	M
Response to Trustee's Motion to	Annick Roy	10/8/2013	55	N

Intervene for a Limited Purpose				
Memorandum of Law in Opposition to Plaintiffs' Motions to Remand	Western Petroleum Company and Petroleum Transport Solutions, LLC	10/15/2013	59	O
Memorandum in Opposition to Plaintiffs' Motion to Remand	Dakota Plains Transloading LLC and Dakota Plains Marketing LLC	10/15/2013	60	P
Opposition to Plaintiffs' Motion to Remand	Rail World, Inc., Rail World Locomotive Leasing LLC, and Edward Burkhardt	10/15/2013	62	Q
Reply Memorandum in Support of Motion for Order (I) Staying Ruling on Abstention or Remand and (II) Granting Leave to Intervene for a Limited Purpose	Chapter 11 Trustee	10/21/2013	63	R
Pre-Ruling Submission Regarding the Chapter 11 Trustee's Motion to Stay	Western Petroleum Company and Petroleum Transports Solutions, LLC	10/21/2013	64	S
Reply Memorandum in Support of Motion to Remand	Annick Roy	10/29/2013	67	T

11. The Trustee will supplement this report as required by the Court.

Dated: November 8, 2013

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

By his attorneys:

/s/ Michael A. Fagone
Michael A. Fagone, Esq.
Sam Anderson, Esq.
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127
E-mail: mfagone@bernsteinshur.com