

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MAINE

In Re:

Montreal Maine & Atlantic
Railway, LTD.,
Debtor.

Bk. No. 13-10670
Chapter 11

**Claimant's Motion for Relief from Judgment and Reconsideration of Claim Trustee's
Third Omnibus Objection to Proofs of Claim That Will be Satisfied Under the CCAA Plan
and that were Released Under the Plan, Certain of Which
Additionally (A) Contain Insufficient Documentation and/or (B) Late Filed**

COMES NOW, the Creditors attached in Schedule A hereinafter collectively referred to as "**Creditors**", in the above captioned matter and, pursuant to Rule 60 (b) of the United States Bankruptcy Court of Maine, Federal Rules of Civil Procedure, respectfully moves this Honorable Court, for relief and clarification from the Court's *Order Sustaining Trustee's Third Omnibus Objection to Proofs of Claim That Will be Satisfied Under The CCAA Plan and That Were Released Under the Plan, Certain of Which Additionally (A) Contain Insufficient Documentation and/or (B) Late Filed* on April 4, 2016 ("Order").

INTRODUCTION

1. The Order determined the Trustee's *Third Omnibus Objection to Proofs of Claim that will be Satisfied under the CCAA Plan and that were released under the Plan, Certain of which Additionally (A) Contain Insufficient Documentation and/or (B) Late Filed* ("Claim Objection"). In direct conflict with the Claim Objection and the confirmed plan in this case, the monitor under the CCAA case of the Debtor's affiliate ("Monitor") wrongfully has relied upon the Order as grounds to deny payment of Creditors' valid and allowed claims in the CCAA, notwithstanding that the Claim Objection and the Plan make clear (i) those claims are to be paid through the CCAA plan, and (ii) nothing in the Claim Objection affects claimants rights to payment under the CCAA plan). The Creditors seek clarification of the Order to reinstate the claims disallowed by the Order for purposes of the CCAA.

HISTORICAL BACKGROUND

1. 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 the Debtor's wholly owned subsidiary, Montreal Maine & Atlantic Canada Co. ("MMA Canada"), later accepted the rail cars from CP at Saint-Jean, Québec.

2. The Derailment set off several massive explosions, destroying downtown Lac-Mégantic and neighboring homes, and has killed at least 47 people. Oil that did not burn, or was not re-captured, escaped into the environment, necessitating an extensive environmental cleanup. 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.
3. 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 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].
4. 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").
5. On March 31, 2015, MMA filed an initial version of the Plan and MMA Canada filed an initial version of the CCAA Plan. On June 8, 2015, the Monitor in the CCAA Case filed an amended version of the CCAA Plan. The CCAA Plan provides for, among other things, treatment of Derailment Claims and for Releases and Injunctions substantially identical to those set forth in the Plan.
6. On July 15, 2015, the Trustee filed an amended version of the Plan [D.E. 1534].
7. On October 9, 2015, the Bankruptcy Court entered the Confirmation Order.
8. Subsequent to the Claims Bar Date, the Canadian Class has file three motions with almost 600 late, unfiled claimants which were allowed via the Canadian Court.
9. The most recent of these orders occurred on November 26, 2015, allowing entry for over 400 late filed proof of claims.
10. The Plan was consummated on December 22, 2015

Relief Sought

11. By this Motion, the Creditors seek clarification of the Order. Under the Plan, Creditors' claims for economic, trouble and inconvenience, red and yellow zone claims, post-traumatic stress disorders, evacuation, bodily injury and grandparents and grandchildren claims ("Claims") were to be paid and satisfied pursuant to the CCAA plan. The Claim Objection sought disallowance of the Creditors' Claims, on the grounds, *inter alia*, that the Claims were to be paid and satisfied under the CCAA Plan. Indeed, in bold type, the Claim Objection (at 1-2) includes the following disclaimer (the "CCAA Disclaimer")

**THIS OBJECTION HAS NO EFFECT ON THE RIGHTS OF
CLAIMANTS IN THE CCAA CASE, INCLUDING THE
RIGHT TO RECEIVE DISTRIBUTIONS UNDER THE
CCAA PLAN, OR ON THE ALLOWANCE OR**

DISALLOWANCE OF SUCH CLAIMS IN THE CCAA CASE.

12. At all times, Creditors believed that their claims were recognized under the CCAA Plan and were unaffected by the Claim Objection. Creditors relied upon the CCAA Disclaimer in refraining from filing any opposition to the Claims Objection, since they took the Trustee at his word that the Claims Objection would have no effect on their Claims in the CCAA Case. However, the Monitor has taken a different position. During a meeting with the Canadian Monitor regarding the Claims on April 4, 2016, the same date of the date of entry of the Order, the Canadian Monitor for the first time asserted that the Claims would not be considered valid under the CCAA plan as they were identified as being expunged by the Order. Indeed, but for the Order, the Canadian Monitor made clear that the Claims would be allowed for purposes of the CCAA plan but for the Order.

Arguments

13. The Court should clarify the Order to make clear, as the Trustee stated in the CCAA Disclaimer, that the Claim Objection has no effect on the rights of Creditors in the CCAA Case, including the right to receive distributions under the CCAA Plan, or on the allowance or disallowance of Creditors' Claims in the CCAA Case. In reliance on the CCAA Disclaimer, Creditors did not respond to the Claim Objection. It is inequitable and unfair to allow the Canadian Monitor to rely on the Order for a result that the Trustee stated, in the CCAA Disclaimer, was not the intended result of the Claim Objection.
14. Alternatively, pursuant to Fed.R.Civ.P. 9024 and Fed.R.Civ.P. 60(b), Creditors request that the Court reconsider the Order, and allow them a reasonable opportunity to file a response to the Claims Objection. The Claims Objection asserts three grounds for objection. First, the Claims Objection seeks to disallow the Claims because they are to be paid and satisfied only through the CCAA Plan, and not through the Plan confirmed in this case. Creditors agree that their Claims are to be satisfied solely under the CCAA Plan. Second, the Claims Objection seeks to disallow the Claims on the grounds that the Creditors have not provided adequate documentation of the Claims. The purpose of the April 4 meeting with the Canadian Monitor was to provide detailed information responsive to the "documentation" concerns raised by the Canadian Monitor beforehand. If necessary to file such documentation in this Court, notwithstanding that the Claims are dealt with exclusively in the CCAA Case, then Creditors request a reasonable opportunity to file the documentation they provided to the Canadian Monitor at the April 4 meeting and otherwise respond to the contention that the documentation is insufficient.
15. Finally, the Claims Objection asserts that some of the Claims were untimely. Creditors filed claims timely for the Claims, but filed, after the Bar Date, additional claims as clarifications. Since all Claims are disallowed because the Claims are dealt with exclusively in the CCAA, the timeliness, or untimeliness, of the Claims is a matter for the Monitor and the CCAA Case. In virtually every instance, the allegedly untimely filed claim is duplicative of claims filed timely, and simply provide more detail about the

nature of the Claim and the holder of the Claim. It should be left to the Creditors and the Canadian Monitor to resolve, in proceedings other than in this Court, whether the alleged untimeliness of some of the Claims matters, or whether, as Creditors contend, the untimely filed claims were tantamount to clarifications and amendments of timely filed claims. Creditors should be provided with an opportunity to respond to the Claims Objection and litigate the timeliness issues, and, if appropriate, file motions seeking leave to file claims after the Bar Date, if the Court determines it must adjudicate those matters in this case, notwithstanding the Claims will be dealt with exclusively in the CCAA Case and notwithstanding that the allegedly untimely filed Claims largely, if not entirely, are duplicative of timely filed Claims.

Dated: April 19, 2016

Respectfully Submitted

/s/ Jason C. Webster

Jason C. Webster, Esq.
THE WEBSTER LAW FIRM
6200 Savoy Drive, Suite 150
Houston, Texas 77036
Telephone: (713) 396-5197
E-mail: quebec@thewebsterlawfirm.com

/s/ George W. Kurr, Jr., Esq.

George W. Kurr, Jr., Esq.
GROSS, MINSKY & MOGUL, P.A.
23 Water Street, Suite 400
P. O. Box 917
Bangor, ME 04402-0917
Phone: (207) 942-4644 ext. 206
gwkurr@grossminsky.com

CERTIFICATE OF SERVICE

I, George W. Kurr, Jr., Esquire, of the firm Gross, Minsky & Mogul, P.A., hereby certify that on April 19, 2016, I electronically filed **CLAIMANT'S MOTION FOR RELIEF FROM JUDGMENT AND RECONSIDERATION OF CLAIM TRUSTEE'S THIRD OMNIBUS OBJECTION TO PROOFS OF CLAIM THAT WILL BE SATISFIED UNDER THE CCAA PLAN AND THAT WERE RELEASED UNDER THE PLAN, CERTAIN OF WHICH ADDITIONALLY (A) CONTAIN INSUFFICIENT DOCUMENTATION AND/OR (B) LATE FILED** with the Court via the CM/ECF electronic filing system which will send notification of such filing to the attorneys/parties of record who have registered as CM/ECF participants.

/s/ George W., Kurr, Jr., Esq.
George W. Kurr, Jr., Esq.

UNITED STATE BANKRUPTCY COURT
DISTRICT OF MAINE

In Re:

Montreal Maine & Atlantic
Railway, LTD.,
Debtor.

Bk. No. 13-10670
Chapter 11

**Schedule A to Claimant's Motion for Relief from Judgment and Reconsideration of Claim Trustee's
Third Omnibus Objection to Proofs of Claim That Will be Satisfied Under The CCAA Plan
and That Were Released Under the Plan, Certain of Which
Additionally (A) Contain Insufficient Documentation and/or (B) Late Filed**

Schedule "A"

303 Guay, Nancy
302 Lacroix, Pascale
436 Poirier, Melanie
437 Roy, Doris
524 Audet, Beland
526 Beaudoin, Gabriel
547 Beland Audet on behalf of Logi-Bel
575 Bizier, Jocelyne
529 Bouchard, Michel
530 Boulet, Louise
531 Bourgeois, Helene
532 Champagne, Line
533 Charest, Denis
534 Chouinard, Sonia
539 Daniel Gendron on behalf of Gravure Megantic
579 Dion, Francois
558 Doris Roy on behalf of The Heritage Building
582 Dubois, Denise

580 Duplessis, Amelie Campeau
536 Emanuel Baillargeon obo Force Action Nutrition
535 Favreau, Lea
537 Fortin, Jean-Yves
574 Gagne, Lisandra Arencibia Tamayo
565 Josee Morin on behalf of A.L, a minor
566 Josee Morin on behalf of F.L., a minor
527 Lacroix, Roxanne Bizier
542 Lafontaine, Christian
544 Lapierre, Guillaume
545 Lapierre, Manon
546 Lavoie, Joyce
572 Lisandra Arencibia Tamayo Gagne obo E.G., minor
573 Lisandra Arencibia Tamayo Gagne obo J.B.G., minor
548 Martin, Andre
567 Melissa Robert on behalf of E.R., a minor
568 Melissa Robert on behalf of M.R., a minor
576 Michel Boulanger on behalf of J.B., a minor
577 Michel Boulanger on behalf of M.B., a minor
563 Morin, Carolyne
549 Nadeau, Sabrina
570 Pascale Lacroix on behalf of G.G., a minor
569 Pascale Lacroix on behalf of R.G., a minor
525 Pierre Boulet on behalf of Bar Laitier
550 Pierre Boulet on behalf of Poulet Frit Ideal
571 Rodrigue, Renald
551 Roy, Gabryel
552 Roy, Ginette
578 Roy, Jacques
553 Roy, Julie

554 Roy, Rejean
555 Roy, Sandra
556 St.-Hilaire, Bernard
581 Steve Roy on behalf of Y.R., a minor
557 Tanguay, Jean
559 Turcotte, Celine
560 Valiquette, Andre
561 Valiquette, Louise
562 Valiquette, Philippe

**UNITED STATE BANKRUPTCY COURT
DISTRICT OF MAINE**

In Re:

**Montreal Maine & Atlantic
Railway, LTD.,
Debtor.**

**Bk. No. 13-10670
Chapter 11**

**Order on Claimant's Motion for Relief from Judgment and Reconsideration of Claim
Trustee's Third Omnibus Objection to Proofs of Claim That Will be Satisfied Under the
CCAA Plan and that were Released Under the Plan, Certain of Which
Additionally (A) Contain Insufficient Documentation and/or (B) Late Filed**

After notice and hearing on Claimant's Motion for Relief from Judgment and Reconsideration of Claim Trustee's Third Omnibus Objection to Proofs of Claim That Will be Satisfied Under the CCAA Plan and that were Released Under the Plan [D.E.]; the Court having reviewed the memorandum of law filed by the Claimants and other interested parties, does hereby clarify its Order Sustaining Trustee's Third Omnibus Objection To Proofs of Claim That Will be Satisfied Under The CCAA Plan and That Were Released Under the Plan, Certain of Which Additionally (A) Contain Insufficient Documentation and/or (B) Were Late Filed [D.E. 2121].

For good cause it appears to this Court that nothing contained in this Court's Order sustaining the Trustee's Third Omnibus Objection had any affect on the CCAA Plan.

The Claimants right to file claims on the CCAA case are governed by the Debtor's Confirmed Chapter 11 Plan [D.E. 1801] and those rights are neither expanded nor abridged by this Court's Order sustaining the Trustee's Objection in the Third Omnibus Objection to Proofs of Claim (D.E. 2121) filed by the Trustee.

Dated at Portland, Maine by day of _____, _____, 2016.

The Honorable Peter G. Cary
Chief Judge, United States Bankruptcy Court