UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL, MAINE & ATLANTIC RAILWAY, LTD., Debtor.	Case No. 13-10670 Chapter 11

FAMILY MEMBERS' REPLY MEMORANDUM IN SUPPORT OF (1) MOTION FOR EXPEDITED HEARING AND SHORTENED OBJECTION DEADLINE; AND (2) MOTION OF FAMILY MEMBERS FOR ORDER: (I) ENFORCING CONFIRMED CHAPTER 11 PLAN, (II) HOLDING CONTEMNORS IN CIVIL CONTEMPT, AND (III) IMPOSING SANCTIONS

The Family Members[1] hereby file this reply memorandum in support of the Motion and the Motion to Expedite, and in opposition to the Contemnors' objections thereto [Docket Nos. 2187, 2188]. The Family Members state as follows:

I. The Motion Does Not Implicate the Protocol or Quebec Law, and There is Nothing for This Court to Coordinate With the Canadian Court

The Contemnors invoke the *Cross-Border Insolvency Protocol* [Docket No. 126-1] (the "Protocol") in their objections to both the Motion and the Motion to Expedite. These arguments widely miss the mark. The Motion does not seek any relief that implicates either the Protocol or Quebec law – in fact, there is no substantive motion pending before this Court that could conceivably require consultation or coordination with the Canadian Court.[2] Rather, the only

[1] All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion and the Motion to Expedite.

[2] Notably, there is a substantive motion pending before the Canadian Court – the Nadeau Motion – that might implicate the Protocol, and the Contemnors have not suggested that consultation or coordination is required by the Canadian Court. In light of this, the Contemnors' invocation of the Protocol in the Objection is wholly disingenuous. Moreover, the Contemnors appear to be invoking the Protocol to in a cynical attempt to manufacture jurisdiction in the Canadian Court. Since the Canadian Court lacks jurisdiction, deliberately filing the Nadeau Motion in the wrong court cannot form the basis for the Canadian Court to exercise even the limited jurisdiction required to invoke the Protocol.

relief sought involves the Family Members' request that this Court enforce the jurisdictional provisions of its own Confirmation Order, which is solely a matter of U.S. federal law.

There is no dispute – indeed the Contemnors' concede – that this Court has exclusive jurisdiction over the matters raised in the Nadeau Motion pursuant to the jurisdictional provisions of the Confirmation Order. Paragraph 87 of the Confirmation Order and sections 5.10 and 11.1 of the Plan clearly provide this Court with exclusive jurisdiction over matters involving the WD Trust, a result which the Canadian Court explicitly ratified in the Sanction Order. The division of labor between the two courts was intentional and heavily negotiated, and what the Contemnors are now attempting to do is improperly renegotiate a settled Plan issue. Thus, this Court should enter an order granting the Motion and enforcing its exclusive jurisdiction over matters related to the WD Trust, without using the Protocol to involve the Canadian Court that otherwise lacks jurisdiction to hear and determine any aspect of the matters raised in the Nadeau Motion. If and when the Contemnors (or any other party) file a substantive motion in the proper forum, then this Court can hear and determine that motion and, if appropriate, use the Protocol, to most efficiently and fairly resolve the issues presented. Until that time, this Court is only being asked to enforce its own undisputed jurisdiction.

II. Delaying Resolution of the Motion Diminishes the WD Trust *Res* to the Detriment of WD Trust Beneficiaries

The Contemnors also argue that delaying a hearing on the Motion will provide time for interested parties to discuss and resolve related issues. The Family Members remain ready, willing, and able to engage in such discussions, but delaying resolution of the clear and straight-forward legal issue presented by the Motion has no impact on these discussions. All interested parties are before this Court, and the issues presented by the Motion are fully briefed and ready

for decision.[3] There is no reason for delay. Conversely, delaying resolution of this simple jurisdictional issue, and allowing inconsistent and unnecessary proceedings to move forward on both sides of the border, only diminishes the limited *res* of the WD Trust to the detriment of the WD Trust Beneficiaries (including Ms. Nadeau, to the extent that she is later determined to be a beneficiary). For this reason, the Court should act promptly to resolve any doubt about the proper forum for disputes about the WD Trust.

III. The Contemnors Should be Sanctioned Because They Admit That (A) They Negotiated and Agreed to the Exclusive Jurisdiction Provisions of the Confirmed Plan and (B) Knowingly Filed the Nadeau Motion in the Canadian Court Anyway

In their objection to the Motion, the Contemnors **admit** that they actively negotiated and agreed to the exclusive jurisdiction provisions of section 5.10 of the Confirmed Plan (paragraph 12 of the Motion). They also **admit** that they filed the Nadeau Motion – seeking relief within the scope of section 5.10 – in the Canadian Court despite this knowledge about the jurisdictional requirement (paragraph 16 of the Motion). It is hard to imagine a more textbook example of contemptuous and sanctionable conduct.

In response, the Contemnors brazenly argue that they cannot be held in contempt because the language of the Confirmation Order did not explicitly forbid the filing of a motion in the Canadian Court. Rather, it merely confirmed the Plan, which included a binding provision stating that "[a]ny dispute arising under this section 5.10 . . . shall be determined exclusively by *de novo* review before the Bankruptcy Court . . . ." Thus, the Contemnors argue that, at most, they can be held liable for breach of contract. As a threshold matter, this argument ignores, at

[3] The Contemnors' feigned ignorance about the WD Trustee's position on the Motion is inexplicable. The Contemnors attended the May 30, 2016 hearing before the Canadian Court, and they received and reviewed the WD Trustee's brief filed on June 30, 2016. In both instances, the WD Trustee argued that the Canadian Court lacks jurisdiction over the Nadeau Motion under the Confirmed Plan and Confirmation Order.

minimum, paragraph 53 of the Confirmation Order and section 1141(a) of the Bankruptcy Code, both of which make the Confirmed Plan binding upon, *inter alia*, the Contemnors. The Confirmed Plan provides this Court with exclusive jurisdiction, as noted above, and jurisdiction to interpret the Confirmed Plan and the Confirmation Order. Under these circumstances, a violation of the jurisdictional provisions of the Confirmed Plan is contemptuous. See, e.g., In re Ventilex USA, Inc., 509 B.R. 140, 145-46 (Bankr. S.D. Ohio 2014).

Even if the Contemnors' conduct does not provide a basis for a contempt finding, the Family Members have requested sanctions in addition to contempt in the form of an award of attorneys' fees and costs related to prosecuting the Motion and the Motion to Expedite. Indeed, there are abundant legal theories upon which sanctions can be imposed under these circumstances, even without a contempt finding. For instance, this Court could award sanctions under 28 U.S.C. § 1927, which allows attorneys' fees and expenses to be awarded for "unreasonabl[e] and vexatious[]" litigation tactics that "multipl[y] proceedings in any [federal] case." Given their participation in the negotiation of, and agreement to, the jurisdictional provisions of section 5.10, the Contemnors' litigation tactics in the Canadian Court and this Court are wholly unreasonable, clearly vexatious, and have multiplied proceedings. Alternatively, this Court could invoke its inherent power to impose "punitive non-contempt sanctions." See Charbono v. Sumski (In re Charbono), 790 F.3d 80, 87 (1st Cir. 2015) ("without serious question, bankruptcy courts possess the inherent power to impose punitive non-contempt sanctions for failures to comply with their orders"). The Contemnors can split the hair as finely as they wish, but the Family Members should not be forced to bear the cost of the Contemnors' blatant and unjustifiable forum shopping. Sanctions are appropriate and should be awarded under the circumstances.

For these reasons, the Family Members request that the Court (1) enter an order granting the Motion to Expedite, and (2) grant the relief requested in the Motion on an expedited basis.

Dated: July 6, 2016

Respectfully submitted,

/s/ *Jeremy R. Fischer*

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing on all parties in interest requesting CM/ECF notice in the above-captioned case, including U.S. counsel for the Contemnors, F. Bruce Sleeper, Esq.

Dated: July 6, 2016

/s/ *Jeremy R. Fischer*
Jeremy R. Fischer