

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**DEBTOR’S APPLICATION PURSUANT TO 11 U.S.C. §§ 327(a) AND 328(a),
FED. R. BANKR. P. 2014, AND D. ME. LBR 2014-1 AND 2014-2(b)
FOR AUTHORITY TO EMPLOY VERRILL DANA, LLP AS COUNSEL**

Pursuant to 11 U.S.C. §§ 327(a) and 328(a), Rule 2014 of the Federal Rules of Bankruptcy Procedure, and D.Me. LBR 2014-1 and 2014-2(b), Montreal, Maine & Atlantic Railway Ltd. (“**MMA**” or “**Debtor**”), hereby seeks authority to employ the law firm of Verrill Dana LLP as its counsel in this case.

In support of this application (the “**Application**”), the Debtor states as follows:

I. Jurisdiction and Venue

1. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 & 1334 and D. Me. Local R. 83.6(a), pursuant to which all cases filed in Maine under 11 U.S.C. § 101, *et seq.* (the “**Bankruptcy Code**”) are referred to bankruptcy judges of this district. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding over which the Court has jurisdiction and Constitutional authority to enter a final order.

II. Procedural Background

2. On August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Petition Date**”).

3. From the Petition Date until August 21, 2013, the Debtor remained in possession and control of its property and operated as a debtor-in-possession pursuant to sections 1107(a)

and 1108 of the Bankruptcy Code and this Court's Order Authorizing the Debtor's Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee. [DE 34]. On August 21, 2013, the United States Trustee appointed Robert J. Keach to serve as a Chapter 11 trustee (the "**Trustee**") in this case pursuant to 11 U.S.C. §1163. As of that date, the Debtor ceased operating as a debtor-in- possession, and Counsel (as defined below) ceased representing the Debtor. At the Trustee's request, Counsel has continued providing services for the estate after August 21. The Trustee has filed or will shortly file an application to employ Counsel from and after August 21, 2013. This Application is filed with the consent and support of the Trustee.

III. Factual Background

4. Reference is made to the affidavit of M. Donald Gardner, Jr. for the factual background of MMA and the events leading to this bankruptcy case. [DE 11]. The facts recited in Mr. Gardner's Affidavit are incorporated herein as if set forth in full.

IV. Application for Employment

5. The Debtor desires to employ Verrill Dana LLP, including Roger A. Clement, Jr., Esq. and Nathaniel R. Hull, Esq. of that firm, and such other Verrill Dana attorneys and paraprofessionals as are appropriate (collectively, "**Verrill Dana**" or "**Counsel**") as its counsel in this case. Such employment is necessary because the Debtor requires specialized legal knowledge, experience, and capability in bankruptcy, including, specifically, railroad bankruptcies, and non-bankruptcy matters related to this case and believes that Counsel is able to meet these needs.

6. Verrill Dana has represented the Debtor on a variety of matters during the past 8 years. Prior to the Petition Date, Verrill Dana advised the Debtor on insolvency and bankruptcy

matters, including, without limitation, the workings of the Bankruptcy Code, the desirability of filing a bankruptcy case, the relationship between a case filed by the Debtor, and a case filed in Canada by the Debtor's subsidiary -- Montréal Maine & Atlantic Canada Co., the effect of a bankruptcy filing on the Debtor's operations, and the likely treatment of claims filed against the Debtor. Prior to the Petition Date, Counsel prepared the chapter 11 petition, the first day motions, and drafts of the schedules and statements.

7. After the Petition Date, Counsel provided legal services appropriate for the early stages of a chapter 11 case, including without limitation, the following:

- (a) analyzing the Debtor's financial situation, including cash flow projections, balance sheet and projections, and income statement and projections;
- (b) analyzing the Debtors accounts receivable and clearinghouse transactions, including the Settlement System;
- (b) preparing the Debtor's Petition, Schedules, and Statements of Financial Affairs;
- (c) drafting and filing motions for the use of cash collateral, for payment of prepetition wages, for continuation of utility service, and for the continued use of prepetition bank accounts and banking procedures;
- (c) attendance with the Debtor at the initial interview with the U.S. Trustee; and response to individual creditor inquiries;
- (d) evaluating the Debtor's executory contracts and unexpired leases and drafting and filing a motion to reject certain rolling stock leases;
- (e) advising the Debtor regarding its responsibilities as Debtor in possession and its post-petition financial operations, negotiation of any borrowing stipulations which may be required, and the furnishing of financial information to the United States Trustee's Office; and

- (f) reviewing and analyzing various claims of the Debtor's creditors and the treatment of such claims;

8. To the best of the Debtor's knowledge, neither Verrill Dana nor any of its partners, associates or other attorneys have any connection with the Debtor, its creditors, or any other parties-in-interest, or its respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, *except as otherwise disclosed* in the Verified Statement of Attorney Filed by Verrill Dana LLP pursuant to Fed. R. Bankr. P. 2014(a) and D.Me. LBR 2014-1(a) (the "**Verified Statement**"), which was filed concurrently herewith. The Debtor believes that neither Verrill Dana nor any of its partners, associates, or other attorneys holds or represents any interest adverse to the estate or to the Debtor, and that each member of Verrill Dana is a "disinterested person" as that term is defined in the Bankruptcy Code at § 101(14).

9. Subject to this Court's jurisdiction with respect to allowance and payment of professional fees, the Debtor has agreed that Counsel shall be (A) compensated for their services at its appropriate hourly rates in effect at the time the services are rendered for matters of this nature, and, if the criteria set forth in judicial decisions concerning the allowance of fees for bankruptcy related services are met, paid a premium in excess of such rates; and (B) reimbursed in full for their cash disbursements and for such expenses as the firm customarily bills to its clients, subject to any limitations imposed by this Court.

10. Prior to the Petition Date in connection with this matter, the Debtor paid Verrill Dana a total of \$225,000.¹ As of the Petition Date, the Debtor has been billed and paid a total of \$70,415.24 for services rendered and expenses incurred prior to the Petition Date.

¹ The Debtor paid Verrill Dana \$20,000 on July 18, 2013, \$25,000 on July 19, 2013, \$50,000 on July 29, 2013, \$25,000 on July 30, 2013, \$25,000 on July 31, 2013, and \$55,000 on August 5, 2013.

11. Post-petition, it was necessary for the Debtor to employ Verrill Dana to render the foregoing professional services. As of the Petition Date, Verrill Dana held a retainer in the amount of \$154,584.76 (the “**Retainer**”). Verrill Dana holds a security interest in the Retainer, and will apply the Retainer as necessary to satisfy Court-approved fees in this case.

12. The Debtor understands that Verrill Dana intends to apply to the Court for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtor’s Chapter 11 case in accordance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, the District of Maine Local Bankruptcy Rules, the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330, and any applicable orders of the Court, including, without limitation, the order approving Verrill Dana’s retention.

V. Service of this Motion and Request for Entry of Order Without Hearing

13. The Debtor, through counsel, will cause this Application, as well as the proposed Order, to be served by first class U.S. mail, postage prepaid and, as applicable, by electronic mail on (i) United States Trustee; (ii) the 20 largest unsecured creditors in this case; (iii) the Federal Rail Administration; (iv) Wheeling & Lake Erie Railway Company; (v) the United States Secretary of Transportation; (vi) the Surface Transportation Board; and (vii) all parties requesting notice in this case. The Debtor respectfully requests that the Court find such notice to constitute fair, adequate, and sufficient notice of all matters set forth in this Application. Pursuant to D. Me. LBR 2014-2(b), it is requested that the approval of Debtor’s counsel be effective as of the Petition date.

WHEREFORE, the Debtor respectfully requests entry of an Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: September 6, 2013

Respectfully submitted,

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

/s/ Roger A. Clement, Jr. _____

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Nathaniel R. Hull, Esq.

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