

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**FIRST INTERIM APPLICATION FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR
VERRILL DANA LLP AS SPECIAL COUNSEL TO THE TRUSTEE FOR
THE PERIOD OF AUGUST 22, 2013 THROUGH APRIL 30, 2014**

This is a First Interim Application

Name of Applicant:	Verrill Dana LLP
Authorized to Provide Professional Services To:	Robert J. Keach, duly appointed Trustee
Petition Date:	August 7, 2013
Date of Retention Order:	September 10, 2013
Period for Which Compensation and Reimbursement is Sought	August 22, 2013 through April 30, 2014
Fees for Services:	\$335,647.00
Expenses for which Reimbursement is Sought:	4,088.34
Amount Paid by Insurance:	(\$143,238.46)
Total Payment Sought:	\$196,496.88
Amount Paid by Estate to Date:	\$0.00
Retainer Balance:	\$0.00

Pursuant to 11 U.S.C. § 330(a)(1), Rule 2016(a) of the Federal Rules of Bankruptcy Procedure, and D. Me. LBR 2016-1(a), the law firm of Verrill Dana, LLP (“Verrill Dana”), counsel to Robert J. Keach, Esq. the Trustee in the above-captioned case (the “Trustee”), hereby submits this first interim application (the “Application”) approving reasonable and necessary fees of \$335,647.00 and expenses of \$4,088.34 for the period August 22, 2013 through April 30, 2014 (the “Application Period”) and hereby requests that this Court enter an order authorizing payment to Verrill Dana in the amount of \$196,496.88, reflecting the balance owed after receipt

of payments from the Debtor's insurance carrier—XL Group. In support of this Application, Verrill Dana states as follows:

1. On August 7, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, et seq (the "Code").

2. On August 21, 2013, the U.S. Trustee appointed the Trustee [DE 64] as trustee of the Debtor pursuant to 11 U.S.C. § 1163.

3. On September 10, 2013, this Court entered an Order [DE 195] approving the employment of Verrill Dana, LLP, effective as of August 22, 2013, as special counsel to the Trustee (the "Retention Order").

4. This is a core proceeding; the Court has jurisdiction to enter a final order on this Motion pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

**Basis of Request for Allowance of Compensation
and Reimbursement of Expenses**

5. This is the first application for compensation which Verrill Dana has submitted to the Court in this Chapter 11 case.

6. No agreement or understanding exists between Verrill Dana and any individual, person or other entity for the sharing of the compensation and reimbursement of expenses sought by this Application, except among partners and employees of Verrill Dana. In addition, no payments have been made or promised to Verrill Dana for services rendered or to be rendered in connection with the Debtor's Chapter 11 case, except as set forth herein.

7. All services for which approval of compensation is requested were performed for and on behalf of the Trustee and not for any other individual, person or entity.

**Services Provided by
Verrill Dana to the Trustee and Expenses Incurred**

8. During the Application Period, Verrill Dana provided essential professional services to the Trustee under the Code, the Federal Rules of Bankruptcy Procedure, and the Local Rules of this Court. The services provided by Verrill Dana to the Trustee are described in detail in the attached Exhibit A.

9. Attached hereto as Exhibit B is a table showing the number of hours billed and the hourly rate for each timekeeper. The blended hourly rate for time spent by attorneys on this matter is \$285.81. The blended hourly rate for time spent by paralegals on this matter is \$134.22.

10. Attached hereto as Exhibit C is a brief professional biography of each Verrill Dana professional who rendered services in connection with the fees and expenses sought in this Application, as required by D. Me. LBR 2016-1(a)(3)(v),.

11. Below is an allocation of fees by category of services.

<u>Fee Category</u>	<u>Hours for Period</u>	<u>Fees for Period</u>
Case administration, including transition services, cash collateral issues, analysis of accounts receivable, accounts payable, recoupment, set off, railroad clearinghouse transactions, rolling stock, executory contract and unexpired leases, and preparation of schedules and statement of financial affairs; advise trustee regarding insurance coverage issues.	261.9	\$65,518.50
Criminal investigation conducted by Sûreté du Quebec and internal analysis of accident, including representation during witness interviews, negotiation with SQ, FBI and Office of U.S. Attorney, establish protocols for review and production of electronically stored	1,071.9	\$270,128.50

information; interview employees of Debtor; work with Debtor's IT staff to facilitate document production; review documents and ESI for privilege; negotiate search terms and other protocols for ESI; produce documents and ESI in accordance with subpoenas; work with outside vendors to minimize cost of responding to subpoenas; regularly report to and advise Trustee regarding investigation as to cause of accident, criminal investigation, and Trustee's duties and rights regarding subpoenas.		
Totals		\$335,647.00

12. Verrill Dana's services on behalf of the Trustee can be divided into two broad categories. First, Verrill Dana has provided services to assist with the administration of the case, particularly relating to the transition of administration of this case from the Debtor to the Trustee, and the preparation of bankruptcy schedules and the statement of financial affairs. Verrill Dana was well positioned to provide these services in light of its historic representation of the Debtor, including its representation of the Debtor prior to and in connection with the voluntary bankruptcy filing on August 7, 2014, and continuing to represent the Debtor post-petition until the Trustee was appointed on August 21, 2014. Verrill Dana met with the Trustee and his primary counsel to provide information about the Debtor's operations and financial affairs, including issues relevant to the Debtor's use of cash collateral. These issues were complex in light of the Debtor's participation in the national railroad interline settlement system, and its complex and interrelated relationships with various Irving entities engaged in the rail, petroleum, pulp and paper, and forest products industries. The issues were made more complex by the existence of cross-border issues with the Debtor's subsidiary – Montreal, Maine & Atlantic Canada Co. ("MMAC"). Verrill Dana assisted the Trustee in understanding various issues, relationships, and historical practices of the Debtor, and accompanied the Trustee in initial

meetings with the Debtor's management and counsel for MMAC, as well as the monitor appointed by the Canadian court in connection with the MMAC CCAA filing, which occurred on or about August 6, 2014. Verrill Dana worked with the Debtor's management to gather information and prepare and file the Debtor's schedules and statement of financial affairs. Verrill Dana also assisted the Trustee in causing an insurance carrier to reimburse a significant portion of the Trustee's legal expenses in connection with the Sûreté du Québec in Canada, which is discussed more fully below. Verrill Dana attorneys and paralegals spent 261.9 hours and billed \$65,518.50 for services described in this paragraph. A detailed description of Verrill Dana's time entries in connection with its general representation of the Trustee on the matters described above is attached as Exhibit A-1, and is identified in Verrill Dana's billing files by matter number 45775-9145.

13. Verrill Dana's second broad category of services on behalf of the Trustee involved the criminal investigation of the Debtor launched by Sûreté du Québec (the "SQ") in Canada, which included the SQ's affiliation with the United States Attorney's Office and the Federal Bureau of Investigation in the United States. Verrill Dana first learned of the SQ investigation on August 9, 2014 (shortly after the Petition Date) when it received a call from a member of the Debtor's management reporting that the SQ had unexpectedly arrived at the homes of one or more of the Debtor's employees on a Friday night, accompanied by an FBI agent, to conduct interviews regarding the accident in Lac-Mégantic which precipitated the Debtor's bankruptcy filing. Immediately following his appointment, the Trustee retained Verrill Dana to continue its work in connection with the SQ investigation. Verrill Dana, at the direction of the Trustee, represented the Debtor and certain of its employees for purposes of the SQ's investigation, including advising the Debtor on cross-border legal issues concerning criminal investigations and prosecutions. Verrill Dana attended a substantial number of the interviews of

the Debtor's employees that were conducted by the SQ and/or FBI over the course of several months and at the Debtor's offices across Maine and Vermont. At the request of the Trustee, and in order to properly represent the Debtor for purposes of the SQ's investigation, Verrill Dana simultaneously undertook an investigation into the facts and circumstances that led to the accident in Lac-Mégantic.

In addition to the interviews, SQ also served the Debtor with a broad subpoena for documents (both paper and electronic) relating to the accident, the company's operations, and safety practices more generally. In order to respond to the subpoena, Verrill Dana collected, reviewed and processed more than 66,000 emails, 100,000 pages of paper documents, and millions of electronic documents (totaling more than 500 GB of data). Verrill Dana attorneys collected the documents and data from 30 custodians. A team of Verrill Dana attorneys was charged with reviewing the documents for responsiveness and privilege. To date, Verrill Dana has produced more than 235,000 documents in response to SQ's subpoenas and identified approximately 50 GB of additional data in native format. Verrill Dana also spent a significant amount of the time reviewing and negotiating the scope of these subpoenas with the U.S. Attorney's Office and advising the Trustee on methods of document review and production that resulted in significant cost savings to the estate. Verrill Dana represented the Trustee in asserting claims under one of the Debtor's insurance policies issued by XL Group. Verrill Dana has also assisted the Trustee in other matters where the Trustee needed ready access to documents or facts concerning the previous operations of the Debtor prior to filing. Verrill Dana attorneys and paralegals spent 1071.9 hours and billed \$270,128.50 for services described in this paragraph. A detailed description of Verrill Dana's time entries in connection with its general representation of the Trustee on the matters described above is attached as Exhibit A-2, and is identified in Verrill Dana's billing files by matter number 40231-9121.

14. Verrill Dana, on behalf of the Trustee, has sought reimbursement of its fees in connection with the SQ criminal investigation from the Debtor's insurance carrier – XL Group. XL Group has paid \$196,806.71 to Verrill Dana in connection with the services performed during the Application Period.¹ XL has denied coverage for \$60,431.97 in services rendered between August 22, 2013 and February 28, 2014. XL has not yet responded to an invoice in the amount of \$131,011.04 recently sent for services from March 1 through April 30, 2014. The Trustee's right to contest XL's denial of coverage is preserved. Verrill Dana shall promptly turn over to the Trustee any amounts received from XL that would constitute an overpayment. Verrill Dana seeks payment from the bankruptcy estate of \$196,496.88, which represents its unpaid balance after applying payments received from XL Group for services during the Application Period.

15. Verrill Dana's reimbursable expenses on behalf of the Trustee totaled \$4,088.34 during the Application Period, in accordance with the standard Maine expense level list ("SMELL"). An itemization of expenses incurred on behalf of the Trustee is set forth in Exhibit D. These charges cover only Verrill Dana's direct costs that are not incorporated in Verrill Dana's hourly fees. All expenses in this matter are in-line with the usual and customary expenses in non-bankruptcy matters of comparable size and complexity.

Conclusion

16. The professional services rendered and expenses incurred by Verrill Dana on behalf of the Trustee during the Application Period were necessary and beneficial to the estate and to Trustee's administration of the Chapter 11 case, and work performed in a timely manner,

¹ Verrill Dana has received a total of \$172,855.46 from XL in connection with services for the Debtor and Trustee. \$29,253.00 of this amount was for post-petition services prior to the appointment of the Trustee, and \$364 was for prepetition services that were submitted to XL for reimbursement post-petition. The remainder of the amount paid by XL, \$143,238.46 (computed as \$172,855.46 less \$29,253.00 less \$365.00) would be applied to the fees and expenses described in this Application if it were approved by the Court.

commencing or with the complexity and nature of the issues involved. The fees for which Verrill Dana seeks compensation pursuant to this Application are reasonable based on the rates charged for such services by comparably skilled professionals to clients other than clients in cases under the Code. The compensation requested is reasonable in light of the nature, extent, and value of the services provided.

WHEREFORE, Verrill Dana respectfully requests that this Court enter an order:

A. Approving, on an interim basis, Verrill Dana's fees in the amount of \$335,647.00, to Verrill Dana as compensation for reasonable and necessary professional services rendered by it to the Trustee during the Application Period, and \$4,088.34 for actual and necessary expenses incurred by Verrill Dana on behalf of the Trustee during such period, for a total amount approved of \$339,735.34.

B. Authorizing the Trustee to pay \$196,496.88 to Verrill Dana, which represents the balance due to Verrill Dana for services rendered and expenses incurred by Verrill Dana on behalf of the Trustee during the Application Period; and

C. Granting such other and further relief as this Court deems just and equitable.

Dated: May 27, 2014

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