

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**SECOND INTERIM APPLICATION FOR COMPENSATION
AND REIMBURSEMENT OF EXPENSES FOR
VERRILL DANA LLP AS SPECIAL COUNSEL TO THE TRUSTEE FOR
THE PERIOD OF MAY 1, 2014 THROUGH SEPTEMBER 30, 2014**

This is a Second 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	May 1, 2014 through September 30, 2014
Fees for Services:	\$34,153.00
Expenses for which Reimbursement is Sought:	\$428.01
Amount Paid by Insurance:	(\$1,182.00)
Total Payment Sought:	\$33,399.01
Amount Paid by Estate to Date:	\$196,496.88
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 second interim application (the “Application”) approving reasonable and necessary fees of \$34,153.00 and expenses of \$428.01 for the period May 1, 2014 through September 30, 2014 (the “Application Period”) and hereby requests that this Court enter an order authorizing payment to Verrill Dana in the amount of \$33,399.01, 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 second 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 \$304.17. The blended hourly rate for time spent by paralegals on this matter is \$165.

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, respond to inquiries regarding Debtors' assets, liabilities and other affairs; advise trustee regarding insurance coverage issues.	67.5	\$21,366.50
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 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; negotiate with FBI and SQ regarding seizure of locomotive involved in accident; advise Trustee regarding criminal indictments in Canada of several employees.	40.8	\$12,786.50
Totals	108.3	\$34,153.00

12. Verrill Dana’s services on behalf of the Trustee can be divided into two broad categories.

A. Case Administration. 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, 2013, and continuing to represent the Debtor post-petition until the Trustee was appointed on August 21, 2013. Verrill Dana attorneys and paralegals spent 67.5 hours and billed \$21,366.50 for services described in this subparagraph 12.A. 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.

B. Criminal Investigation in Canada. 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 40.8 hours and billed \$12,786.50 for services described in this subparagraph 12.B. 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.

13. 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 \$1,182.00 to Verrill Dana in connection with the services performed during the Application Period.¹ XL has denied coverage for \$11,604.50 in services rendered between May 1, 2014 and August 31, 2014. XL has not yet responded to an invoice in the amount of \$2,088.50 recently sent for services from September 1 through September 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 \$33,399.01, which represents its unpaid

¹ The amount paid by XL, \$1,182.00 would be applied to the fees and expenses described in this Application if it were approved by the Court.

balance after applying payments received from XL Group for services during the Application Period.

14. Verrill Dana's reimbursable expenses on behalf of the Trustee totaled \$428.01 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

15. 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, 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 \$34,153.00, to Verrill Dana as compensation for reasonable and necessary professional services rendered by it to the Trustee during the Application Period, and \$428.01 for actual and necessary expenses incurred by Verrill Dana on behalf of the Trustee during such period, for a total amount approved of \$34,581.01.

B. Authorizing the Trustee to pay \$33,399.01 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: October 24, 2014

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/s/ Roger A. Clement, Jr.
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

**ORDER GRANTING SECOND INTERIM APPLICATION FOR
COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR
VERRILL DANA LLP AS SPECIAL COUNSEL TO THE TRUSTEE FOR
THE PERIOD OF MAY 1, 2014 THROUGH SEPTEMBER 30, 2014**

THIS MATTER came on before this Court upon the *Second Interim Application for Compensation and Reimbursement of Expenses For Verrill Dana LLP as Special Counsel to the Trustee for the Period of May 1, 2014 Through September 30, 2014* (the "Fee Application") filed by Verrill Dana, LLP ("Verrill Dana"), special counsel to the Trustee. Verrill Dana having provided notice of the Fee Application, and no party-in-interest having filed an opposition to the Fee Application, or any such opposition being withdrawn or overruled, the Court having reviewed the Fee Application and after such hearing as was necessary, the Court having found good cause to grant the Application, it is hereby

ORDERED, ADJUDGED AND DECREED

that:

1. There was adequate notice to all parties-in-interest under the circumstances of this case.
2. The Fee Application be and hereby is GRANTED.

3. Verrill Dana, pursuant to 11 U.S.C. § 331, be and hereby is allowed \$34,153.00 as compensation for reasonable and necessary professional services rendered by it to the Trustee plus \$428.01 for actual and necessary expenses incurred by Verrill Dana on behalf of the Trustee during the period from August 22, 2013 through April 30, 2014 (the “Application Period”) for a total award of \$34,581.01.

4. The Trustee is authorized to pay \$33,399.01 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 after receipt of payments from the Debtor’s insurance carrier—XL Group.

5. Verrill Dana’s fees and expenses during the Application Period are allowed on an interim basis in accordance with the applicable sections of the Bankruptcy Code and Federal Rules of Civil Procedure and this Court’s local rules.

Dated: _____, 2014

The Honorable Louis H. Kornreich
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

HEARING NOTICE

TO CREDITORS AND ALL OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that **Verrill Dana, LLP**, has filed an Application for Compensation in this case. The Applicant serves as:

- Attorney for the debtor(s)
- Attorney for the trustee
- Accountant for the estate
- Other: Special Counsel to the Trustee

This is the Applicant’s Second Interim Application for Compensation in this case. The Applicant is seeking approval from the Court for fees in the amount of **\$34,153.00** and expenses in the amount of **\$428.01**, for work done in this case from May 1, 2014 through September 30, 2014, for a total award of **\$34,581.01**.

If the Applicant has been awarded compensation already in this case, it was for the following time periods and in the following amounts: August 22, 2013 through April 30, 2014 in the amount of \$196,496.88.

A HEARING HAS BEEN SCHEDULED to take place at the United States Bankruptcy Court, District of Maine, 202 Harlow Street, 3rd Floor, Bangor, Maine, on **November 18, 2014 at 10:00 a.m.**

All as more fully set forth in said Application on file at the Clerk’s Office, U.S. Bankruptcy Court.

Objections, if any, are due to be filed on or before November 10, 2014 with the United States Bankruptcy Court, District of Maine, 202 Harlow Street, 3rd Floor, Bangor, Maine, with a copy to Roger A. Clement, Jr., Esq. at the address shown below.

If you fail to respond in accordance with this notice, the Application may be granted by default without further notice.

Dated: October 24, 2014

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

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

CERTIFICATE OF SERVICE

On October 24, 2014, all parties listed on the Electronic Mail Notice List were served electronically through the Court's ECF system with a true and correct copy of the *Second Interim Application for Compensation and Reimbursement of Expenses for Verrill Dana LLP as Special Counsel to the Trustee for the Period of May 1, 2014, through September 30, 2014*, dated October 24, 2014, together with *Exhibits A-1, A-2, B, C and D, Hearing Notice* and a *proposed Order*.

The Notice of Hearing relating to the foregoing is being filed and served by Trustee's primary counsel at the law firm of Bernstein, Shur, Sawyer & Nelson.

Dated: October 24, 2014

/s/ Marilyn J. Henderson
Marilyn J. Henderson

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