

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL MAINE &
ATLANTIC RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**SECOND INTERIM AND FINAL APPLICATION FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF COVINGTON & BURLING LLP,
SPECIAL COUNSEL TO THE TRUSTEE, ROBERT J. KEACH, FOR THE
INTERIM PERIOD FROM MAY 1, 2014, THROUGH DECEMBER 31, 2015,
AND THE FINAL PERIOD FROM AUGUST 21, 2013,
THROUGH DECEMBER 31, 2015**

| | |
|------------------------------------------------------------------------|-----------------------------------------------------------|
| Name of applicant: | Covington & Burling LLP |
| Authorized to provide professional services to: | Special Counsel to Robert J. Keach, Chapter 11 Trustee |
| Date of retention: | August 21, 2013 |
| Interim Fee Period for which compensation and reimbursement is sought: | May 1, 2014, through December 31, 2015 |
| Previously Approved Interim Fee Applications: | August 21, 2013, through April 30, 2014 |
| Final Fee Period for which compensation and reimbursement is sought: | August 21, 2013, through December 31, 2015 |
| Amount of fees requested for Interim Fee Period: | \$8,766.50 |
| Amount of expense reimbursement requested for Interim Fee Period: | \$84.00 |
| Total fees and expenses requested for Interim Fee Period: | \$8,850.50 |

Final Fee Period for which compensation and reimbursement is sought: August 21, 2013, through December 31, 2015

Amount of fees requested for Final Fee Period: \$33,766.50

Amount of expense reimbursement requested for Final Fee Period: \$220.84

Total fees and expenses requested for Final Fee Period: \$33,987.34

Amount Paid to Date: \$25,136.84

This is a final fee application.

Prior Fee Applications

| Date Filed | Period Covered | Requested | | Approved/Received | |
|--------------|--------------------------------|-------------|----------|-------------------|----------|
| | | Fees | Expenses | Fees | Expenses |
| May 27, 2014 | August 21, 2013-April 30, 2014 | \$25,000.00 | \$136.84 | \$25,000.00 | \$136.84 |

Compensation by Professional

For the Interim Fee Period from May 1, 2014, to December 31, 2015

| Timekeeper | Title | 2014 Rate | 2015 Rate | Hours | Amount |
|-----------------------------|---------|-----------|-----------|-------|-------------------|
| Michael Baxter | Partner | \$915.00 | \$950.00 | 13.20 | \$12,309.00 |
| Warren Caywood | Partner | \$915.00 | \$950.00 | .50 | \$457.50 |
| Total | | | | | \$12,766.50 |
| Less Voluntary Reduction | | | | | \$4,000.00 |
| Total Fees Requested | | | | | \$8,766.50 |

Compensation by Project Category

For the Interim Fee Period from May 1, 2014, to December 31, 2015

| Task Code | Description | Fee Total |
|------------------|----------------------------------|--------------------------------|
| B160 | Employment Applications | \$2,755.50 |
| B161 | Fee Applications | \$9,279.00 |
| B280 | Case Assessment and Developments | \$732.00 |
| Total | | \$12,766.50¹ |

Expense Summary

For the Interim Fee Period from May 1, 2014, to December 31, 2015

| Expense Category | Expenses for the Period |
|----------------------------------|--------------------------------|
| Computer Research ² | \$40.00 |
| Long Distance Calls ³ | 44.00 |
| Total Expenses | \$84.00 |

¹ Prior to voluntary reduction of \$4,000.00.

² Covington's practice is to bill clients for LEXIS and Westlaw research at actual cost.

³ Long-distance calls charged at \$0.18 per minute and teleconferencing services charged at actual cost.

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In re:

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Debtor.

Bk. No. 13-10670
Chapter 11

**SECOND INTERIM AND FINAL APPLICATION FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF COVINGTON & BURLING LLP,
SPECIAL COUNSEL TO THE TRUSTEE, ROBERT J. KEACH, FOR THE
INTERIM PERIOD FROM MAY 1, 2014, THROUGH DECEMBER 31, 2015,
AND THE FINAL PERIOD FROM AUGUST 21, 2013,
THROUGH DECEMBER 31, 2015**

Covington & Burling LLP (“**Covington**”), special counsel to Robert J. Keach, the Chapter 11 Trustee of the above-captioned debtor (“**Debtor**”), submits this Second Interim and Final Fee Application (“**Application**”) for the interim period from May 1, 2014, through December 31, 2015 (“**Interim Fee Period**”), and for the Final Fee Period from August 21, 2013, through December 31, 2015 (“**Final Fee Period**”). Covington requests allowance of (i) compensation for professional services rendered during the Interim Fee Period in the amount of \$8,766.50, and reimbursement of actual and necessary expenses and other charges in the amount of \$84.00; and (2) final allowance of compensation for professional services rendered during the Final Fee Period in the amount of \$33,766.50, and reimbursement of actual and necessary expenses and other charges in the amount of \$220.84.

Background

1. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

2. On August 7, 2013, the Debtor commenced a voluntary case under Chapter 11 of the Bankruptcy Code. On August 21, 2013, the United States Trustee appointed Robert J. Keach as Chapter 11 Trustee pursuant to Bankruptcy Code § 1102.

3. On August 29, 2013, the Court entered an order under Bankruptcy Code § 1103 and Bankruptcy Rule 2014, approving Covington's retention as special counsel to the Trustee. *See* Docket No. 121.

4. Pursuant to Bankruptcy Rule 2016(a), Covington states that it has not entered into any agreement or understanding with any other entity for the purpose of sharing fees or other compensation received or to be received for the professional services rendered in or in connection with this case.

5. On May 27, 2014, Covington filed its First Interim Fee Application seeking compensation of \$25,000.00 and reimbursement of expenses and other charges of \$136.84. *See* Docket No. 910. The Court granted the application and allowed fees of \$25,000.00 and expenses and other charges of \$136.84. *See* Docket No. 969. The Trustee has paid these approved fees and expenses.

Summary of Services Rendered

6. During the Interim Fee Period, Covington (i) updated the Trustee on any relevant developments; (ii) prepared and updated supplemental disclosures in accordance with applicable Bankruptcy Rules; (iii) prepared interim and final fee applications; and (iv) responded to inquiries from the Debtor's auditor.

7. During the Final Fee Period, Covington represented and advised the Trustee on railroad regulatory issues. Covington (i) provided consulting and legal services in connection with authorizations from the Surface Transportation Board, the Federal Railroad Administration, and/or the United States Department of Transportation; (ii) provided railroad regulatory advice to the Trustee in connection with the case; (iii) prepared and updated retention application of disclosures in accordance with applicable Bankruptcy Rules; and (iv) prepared fee applications in accordance with applicable Bankruptcy Rules.

Interim Fee Period

8. Covington requests that the Court grant allowance of (i) compensation for professional services rendered during this Interim Fee Period in the amount of \$8,766.50; and (ii) reimbursement of actual and necessary expenses and other charges incurred by Covington in connection with the rendition of such professional services in the amount of \$84.00.

9. The services that Covington rendered during the Interim Fee Period required 13.7 hours of the time of attorneys. For the Interim Fee Period, Covington incurred fees of \$12,766.50 at its usual and customary hourly rates. In the exercise of billing judgment, Covington has voluntarily reduced its fees for the Interim Fee Period by \$4,000 or 31 percent. With this reduction, the total compensation requested for the Interim Period is only \$8,766.50. Attached as **Exhibit A** is a copy of the daily time records for the Interim Fee Period, broken down by task code and listing the name of the attorney, the date on which the services were performed, and the amount of time spent in performing the services.

10. Covington incurred actual and necessary expenses and other charges posted in the Interim Fee Period totaling \$84.00.

11. The expenses for which Covington seeks reimbursement include the following (a summary of the expenses is included in **Exhibit A**):

- a. Computer Research.
- b. Telecommunications. Long-distance calls charged at \$0.18 per minute, outgoing facsimile transmissions charged at \$1.50 per page, and teleconferencing services charged at actual cost (there is no charge for incoming facsimiles).

Final Fee Period

12. Covington requests that the Court grant final allowance of (i) compensation for professional services rendered during the Final Fee Period in the amount of \$33,766.50;

and (ii) reimbursement of actual and necessary expenses and other charges incurred in connection with the rendition of such professional services in the amount of \$220.84.

13. In the exercise of billing judgment, Covington has voluntarily reduced its fees for the Final Fee Period by a total of \$11,947.50 or 26 percent.⁴

Basis for Relief

14. The allowance of compensation for services rendered and reimbursement of expenses incurred in bankruptcy cases is expressly provided for in section 331 of the Bankruptcy Code:

[A]ny professional person employed under section . . . 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered . . . as is provided under section 330 of this title.

11 U.S.C. § 331.

15. Section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that a court may award to a professional person, including a professional person employed under section 1103, “reasonable compensation for actual, necessary services rendered,” together with “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1). The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to attract qualified and competent practitioners to bankruptcy cases.

16. The services for which Covington seeks compensation were necessary and beneficial to the Debtor’s estate. Covington has exercised care to avoid any unnecessary duplication of effort and to ensure the proper utilization of time.

⁴ Covington made voluntary reductions in its first interim fee application of \$7,947.50 and in its second interim fee application of \$4,000.00.

17. Covington submits that its request for allowance of compensation is reasonable. The services rendered were necessary to represent the Chapter 11 Trustee as special counsel. Covington performed its services diligently and efficiently.

18. Covington has exercised the required skill and expertise in representing and advising the Trustee on railroad regulatory issues in this case.

19. Covington's hourly rates for its attorneys and paraprofessionals are its customary rates for such services and are the customary rates generally charged by the firm to its nonbankruptcy clients. Covington believes that its rates are comparable to those charged for similar services by other major law firms.

20. Covington is one of the oldest and largest law firms in Washington, D.C., and has extensive experience in railroad regulatory matters. Covington is recognized for its expertise in matters before the Surface Transportation Board, Federal Railway Administration, and the Department of Transportation. The firm's specialized knowledge and experience with respect to federal railroad regulatory matters, combined with its familiarity with Chapter 11 proceedings, were valuable to the Trustee's administration of the Debtor's estate.

21. Covington believes that its fees charged in this case are commensurate with the complexity, importance, and nature of the issues, and are comparable to fees normally requested for similar services by comparably skilled practitioners. In the exercise of billing judgment, Covington has voluntarily reduced its fees for the Interim Fee Period by 31 percent and for the Final Fee Period by 26 percent.

Conclusion

22. For the reasons set forth above, Covington requests that this Court (i) grant final allowance of compensation in the amount of \$33,766.50, (ii) grant final allowance of reimbursement of actual and necessary expenses and other charges in the amount of \$220.84; and (iii) enter an order granting such other and further relief as may be just and proper.

January 14, 2016

Respectfully submitted,

COVINGTON & BURLING LLP

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January 12, 2016

Invoice: 60702310
Account: 036068.00101

Robert J Keach, Chapter 11 Trustee

Chapter 11 Trustee of Montreal Maine & Atlantic Railway

For professional services rendered in connection with the above referenced matter for the period May 1, 2014, through December 31, 2015, as follows:

| <u>Date</u> | <u>Task</u> | <u>Description</u> | <u>Hours</u> | <u>Timekeeper</u> |
|-------------|-------------|------------------------------------------------------------------------------------------------------|--------------|-------------------|
| 6/2/14 | B160 | Review emails re hearing. | 0.20 | Michael Baxter |
| 6/11/14 | B160 | Preparation for and telephonic participation in hearing on fee applications. | 1.20 | Michael Baxter |
| 9/17/14 | B160 | Telephone conversation with Goodman re conflicts; review and reply to email. | 0.30 | Michael Baxter |
| 10/1/14 | B160 | Review and reply to emails; draft supplemental declaration. | 1.00 | Michael Baxter |
| 1/26/15 | B160 | Telephone conversation with Lenhart; draft 5th supplemental declaration; review and reply to emails. | 0.30 | Michael Baxter |

TOTALS FOR TASK CODE: B160 Employment Applications 3.00

| <u>Date</u> | <u>Task</u> | <u>Description</u> | <u>Hours</u> | <u>Timekeeper</u> |
|-------------|-------------|--------------------------------------------------------------------------------------|--------------|-------------------|
| 5/12/14 | B161 | Preparation of interim fee application. | 0.50 | Michael Baxter |
| 5/19/14 | B161 | Review and revise first interim fee application. | 1.00 | Michael Baxter |
| 5/20/14 | B161 | Revise first interim fee application (1.3); review and reply to emails re same (.2). | 1.50 | Michael Baxter |

| <u>Date</u> | <u>Task</u> | <u>Description</u> | <u>Hours</u> | <u>Timekeeper</u> |
|-------------|-------------|------------------------------------------------------------------------------------------------|--------------|-------------------|
| 5/22/14 | B161 | Review and revise first interim fee application (.4); review and reply to emails re same (.2). | 0.60 | Michael Baxter |
| 11/5/15 | B161 | Prepare second interim final fee application. | 1.00 | Michael Baxter |
| 11/10/15 | B161 | Prepare 2nd interim and final fee application. | 2.50 | Michael Baxter |
| 11/11/15 | B161 | Review fee application. | 0.30 | Michael Baxter |
| 11/12/15 | B161 | Revise 2nd interim and final fee application. | 1.00 | Michael Baxter |
| 11/16/15 | B161 | Review fee applications; draft email re same. | 1.50 | Michael Baxter |

TOTALS FOR TASK CODE: B161 Fee Applications 9.90

| <u>Date</u> | <u>Task</u> | <u>Description</u> | <u>Hours</u> | <u>Timekeeper</u> |
|-------------|-------------|-----------------------------------------------|--------------|-------------------|
| 7/30/14 | B280 | Review and revise MM&A audit response letter. | 0.30 | Michael Baxter |
| 7/30/14 | B280 | Review MM&A audit letter. | 0.00 | Warren G. Caywood |

TOTALS FOR TASK CODE: B280 Case Assessment and Development 0.80

Timekeeper Summary

| <u>Timekeeper</u> | <u>Title</u> | <u>Rate</u> | <u>Hours</u> | <u>Amount</u> |
|-------------------|--------------|-------------|--------------|---------------|
| Michael Baxter | Partner | \$950.00 | 6.60 | \$6,270.00 |
| Michael Baxter | Partner | \$915.00 | 6.60 | \$6,039.00 |
| Warren G. Caywood | Partner | \$915.00 | 0.50 | \$457.50 |
| Total | | | 13.70 | \$12,766.50 |

Task Code Summary

| <u>Task Code</u> | <u>Description</u> | <u>Amount</u> |
|------------------|---------------------------------|---------------|
| B160 | Employment Applications | 2,755.50 |
| B161 | Fee Applications | 9,279.00 |
| B280 | Case Assessment and Development | 732.00 |
| | Total: | \$12,766.50 |

Client Charges Summary

| <u>Code</u> | <u>Description</u> | <u>Amount</u> |
|-------------|--------------------|---------------|
| 058 | Computer Research | 40.00 |
| 158 | Telephone Calls | 44.00 |
| | Total: | \$84.00 |

| | |
|------------------------------|----------------------------|
| Total Fee | \$ 12,766.50 |
| Reduction: | (457.50) |
| Total Client Charges: | 84.00 |
| Total This Invoice | <u>\$ 12,393.00</u> |

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL MAINE &
ATLANTIC RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER GRANTING FINAL APPLICATION FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF COVINGTON & BURLING LLP,
SPECIAL COUNSEL TO THE TRUSTEE, ROBERT J. KEACH, FOR THE
FINAL FEE PERIOD FROM AUGUST 21, 2013, THROUGH
DECEMBER 31, 2015**

This matter having come before the court on the *Second Interim and Final Application for Compensation and Reimbursement of Expenses of Covington & Burling LLP, Special Counsel to the Trustee, Robert J. Keach, for the Interim Period from May 1, 2014, through December 31, 2015, and the Final Fee Period from August 21, 2013 through December 31, 2015* (“Final Fee Application”), and after proper notice to all creditors and other parties-in-interest, the Court having independently reviewed the Final Fee Application, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. The Final Fee Application is granted.¹
2. Pursuant to 11 U.S.C. § 331, Covington & Burling LLP is allowed compensation for services to the Trustee in the aggregate amount of \$33,987.34, including professional fees in the amount of \$33,766.50 and reimbursement of expenses in the amount of \$220.84.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Final Fee Application.

3. The fees and expenses for the Final Fee Period are hereby awarded on final basis in accordance with the applicable sections of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's local rules.

Dated:

The Honorable Peter G. Cary
Chief Judge for the United States Bankruptcy Court
for the District of Maine

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

NOTICE OF HEARING

Covington & Burling LLP (“Covington”), Special Counsel to the Trustee, Robert J. Keach, has filed a Second Interim and Final Application for Compensation and Reimbursement of Expenses for the Interim Period From May 1, 2014, Through December 31, 2015, and the Final Period From August 21, 2013, Through December 31, 2015 (the “Application”). A hearing on the Application is set to take place at the United States Bankruptcy Court, 537 Congress Street, Portland, Maine on **February 23, 2016 at 9:00 a.m.** (the “Hearing”).

By the Application, Covington seeks a total amount of \$8,850.50, which includes fees in the amount of \$8,766.50 and \$84.00 for reimbursement of expenses incurred during the period from May 1, 2014 through December 31, 2015 (the “Compensation Period”). Covington seeks an order authorizing and approving this compensation for the fees and expenses incurred during the Compensation Period on a final basis. Covington also seeks an order authorizing and approving, on a final basis, the compensation for fees and expenses incurred for the period from August 21, 2013 through December 31, 2015. The Application is the second interim and final fee application filed Covington.

On May 27, 2014, Covington filed the First Interim Application for Compensation and Reimbursement of Expenses of Covington & Burling LLP, Special Counsel to the Trustee, Robert J. Keach, for the Period From August 21, 2013 Through April 30, 2014 seeking approval of fees in the amount of \$25,000.00 and expenses in the amount of \$136.84 [Docket No. 910] (the “First Fee Application”). With respect to the First Fee Application, the Court awarded Covington fees in the amount of \$25,000.00 and expenses in the amount of \$136.84 [Docket No. 969].

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to approve the Application, or if you want the court to consider your views on the Application, then **on or before February 16, 2016**, you or your attorney must file with the court a written response explaining your position. If you are not able to access the CM/ECF Filing System, your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court
202 Harlow Street
Bangor, Maine 04401
-and-

Robert J. Keach, Esq.
Bernstein, Shur, Sawyer & Nelson, P.A.
100 Middle St., PO Box 9729
Portland, Maine 04104-5029

If you have to mail your response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the date stated above.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Application and may enter an order granting that relief.

Dated: January 20, 2016

ROBERT J. KEACH, CHAPTER 11 TRUSTEE OF
MONTREAL MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ Sam Anderson
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