



## Mark K. Googins

Partner

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Mark has concentrated his practice in the areas of commercial finance and commercial transactions for the past 38 years. He counsels clients in mergers and acquisitions, in complex commercial negotiations, and in a wide variety of lending transactions including equipment leasing, leveraged buyouts, and sale-leasebacks.

Mark is co-author of the Maine Commercial Lending Handbook (Tower Publishing, 2011). He is a member of the American Bar Association, the New York State Bar Association, and the Maine State Bar Association. Before joining Verrill, Mark practiced at Milbank, Tweed, Hadley & McCloy in New York.

Among the more notable merger and acquisition transactions for which Mark has served as lead counsel are the acquisition of the Supply Chain Operations Division of Vitran Corporation by Legacy Supply Chain Services, the acquisition of the assets of the Hathaway Shirt Division from WARNACO on behalf of an investor group led by former Governor John R. McKernan, Jr., the sale of one of the country's top health care consulting groups, the sale of one of the country's leading hydropower consulting groups, the acquisition of the assets of a cellular telephone company, the development and eventual merger of the Fresh Samantha juice company, and the sale of the U.S. and Canadian electric generating assets of a Maine-based public utility.

Mark frequently acts as local counsel in mergers and acquisitions. He has served as local counsel in the negotiation of the acquisition of a major hydroelectric facility, the acquisition of a pulp mill and related energy assets, the acquisition of a home health care business, and the sale of an educational institution.

Mark also serves as primary outside legal counsel to a number of small and midsize businesses that do not have in-house counsel. These businesses are in a wide variety of fields including manufacturing, payroll processing, trucking, garden products, scrap metal recycling, design and marketing, publishing, software, food distribution, and alternative energy.

### Services/Industries

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- Business Law
- Commercial Finance & Lending
- Energy
- Financial Services
- Food & Beverage
- Manufacturing
- Manufacturing Food & Beverage
- Mergers & Acquisitions
- Retail Food & Beverage

## **Commercial Lending**

Mark also represents lenders and borrowers in commercial loan transactions. These transactions have included representation of:

- the borrower in the acquisition of more than 300,000 acres of timberland
- the borrower in the financing for a major forest products enterprise
- the borrower in the refinancing of an owner-occupied medical office building
- the lender in an equipment lease financing
- the lender to a regulated public utility
- the lender in a syndicated line of credit and term loan facility for a distributorship business

He has negotiated numerous workout agreements, on behalf of lenders and borrowers, in the context of non-performing and troubled loans.

Mark handles complex commercial negotiations and has negotiated environmental risk transfer agreements, marketing services agreements, and interim management agreements. Mark worked closely with the Penobscot River Restoration Trust in the negotiation and implementation of the Lower Penobscot River Option Agreement, the first transaction of its kind in the U.S. The Option Agreement allowed the Trust to acquire three hydroelectric facilities on the Penobscot River as part of a complex multi-party arrangement.

## **Education**

- New York University School of Law (J.D.)
  - Articles Editor, Annual Survey of American Law, 1981-1982
- Tufts University (B.A.)

## **Public Service**

- Board Member, Seventy-Five State Street
- Board of Trustees, Cheverus High School (1990-1998, 2004-2013)(Chair, 2011-2013)

## **Bar Admissions**

- New York
- Maine

## **Honors**

- Recognized in *Chambers USA: America's Leading Lawyers for Business* under "Band 1" Corporate/M&A
- Named the Best Lawyers® 2013, 2016 and 2020 Banking and Finance Law "Lawyer of the Year" in Portland, Maine
- Named the Best Lawyers® 2014, 2018, and 2021 Corporate Law "Lawyer of the Year" in Portland, Maine

- Named the Best Lawyers® 2009 Maine Banking "Lawyer of the Year" in Portland, Maine
- Listed in *The Best Lawyers in America*© for Banking and Finance Law, Corporate Law, Mergers and Acquisitions Law in Portland, Maine
- AV® rated by *Martindale-Hubbell*

To learn more about third-party ratings and rankings, and the selection processes used for inclusion, [click here](#).

## Experience

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### **Acquisition of Paper Mill**

Verrill represented an energy developer in its proposed acquisition of the real estate and electric generation assets of a former paper mill. We provided advice on federal and state regulatory laws affecting the client's acquisition and proposed operations, including maintaining Qualifying Facility status and avoiding public utility status at both the state and federal levels.

### **Sales of Kennebec Hydro Project**

Verrill represented Kennebec Water District in connection with the sale to Essex Hydro of its hydro-electric facility on the Kennebec River. Bill Harwood and Brian Marshall represented Kennebec Water District in seeking FERC approval of the transfer of the project and securing an order of the Maine PUC declining to assert jurisdiction over the sale. Mark Gogins negotiated the Purchase & Sale Agreement and Tony Calcagni negotiated the transfer of real estate and related easements.

### **Solar Energy: Acquisition of Grid-Scale Project in Brunswick, Maine**

Verrill represented Diversified Communications in the acquisition of a newly built \$2.5 million solar array in Brunswick, Maine. The array, which was developed by ReVision Energy and went online in January 2018, will provide power to more than 100 businesses at Brunswick Landing. Verrill attorneys advised Diversified Communications on a range of issues in the transaction, including federal debt financing, solar investment tax credits, solar renewable energy credits, electric power sales, EPC contracting, and regulatory, real estate and corporate matters. We worked collaboratively with Diversified Communications and the developer of the project to get the deal done on a short timeline while minimizing investment risk.

### **Certifications and Approvals for Pittsfield Solar, Which Will Be Largest Solar Farm in Maine When It Goes Into Service**

In 2017, Verrill Dana represented Cianbro Development Corp. subsidiary Pittsfield Solar, LLC in obtaining regulatory approvals for a 9.9-megawatt ground-mounted solar array to be located on 54 acres in Pittsfield, Maine. Verrill helped Pittsfield Solar obtain community-based renewable energy project certification from the Maine Public Utilities Commission ("PUC"), Maine PUC approval for waivers relating to the interconnection and power purchase agreements between Pittsfield Solar and Central Maine Power Company, and Renewable Portfolio Standard

certification. These processes involved critical negotiations with both the regulator and the utility. When fully in service, Pittsfield Solar will be the largest solar project in Maine by a factor of two. The first phase of the project will go into service in December 2017, while the remainder will go into service by spring 2018.

### **Oakhurst Dairy: The Natural Goodness of an Enduring Legacy**



*The Bennett Family*

*L to R: Jean Bennett Driscoll, William P. Bennett, Mary Ellen Bennett Tetreau, Priscilla Bennett Doucette, Althea Bennett McGirr, John H. Bennett*

When Stanley T. Bennett opened [Oakhurst Dairy](#) in 1921, he laid the groundwork for what would grow to become an iconic multi-generational family-owned business with a reputation for innovation, community service and environmental stewardship. His family successfully ran the business for three generations. In 2013, the family made the decision to sell the company to [Dairy Farmers of America, Inc. \(DFA\)](#), a \$12 billion cooperative. A team of Verrill attorneys worked closely with the Bennetts throughout the complex merger negotiations which lasted more than six months and involved multiple potential acquirers. Many legal issues required attention beyond the agreement negotiations, and Verrill had the breadth and depth of experience to take them on. Our team provided counsel relating to federal antitrust review, taxation and benefits issues, intellectual property, environmental permitting and real estate interests.

Oakhurst's numerous dairy products have been a household staple in New England for generations. The Bennett family was thrilled to have the partnership opportunity presented by DFA, with its national presence, complementing culture and values, and financial strength. As a result of the sale, none of Oakhurst's 200 employees lost their jobs, the company will continue to get its milk from the 70 independent Maine farmers who supply Oakhurst's milk, and the integrity of the product will be maintained. Verrill was honored to work with this iconic company in ensuring its legacy will endure and the dairy will remain a vibrant member of the local economy for generations to come.

### **Commercial Lending - Illustrative Borrower Representations**

The following is a list of illustrative borrower transactions handled by attorneys in Verrill's Commercial Lending Group:

- Representation of a logistics company in a \$110 million senior syndicated secured loan facility and a related \$25 million senior secured subordinated term loan facility in connection with a refinancing and a multi-national acquisition
- Representation of an international communications company in a \$75 million syndicated revolving credit facility which includes a multicurrency

- component for the Borrower's foreign subsidiaries in Europe and Asia
- Representation of a chemical manufacturing business in a loan facility that includes a \$1.8 million line of credit and \$3.9 million in term loans
  - Representation of the borrower in connection with several different low-income housing projects in states across the country
  - Representation of franchisee with multiple locations in connection with \$3.35 million acquisition loan
  - Representation of a Canadian acquirer of a Maine-based manufacturing facility in a term loan and a line of credit from a local bank.
  - Representation of a physicians group in the refinancing of their medical office building.
  - Representation of a lumber mill in obtaining acquisition financing and an operating line of credit with a governmental lender.
  - Representation of a multistate medical services business in obtaining working capital and equipment financing from a California-based lender.
  - Representation of a Massachusetts manufacturer in the financing of the acquisition of a new manufacturing facility and related operating line of credit.
  - Representation of a home health agency franchisee in obtaining multi-million dollar acquisition financing and operating line of credit from a commercial bank.
  - Representation of private equity group's portfolio company borrowers in negotiation of covenant modifications with commercial lenders to accommodate cash flow and other needs.
  - Representation of a Massachusetts manufacturer in the refinancing of credit facilities with commercial banks and subordinated lenders for purposes of redeeming a mezzanine financier's shareholding.

### **Commercial Lending - Illustrative Lender Representations**

The following is a list of illustrative lender transactions handled by attorneys in Verrill's Commercial Lending Group:

- Representation of lender, administrative agent and swingline lender in connection with an agented secured loan facility aggregating \$90 million that includes a revolving loan facility, a letter of credit facility, a swingline loan facility and a term loan, for a petroleum products distribution business
- \$44 million mortgage loan to finance the acquisition of an office complex in Portland, Maine
- Representation of lender and administrative agent in a secured agented loan facility aggregating \$16 million, to finance the acquisition of specialized tanker trucks by a natural gas company
- \$16.5 million construction and term mortgage loan to finance the conversion of a building into an office building
- \$24 million mortgage loan to refinance a commercial building in New York City
- \$15.1 million mortgage loan to acquire a commercial building in Boston
- \$17.4 million construction and term mortgage loan to finance the acquisition and renovation of a commercial building in New York City
- \$24.5 million mortgage loan to finance the acquisition of a commercial building in Somerville, Massachusetts

- \$10.5 million mortgage loan to refinance a hotel located in Durham, North Carolina
- \$12 million mortgage loan to finance the acquisition of two medical office buildings located in Maine
- \$5.6 million construction mortgage loan to a non-profit corporation to finance the construction of a new residential care facility in Maine
- \$20 million unsecured reducing revolving loan facility for a multi-national educational business
- Secured loan facility aggregating \$2.7 million that includes a revolving loan and a mortgage term loan, for a medical device manufacturing business
- Secured loan facility aggregating \$10 million that includes a working capital revolver, an equipment revolver and a term loan, including a letter of credit facility, for a group of food processing businesses
- Secured loan facility aggregating \$17 million that includes a line of credit and a term loan, for a food distribution business
- Secured loan facility aggregating \$24 million that includes a line of credit and a term loan, for a multi-state manufacturing business
- \$25,000,000 secured line of credit for a multi-state industrial and mechanical construction business
- Secured loan facility aggregating \$10.3 million that includes term loans, mortgage loans and a revolving loan facility with a letter of credit facility, for a manufacturing business with locations in two states
- Secured loan facility aggregating \$5 million that includes a line of credit and a term loan, for a communications business
- Secured loan facility aggregating \$11.8 million that includes multiple lines of credit, revolving lines that convert to term loans, and term loans, for a group of equipment repair and restoration businesses
- Secured loan facility aggregating \$28.2 million that includes a line of credit that is seasonally adjusted, a letter of credit facility, term loans and an equipment revolver, for a regional product distribution business
- Secured loan facility aggregating \$6.875 million that includes multiple term loans, a construction loan (converting to term) and multiple lines of credit (for equipment acquisition and for working capital), for a group of nursing homes
- Secured loan facility aggregating \$9.2 million that includes lines of credit and term loans, for a group of companies in the natural resources business
- Secured loan facility aggregating \$8.05 million that includes term loans, a working capital line of credit and an equipment acquisition line of credit, for a machine manufacturing business
- Secured loan facility aggregating \$4.05 million that includes a term loan and a line of credit, for a local utility business
- \$10,000,000 line of credit facility for a multi-national paper making company
- Representation of letter of credit bank in connection with the issuance of \$6,525,000 in aggregate amount of Revenue Obligation Securities issued in connection with an expansion of an existing manufacturing facility
- Secured loan facility aggregating \$30 million that includes an asset-based working capital line of credit and an equipment line of credit, for a distributor

- Representation of letter of credit bank in connection with the issuance by the Finance Authority of Maine of \$5,065,000 in aggregate amount of Revenue Obligation Securities in connection with the construction of a new publishing facility
- \$4,500,000.00 mortgage loan for the acquisition of an office building in New Hampshire
- Secured loan facility aggregating \$5 million that includes a line of credit, term loan and equipment financing facility, for a tool and die manufacturing company.
- Representation of lender and administrative agent in connection with several different multi-lender line of credit loans (secured and unsecured) provided to publicly held Real Estate Investment Trusts
- Representation of lender in connection with several so-called "mezzanine loans" secured by pledges of the limited liability company membership interests in the single-purpose entities that own real estate, including the negotiation of intercreditor agreements between the first mortgage lender and the mezzanine lender
- Continuing representation of the Maine Health and Higher Educational Facilities Authority (MHHEFA), an instrumentality of the state which issues bonds for the construction and renovation of hospitals, nursing homes and higher education facilities

### **Emera's Acquisition of Swan's Island Electric Cooperative**

Emera's 2017 acquisition of Swan's Island Electric Cooperative required a multi-disciplined team of Verrill energy lawyers to successfully close the transaction. Because the seller was a member based cooperative, the transaction was structured as an asset purchase, rather than a stock purchase. This required a determination that the Cooperative had marketable title to hundreds of easements, many of which had been acquired by the Cooperative decades earlier. Upon investigation, the parties identified that there were over 200 easements to be acquired or confirmed for Cooperative power lines crossing private property. Tony Calcagni worked with the Cooperative management team for approximately one year to remedy the problems and procure valid deeds to the power line easements.

The acquisition also raised a novel question of utility ratemaking. Because of the high cost of serving the islands, the Public Utilities Commission raised the issue as to whether island ratepayers should pay more than Emera's mainland rates for electricity. In a two to one decision, the Maine PUC rejected the acquisition, finding that charging mainland rates to island customers would result in an unreasonable subsidy of island customers. In response, Bill Harwood and Brian Marshall, renegotiated the terms of the acquisition by including a five-year monthly surcharge on island ratepayers, and were thereby able to convince the Public Utilities Commission to approve the acquisition.

### **HeadInvest: Management Buyout**

Androscoffin Savings Bank bought HeadInvest, an investment advisory firm, and held it as a wholly-owned subsidiary for many years. It decided that the business was not a good fit for it and agreed to sell the business to the then-existing management. We advised the management group on establishing an acquisition

vehicle, negotiating a new lease for office space and in negotiating and closing the deal (including seller financing).

### **Multi-Disciplinary Representation in Mill Purchase and Regulatory Compliance**

We represented the buyer in the acquisition of Domtar Maine LLC, which owns and operates the pulp mill in Baileyville, Maine (also known as Woodland), and continue to represent the mill in regulatory compliance matters. The mill produces about 395,000 metric tons of pulp a year, and is Washington County's largest employer with about 300 employees. It also has significant hydroelectric generating assets, with surplus power being sold to New Brunswick Power.

Verrill acted as co-counsel with O'Melveny & Myers.

Our representation included extensive due diligence and contract negotiation, and we relied upon our extensive experience in real estate, pension and benefits, labor and employment (several unions are involved with the mill), energy (including FERC), environmental law, commercial finance, tax and intellectual property.

### **Penobscot River Restoration Trust: Project Management**



Our complex project management experience is a key to returning sea-run fish to historic habitat in the Penobscot River. The Penobscot River Restoration Project is one of the largest in our country's history. We collaborated with the Penobscot Indian Nation, dam owners, seven conservation groups and federal, state and tribal agencies to remove two dams, bypass a third, and regenerate the environment while maintaining energy production. We're doing it for our home state of Maine. We're doing it because it is the right thing to do. We're also doing it to make some fish very happy.

Learn more about the Penobscot River Restoration Trust at [verrilldana.com/penobscot](http://verrilldana.com/penobscot).

**Verrill Dana**  
Attorneys at Law

The Penobscot River Restoration Project is one of the largest and most creative river restoration projects in our nation's history. The nonprofit Penobscot River Restoration Trust ("the Penobscot Trust") has worked in collaboration with the Penobscot Indian Nation, seven conservation groups, state and federal agencies, and dam owner Black Bear Hydro Partners LLP, to implement the project to restore 11 species of sea-run fish to the Penobscot River, while also maintaining energy production.\* In 2015, the Trust has neared completion of the final stages of



this 12-year endeavor. Verrill congratulates all those involved in this historic project.

Successful implementation of the project has revived not only native fisheries but social, cultural and economic traditions of New England's second largest river—the Penobscot. The Penobscot Trust has acquired three Penobscot dams, holds necessary final permits, and is preparing to remove the two closest to the sea – Veazie and Great Works – and construct a fish bypass at the third dam, Howland. At the same time, Black Bear Hydro is, as part of the project, increasing power generation and improving fish passage at several other dams on the river to maintain or increase generating capacity in the system.

Through this reconfiguration of fish migration access and power production, the Penobscot Project has significantly improved access to nearly 1,000 miles of habitat and restore ecological functions of the river while also maintaining hydropower capacity of the river system. Further information regarding this historic project can be found on the Trust's website, [www.penobscotriver.org](http://www.penobscotriver.org).

Verrill has been pleased to assist the Trust since 2006 with all phases of the restoration project, including drafting of the commercial agreements, national, state and local permitting and regulatory compliance for the decommissioning and removal activities, as well as assistance with strategic planning and dispute resolution. Attorneys from multiple practices, including corporate, real estate, environmental, regulatory, construction, energy and utilities coordinated a multi-disciplinary approach to supporting the Trust's goals and objectives. As a commitment of Verrill to bringing its experience to matters of significant public interest, Verrill contributed extensive in-kind legal assistance to the Penobscot Trust.

*\* The project has been an uncommonly effective collaboration including PPL Corporation; Black Bear Hydro Partners LLC; Penobscot Indian Nation; the Penobscot Trust, American Rivers, Atlantic Salmon Federation, Maine Audubon, Natural Resources Council of Maine, Trout Unlimited, The Nature Conservancy, federal agencies including the U. S. Department of the Interior [Bureau of Indian Affairs; National Park Service; and U.S. Fish and Wildlife Service (FWS)] and the National Oceanic and Atmospheric Administration (NOAA); the State of Maine including the State Planning Office, Department of Marine Resources and Inland Fisheries and Wildlife; as well as private and public funders; communities; businesses; and numerous others.*

#### **Purchaser Representation: 300,000 Acre Timberland Deal**

We represented the purchaser in the acquisition of more than 300,000 acres of timberland in Northern Maine, including negotiation of purchase and sale agreement, entity formation, tax advice, loan representation, environmental due diligence and ongoing operational assistance.

#### **Representation of Chapter 7 Trustee: Red Shield Acquisition, LLC**

Verrill was selected as counsel to the Chapter 7 Trustee for Red Shield Acquisition, LLC. The first priority in our engagement was successfully securing bankruptcy court approval for the sale of the Debtor's pulp mill in Old Town, Maine under section 363 of the Bankruptcy Code. Verrill accomplished this primary

objective in a mere 26 days from our selection as Trustee's counsel. Although the work for the Trustee in this case is on-going, securing approval for the sale of the Debtor's assets this quickly permitted some 200 furloughed employees of the Debtor to return to work before the holidays and permitted this important asset in Maine's economy to be back online as soon as possible.

### **SunEdison Massachusetts Solar Projects**

In 2013, Verrill represented First Wind in its acquisition and subsequent re-financing of several solar projects in Massachusetts. The projects are now supplying power to off-site users including the University of Massachusetts system.

### **The VIA Group, LLC**

We wish we could claim to possess the creative spark of our client, [Via](#). They develop marketing and advertising campaigns and even new brand names for an impressive list of household brands, like Welch's® and Maidenform®. But they need our legal creativity too. In addition to helping screen for potential intellectual property conflicts, we help them negotiate contracts with their clients that allow the client to use the materials Via develops without stifling Via's creativity.

## **Publications & Podcasts**

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March 30, 2020

**The SBA Paycheck Protection Program: An Overview**

March 25, 2019

**Developing Opportunities: The Ins and Outs of New Opportunity Zones and their Tax Benefits**

June 26, 2018

**Verrill Voices: Discussions with the 2018 MaineBiz Business Leaders of the Year**

August 14, 2017

**Lawyers on Tap: Risk Management Podcast Series**

May 31, 2017

**Verrill Voices: Lawyers on Tap- Tap Tips on Financing**

February 22, 2013

**The Law of Guaranties: A Jurisdiction-by-Jurisdiction Guide to U.S. and Canadian Law**

July 1, 2011

**Maine Commercial Lending Handbook**