CANADA

PROVINCE OF QUEBEC
DISTRICT OF MÉGANTIC

NO: 480-06-000001-132

(Class Action)
SUPERIOR COURT

GUY OUELLET

and

SERGE JACQUES

and

LOUIS-SERGES PARENT

Plaintiffs/ Class Representatives

-vs.-

CANADIAN PACIFIC RAILWAY COMPANY

and

MONTREAL, MAINE & ATLANTIC CANADA COMPANY, legal person duly constituted, having its head office at 1959 Upper Water Street, Suite 800, City of Halifax, Province of Nova Scotia, B3J 2X2

and

THOMAS HARDING, domiciled and residing at 341, St-Grégoire, City of Farnham, Province of Quebec, J2N 1R2

Defendants

AMENDED APPLICATION (…) TO INSTITUTE PROCEEDINGS
(Art. 141 C.C.P. and following)

TO THE HONOURABLE MR. JUSTICE MARTIN BUREAU, J.S.C., SITTING IN AND FOR THE DISTRICT OF MÉGANTIC, YOUR PLAINTIFFS/ CLASS REPRESENTATIVES STATE AS FOLLOWS:

I. INTRODUCTION

1. On May 8, 2015, the Superior Court of Quebec authorized (certified) the Plaintiffs/Class Representatives to institute a class action against the Defendant, Canadian Pacific Railway Company, on behalf of the following group:

    - [TRANSLATION] All persons and entities (natural persons, legal persons established for a private interest, partnerships or associations which had no more than 50 employees during the 12-month period preceding the Motion for Authorization) residing in, owning or leasing property in, operating a business in or being employed by a person resident in or a business located in Lac-Mégantic, and/or were physically present in Lac-Mégantic on July 6, 2013, the date of the train derailment (the "Train Derailment") [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], or any other group to be determined by the Court[1];

1.1. On October 24, 2016, the Superior Court of Quebec authorized the Plaintiffs/Class Representatives to institute a class action against the Defendants Montreal, Maine & Atlantic Canada Co. and Thomas Harding, on behalf of the same group;

2. The Defendant, Canadian Pacific Railway ("CP Rail"), is a Canadian Railway Company, federally incorporated with its head office in Calgary, Alberta;

2.2. The Defendant, Montreal, Maine & Atlantic Canada Co. ("MMA Canada"), is a corporation that was involved with the operation of the Class II freight railroad in the United States of Maine and Vermont and in the Canadian provinces of Quebec and New Brunswick, as well as with the ownership and leasing of locomotives and train cars travelling, *inter alia,* between Montreal, Quebec and Lac-Mégantic, Quebec. The corporate structure between all of the related MMA corporations is unclear and as a result, the MMA corporations will be referred to herein as the "MMA Entities";

2.3. The Defendant, Thomas Harding, was the conductor of the train that derailed in Lac-Mégantic, Quebec on July 6, 2013;

[1] *Ouellet c. Rail World Inc*., 2015 QCCS 2002, at para. 103.1:

> Toutes les personnes et entités (personne physique, personne morale de droit privé, société ou association lesquelles ne comportaient pas plus de 50 employés durant les 12 mois précédant la requête pour autorisation), résidant, possédant ou louant une propriété, exploitant une entreprise ou qui étaient employées par une personne résidante ou une entreprise située à Lac-Mégantic ou qui étaient physiquement présentes à Lac-Mégantic le 6 juillet 2013 date du déraillement ferroviaire [incluant leur succession, héritiers, époux ou conjoint, enfants, petits-enfants, parents, grands-parents ou frères et soeurs], ou tout autre groupe à être déterminé par le Tribunal.

3. The Superior Court of Quebec also authorized the Plaintiffs/ Class Representatives to institute a class action against World Fuel – World Fuel Services Corporation (WFS Corp.), World Fuel Services Inc. (WFS Inc.), World Fuel Services Canada Inc. (WFS Can.) and Western Petroleum Company (Western) (together, the "World Fuel Entities"). However, these unnamed entities have contributed to an indemnity fund to settle the claims against them, including the claims raised by this class action through the CCAA proceedings instituted by (…) MMA Canada, Court File Number 450-11-000167-134 and through the Chapter 11 bankruptcy proceedings brought in Maine by Montreal Maine & Atlantic Railway ("MMAR"). As such, this class proceeding is only being pursued against Defendants CP Rail, MMA Canada, and Thomas Harding;

4. The present action arises out of the train derailment that occurred in Lac-Mégantic, Quebec, on July 6, 2013. CP Rail was responsible for subcontracting the transport of shale liquids to MMA Canada. The Shale Liquids were being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on July 6, 2013, as described herein;

5. The train was comprised of the 72 DOT-111 tank cars, each carrying 113,000 litres ("the Tankers") of the Shale Liquids and of 5 locomotive units (hereinafter collectively referred to as the "Train"), the whole as appears more fully from a copy of the National Post graphic article entitled "The Night a Train Destroyed a Town", produced herein as **Exhibit P-1**;

6. In order to deliver the Shale Liquids to their purchaser, World Fuel contracted with CP Rail to transfer the Shale Liquids from New Town, North Dakota to Montreal, Quebec. CP Rail subcontracted with MMAR to transport the Shale Liquids from Montreal, Quebec to a rail company in New Brunswick owned by Irving Oil, which would then transport the Shale Liquids to Irving Oil's refinery in St. John, New Brunswick. Western Petroleum leased the Tankers for this purpose;

7. On or about July 5, 2013, the Train reached Côte Saint-Luc, Quebec, where the carriage of the 72 Tankers was transferred to (…) MMAR;

8. In the judgment granting authorization of the class action as against CP Rail dated May 8, 2015 (the "First Authorization Judgment"), the Superior Court of Quebec identified the principle questions/issues of fact and law to be treated collectively as the following:

   a) L'intimé CP savait-il ou aurait-il dû savoir que les liquides de schiste acheminés à partir de Newport, Dakota du Nord vers St-John au Nouveau-Brunswick dans les wagons-citernes DOT-111 étaient mal classifiés et identifiés?

b) L'intimé CP savait-il ou aurait-il dû savoir que les liquides de schiste acheminés par transport ferroviaire à partir de Newport Dakota du Nord vers St-John au Nouveau-Brunswick étaient plus volatiles, explosifs et inflammables que du pétrole brut typique?

c) L'intimé CP a-t-il été négligent en permettant que les liquides de schistes acheminés à partir de Newport au Dakota du Nord vers St-Jean au Nouveau-Brunswick le soient dans des wagons-citernes DOT-111?

d) Les wagons-citernes DOT-111 utilisés pour transporter les liquides de schiste étaient-ils appropriés et la décision d'utiliser ces wagons-citernes a-t-elle causé ou favorisé l'incendie, les explosions et la contamination qui ont suivi le déraillement survenu le 6 juillet 2013 à Lac-Mégantic?

e) L'intimé CP a-t-il été négligent dans le cadre de ses discussions et négociations avec les intimés World Fuel pour le choix du trajet afin d'acheminer les liquides de schiste de Newport, Dakota du Nord vers St-John au Nouveau-Brunswick et a-t-il eu un rôle prépondérant et fautif dans la détermination finale du trajet et par voie de conséquence, du transporteur utilisé?

L' intimé CP a-t-il été négligent en choisissant, suggérant, recommandant ou permettant que les liquides de schiste acheminés à partir de Newport au Dakota du Nord, vers St-John au Nouveau Brunswick le soient sur la voie ferrée propriété du transporteur ferroviaire MMA?

f) Quelle est la nature et l'étendue des dommages et autres remèdes que peuvent réclamer les membres du recours collectif?

g) Les membres du recours collectif ont-ils le droit à des dommages et intérêts corporels, moraux et matériels? Si oui, quel est le montant de ces dommages?

8.1. <u>In the judgment granting authorization of the class action as against MMA Canada and Thomas Harding dated October 24, 2016 (the "Second Authorization Judgment"), the Superior Court of Quebec identified the principle questions/issues of fact and law to be treated collectively as the following:</u>

a) <u>Les liquides de schistes acheminés par transport ferroviaire à la demande de World Fuel étaient-ils adéquatement classifiés et étiquetés?</u>

b) <u>Si les liquides de schistes transportés à la demande de World Fuel étaient mal classifiés et identifiés conformément à la législation en</u>

vigueur et aux règlements d'application, ces erreurs de classification et d'identification sont-elles la cause ou ont-elles favorisé l'incendie, les explosions et la contamination qui ont suivi le déraillement du 6 juillet 2013 à Lac-Mégantic?

c) Les défendeurs MMACC et CPR savaient-ils ou auraient-ils dû savoir que les liquides de schiste acheminés à partir de Newport, Dakota du Nord vers St-John au Nouveau-Brunswick dans les wagons-citernes DOT-111 étaient mal classifiés et identifiés?

d) Les défendeurs MMACC et CPR savaient-ils ou auraient-ils dû savoir que les liquides de schiste acheminés par transport ferroviaire à partir de Newport Dakota du Nord vers St-John au Nouveau-Brunswick étaient plus volatiles, explosifs et inflammables que du pétrole brut typique?

e) Les défendeurs MMACC et CPR ont-ils été négligents en permettant que les liquides de schistes acheminés à partir de Newport au Dakota du Nord vers St-Jean au Nouveau-Brunswick le soient dans des wagons-citernes DOT-111?

f) Les wagons-citernes DOT-111 utilisés pour transporter les liquides de schiste étaient-ils appropriés et la décision d'utiliser ces wagons-citernes a-t-elle causé ou favorisé l'incendie, les explosions et la contamination qui ont suivi le déraillement survenu le 6 juillet 2013 à Lac-Mégantic?

g) Le défendeur CPR a-t-il été négligent dans le cadre de ses discussions et négociations avec World Fuel pour le choix du trajet afin d'acheminer les liquides de schiste de Newport, Dakota du Nord vers St-John au Nouveau-Brunswick et a-t-il eu un rôle prépondérant et fautif dans la détermination finale du trajet et par voie de conséquence, du transporteur utilisé?

h) Le défendeur CPR a-t-il été négligent en choisissant, suggérant, recommandant ou permettant que les liquides de schiste acheminés à partir de Newport au Dakota du Nord, vers St-John au Nouveau-Brunswick le soient sur la voie ferrée propriété du transporteur ferroviaire MMACC?

i) Le défendeur MMACC a-t-il exercé un contrôle effectif sur le train qui a déraillé?

j) Est-ce que le défendeur MMACC a failli à ses obligations de développer et mettre en œuvre des politiques et procédures avant le déraillement du train qui a déraillé?

k) Est-ce que l'intimé MMACC a failli à son devoir d'employer des personnes qualifiées, de les former et de les superviser adéquatement

par rapport aux procédures appropriées à utiliser dans la sécurisation de leurs trains?

l) Est-ce que le défendeur Thomas Harding a, par ses faits et gestes, causé ou contribué au déraillement du train.

m) Quelle est la nature de l'étendue des dommages et autres remèdes que peuvent réclamer les membres du recours collectif?

n) Les membres du recours collectif ont-ils le droit à des dommages et intérêts corporels, moraux et matériels? Si oui, quel est le montant de ces dommages?

II. THE SITUATION

a) Background: The Source and Extraction of the Shale Liquids

9. The Shale Liquids originated in the Bakken formation which is a rock formation of approximately 520,000 square kilometres of the subsurface underlying parts of North Dakota, Montana, Saskatchewan, and Manitoba. Crude oil is typically extracted from the Bakken formation as well as from other adjacent hydrocarbon-bearing formations through horizontal wells in the natural fractures in the rock formation or through the use of hydraulic fracturing;

10. Bakken oil production yields not only highly sought-after crude oil, but also a significant amount of volatile vapours, gases and light liquids, including propane, butane, pentane and natural gasoline. When left in their combined state, these gases and liquids can become extremely explosive, even at relatively low ambient temperatures. Some of these gases may be burned off – or flared off– at the well-head, but others remain in the extracted well product. The degree to which these volatile vapours, gases and light liquids, including propane, butane, pentane and natural gasoline are permitted to remain in the extracted well product is controlled by the oil producers;

b) Dramatic Expansion in the Shipment of Crude Oil by Rail

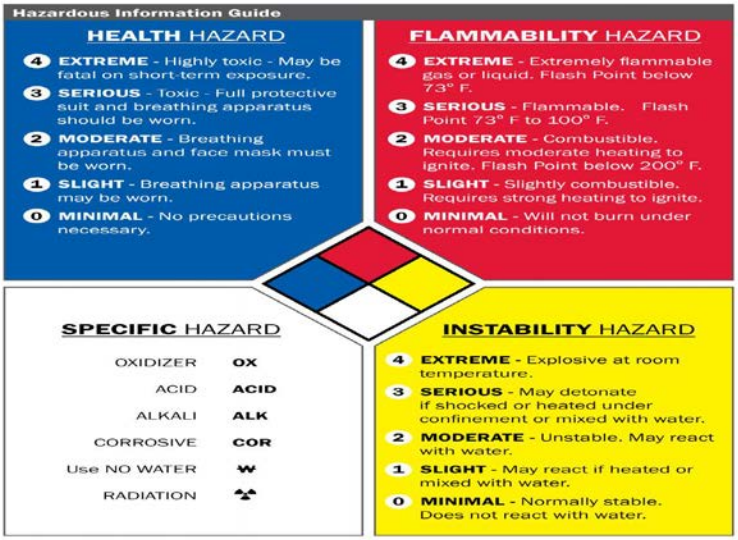
11. In recent years and, in significant part as a result of the growth of oil production from the Bakken region, crude oil shipments have become the fastest growing of all hazardous materials shipped by rail in the United States (hereinafter, the "U.S."), with crude oil originations having increased 443% since 2005, the whole as appears more fully from a copy of the correspondence from the Federal Railroad Administration to the American Petroleum Institute dated July 29, 2013, produced herein as **Exhibit P-2**;

12. Canada has experienced an even more dramatic increase in the volume of crude oil carried by rail. Specifically, there has been a 28,000% increase in the

amount of oil shipped via rail since 2009, increasing from 500 carloads in 2009, to an estimated 140,000 carloads in 2013, the whole as appears more fully from a copy of a CTV News article entitled “Quebec Disaster: Oil shipments by rail have increased 28,000 per cent since 2009” dated July 7, 2013, produced herein as **Exhibit P-3**;

c) Hazard Classification: The Misclassification of the Shale Liquids

13. Oil producers are required to determine the appropriate hazard classification of their oil production at various stages in the process and for various purposes. For example, the well-pad storage tanks must carry diamond-shaped warning placards to reflect the appropriate hazard classification of their contents as depicted below;



14. In addition, as “offeror[s] of hazardous material for transportation in commerce”, oil producers are responsible for knowing the composition of their product and properly classifying the hazardous material in compliance with the standards set out by the United States Department of Transportation – Pipeline and Hazardous Materials Safety Administration’s *Code of Federal Regulations – Hazardous Materials Regulations* (hereinafter the “HMR”)[2]. In particular, the regulations provide that crude oil, as a flammable liquid is included in Class 3, while Class 4 materials include spontaneously combustible materials;

15. Class 3 flammable liquids being offered for transportation in commerce are further sub-categorized for risk into one of three (3) packing groups (“PG”s) based on the substance’s initial boiling point, absolute pressure and flash point with PG I representing the highest level of risk and PG III representing the

[2] The United States Department of Transportation Pipeline and Hazardous Materials Safety Administration’s *Code of Federal Regulations* Subchapter C sections 171-180, at s. 171.1.

lowest level of risk. These classification standards are consistent between the U.S. regulations (the HMR) and the applicable Canadian regulations, as set out in the *Transportation of Dangerous Goods Regulations, Part II*, SOR/2008-34;

16. Material Safety Data Sheets ("MSDS"s)[3] for Bakken Oil prepared by other Canadian oil companies, more specifically, Cenovus Energy Inc. ("Cenovus") in November, 2012 and Enbridge Pipelines Inc. ("Enbridge") in June, 2011, indicate an National Fire Protection Agency ("NFPA") flammability risk level of 4; however, several well-pad storage tanks operated by Marathon Oil Company and Slawson Exploration Company in the Bakken region were placarded with a flammability risk of 3, the whole as appears more fully from a copy of the Cenovus Energy Inc. MSDS dated November 2, 2012, a copy of the Enbridge Pipelines Inc. MSDS dated 06/08/2011, produced herein as **Exhibits P-4 and P-5** respectively;

17. Further, the Cenovus MSDS classified the Bakken oil as PG I and the Enbridge MSDS classified the Bakken oil as PG II; however, according to the Transportation Safety Board of Canada's investigation (discussed in greater detail below), all cargo on the Tankers was designated as lower risk PG III product, the whole as appears more from a copy of the Rail Safety Advisory Letter to Transport Canada from the TSBC, dated September 11, 2013 produced herein as **Exhibit P-6**;

d) Concerns about Bakken oil prior to the Train Derailment

18. While Bakken oil was historically considered "sweet" oil, meaning that it is typically not infused with high levels of, toxic, highly flammable, corrosive and explosive hydrogen sulfide ("H_2S"), there have been increasing observations of elevated levels of H_2S in Bakken oil. The range of concerns and risks associated with H_2S and crude oil was well-known in the oil and gas industry prior to the Train Derailment, the whole as appears more fully from a copy of the PowerPoint presentation prepared by Irving Oil with respect to serious issues of quality control in crude oil transported by rail, produced herein as **Exhibit P-7**;

19. H_2S in petroleum products sourcing out of North Dakota was of such concern prior to the Train Derailment that common carrier pipelines servicing the Bakken region set strict limits on the H_2S concentration permitted in the product. These levels were set at between 5 and 10 ppm[4], the whole as appears more fully from a copy of the Order Accepting Tariff Filing by the U.S. Federal Energy Regulatory Commission ("FERC") dated June 6, 2013, produced herein as **Exhibit P-8**;

[3] Material safety data sheets ("MSDS"s) are a widely used system for cataloging information on chemicals, chemical compounds, and chemical mixtures.
[4] PPM is Parts Per Million.

20. In order to meet this standard, the crude oil being extracted with higher H_2S concentrations would need to either be blended in order to dilute the H_2S level or be transported by alternate means, i.e. by rail;

21. In addition to the known risk of high H_2S concentrations in the oil extracted from the general area, there were other serious concerns mounting regarding the content of the crude oil coming from the North Dakota Bakken and its appropriate hazard classification;

22. The Shale Liquids were mixed with other volatile substances and/or contained other chemical components that were highly flammable and not typically found in crude oil, the whole as appears more fully from a copy the Globe and Mail article entitled "Blast Probe Turns to Oil Composition" dated July 19, 2013, produced herein as **Exhibit P-9**

23. CP Rail knew or ought to have known that the Shale Liquids were much more volatile, explosive and combustible than typical crude oil and that they were a highly flammable mixture of multiple petroleum substances, including hydrogen sulfide gas. CP Rail knew or ought to have known that extra precautions had to be taken in order to ensure the safe transport of the Shale Liquids by the Train and as will be described below, CP Rail was aware of the mislabelling of the tank cars which comprised the Train;

e) The Train Derailment

23.1. One of the MMA entities, Montreal, Maine and Atlantic Corporation ("MMAC"), issued a press release immediately following the Train Derailment, as can be seen from **Exhibit P-10**. Further details are evident from the newspaper articles at **Exhibits P-1, P-11** and **P-12.**

24. On July 5, 2013, at 11:25 P.M., Defendant Harding, the sole engineer employed (…) to operate the Train, parked and tied down the Train in the town of Nantes, Quebec, for a stopover en route to the province of New Brunswick, the whole as appears more fully from a copy of the Montreal, Maine and Atlantic Railway (MMAR) Press Release entitled "Derailment in Lac-Mégantic, Quebec" dated July 6, 2013, produced herein as **Exhibit P-10**;

25. The estimated 9,975 ton Train was parked eleven (11) kilometres west of Lac-Mégantic, Quebec, on the main rail line at an elevation point of 515 metres on an incline of 1.2%;

26. (…) Defendant Harding claims to have tied down the Train and turned off four of the five engines, leaving the lead engine #5017 on to ensure that the air brake system continued to operate. Defendant Harding failed to apply any or insufficient hand brakes, thereby failing to act in accordance with existing requirements, regulations, and policy, the whole as appears more fully from a

copy of the Wall Street Journal article entitled “Brakes Cited in Quebec Wreck” dated July 10, 2013, produced herein as **Exhibit P-11**;

26.1. Defendant Harding then left the scene at approximately 11:25 P.M. and went to a local hotel for the night, leaving the train unattended. The Train was emitting smoke at that time;

27. At 11:30 P.M., residents of Nantes noticed a significant amount of smoke coming from the Train’s first locomotive and called 9-1-1;

28. At 11:45 P.M., the Nantes fire department arrived on the scene to extinguish a small fire in the locomotive, reportedly caused by a ruptured oil or fuel line in the locomotive. In accordance with procedure, the fire department turned off the running engine so as to prevent the fire from accessing the engine’s fuel;

29. At 11:50 P.M., the fire was reported to rail traffic control and the MMA Entities (…) dispatched two (2) track maintenance employees (…) to the scene. Neither Defendant Harding nor any other properly qualified engineer attended;

30. By 12:15 A.M. on July 6, 2013, the blaze was completely extinguished and the firefighters left the Train in the custody of the MMA employees who either failed to take any, or failed to take adequate measures in the emergency situation to ensure that the Train was safely secured. In addition, they failed to request or to bring the situation to the attention of Defendant Harding or any other qualified engineer to ensure the safety and security of the Train, particularly the adequacy and effectiveness of the braking system. Instead, they simply left without taking appropriate and necessary measures to secure the Train (…);

31. At approximately 12:56 A.M., after the emergency responders had left and, while no (…) representatives of MMA Canada were present, the Train began to move downhill along the track towards the town of Lac-Mégantic;

32. At 1:14 A.M., the Train derailed at the rue Frontenac road crossing in Lac-Mégantic and crashed into the downtown core and business centre of the town, incinerating and killing nearly fifty (50) people (…);

33. Between 1:15 A.M. and 4:00 A.M., several tanker cars caught fire and the highly flammable tank cars filled with Shale Liquids exploded, decimating the entire area. The explosions continued for several hours as 2,000 residents were evacuated from the area to prevent further deaths (hereinafter referred to as the “Explosion”), the whole as appears more fully from a copy of the National Post article entitled “Death Toll Rises to 13 with Dozens More Still Missing” dated July 9, 2013, produced herein as **Exhibit P-12**;

34. At least thirty (30) buildings owned and/or leased by Class Members were destroyed in the downtown “red zone” and at least 20 people lost their homes;

a) MMA Canada - Employee Negligence

34.1. On July 10, 2013, MMA Entities, through their chairman and president, seemingly took responsibility for the Train Derailment, destruction and deaths caused by the Train Derailment, explosion and fire. Edward Burkhardt gave an impromptu press conference to the media in Lac-Mégantic, in which he was asked by a reporter: "You don't accept full responsibility for this?", his answer was the following:

> "I didn't say that, you see people are always putting words in my mouth, please, I did not say that, we think we have plenty of responsibility here, whether we have total responsibility is yet to be determined. We have plenty of it. We're going to try to help out with everything that we can in this community, working through the city and the Red Cross to do our best to meet our obligation to make repairs and put people back in homes and things like that."

34.2. And when asked about the application of the brakes on the Train, Edward Burkhardt replied:

> "This was a failure of the brakes; it's very questionable whether the brakes- the hand brakes- were properly applied on this train. As a matter of fact, I'd say they weren't or we wouldn't have had this incident [...] I don't think the employee removed brakes that were set; I think they failed to set the brakes in the first place. We know the brakes were applied properly on a lot of the locomotive. The fact that when the air-brakes released on the locomotive, that the train "ran away", would indicate that the hand brakes on the balance of the train were not properly applied. It was our employee that was responsible for setting an adequate number of hand brakes on the train."

34.3. The Transportation Safety Board of Canada conducted a preliminary investigation, as can be seen from **Exhibit P-16.** The completed report of the Transportation Safety Board's investigation can be seen from **Exhibit P-25**;

b) The MMA Entities' Poor Safety Record

34.4. At all material times, the MMA Entities had a duty to ensure that MMA Canada operated safely, that each train operated by MMA Canada, including the Train, was adequately staffed to ensure the safety of all goods transported, and that MMA Canada's accident and incident rate was not higher than national averages – it failed in all of these duties;

34.5. According to Canada's Transportation Safety Board, since 2003, the MMA Entities have reported 129 accidents, including 14 main track derailments and 4 collisions, making it one of the most unsafe railway operators in North America;

34.6. In the United States, the MMA Entities have reported 23 accidents, injuries and other mishaps from 2010 to 2012, according to Federal Railroad Administration data;

34.7. In 2012, the MMA Entities had an average of 36.1 occurrences per million miles, while the national average was 14.6 (the MMA Entities' accident rate being 247 percent higher than the national average). Between 2003 and 2011, the MMA Entities' accident rate ranging between 23.4 and 56 incidents per million miles, while the national average ranged between 15.9 and 19.3 (the MMA Entities' accident rate ranging between 147 percent higher and 290 percent higher);

34.8. A great number of these occurrences involved brakes that either failed or had not been properly activated, resulting in the train rolling away unmanned. MMA Canada was cited for numerous violations of section 112 of *the Canadian Railway Operating Rules* ("CROR") for failing to adequately secure its trains;

34.9. MMA Canada's poor safety record can be seen from Exhibit P-17. Further, a detailed list of all the contraventions of CROR regulations can be found at **Exhibit P-26**;

c) The Rail World Entities' Cutbacks

34.10. In 2003, Rail World bought the Bangor & Aroostook Railroad, which spans approximately 1,200 kilometres of regional rail track in Maine, Vermont, and Canada, and renamed it Montreal, Maine and Atlantic Railway Inc.;

34.11. Contrary to industry standards, the MMA Entities reduced their locomotive crews by half, replacing two (2) engineers with only one (1) in charge of the operation of an entire train. In North America, most train operators, including two of Canada's largest – Canadian National Railway Ltd. and Canadian Pacific Railway Ltd. – employ two engineers to operate their trains. Simply put, the MMA Entities had a special duty to ensure the usage of adequate train crews of at least two (2) engineers when transporting highly flammable Bakken Shale Liquids, particularly so through urban and residential areas;

34.12. In 2012, the MMA Entities' finances had somewhat improved after years of operating losses, in part, due to the new business of shipping petroleum products to the Irving Oil refinery in Saint John, New Brunswick (where the Train was headed before the Train Derailment);

34.13. In order to keep costs at a minimum and to keep the company profitable, the MMA Entities began outfitting their trains with remote-control communications technology systems and employing other cost-cutting tactics, such as employee cutbacks, with complete disregard for industry safety and security practices when transporting inherently dangerous goods;

34.14. These cutbacks demonstrate a serious and concerted preoccupation with finances at the expense of the necessary safety and security policies that should have been their primary concern, as can be seen from **Exhibits P-27 and P-28**;

III. THE LIABILITY OF CP RAIL FOR THE TRAIN DERAILMENT

a) Corporate reorganization of CP Rail and substantial employee layoffs including employees dealing with train safety, maintenance yard workers and others in Côte Saint-Luc, Quebec

35. In the spring of 2012, Pershing Square Capital Management ("Pershing Square"), a New York hedge fund, acquired control of the Board of CP Rail through a proxy battle, after purchasing over 14% of the common equity, making it the largest shareholder of CP Rail;

36. After taking control, Pershing Square appointed Hunter Harrison as the new CEO of CP Rail. Pursuant to the directions from the Board, Harrison undertook a substantial cost-reduction plan, which cut over 4,000 employee positions, representing more than 20% of the total employees of the company. This included a large number of yard workers in the CP Rail Côte Saint-Luc, Quebec rail yards as well as hundreds of employee positions relating to train safety and maintenance;

37. At the same time, CP Rail significantly increased its business of transporting from the Bakken region of North Dakota, to refineries in Eastern North America, including the Irving Oil refinery in New Brunswick. CP Rail was aware that the transport of Shale Liquids involved longer and heavier trains dedicated to the transport of crude oil. It was also well-known that some of CP Rail's secondary branch lines, including the lines previously sold to MMA Canada in Quebec, required substantial repairs and upgrades in order to accommodate the heavier and longer trains carrying crude oil and that the transportation of longer and heavier trains carrying crude oil over these lines posed significantly increased safety hazards;

38. However, in order to earn as large a profit on the transportation of the unit trains as possible and, in accordance with the requirements of its "partnership" arrangements with MMA, Dakota Plains and World Fuel, CP

Rail, as the “arranger” of the shipment, chose to ignore the well-known safety concerns in relation to MMA and its track and caused the unit trains to use MMA Canada’s routing to deliver the Shale Liquids to Irving Oil. This is the same routing chosen by CP Rail, as “arranger” of these same shipments dating back to November 2, 2012. Since that time, CP Rail, as arranger, had caused 3,830 oil tanker cars to be shipped along the MMA line to Irving Oil’s refinery. CP Rail also knew, or turned a blind eye to the fact that all of these oil tanker cars were mislabelled, as described herein;

39. As noted above, these Shale Liquids were known to CP Rail to be a highly flammable and therefore hazardous substance; however, from the point of extraction to the point of explosion in Lac-Mégantic, these risks were inadequately and falsely labelled and insufficient precautions were taken to ensure safe transport;

40. On November 2, 2013, Irving Oil effected an analysis of the Shale Liquids from one of the oil wells located in the Bakken region. The results of the analysis determined that the Shale Liquids were required to be labelled as “Class 3 Packing Group I” instead of the far less volatile and explosive “Class 3 Packing Group III”. Similarly, Irving Oil labelled the Shale Liquids being *returned* from Irving Oil’s refinery under the more volatile and explosive “Class 3 Packing Group I”, the whole as appears more fully from a copy of the Dénonciation en vue d’obtenir un mandat de perquisition, dated December 11, 2013, produced herein as **Exhibit P-13**;

41. CP Rail was accordingly well aware of the mislabelling of the Shale Liquids through the obvious discrepancy in labelling as between the trains inbound to Irving as opposed to those trains returning from the Irving facility;

42. Further, as a major partner in the North Dakota transloading facility, CP Rail would have been highly sensitized to the mislabelling of the Tankers. Instead, CP Rail persisted in transporting thousands of tankers of Crude all mislabelled. Details of this partnership are described below;

43. As the railway company responsible for the transportation of the unit trains, CP Rail knew or ought to have known that the Shale Liquids were mislabelled for the reasons described herein;

b) The partnership between CP Rail, the World Fuel Entities, the Dakota Plains Entities and other subsidiaries to develop a $50 million transload facility in the Bakken area of North Dakota

44. In 2012, the management of CP Rail, at the direction of the Board and its largest shareholder, Pershing Square, decided to substantially increase revenue by transporting more Shale Liquids from the Bakken region of North Dakota to Eastern North America. CP Rail developed a plan to move Bakken

crude oil liquids through a series of partnership agreements with the World Fuel entities and the Dakota Plains entities to supply East Coast refineries, including the refinery operated by the Irving Oil entities in New Brunswick. CP Rail and its partners, World Fuel and Dakota Plains, as well as related subsidiaries, were well-aware that they were offering to deliver highly volatile oil products and gas-infused Shale Liquids at discounted transportation prices in order to increase revenue and profits;

45. Pursuant to these plans, CP Rail agreed to transport highly volatile, gas infused Bakken Shale Liquids utilizing DOT-111 Tankers, which were much less expensive to acquire and to operate (and known as such), but were also known to be far more dangerous and inappropriate for the safe hauling of volatile Bakken Shale Liquids. These less expensive, substandard, and unsafe railcars were utilized in order to maximize the profits of CP Rail and its joint venture partners by enabling CP Rail to offer discounted transportation prices to purchasers;

46. As part of the partnership agreements between CP Rail, World Fuel, Dakota Plains and their subsidiaries, they agreed to build and, in fact, constructed a $50 million loading spur in North Dakota to load Bakken Shale Liquids from a truck terminal onto CP Rail trains. CP Rail was the sole "rail partner" permitted to utilize the spur for the transportation of Bakken crude to the East coast refineries;

47. CP Rail developed this facility in conjunction with its joint venture partners, World Fuel and Dakota Plains, as a part of the larger project involving the development and transportation of Bakken crude oil liquids from North Dakota to Eastern North America. CP Rail was involved in a further joint venture arrangement with World Fuel and Dakota Plains to transport sand from Wisconsin to North Dakota over CP Rail's network to be used in the fracking process in the Bakken region;

48. By reason of this substantial investment and presence in the Bakken region, CP Rail was intimately aware of the volatile nature of the Shale Liquids and actively participated in, or turned a blind eye to the practice of mislabelling thousands of Tankers as PG III when CP Rail knew, or ought to have known that this was an erroneous designation;

c) The relationship between CP Rail and MMAR and/or MMA Canada

49. In 2002, CP Rail had sold its track system east of Montreal through the province of Quebec and the state of Maine and connecting with New Brunswick to MMAR. This included the track which carried the Train through the town of Lac-Mégantic. Following the sale of this as well as other routes, CP Rail maintained a close partnership relationship with MMAR and acted as

the "main interchange partner" with MMAR with respect to rail shipments passing through Montreal;

50. CP Rail and MMAR maintained a broad set of mutually beneficial commercial agreements to coordinate shipment of trains from the CP rail network through Montreal and through the MMAR rail network to New Brunswick in Eastern Canada. CP Rail and MMAR's relationship, which including interchange agreements and documents granting trackage and/or haulage or any other operating rights between the two rail companies were set out in the Bill of Lading the whole as appears more from a copy of CP's Exhibit CP-7, being CP Rail's Bill of Lading for unit Train 282, produced herein as **Exhibit P-14**; and the whole as appears more from a copy of the Interchange Trackage Rights Agreement dated January 8, 2003 that was produced as JC-2 at the cross-examination of James Clements, a witness for CP Rail, produced herein as **Exhibit P-15**;

51. As a result of this partnership and these agreements, CP Rail had intimate knowledge of the substandard nature of MMAR's operations, its poor safety record, and the poor maintenance of its track and of its locomotives, the whole as appears more fully from **Exhibits P-16 and P-17**;

52. In addition, CP Rail was well-aware of the inadequate staffing policies and of the deficient safety policies utilized by MMAR, including the use of only one (1) engineer on heavy and longer trains, such as the Train, hauling highly volatile Bakken crude oil liquids on substandard track;

53. CP Rail was at all times aware that the track in the MMAR Eastern Quebec network, including that which passed through Lac-Mégantic, was "excepted track"[5], which was subject to numerous "low speed" limits and wholly inappropriate for the transport of heavy trains carrying substantial quantities of volatile Bakken crude oil. CP Rail was aware that this excepted track was wholly inappropriate to safely transport a heavy train carrying 72 cars of Bakken crude oil;

54. Prior to the Train Derailment, CP Rail was also aware that MMA had had an average rate of 38.81 accidents and incidents per million truck miles travelled, (which was more than double the U.S. national average of 17.15), in the period from 2003 through 2012. CP Rail was also aware that MMA's record was even worse in other categories including incidents such as hazardous material leaks in which MMA had a rate of 11.87, which was more than 3 times the national rate of 3.41. CP Rail was aware that several of these

[5] An excepted track is a class of track below Class 1 which is poorly maintained. If a track is designated as an "excepted track", there is a speed restriction where trains can travel a maximum of 10 MPH, cannot carry any passengers and cannot transport any dangerous goods. "Excepted tracks" often have serious safety issues, such as broken rails and defective ties, that can cause train derailments, as has been noted in Transport Canada's internal communications.

incidents involved brakes that failed or were not properly activated, resulting in the train rolling away unattended;

55. CP Rail acknowledged that as result of its determination (after the takeover by Pershing Square) to develop much more business by transporting Bakken crude oil liquids with much larger and heavier trains, that it would be necessary to upgrade much of the track utilized for these large and heavy trains;

56. CP Rail was aware that it was operating with substandard "100 pound, jointed rail, 1950s vintage" and that this track would have to be updated at significant capital costs in order to be able to safely transport these trains and the volatile liquids. It was aware at all material times leading up to the Train Derailment that the MMA rail system was equally or more deficient and incapable of safely transporting heavy trains with Bakken crude oil through Eastern Quebec;

57. Notwithstanding these clear indicators, CP Rail decided to ship the 72 unit train through Lac-Mégantic with the knowledge that the derailment involving the catastrophic explosion of 72 railcars carrying volatile Bakken crude oil was not only quite possible, but over time, highly probable. Thus, CP Rail knew, and yet, did nothing to prevent, a catastrophic disaster waiting to happen. And happen it did in the early hours of July 6, 2013 causing the death by incineration of 47 people resident in Lac-Mégantic, the destruction of the town centre and the indescribable devastation to the lives and property of the thousands of Class Members;

d) CP Rail's knowledge of the extremely volatile and explosive nature of the Bakken Shale Liquids

58. CP Rail entered into contracts with the Irving Oil entities, the World Fuel entities, the Dakota Plains entities and others known to CP Rail, to transport the 72 tanker car train from Newtown, North Dakota to the Irving Oil refinery in St. John, New Brunswick. CP Rail was responsible for the safety of the Train and all aspects of the rail shipment throughout the journey from North Dakota to New Brunswick;

59. CP Rail moved the 72 tanker car train from the Dakota Plains transload[6] facility in Newtown, North Dakota to the CP Rail interchange yard in Côte Saint-Luc, Quebec. At that point, CP Rail subcontracted with its partner, MMA, to use the MMA locomotives and rail system to transport the 72 car train over MMA's substandard track from Montreal through Eastern Quebec and Maine, to the Irving Oil refinery in New Brunswick;

[6] "Transloading" is the process of transferring product from one mode of transportation to another, in this case, the Shale Liquids were "transloaded" from truck to rail car.

60. By 2012, CP Rail was well-aware that the Bakken Shale Liquids were highly volatile and explosive and were capable of bubbling, and having high gas emissions during transport coupled with high vapour pressures. These volatile conditions were known to create very dangerous conditions in which there was a high probability of explosion if the tank cars ruptured in a derailment. The CP Rail was also aware of the repeated and consistent, mislabelling of the Tank Cars since November 2012 when these shipments through Lac-Mégantic began. CP Rail and its partners were well-aware of this information through 2012 and through the first half of 2013;

61. CP Rail was also aware that the volatile nature of the Bakken Shale Liquids was inconsistent with the common transportation classification for such liquids as Class III Packing Group III, which was often used by oil producers, shippers and importers including the Irving Oil entities in respect of the Bakken Shale Liquids, as can be seen in CP Rail's Bill of Lading for unit Train 282 (Exhibit P-14);

62. CP Rail was aware that if the Bakken Shale Liquids had been properly classified under the label Class II (flammable gases) or Class III (flammable liquids) and as Packing Group I, this classification of hazardous materials would have not permitted the shipping of Bakken Shale Liquids other than by Class I rail operators such as CP Rail and Canadian National Railway Company ("CN") and would not have permitted the shipment of the Bakken Shale Liquids over the MMA tracks and by the MMA operation in Eastern Quebec. However, CP Rail and its partners permitted, assisted with, or were willfully blind as to the mislabelling by the Irving Oil entities of the Bakken Shale Liquids being shipped to the Irving Oil refinery to permit the cheaper transportation of the Shale Liquids over the MMA tracks pursuant to CP Rail partnership with MMA;

63. CP Rail was aware that as a result of the misclassification of the Bakken crude oil, which stated the contents were "Class III Packing Group III" (Exhibit P-16) that these would be considered the least dangerous flammable liquids and as such, CP Rail could use the poorly-maintained and low-cost MMA rail system to ship the Bakken Shale Liquids through Lac-Mégantic to the Irving Oil refinery. Despite this knowledge, CP Rail made the business decision to ship the Shale Liquids to the Irving Oil refinery utilizing MMA's much cheaper, but shoddily-maintained and much more dangerous route, and bypassing a longer, but much safer CN route;

e) CP Rail's knowledge that the DOT-111 tank cars used to transport the Shale Liquids were inadequate

64. DOT-111 tank cars, also known as CTC-111A tank cars (the "Tankers") were used to transport the Shale Liquids from North Dakota to New Brunswick. The Tankers are multi-purpose, non-pressure tank cars that are widely known

or ought to have been known by CP Rail, and are known by regulators to be highly vulnerable to leaks, ruptures and explosions;

65. CP Rail knew or ought to have known that the United States National Transportation Safety Board ("U.S. NTSB") repeatedly noted in numerous investigations, beginning as early as May 1991, that DOT-111 model tank cars have multiple design flaws which result in a high incidence of tank failures during collisions, and render them unsuitable for the transport of dangerous and explosive products, the whole as appears more fully from a copy of the U.S. NTSB Safety Recommendation dated March 2, 2012, produced herein as **Exhibit P-18**;

66. CP Rail knew or ought to have known that the TSBC also noted that the DOT-111 tank design is flawed, resulting in a high incidence of tank failure during accidents and should not have been used to transport highly combustible and explosive Shale Liquids such as those liquids and gases contained in The Tankers. There are numerous accidents in Canada alone, where DOT-111 design flaws were ultimately identified as a contributing causal factor to the damage, the whole as can be seen from a copy of TBSC Occurrence Reports produced herein as **Exhibits P-19, P-20, P-21, P-22, and P-23;**

67. Flaws in the design of the DOT-111 tank cars that were known or ought to have been known by CP Rail include:

    a) the tank is not double-hulled and its steel head and shell are too thin to resist puncture;

    b) the steel shell is not made of normalized steel, which is more resistant to rupture;

    c) the tank's ends are especially vulnerable to tears from couplers that can fly up after ripping off between cars;

    d) unloading valves and other exposed fittings on the tops of the tanks easily break during rollovers as they do not have protective guards, and when this happens the tanks have the capacity to rapidly unload;

    e) the tanks are not equipped with shields to resist shock in the event of a collision;

    f) where such tanks have previously been used to carry crude oil and solids have settled in the car, there can be corrosion in the bottom of the car, leading to an increased risk of breach in the event of a collision; and

g) where the crude being transported contains a mixture of, *inter alia*, methane, ethane, propane, H_2S which results in high vapour pressure, it can cause bubbling crude, leading to corrosion of the tank and increased risk of breach in the event of a collision,

The whole as appears more fully from a copy of slide 14 of the power-point presentation prepared for a Canadian Crude Quality Technical Association workshop on Vapour Pressure held in Edmonton on February 5 and 6, 2013, produced herein as **Exhibit P-24**;

68. As a result, it was widely known that the Tankers were highly prone to failure and leakage even in collisions at low speed and should not have been used to transport the Shale Liquids;

69. These flaws were repeatedly identified and publicized as being of great concern to Canadian and American regulators. In 2011, the American Association of Railroads' Tank Car Committee imposed design changes intended to improve safety in new DOT-111s, including requirements for thicker heads, low-pressure release valves and puncture-proof shells. These design modifications have also been adopted for new DOT-111 cars manufactured and used in Canada, but there is no requirement to modify existing tanks. While these changes decrease the likelihood of tank rupture in tanks produced in late 2011 and onwards, the benefits are not realized unless a train is composed entirely of tanks that possess these modifications as even one substandard tank car in the train can cause the rest to explode. None of the tankers in question had received the design reinforcement changes described above;

70. In the presence of ongoing concerns, the U.S. NTSB issued safety guidelines in March, 2012 for all DOT-111s, which included a recommendation that all tank cars used to carry ethanol and crude oil be reinforced to render them more resistant to punctures and explosions and that existing non-reinforced tankers be phased out completely. These guidelines highlighted the dangers posed by the transport of large quantities of ethanol and crude oil by rail and specifically cited the increased volume of crude oil being shipped out of the Bakken region of North Dakota as one of many justifications for the requirement for improved standards (Exhibit P-18). CP Rail knew or ought to have known of these safety guidelines and should have ensured that Shale Liquids were not transported in The Tankers or alternatively that Shale Liquids were only transported in tankers that had been reinforced in a manner consistent with the guidelines;

71. Despite known concerns surrounding the use of non-reinforced tankers to transport Shale Liquids, all of The Tankers involved in the Train Derailment were older and non-reinforced DOT-111 tanks, thus remaining highly prone to rupture and explosion in the event of a derailment;

72. CP Rail knew or ought to have known that DOT-111 tanks were prone to rupture and should therefore not have been used to transport the Shale Liquids. CP Rail had a duty to ensure that the Shale Liquids were not transported in the Tankers and were safely transported in tanks that had proper safety features and reinforcement to limit failure in the event of a derailment, such as double-hulls, thicker shells and heads, front and rear shields to absorb the impact of collisions, guards for fittings, and gauges to restrict the rapid unloading of tank contents;

f) CP Rail's decision to ignore problems with the defective locomotive used by MMA to pull the train from CP's rail yard through Eastern Quebec to Lac-Mégantic

73. As known by CP Rail, the Train was transported by CP Rail from North Dakota across the Northern United States, through Canada and through Montreal during an unusually warm heat wave. The heat wave caused the Bakken Shale Liquids to become even more volatile with certain gases boiling during transport, which raised the vapour pressure to rise dramatically inside the DOT-111 cars. This elevated pressure caused periodic emissions of both hydrocarbon gases and hydrogen sulfide gases aboard the tanker cars. These gas emissions provided further and additional warning to CP Rail of the unusual volatility of the contents of the 72 DOT-111 cars in those severe weather conditions;

74. CP Rail employees either ignored evidence that the tanker cars were venting hazardous gases during the over 2,700 kilometre trip from North Dakota to Montreal or were wilfully blind to the imminent danger caused by improper safety precautions. Similarly, MMA employees and the CP Rail Côte Saint-Luc rail yard workers failed to undertake any or sufficient analyses to determine the extreme volatility of the Bakken crude oil liquids and gases being transported by MMA on the train on July 5 and 6, 2013 to Lac- Mégantic, Quebec;

75. CP Rail put the MMA unit train together in its Montreal interchange yard in Côte Saint-Luc. In doing so, CP Rail employees failed to undertake the necessary steps to ensure that the Shale Liquids being transported by MMA were appropriately labeled and were being shipped in a safe manner;

76. As a consequence of CP Rail's action and/or inaction, as described above, the Train Derailment occurred;

IV. <u>THE FAULTS OF CP RAIL</u>

77. CP Rail had a duty to the Plaintiffs/ Class Representatives and the Class Members to abide by the rules of conduct, usage or law to ensure the safe transportation of the Shale Liquids and the safe operation of the Train;

78. CP Rail had a duty to the Plaintiffs/ Class Representatives and the Class Members to exercise reasonable care in their determination of the methods, railway, railway operator and tanks used to ship the Shale Liquids from North Dakota to New Brunswick and to exercise reasonable care in their physical shipment of the Shale Liquids from North Dakota to New Brunswick;

79. The Train Derailment and the resulting injuries and damages were caused by the faults of the CP Rail themselves, as well as, of their agents or servants, for whose actions, omissions and negligence they are responsible, the particulars of which include, but are not limited to:

a) although it was familiar with the track, as its previous owner, and knew it was an excepted track, it still subcontracted with MMAR, despite its poor safety record and inadequate insurance coverage;

b) it failed and/or neglected to hire a safe and qualified railway operator that would have been adequately solvent, capitalized and insured in the event that such an incident occurred and substantial damages were required to be paid to the Plaintiffs/Class Representatives and members of the Class, including those killed and injured as a result of the Train Derailment;

c) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;

d) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly labeled and transported as hazardous materials;

e) it failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, and/or that they were only transported in DOT-111 tanks that were properly reinforced to improve their safety in the event of a collision;

f) it failed and/or neglected to hire a safe and qualified railway operator with a positive safety record to transport the Shale Liquids;

g) it failed and/or neglected to hire a safe and qualified railway operator that would have adequately staffed its trains to ensure safety and would not have left trains transporting dangerous and explosive materials unattended;

h) it failed and/or neglected to hire a safe and qualified railway operator that would only operate locomotives in good working order, instead it contracted

with MMAR which had a poor safety record and which railway tracks were considered to be excepted;

i) it had a duty to use a safe and qualified railway operator that abided by accepted industry and regulatory standards and that maintained adequate industry ranking in terms of safety;

j) it failed and/or neglected to inspect or adequately inspect the Train and its equipment or the track before contracting with MMAR to transport the Shale Liquids on the MMAR track;

k) it failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when it ought reasonably to have done so, and they failed and/or neglected to prevent such an incident from occurring;

l) it allowed a dangerous situation to exist, when, by the use of a reasonable effort, it could have prevented the Train Derailment and/or limited the scope of damage resulting therefrom;

V. THE FAULTS OF MMA CANADA AND THOMAS HARDING

79.1. MMA Canada owed a duty of care to Class Members to ensure that the Bakken Shale Liquids were being transported in a safe manner. This includes the Bakken Shale Liquids being properly labelled, transported by a safe and reliable railway operator, and transported in adequate tank cars;

79.2. MMA Canada transported hazardous materials over "excepted" and/or dilapidated track that had fallen into disrepair, with only a single engineer (Defendant Harding), who failed to apply the brakes properly;

79.3. MMA Canada had the worst safety record of any railway operator in North America. In spite of this, the MMA Entities nevertheless engaged in a variety of cost-cutting measures, at the price of human safety. Simply put, MMA Canada failed to ensure that the Bakken Shale Liquids were transported in a safe manner and thus, breached its duty to the Class Members;

79.4. The Train Derailment and the resulting injuries and damages were caused by the faults of MMA Canada and Thomas Harding themselves, as well as, of their agents or servants, for whose actions, omissions and negligence they are responsible, the particulars of which include, but are not limited to:

a) they failed and/or neglected to take reasonable or any care to ensure that the Train was safely and securely stationed for the night on July 5, 2013;

b) they failed and/or neglected to inspect or to adequately inspect the Train and its equipment before leaving it unattended on July 5, 2013;

c) they failed and/or neglected to activate or to secure a reasonable amount of the Train's hand brakes both before and after the fire at 11:30 P.M. on July 5, 2013;

d) they failed and/or neglected to keep or to maintain the Train in a proper state of mechanical order suitable for the safe use thereof;

e) they failed and/or neglected to take the appropriate safety and security measures following the fire;

f) they failed and/or neglected to ensure that a qualified train engineer or another qualified employee inspected the Train following the fire;

g) they failed and/or neglected to contact Defendant Harding following the fire to inform him that the fire had occurred, that the Train's engine had been turned off, and/or that the Train's air brakes were no longer operational;

h) they failed and/or neglected to ensure that the Train remained attended at all times during and following the fire on the evening of July 5, 2013;

i) they failed and/or neglected to implement and/or adhere to appropriate and adequate safety protocols to be followed in emergency situations;

j) they failed and/or neglected to adequately train and/or to monitor their employees to follow safety protocols during emergency situations;

k) they failed and/or neglected to consider and/or were willfully blind to the dangers of leaving the Train on a slope and on the main rail line, unattended, for an extended period of time;

l) they failed and/or neglected to identify and/or were willfully blind to the risk of the Train Derailment when they ought reasonably to have done so and they failed and/or neglected to take measures to prevent such an incident from occurring;

m) they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe operation of the Train;

n) they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same on the basis of *respondiat superior*;

o) they permitted incompetent employees, whose faculties of observation, perception, and judgment were inadequate, to operate the Train;

p) they caused and/or allowed the Train to be operated by a single conductor despite the fact that they knew or should have known that having at least two (2) conductors on board was the common safe practice in the industry;

q) they permitted a person to operate the Train who failed and/or neglected to identify a dangerous situation and failed and/or neglected to take appropriate measures to prevent it;

r) they failed and/or neglected to properly instruct and educate their agents and/or employees on the manner in which to safely operate the Train and the appropriate measures to take after a fire;

s) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment and/or at the very least limited the scope of resulting damage;

t) they agreed to transport hazardous and explosive materials in a wholly unsafe and inadequate manner and thus, failed to ensure the safety of the public;

u) MMA Canada allowed itself to operate without adequate capitalization, including maintaining both adequate capital and adequate liability insurance coverage, in the event that such an incident would occur and damages would need to be paid;

VI. THE SITUATION OF THE PLAINTIFFS/CLASS REPRESENTATIVES

Plaintiff Ouellet

80. Plaintiff Ouellet resides at 4282 Rue Mauger in Lac-Mégantic, Quebec;

81. Plaintiff Ouellet suffered many grave losses due to the Train Derailment including, but not limited to the death of his partner, Diane Bizier. At the time, they had been in a serious relationship for five (5) years;

82. Plaintiff Ouellet's place of work, a factory, was closed for three (3) days following the Train Derailment, which resulted in the loss of many hours of work and income;

83. Furthermore, Plaintiff Ouellet took a work leave for one week due to overwhelming stress, anxiety and sadness;

84. As a result of the death of his partner, Plaintiff Ouellet also suffered a loss of support, companionship and consortium;

85. Plaintiff Ouellett's damages are a direct and proximate result of CP Rail's conduct;

86. In consequence of the foregoing, Plaintiff Ouellett is justified in claiming damages;

Plaintiff Jacques

87. Plaintiff Jacques previously resided at 5142, Boulevard des Vétérans, Lac-Mégantic, Quebec which was situated across from the Parc des Vétérans in Lac-Mégantic;

88. Plaintiff Jacques and his wife escaped from their house mere minutes before a storm sewer full of gasoline exploded in their yard, destroying both his home and his business;

89. Had Plaintiff Jacques and his wife not escaped when they did, they would have been killed in their home as happened to many of their neighbours;

90. Plaintiff Jacques' home was a mansion of tremendous historic, cultural and personal value, in addition to its significant commercial real estate value and is irreplaceable;

91. Plaintiff Jacques' home was also his place of business;

92. As a result of the Train Derailment, Plaintiff Jacques suffered many damages, including, but not limited to: the loss of his home, the loss of his business establishment, the loss of his furniture and the loss of all personal and business effects which were destroyed when his home exploded;

93. Plaintiff Jacques also suffered from significant emotional harm as a result of the tragedy, including the loss of many friends and neighbours and a loss of his sense of security;

94. Plaintiff Jacques' damages are a direct and proximate result of CP Rail's conduct;

95. In consequence of the foregoing, Plaintiff Jacques is justified in claiming damages;

Plaintiff Parent

96. Plaintiff Parent used to reside at 5060 Boulevard des Vétérans in Lac-Mégantic, Quebec;

97. The night of the Train Derailment, Plaintiff Parent and his wife were able to escape from the explosions and fire to the safety of their vehicle; however, his home, place of business, furniture and personal effects were all completely destroyed in the Train Derailment and subsequent explosions and fire, as firefighters had to demolish his home to prevent the fire from spreading;

98. Plaintiff Parent's home was also his place of business;

99. As a result of the Train Derailment, Plaintiff Parent suffered significant damages, including the loss of his home and personal effects, the loss of his business and his place of work, and related economic losses;

100. Plaintiff Parent also suffered from significant emotional harm as a result of the tragedy, including the loss of many friends and neighbours and a loss of his sense of security;

101. Plaintiff Parent`s damages are a direct and proximate result of the CP Rail's conduct;

102. In consequence of the foregoing, Plaintiff Parent is justified in claiming damages;

VII. THE DAMAGES

103. Every member of the Class resided in, owned or leased property in or were physically present in Lac-Mégantic, Quebec and suffered a loss of some nature or kind resulting directly or indirectly from the Train Derailment;

104. Each member of the Class is justified in claiming at least one or more of the following as damages:

a. For physical injury or death, the individuals or their estates may claim at least one or more of the following non-exhaustive list, namely:

i. pain and suffering, including physical injury, nervous shock or mental distress;
ii. loss of enjoyment of life;
iii. past and future lost income;
iv. past and future health expenses which are not covered by Medicare;
v. property damages; and/or
vi. any other pecuniary losses;

b. Those individuals who did not suffer physical injury may claim one or more of the following non-exhaustive list, namely:

i. mental distress;
ii. incurred expenses;
iii. lost income;
iv. expenses incurred for preventative health care measures which were not covered by Medicare;
v. inconvenience;
vi. loss of real or personal property;
vii. property damages causing replacement and/or repairs;
viii. diminished value of real property; and/or
ix. any other pecuniary losses;

c. Family members of those that died or were physically injured may claim one or more of the following non-exhaustive list, namely:

i. expenses reasonably incurred for the benefit of the person who was injured or who has died;
ii. funeral expenses incurred;
iii. travel expenses incurred in visiting the injured person during his or her treatment or recovery;
iv. loss of income or for the value of services where, as a result of the injury, the family member provides nursing, housekeeping or other services for the injured person; and
v. an amount to compensate for the loss of guidance, care and companionship that the family member might reasonably have expected to receive from the person if the injury or death had not occurred; and/or
vi. any other pecuniary loss;

d. Businesses Owning or Leasing Property and/or Operating in Lac-Mégantic may claim one or more of the following non-exhaustive list, namely:

i. loss of real or personal property;
ii. property damages causing replacement or and repairs;
iii. loss of income, earnings, or profits;
iv. diminished value of real property; and/or
v. any other pecuniary loss;

105. All of these damages to the Class Members are a direct and proximate result of (…) the Defendants' faults and/or negligence;

FOR THESE REASONS MAY IY PLEASE THIS HONOURABLE COURT TO:

GRANT the class action of the Plaintiffs/ Class Representatives and each of the members of the Class;

DECLARE CP Rail, MMA Canada and Thomas Harding liable for the damages suffered by the Plaintiffs/ Class Representatives and each of the members of the Class;

CONDEMN CP Rail, MMA Canada and Thomas Harding to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

(…)

CONDEMN CP Rail, MMA Canada and Thomas Harding to pay interest and additional indemnity on the above sums according to law from July 15, 2013, the date of service of the motion to authorize a class action;

ORDER CP Rail, MMA Canada and Thomas Harding to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN CP Rail, MMA Canada and Thomas Harding to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

Lac-Mégantic, January 13, 2017

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Montreal, January 13, 2017

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MÉGANTIC

NO: 480-06-000001-132

(Class Action)
SUPERIOR COURT

GUY OUELLET

and

SERGE JACQUES

and

LOUIS-SERGES PARENT

Plaintiffs/ Class Representatives

-vs.-

MONTREAL, MAINE & ATLANTIC CANADA COMPANY,

and

THOMAS HARDING

and

CANADIAN PACIFIC RAILWAY COMPANY

Defendants

NOTICE OF DISCLOSURE OF EXHIBITS

TAKE NOTICE that the Plaintiffs / Class Representatives intend producing the following exhibits at the hearing:

P-1: Copy of the National Post graphic article entitled “The Night a Train Destroyed a Town”;

P-2: Copy of the correspondence from the Federal Railroad Administration to the American Petroleum Institute dated July 29, 2013;

P-3: Copy of a CTV News article entitled “Quebec Disaster: Oil shipments by rail have increased 28,000 per cent since 2009” dated July 7, 2013;

P-4: Copy of the Cenovus Energy Inc. MSDS dated November 2, 2012;

P-5: Copy of the Enbridge Pipelines Inc. MSDS dated June 8, 2011;

P-6: Copy of the Rail Safety Advisory Letter to Transport Canada from the TSBC, dated September 11, 2013;

P-7: Copy of the PowerPoint presentation prepared by Irving Oil with respect to issues of quality control in crude oil transported by rail;

P-8: Copy of the Order Accepting Tariff Filing by the U.S. Federal Energy Regulatory Commission (“FERC”) dated June 6, 2013;

P-9: Copy of the Globe and Mail article entitled “Blast probe turns to oil composition” dated July 19, 2013;

P-10: Copy of the Montreal, Maine and Atlantic Railway Press Release entitled “Derailment in Lac-Mégantic, Quebec” dated July 6, 2013;

P-11: Copy of the Wall Street Journal article entitled “Brakes Cited in Quebec Wreck” dated July 10, 2013;

P-12: Copy of the National Post article entitled “Death Toll Rises to 13 with Dozens More Still Missing” dated July 9, 2013;

P-13 : Copy of the Dénonciation en vue d’obtenir un mandat de perquisition, dated December 11, 2013;

P-14: Copy of CP’s Exhibit CP-7, the Bill of Lading for unit Train 282;

P-15: Copy of Interchange Trackage Rights Agreement dated January 8, 2003 that was produced as JC-2 at the cross-examination of James Clements;

P-16: Copy of the Transportation Safety Board of Canada’s Rail Investigation Report entitled “Railway investigation R13D0054” dated July 12, 2013 and Copy of the Globe and Mail article entitled “Police signal there are sufficient grounds for charges in Lac-Mégantic” dated July 9, 2013, *en liasse*;

P-17: Copy of the Wall Street Journal article entitled “Runaway Quebec Train's Owner Battled Safety Issues” dated July 9, 2013;

P-18: Copy of the U.S. NTSB Safety Recommendation dated March 2, 2012;

P-19: Copy of TSBC Railway Occurrence Report dated January 30, 1994;

P-20: Copy of TSBC Railway Occurrence Report dated October 17, 1994;

P-21: Copy of TSBC Railway Occurrence Report dated January 21, 1995;

P-22: Copy of TSBC Railway Investigation Report dated August 27, 1999;

P-23: Copy of TSBC Railway Investigation Report dated May 2, 2005;

P-24: Copy of slide 14 of the power-point presentation prepared for a Canadian Crude Quality Technical Association workshop on Vapour Pressure held in Edmonton on February 5 and 6, 2013;

P-25: Copy of the Transportation Safety Board of Canada's (TSB) Railway Investigation Report R13D0054;

P-26: List of TC's interventions with MMA Canada;

P-27: Copy of The Gazette article entitled "Railway companies cutting back crew" dated July 10, 2013;

P-28: Copy of The Star article entitled "Lac Megantic: Railway's history of cost-cutting" dated July 11, 2013.

Lac-Mégantic, January 13, 2017

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Montréal, January 13, 2017

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Nº: 480-06-000001-132

(Class Action)
SUPERIOR COURT
DISTRICT OF MÉGANTIC

GUY OUELLET *ET ALS*.
Plaintiffs / Class Representatives
-vs.-
CANADIAN PACIFIC RAILWAY COMPANY *ET ALS*.
Defendants

AMENDED APPLICATION TO INSTITUTE PROCEEDINGS
(Art. 141 C.C.P. and following)

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