

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

(Class Action)
SUPERIOR COURT

NO. 450-06-000001-135

YANNICK GAGNÉ, doing business
under the trade-name **MUSI-CAFÉ**

and

GUY OUELLET

Petitioners

-vs.-

RAIL WORLD, INC., legal person duly
constituted, having its head office at
6400 Shafer Court, Suite 275, City of
Rosemont, State of Illinois, 60018, USA

and

RAIL WORLD HOLDINGS, LLC, legal
person duly constituted, having its head
office at 6400 Shafer Court, Suite 275,
City of Rosemont, State of Illinois,
60018, USA

and

**MONTREAL MAINE & ATLANTIC
RAILWAY LTD.**, legal person duly
constituted, having its head office at 15
Iron Road, City of Hermon, State of
Maine, 04401, USA

and

EARLSTON ASSOCIATES L.P., legal
person duly constituted, having its head
office at 8600 W Bryn Mawr Ave 500N,
City of Chicago, State of Illinois, 60631,
USA

and

PEA VINE CORPORATION, legal person duly constituted, having its head office at 2899 Sherman Ave, City of Monte Vista, State of Colorado, 81144, USA

and

MONTREAL, MAINE & ATLANTIC CORPORATION, legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

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

EDWARD BURKHARDT, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

ROBERT GRINDROD, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

GAINOR RYAN, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

DONALD GARDNER, JR., service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

JOE MCGONIGLE, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

CATHY ALDANA, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

THOMAS HARDING, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

Respondents

and

XL INSURANCE COMPANY LIMITED, legal person duly constituted, having its principal establishment at 8 Street Stephen's Green, City of Dublin, 2, Ireland

and

XL GROUP PLC, legal person duly constituted, having its principal establishment at One Bermudiana Road, City of Hamilton, HM, 08, Bermuda

Mises-en-cause

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, YOUR
PETITIONERS STATE AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioners wish to institute a class action on behalf of the following group, of which they are members, namely:
 - all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the “Train Derailment”), or any other group to be determined by the Court;

B) The Respondents

2. Please note that the Respondents presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

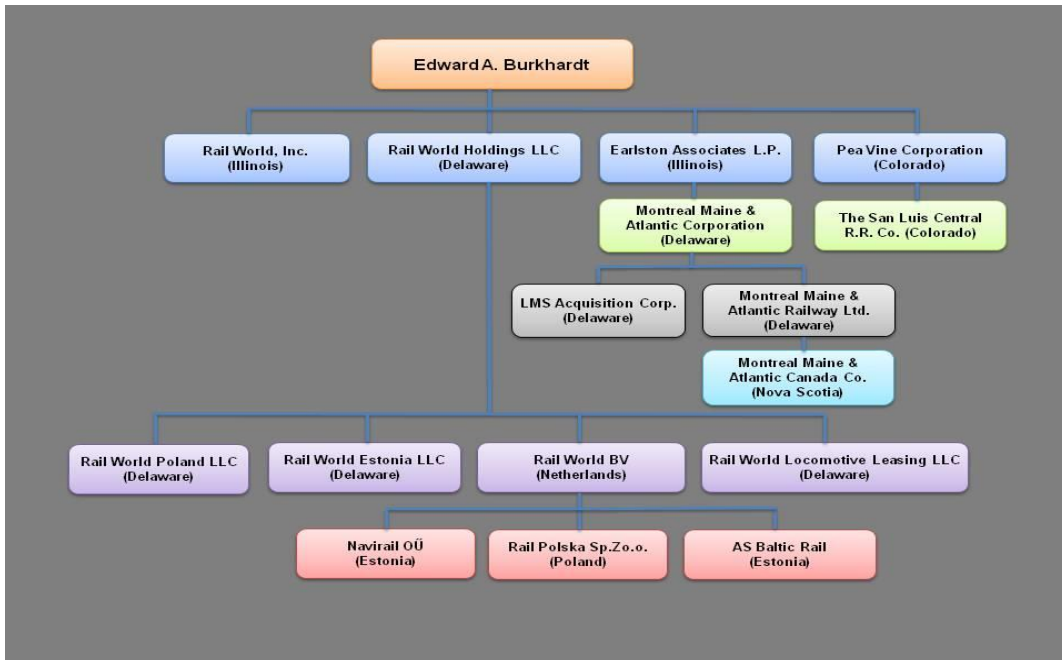
The Corporate Respondents

3. Respondent Rail World, Inc. (“Rail World”) is an American rail transport holding corporation with its head office in Rosemont, Illinois. It is a railroad management and consulting company. It is the parent company of Montreal, Maine and Atlantic Railway Ltd. (“MMAR”) and its president and Chief Executive Officer is Respondent Edward Burkhardt;
4. Respondent Rail World Holdings, LLC (“Rail World Holdings”) is an American corporation with its head office in Rosemont, Illinois. The company holds railway investments around the world. Respondent Edward Burkhardt serves as the president of the company;

5. Respondent MMAR is an American corporation with its head office in Hermon, Maine. It operates a Class II freight railroad in the U.S. states of Maine and Vermont and in the province of Quebec. MMAR owns the 1200 kilometer regional railway crossing Maine, Vermont, Quebec and New Brunswick and it also owns locomotives and train cars travelling between Montreal, Quebec and Lac-Mégantic, Quebec. It is a wholly-owned subsidiary of Rail World and Respondent Edward Burkhardt serves as the Chairman of the Board;
6. Respondent Earlston Associates L.P. (“Earlston”) is an American corporation with its head office in Chicago, Illinois. Its majority shareholder is Respondent Edward Burkhardt, who owns 72.78% of the corporate stock. It is the parent company of Montreal, Maine and Atlantic Corporation (“MMAC”);
7. Respondent Pea Vine Corporation (“Pea Vine”) is an American corporation with its head office in Vista, Colorado. It operates in the rail transportation industry as a railroad line-haul operator. Respondent Edward Burkhardt is the President of the company;
8. Respondent MMAC is an American corporation with its head office in Hermon, Maine. It is a wholly-owned subsidiary of Respondent Earlston;
9. Respondent Montreal, Maine & Atlantic Canada Company (“MMA Canada”) is a wholly-owned subsidiary of MMAR who does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1**;

The Individual Respondents

10. Respondent Edward Burkhardt (“Burkhardt”) is the President of Respondents Rail World, Rail World Holdings and Pea Vine Corporation. Mr. Burkhardt is the majority shareholder of Respondent Earlston and he serves as the Chairman of the Board of Directors at Respondent MMAR. Respondent Edward Burkhardt is responsible for the implementation and enforcement of policies and/or for the failure to implement and to enforce proper policies and procedure;
11. As is plainly illustrated below, Respondent Edward Burkhardt is the principal director of and exercises real and effective control of the other Respondents, in effect functioning as the alter ego of the entire operation.



12. Respondents Edward Burkhardt, Robert Grinrod (President and Chief Executive Officer of MMAR), Gainor Ryan (Vice-President of Human Resources of MMAR), Donald Gardner, Jr. (Vice-President Finance and Administration and Chief Financial Officer at MMAR), Joe McGonigle (Vice-President of MMAR) and Cathy Aldana (Vice-President of Research and Administration at Rail World) are the collectively the controlling minds of the Corporate Respondents;
13. Respondent Thomas Harding was the conductor of the Train;
14. Mis-en-cause XL Insurance Company Limited is a global insurance company with its head office in Ireland. It is the liability insurer of Respondent MMAR;
15. Mis-en-cause XL Group PLC is a global insurance company with its head office in Bermuda. It is the liability insurer of Respondent MMAR;
16. All Respondents, whether directly or indirectly, are significantly involved in the train derailment that took place on July 6, 2013 in Lac-Mégantic, Quebec;
17. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Corporate Respondents will be referred to as the “Rail Companies” and the Individual Respondents will be referred to as “Senior Executive Team” for the purposes hereof;

c) The Situation

18. Please note that the facts presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;
19. On July 5, 2013, at approximately 11:25 pm, Respondent Harding, an engineer employed by Respondent MMAR, parked and tied down a train in the town of Nantes, Québec, 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 (MMA) Press Release entitled "Derailment in Lac-Mégantic, Quebec" dated July 6, 2013, produced herein as **Exhibit R-2**;
20. The freight train was comprised of 72 DOT-111 tank cars, each carrying 113,000 litres of petroleum crude oil and 5 locomotive units (hereinafter 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 R-3**;
21. The estimated 9,975 ton train was parked approximately 11 kilometers west of Lac-Mégantic, Québec, on the main rail line at an elevation point of 515 meters on an incline of approximately 1.2%;
22. Respondent Harding claims to have tied down the Train and turned off four of the five engines, leaving on the lead engine #5017 to ensure that the air brake system continued to operate, 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 R-4**;
23. Respondent Harding also claims to have applied eleven (11) hand brakes; however, this fact has been called into question by Respondent MMAR and Respondent Burkhardt;
24. Respondent Harding, the only employee assigned to operate the Train, then left at approximately 11:25 PM and went to a local hotel for the night;
25. At approximately 11:30 PM, residents of Nantes noticed a significant amount of smoke coming from the Train and called 9-1-1;
26. At approximately 11:45 PM, 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;
27. At approximately 11:50 PM, the fire was reported to rail traffic control and Respondent MMAR dispatched two (2) track maintenance employees ("MMAR Representatives") to the scene;

28. By 12:15 AM on July 6, 2013, the blaze was completely extinguished and the firefighters left the Train in the custody of the MMAR Representatives, who confirmed that the Train was safe;
29. At approximately 12:56 AM, after the emergency responders had left and, while no MMAR Representatives were present, the Train began to move downhill along the track towards the town of Lac-Mégantic;
30. At approximately 1:14 AM, the Train derailed at the Rue Frontenac road crossing in Lac-Mégantic and crashed into the downtown core of the town (hereinafter referred to as the “Train Derailment”);
31. Between 1:15 am and 4:00 am, several tanker cars caught fire and exploded, decimating the entire area. The explosions continued for several hours as 2,000 residents were evacuate from the area, 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 R-5**;
32. In the aftermath of the Train Derailment, 33 bodies have been found and 17 remain missing as of the time that this motion is filed. Numerous people also sustained extensive physical injuries as a result of the blasts;
33. At least thirty (30) buildings were destroyed in the downtown “red zone” and at least 20 people lost their homes;
34. The Transportation Safety Board of Canada (“TSBC”) and the Sûreté du Québec (“SQ”) have both launched investigations into the causes of the Train Derailment, the whole as appears more fully from a copy of the Transportation Safety Board of Canada’s Rail Investigation Report entitled “Railway investigation R13D0054” dated July 12, 2013 and from a copy of the Globe and Mail article entitled “Police signal there are sufficient grounds for charges in Lac-Mégantic” dated July 9, 2013, produced herein, *en liasse*, as **Exhibit R-6**;
35. On July 10, 2013, Respondent 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.”

And when asked about the application of the brakes on the Train, Respondent 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.”

36. Since 2003, Respondent MMAR has reported 129 accidents, including 14 main track derailments and 4 collisions, according to Canada’s Transportation Safety Board (Exhibit R-6);
37. In the United States, Respondent MMAR has reported 23 accidents, injuries and other mishaps from 2010 to 2012, according to Federal Railroad Administration data, the whole as appears more fully from a copy of the Wall Street Journal article entitled “Runaway Quebec Train’s Owner Battled Safety Issues” dated July 9, 2013, produced herein as **Exhibit R-7**;
38. In 2012, Respondent MMAR had an average of 36.1 occurrences per million miles, while the national average was 14.6. Between 2003 and 2011, the company’s rate ranged between 23.4 and 56 incidents per million miles, while the national average ranged between 15.9 and 19.3, according to Federal Railroad Administration data (Exhibit R-7);
39. Several of these incidents involved brakes that failed or were not properly activated, resulting in the train rolling away unmanned;
40. For example, in February 2010, a train of 3 MMAR locomotives were left unattended in Brownville Junction, Maine. The air brakes failed and the train rolled down a hill and crashed, causing physical injury and spilling more than 1,100 litres of fuel, the whole as appears more fully from a copy of the Bureau of Remediation & Waste Management report number B-97-2013, produced herein as **Exhibit R-8**;
41. On June 11, 2013, a MMAR train derailed in Frontenac, Quebec, just east of Lac Mégantic and spilled 13,000 litres of diesel fuel, the whole as appears

more fully from a copy of the La Presse article entitled “Déversement de 13 000 litres de diesel à Frontenac, près de Lac-Mégantic” dated June 11, 2013, produced herein as **Exhibit R-9**;

The Respondent Cutbacks

42. In 2003, Respondent Rail World bought the Bangor & Aroostook Railroad, which spans approximately 1200 kilometers of regional rail track in Maine, Vermont and Canada, and renamed it Montreal, Maine and Atlantic Railway Inc.;
43. From the beginning, Respondent MMAR suffered many financial difficulties, largely due to decreases in the lumber and pulp-and-paper industries that once sustained it, the whole as appears more fully from a copy of The Gazette article entitled “Railway companies cutting back crew” dated July 10, 2013, produced herein as **Exhibit R-10**;
44. Following the takeover, employee wages were drastically cut in order to save costs. Cuts and layoffs continued in 2006 and again in 2008, the whole as appears more fully from a copy of The Ottawa Star article entitled “Lac Megantic: Railway's history of cost-cutting” dated July 11, 2013, produced herein as **Exhibit R-11**;
45. Respondent MMAR, contrary to industry standards, reduced its locomotive crews by half, replacing two (2) workers with a single employee in charge 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- use two staff to operate one train (Exhibit R-7);
46. In 2010, Respondent MMAR sold 375 kilometers of rail line in Maine to the state itself for close to \$20.1 million, citing economic hardship (Exhibit R-7);
47. In 2012, Respondent MMAR’s finances had somewhat improved after years of operating losses, in part due to the new business of shipping petroleum products to Irving Oil in Saint John, New Brunswick, where the Train was headed before the Train Derailment;
48. In order to keep costs at a minimum and the company profitable, Respondent MMAR began outfitting its 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;
49. These cutbacks demonstrate a serious and concerted preoccupation with finances at the expense of the necessary safety and security policies that should have been the primary concern of the Respondents;

50. The policies pertaining to the transportation of goods by rail and the implementation of such policies by Respondent MMAR emanate from Respondent Rail World, of which Respondent Burkhardt is President and Chief Executive Officer;
51. All directives concerning the number of employees required to operate the Train, the number and manner in which the hand brakes are to be applied, the decisions to leave the Train unattended, the lack of safety and security measures or procedures are dictated and enforced by Respondent Rail World and its alter ego, Respondent Burkhardt in his capacity as President and Chairman of the Board, at his sole unfettered discretion;
52. Canada's rail industry is largely self-regulating, allowing rail corporations such as Respondent Rail World to implement and enforce their own guidelines and standards. Because of the lack of regulation in this industry, it is impossible to know whether these corporations actually implemented these protocols and, if so, whether they actually adhered to their safety protocols;
53. Respondent Burkhardt, through Respondent Company Rail World maintains authority, control, decision making and governing power over all the subsidiary and affiliated corporations including Respondents Rail World Holdings, MMAR, Earlston, Pea Vine, MMAC, MMA Canada. Rail World is, effectively, the alter-ego of these companies through which it is able to exercise various business transactions;

D) The Faults

54. The Respondents had a duty to abide by the rules of conduct, usage or law to ensure the safe operation of the Train;
55. The Train Derailment and the resulting injuries and damages were caused by the faults of the Respondents 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;
 - b) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before leaving it unattended;
 - c) they failed and/or neglected to activate or secure a reasonable amount of the Train's hand brakes;

- d) they failed and/or neglected to have or maintain the Train in 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 at 11:30 PM on July 5, 2013;
- f) they failed and/or neglected to consider the dangers of leaving the Train on a slope and on the main rail line, unattended, for an extended period of time;
- g) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so and they failed and/or neglected to prevent such an incident from occurring;
- h) they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe operation of the Train;
- i) they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same;
- j) they permitted incompetent employees, whose faculties of observation, perception and judgment were inadequate, to operate the Train;
- k) 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;
- l) they permitted a person to operate the Train who failed to identify a dangerous situation and take appropriate measures to avoid it;
- m) they failed or neglected to properly instruct and educate their employees on how to safely operate the Train and the appropriate measures to take after a fire;
- n) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS

Petitioner Ouellet

56. Petitioner Ouellet resides at 4282 Rue Mauger in Lac-Mégantic, Quebec;

57. Petitioner Ouellet suffered many grave losses due to the Train Derailment including, but not limited to the death of his partner, Diane Bizier. They had been in a serious relationship for five (5) years;
58. Petitioner Ouellet's place of work, a factory, was closed for 3 days following the Train Derailment, which resulted in the loss of many hours of work and income;
59. Furthermore, Petitioner Ouellet took a work leave for one week due to overwhelming stress, anxiety and sadness;
60. As a result of the death of his partner, Petitioner Ouellet also suffered a loss of support, companionship and consortium;
61. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
62. In consequence of the foregoing, Petitioner is justified in claiming damages;

Petitioner Gagné

63. Petitioner Gagné resides at 4722 Rue Papineau in Lac-Mégantic, Quebec;
64. Petitioner Gagné owns and operates a restaurant and small concert venue, Musi-Café, located at 5078, Rue Frontenac in Lac-Mégantic, Quebec;
65. Petitioner Gagné was working at Musi-Café the night of the Train Derailment. He and his partner, who was 7 months pregnant at the time, left the establishment merely 15-30 minutes before the Train Derailment;
66. As a result of the Train Derailment, Petitioner Gagné suffered many damages, including, but not limited to: the loss of his business and his place of work, the loss of 3 employees who perished in the tragedy, the loss of 12 employees who are currently unemployed and the investments made over the last two years in the renovation of Musi-Café;
67. After tragedy struck, Petitioner Gagné also suffered from a great deal of sadness, anguish, stress and melancholy;
68. Petitioner Gagné will have to completely rebuild his life, including taking all the administrative measures to revive his business, if possible. As a result of the damage done to his place of business and livelihood, he anticipates many financial problems in his future;
69. Petitioner Gagné has also suffered loss of time, inconvenience and stress due to disorganization and disorientation following the events of July 6, 2013;

70. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

71. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

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

73. 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 are 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;

74. All of these damages to the Class Members are a direct and proximate result of the Respondents' faults and/or negligence;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

75. Petitioners estimate that there are 5,932 persons living in Lac-Mégantic as of 2011. However, Petitioners are unaware of the precise number of persons who, were residing in, owning or leasing property in, or were physically present in Lac-Mégantic and suffered damages arising directly or indirectly from the Train Derailment that took place on July 6, 2013;

76. In addition, given the significant costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;

77. These facts demonstrate that it would be difficult or impractical to contact each and every member of the class to obtain mandates and to join them in one action;
78. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondent and that which the Petitioners wish to have adjudicated upon by this class action
79. Individual questions, if any pale by comparison to the numerous common questions that predominate;
80. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, a single accident and the Respondents' alleged misconduct;
81. The recourse of the Class Members raises identical, similar or related questions of fact or law, namely:
- a. Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and oil spill?
 - b. Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?
 - c. Did the Respondents properly inspect the train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?
 - d. Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?
 - e. Did the Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?
 - f. Did the Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

g. In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h. What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i. Are members of the class entitled to bodily, moral and/or material damages?

j. Are members of the class entitled to aggravated and/or punitive damages?

k. Are the Mises-en-Cause, as the Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

82. The interest of justice favour that this motion be granted in accordance with its conclusions;

v. **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

83. The action that the Petitioners wish to institute on behalf of the members of the class is an action in damages;

84. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants 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 the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants 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 the Defendants 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;

A) The Petitioners request that he be attributed the status of representative of the Class

85. Petitioners are members of the class;
86. Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with their attorneys;
87. Petitioners have the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
88. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
89. Petitioners, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
90. Petitioners are in good faith and have instituted this action for the sole goal of having their rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
91. Petitioners understand the nature of the action;
92. Petitioners' interests are not antagonistic to those of other members of the class;

B) The Petitioners suggest that this class action be exercised before the Superior Court of justice in the district of Saint-François

93. A great number of the members of the class reside in the judicial district of Saint-François;

94. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages and for injunctive relief;

ASCRIBE the Petitioners the status of representatives of the persons included in the class herein described as:

- all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the “Train Derailment”), or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a. Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and oil spill?
- b. Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?
- c. Did the Respondents properly inspect the train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?

d. Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?

e. Did the Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?

f. Did the Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

g. In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h. What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i. Are members of the class entitled to bodily, moral and/or material damages?

j. Are members of the class entitled to aggravated and/or punitive damages?

k. Are the Mises-en-Cause, as the Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants 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 the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants 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 the Defendants 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;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE (national edition), LE DEVOIR, LA TRIBUNE, L'ÉCHO DE FRONTENAC and the LE JOURNAL DE QUÉBEC;

ORDER that said notice be available on the Respondents' websites with a link stating "Notice to all persons and entities residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic and who have suffered a loss relating to the Train Derailment that took place on July 6, 2013";

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

THE WHOLE with costs, including all publications fees.

Lac-Mégantic, July 15, 2013

(s) Daniel Larochelle

ME DANIEL LAROCHELLE
Attorney for the Petitioners

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioners