CANADA

PROVINCE OF QUEBEC
DISTRICT OF MÉGANTIC

NO: 480-06-000001-132

(Class Action)
SUPERIOR COURT

YANNICK GAGNÉ, doing business under the trade-name MUSI-CAFÉ, domiciled and residing at 5078, Rue Frontenac, City of Lac-Mégantic, Province of Quebec, G6B 1H3

and

GUY OUELLET, domiciled and residing at 4282, Rue Mauger, City of Lac-Mégantic, Province of Quebec, G6B 1A8

and

SERGE JACQUES, domiciled and residing at 1880, Route 161, City of Frontenac, Province of Quebec G6B 2S1

and

LOUIS-SERGES PARENT, domiciled and residing at 309-4929, Boulevard des Vétérans, City of Lac-Mégantic, Province of Quebec, G6B 0C1

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

and

IRVING OIL LIMITED, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

IRVING OIL COMPANY, LIMITED, legal person duly constituted, having its head

office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

IRVING OIL OPERATIONS GENERAL PARTNER LIMITED, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

IRVING OIL OPERATIONS LIMITED, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

IRVING OIL COMMERCIAL G.P., legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

WORLD FUEL SERVICES CORP., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

WORLD FUEL SERVICES, INC., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

WORLD FUEL SERVICES CANADA, INC., legal person duly constituted, having its head office at 9800 NW 41st Street, Suite 400, City of Miami, State of Florida, 33178, USA

and

DAKOTA PLAINS HOLDINGS, INC., legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DAKOTA PLAINS MARKETING, LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DPTS MARKETING LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DAKOTA PLAINS TRANSLOADING, LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC, legal person duly constituted, having its head office at 294 Grove Lane East, City of Wayzata, State of Minnesota, 55391, USA

and

WESTERN PETROLEUM COMPANY, legal person duly constituted, having its head office at 9531 West 78th Street, Cabroile Centre, Suite 102, Eden Prairie, State of Minnesota, 55344, USA

and

PETROLEUM TRANSPORT SOLUTIONS, LLC, legal person duly constituted, having its head office at 9531 West 78th Street, Cabroile Centre, Suite 102, City of Eden Prairie, State of Minnesota, 55344, USA

and

STROBEL STAROSTKA TRANSFER, LLC, legal person duly constituted, having its head office at 106 South Green Street, City of Clarks, State of Nebraska, 68628, USA

and

MARATHON OIL CORPORATION, legal person duly constituted, having its head office at 5555 San Felipe Road, City of Houston, State of Texas, 77056, USA

and

MARATHON OIL COMPANY, legal person duly constituted, having its head office at 5555 San Felipe Road, City of Houston, State of Texas, 77056, USA

and

SLAWSON EXPLORATION COMPANY, INC., legal person duly constituted, having its head office at 727 N.Waco,

Suite 400, City of Wichita, State of Kansas, 67203, USA

and

ARROW MIDSTREAM HOLDINGS, LLC, legal person duly constituted, having its head office at 6100 S Yale Ave, Suite 1700, City of Tulsa, State of Oklahoma, 74136, USA

and

DEVLAR ENERGY MARKETING, LLC, legal person duly constituted, having its head office at 384 Inverness Parkway Suite 150, City of Englewood, State of Colorado, 80112, USA

and

OASIS PETROLEUM INC., legal person duly constituted, having its head office at 1001 Fannin St., Suite 202, City of Houston, State of Texas, 77002, USA

and

OASIS PETROLEUM LLC, legal person duly constituted, having its head office at 1021 Main Street, Suite 1150, City of Houston, State of Texas, 77002-6508, USA

and

QEP RESOURCES, INC., legal person duly constituted, having its head office at 1050 17th Street, Suite 500, City of Denver, State of Colorado, 80265, USA

and

UNION TANK CAR COMPANY, legal person duly constituted, having its head

office at 175 West Jackson Blvd., City of Chicago, State of Illinois, 60604, USA

and

TRINITY INDUSTRIES, INC., legal person duly constituted, having its head office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207, USA

and

TRINITY RAIL GROUP, LLC, legal person duly constituted, having its head office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207-2401, USA

and

TRINITY RAIL LEASING 2012 LLC, legal person duly constituted, having its head office at 2525 Stemmons Freeway, City of Dallas, State of Texas, 75207-2401, USA

and

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION, legal person duly constituted, having its head office at 161 North Clark Street, City of Chicago, State of Illinois, 60601, USA

and

GREENBRIER RAILCAR LEASING, INC., legal person duly constituted, having its head office at One Centerpointe Drive, Suite 200, City of Lake Oswego, State of Oregon, 97035, USA

and

GREENBRIER RAILCAR LLC, legal person duly constituted, having its head office at One Centerpointe Drive, Suite

200, City of Lake Oswego, State of Oregon, 97035, USA

and

AMERICAN RAILCAR LEASING LLC, legal person duly constituted, having its head office at 100 Clark Street, Suite 201, City of St. Charles, State of Missouri, 63301, USA

and

AMERICAN RAILCAR LEASING CANADA LIMITED, legal person duly constituted, having its head office at 100 Clark Street, Suite 201, City of St. Charles, State of Missouri, 63301, USA

and

THE CIT GROUP/EQUIPMENT FINANCING, INC., legal person duly constituted, having its head office at 1 CIT Drive, MS#2108-A, City of Livingston, State of New Jersey, 07039, USA

and

PROCOR LIMITED/PROCOR LIMITÉE, legal person duly constituted, having its head office at 2001 Speers Road, City of Oakville, Province of Ontario, L6J 5E1

and

CANADIAN PACIFIC RAILWAY COMPANY, legal person duly constituted, having its head office at 401-9th Avenue SW, Suite 500, City of Calgary, Province of Alberta, T2P 4Z4

and

ATTORNEY GENERAL OF CANADA, representing the Federal Government of Canada, having its Quebec regional office at the Department of Justice Canada, Guy-Favreau Complex, East Tower, 9th Floor, 200 René-Levesque Boulevard West, City of Montreal, Province of Quebec, H2Z 1X4

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

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

INDEX

TO THE HONOURABLE MR. JUSTICE MARTIN BUREAU, J.S.C., SITTING IN AND FOR THE DISTRICT OF MÉGANTIC, 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 or being employed by a person resident in or a business located in Lac-Mégantic, 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 Rail World 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. Rail World Holdings is not a distinct corporate entity performing autonomous business activities, but is instead an entity created to serve as a holding company for other corporate entities and is dominated and controlled by its parent company, Rail World;

5. Respondent MMAR is an American corporation with its head office in Hermon, Maine. It operates a Class II freight railroad in the United States of Maine and Vermont and in the Canadian provinces of Quebec and New Brunswick. MMAR owns the 1200 kilometer regional railway crossing Maine, Vermont, Quebec and New Brunswick and it also owns and leases locomotives and train cars travelling *inter alia* 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. It is a wholly-owned subsidiary of Montreal, Maine and Atlantic Corporation ("MMAC"), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1A.** MMAR is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World, either directly or indirectly through Rail World Holdings and/or MMAC;

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 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. MMAC is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its parent company, Earlston;

9. Respondent Montreal, Maine & Atlantic Canada Company ("MMA Canada") is a wholly-owned subsidiary of MMAR, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1B**. MMA Canada is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World, directly and/or through the other Rail World Respondents;

9.1 Rail World controlled and dominated its subsidiaries directly and/or through its operating and subsidiary companies, including Rail World Holdings, and MMAC, and MMAR. Respondents were operated as one economic unit or a single group enterprise as follows:

a) Each of the seven companies is a parent or subsidiary of the others or is an affiliate of the others;

b) Each of the seven companies is the agent of the others;

c) All seven companies have officers and directors in common, including most importantly, the Respondent Edward Burkhardt as explained below;

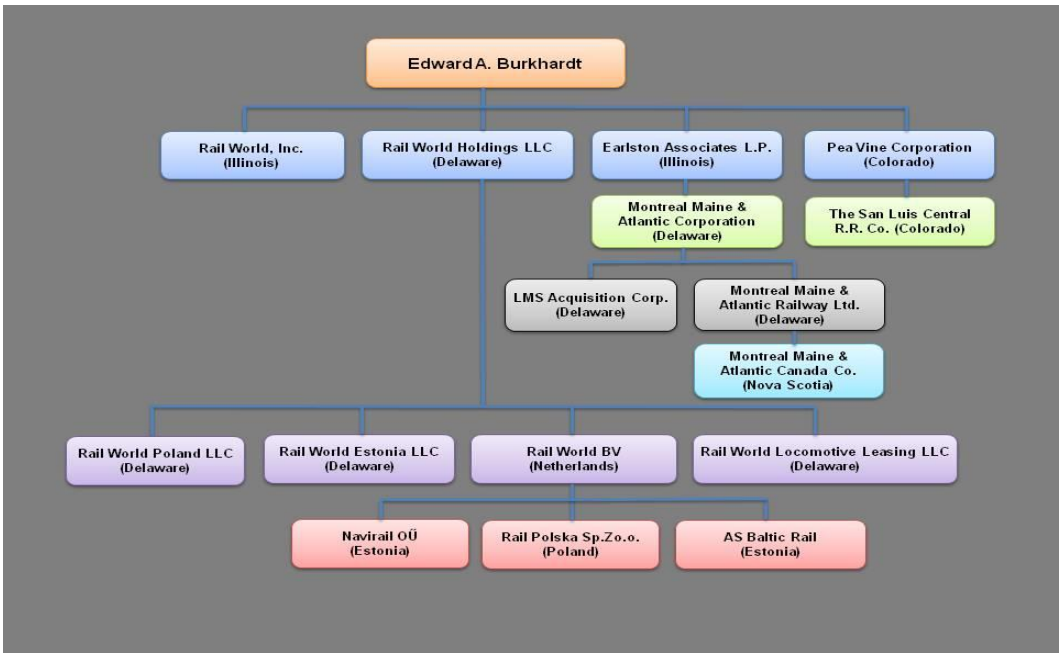
d) The acts and omissions set out herein were done by the Rail World Respondents in pursuit of their common enterprise; and

e) All of the Rail World Respondents were under the control and direction, including all aspects of their business and operations, of the Respondent Rail World and its officers and directors and its subsidiaries as described herein;

The Individual Rail World 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. The other officers and management of the Rail World Respondents and its affiliates effectively controlled all aspects of the business and operations of all of the Rail World Respondents as described herein;



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 MMAC) and Cathy Aldana (Vice-President of Research and Administration at Rail World) are collectively, the controlling minds of the Corporate Rail World Respondents;

13. Respondent Thomas Harding was the conductor of the Train;

14. Mise-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. Mise-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. (…)

17. Given the close ties between the Corporate Rail World Respondents and the Individual Rail World Respondents and considering the preceding, all Corporate Rail World Respondents and Individual Rail World Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Corporate Rail World Respondents will be referred to as the "Rail World Companies" and the Individual Rail World Respondents will be referred to as the "Senior Executive Team" for the purposes hereof. Collectively, they will be referred to as the "Rail World Respondents";

The Irving Oil Respondents

17.1 Respondent, Irving Oil Limited ("Irving Oil") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil either directly or indirectly through an agent or subsidiary was the importer of, or caused to be "imported", or purchased and had a proprietary or equitable interest in and control of the shale liquids, sometimes referred to as "shale oil" or "crude oil" (the "Shale Liquids") that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 via the train that derailed in Lac Mégantic on July 6, 2013, as described herein ("the Train");

17.2 Respondent, Irving Oil Company, Limited ("Irving Oil Co.") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil Co. either directly or indirectly through an agent or subsidiary was the importer of, or caused to be "imported", or purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Co. directly or indirectly, through an agent or subsidiary, contracted with the World Fuel Respondents, Canadian Pacific Railway and/or MMA Canada or MMAR shipments of the Shale Liquids, including the shipment of the Shale Liquids in question on July 6, 2013 and, was wholly responsible for all labelling of the Hazardous Goods and for the decision to use and/or was aware of the use of, the Tankers to ship the Shale Liquids on the Train and the decision of CP and or World Fuel to use MMA and MMA Canada's railway line. Irving Oil Co. was responsible for the decision to use and/or was aware of the use of the United States Department of Transportation ("DOT")-111 tankers ("the Tankers") to ship the Shale Liquids. Irving Oil Co. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1C**;

17.3 Respondent, Irving Oil Operations General Partner Limited ("Irving Oil GPL") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil GPL either directly or indirectly through an agent or subsidiary was the importer of, or caused to be "imported", or purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil GPL directly or indirectly, through an agent or subsidiary, contracted with the World Fuel Respondents, Canadian Pacific Railway and/or MMA Canada or MMAR for shipments of the Shale Liquids, including the shipment of the Shale Liquids in question on July 6, 2013 and,

was wholly responsible for all labelling of the Hazardous Goods and for the decision to use and/or was aware of the use of, the Tankers to ship the Shale Liquids on the Train and the decision of CP and or World Fuel to use MMA and MMA Canada's railway line. Irving Oil GPL is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;

17.4 Respondent, Irving Oil Operations Limited ("Irving Oil Operations") is a corporation incorporated pursuant to the laws of New Brunswick with its head office in St. John, New Brunswick. At all material times, Irving Oil Operations either directly or indirectly through an agent or subsidiary was the importer of, or caused to be "imported", or purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Operations directly or indirectly, through an agent or subsidiary, contracted with the World Fuel Respondents, Canadian Pacific Railway and/or MMA Canada or MMAR for shipments of the Shale Liquids, including the shipment of the Shale Liquids in question on July 6, 2013 and, was wholly responsible for all labelling of the Hazardous Goods and for the decision to use and/or was aware of the use of, the Tankers to ship the Shale Liquids on the Train and the decision of CP and or World Fuel to use MMA and MMA Canada's railway line. It is a wholly-owned subsidiary of Irving Oil, and is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1D**;

17.4.1 Respondent, Irving Oil Commercial G.P. ("Irving Oil Commercial") is a corporation incorporated pursuant to the laws of New Brunswick with its head office in St. John, New Brunswick. At all material times, Irving Oil Commercial, either directly or indirectly through an agent or subsidiary, purchased and/or owned the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013 on the Train. Irving Oil Commercial, directly or indirectly, through an agent or subsidiary, caused to be "imported" through contracts with the World Fuel Respondents, Canadian Pacific Railway and/or MMA Canada or MMAR shipments of the Shale Liquids, including the shipment of the Shale Liquids in question on July 6, 2013 and, was wholly responsible for all labelling of the Hazardous Goods and for the decision to use and/or was aware of the use of, the Tankers to ship the Shale Liquids on the Train and the decision of CP and or World Fuel to use MMA and MMA Canada's railway line. Irving Oil Commercial is a wholly-owned subsidiary of Irving Oil and is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company,

Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1D.1**;

17.5 At all relevant times, the Respondents, Irving Oil, Irving Oil Co., Irving Oil GPL, Irving Oil Operations and Irving Oil Commercial G.P. (hereinafter collectively "Irving Oil") all formed part of a closely knit family of oil corporations which operated for a common benefit of a tightly held private shareholder group. The various Irving Oil Respondents were used interchangeably to "import" the Shale Liquids from the Bakken region of North Dakota. The Irving Oil Respondents acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Irving Oil Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.5.1 At all relevant times, the Irving Oil Respondents had a duty to the Petitioners and to the members of the Class to undertake due diligence to ensure that the Tankers and locomotives that were used to ship the Shale Liquids on the Train were safe and in conformance with all applicable safety and regulatory standards for the shipment of highly flammable and toxic petroleum products;

The World Fuel Respondents

17.5.2 Respondent, World Fuel Services Corp. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services Corp. or one of its subsidiaries was the seller and/or owner of the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the oil. World Fuel Services Corp. exercised control over its subsidiaries and corporate divisions and was responsible for the decision to use and/or was aware of the use of the Tankers to ship the Shale Liquids on the Train;

17.6 Respondent, World Fuel Services, Inc. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services, Inc., either directly or indirectly through one of its subsidiaries and/or in a joint venture with Dakota Plains Holdings, Inc., operated trucks which loaded hydrocarbon liquids (including the Shale Liquids) received from well-sites and transported those liquids to a transload facility[1] adjacent to New Town, North Dakota. World Fuel Services Inc. purchased oil from, *inter alia,* MRO, Slawson, Arrow Midstream, Devlar Energy, Oasis Petroleum and QEP Resources and was

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

thereafter the seller and/or owner of the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the Tankers used to carry the Shale Liquids on the Train. World Fuel Services, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Corp;

17.7 Respondent, World Fuel Services Canada, Inc. is a corporation incorporated pursuant to the laws of British Columbia with its head office located in Miami, Florida. At all material times World Fuel Services Canada, Inc. either directly or indirectly through one of its subsidiaries was the seller and/or owner of the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the Shale Liquids on the Train. World Fuel Services Canada, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Inc., the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1E**;

17.8 Respondent Dakota Plains Holdings, Inc. ("Dakota Plains Holdings") is a corporation incorporated pursuant to the laws of Nevada with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Holdings was a subsidiary of and/or affiliate of and/or in a joint venture with World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc., and/or engaged in a joint venture with World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. and/or Dakota Plains Holdings and operated trucks which loaded hydrocarbon liquids (including the Shale Liquids) at well-sites and transported those liquids to a transload facility adjacent to New Town North Dakota. Dakota Plains Holdings, through a joint venture, purchased oil from, *inter alia,* Marathon Oil Corporation and Slawson Exploration Company, Inc. and thereafter was the seller, owner and shipper of the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the Tankers used to carry the Shale Liquids on the Train;

17.8.0.1 Respondent Dakota Plains Marketing, LLC ("Dakota Plains Marketing") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Marketing was a wholly-owned subsidiary of and/or affiliate of and/or in a joint venture with Dakota Plains Holdings. Dakota Plains Marketing currently holds 50% of the assets of DPTS Marketing LLC, as described;

17.8.0.2 Respondent DPTS Marketing LLC ("DPTS Marketing") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all material times, DPTS Marketing was a joint venture of Dakota Plains Marketing and Petroleum Transport Solutions, LLC. DPTS Marketing was responsible for the purchase, sale, storage, transport, and marketing of hydrocarbons produced within North Dakota to or from refineries and other end-users or persons and to conduct trading activities;

17.8.0.3 Respondent Dakota Plains Transloading, LLC ("Dakota Plains Transloading") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Transloading was a wholly-owned subsidiary of Dakota Plains Holdings. Dakota Plains Transloading is responsible for the purchase, sale, storage, transport, and marketing of hydrocarbons produced within North Dakota to or from refineries and other end-users or persons and to conduct trading activities, including the loading of hydrocarbons onto the Tankers in the facility located in New Town, North Dakota;

17.8.0.4 Respondent Dakota Petroleum Transport Solutions, LLC ("Dakota Petroleum Transport") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Wayzata, Minnesota. At all material times, Dakota Petroleum Transport was a wholly-owned subsidiary of Dakota Plains Holdings. Dakota Petroleum Transport is a joint venture of Dakota Plains Transloading and Petroleum Transport Solutions, LLC which is responsible for the purchase, sale, storage, transport, and marketing of hydrocarbons produced within North Dakota to or from refineries and other end-users or persons and to conduct trading activities including the loading of hydrocarbons onto the Tankers in the facility located in New Town, North Dakota;

17.8.1 Respondent Western Petroleum Company ("Western Petroleum") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Eden Prairie, Minnesota. At all material times, Western Petroleum Company was a subsidiary of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. Western Petroleum Company leased the Tankers which transported the Shale Liquids from North Dakota to Irving Oil's refinery in St. John, New Brunswick from third-party lessors, as identified below;

17.8.2 Respondent Petroleum Transport Solutions, LLC ("Petroleum Transport Solutions") is a corporation incorporated pursuant to the laws of Minnesota with its head office located in Eden Prairie, Minnesota. At all material times, Petroleum Transport Solutions was a wholly-owned subsidiary of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel

Services Canada, Inc. Petroleum Transport Solutions holds 50% of the assets of DPTS Marketing;

17.8.3 Respondent Strobel Starostka Transfer LLC ("Strobel Starostka") is a corporation incorporated pursuant to the laws of Nebraska with its head office located in Clarks, Nebraska. At all material times, Strobel Starostka was a party to a contract with Dakota Petroleum Transport and transloaded the Shale Liquids into the Tankers that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick;

17.8.4 Respondents Dakota Plains Holdings, Dakota Plains Marketing, DPTS Marketing, Dakota Plains Transloading, Dakota Petroleum Transport, Western Petroleum, Petroleum Transport Solutions and Strobel Starostka collectively owned and operated trucks that loaded produced hydrocarbon liquids (including the Shale Liquids) at well-sites and transported those liquids to a transload facility adjacent to New Town, North Dakota, and were thereafter the sellers, owners and shippers of the Shale Liquids that were shipped by Canadian Pacific Railway and MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and were the lessees of the Tankers used to carry the Shale Liquids on the Train;

17.9 At all relevant times, the Respondents, World Fuel Services Corp., World Fuel Services, Inc., World Fuel Services Canada, Inc., Dakota Plains Holdings, DPTS Marketing, Dakota Plains Marketing, Dakota Plains Transloading, Dakota Petroleum Transport, Western Petroleum, Petroleum Transport Solutions, and Strobel Starostka (hereinafter collectively "World Fuel") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions either directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each World Fuel Respondent is individually as well as solidarily liable to the Petitioners and to the members of Class for their injuries, losses and damages, the whole as appears more fully from a copy of the 10-Q SEC Filing of Respondent Dakota Plains Holding, Inc., produced herein as **Exhibit R-1E.1**;

17.10 Unless the context indicates otherwise, all Irving Oil Respondents and World Fuel Respondents will be referred to collectively as the "Oil Respondents" for the purposes hereof;

<u>The Oil Producer Respondents</u>

17.10.0.1 Respondent, Marathon Oil Corporation ~~("MRO")~~ is a multinational oil and gas exploration and production corporation incorporated pursuant to the laws of Delaware, with its head office located in Houston, Texas (…);

17.10.0.1.1 Respondent, Marathon Oil Company is a multinational oil and gas exploration and production corporation incorporated pursuant to the laws of Delaware, with its head office located in Houston, Texas;

17.10.0.1.2 At all relevant times, the Respondents, Marathon Oil Corporation and Marathon Oil Company (hereinafter collectively "MRO") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the mislabelling and shipment of the Shale Liquids on the Train. As such, both MRO Respondents are individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.10.0.1.3 At all material times, MRO had assets valued at $35 billion and annual revenues in excess of $15 billion. MRO, directly or, through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the oil wellheads in the Bakken region of North Dakota that produced the Shale Liquids (hereinafter, the "Wellheads");

17.10.0.2 At all material times, MRO produced the Shale Liquids that were shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed MRO among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.3 At all material times, MRO, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration's Code of Federal Regulations Subchapter C sections 171-180 ("HMR") and was responsible for determining the hazard class of the hazardous materials and placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. MRO's hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.4 Respondent, Slawson Exploration Company, Inc. ("Slawson") is an oil and gas exploration and production corporation incorporated pursuant to the laws of Kansas, with its head office in Kansas. At all material times, Slawson directly, or through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the Wellheads;

17.10.0.5 At all material times, Slawson produced the Shale Liquids that were being shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed Slawson among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.6 At all material times, Slawson, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the HMR and was responsible for determining the hazard class of the hazardous materials and placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. Slawson's hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.7 Respondent Arrow Midstream Holdings, LLC ("Arrow Midstream") is an oil and gas exploration and production corporation incorporated pursuant to the laws of Delaware, with its head office in Tulsa, Oklahoma. At all material times, Arrow Midstream directly, or through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the Wellheads;

17.10.0.8 At all material times, Arrow Midstream produced the Shale Liquids that were being shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed Arrow Midstream among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.9 At all material times, Arrow Midstream, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the HMR and was responsible for determining the hazard class of the hazardous materials and for placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. Arrow Midstream's hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.10 Respondent Devlar Energy Marketing, LLC ("Devlar Energy") is an oil and gas exploration and production corporation incorporated pursuant to the laws of Colorado, with its head office in Englewood, Colorado. At

all material times, Devlar Energy directly, or through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the Wellheads;

17.10.0.11 At all material times, Devlar Energy produced the Shale Liquids that were being shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed Devlar Energy among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.12 At all material times, Devlar Energy, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the HMR and was responsible for determining the hazard class of the hazardous materials and placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. Devlar Energy's hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.13 Respondent Oasis Petroleum Inc. is an oil and gas exploration and production corporation incorporated pursuant to the laws of Delaware, with its head office in Houston, Texas. At all material times, Oasis Petroleum Inc. directly, or through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the Wellheads;

17.10.0.14 Respondent Oasis Petroleum LLC is an oil and gas exploration and production corporation incorporated pursuant to the laws of Delaware, with its head office in Houston, Texas. At all material times, Oasis Petroleum LLC directly, or through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the Wellheads;

17.10.0.15 At all relevant times, the Respondents Oasis Petroleum Inc. and Oasis Petroleum LLC (hereinafter collectively "Oasis Petroleum") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Oasis Petroleum Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.10.0.16 At all material times, Oasis Petroleum produced the Shale Liquids that were being shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed Oasis

Petroleum among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.17 At all material times, Oasis Petroleum, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the HMR and was responsible for determining the hazard class of the hazardous materials and placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. Oasis Petroleum's hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.18 Respondent QEP Resources, Inc. ("QEP Resources") is an oil and gas exploration and production corporation incorporated pursuant to the laws of Delaware, with its head office in Denver, Colorado. At all material times, QEP Resources directly, or through one of its subsidiaries, owned and/or operated and/or had the drilling rights for the Wellheads;

17.10.0.19 At all material times, QEP Resources produced the Shale Liquids that were being shipped from North Dakota to Irving Oil's refinery in St. John, New Brunswick. At all material times, World Fuel Services listed QEP Resources among the sellers/offerors of the crude oil purchased immediately prior to the Train Derailment;

17.10.0.20 At all material times, QEP Resources, as the owner of/operator of/holder of drilling rights to the Wellheads, was an "offeror of hazardous material for transportation in commerce" within the meaning of section 171.1 of the HMR and was responsible for determining the hazard class of the hazardous materials and placing the appropriate placards denoting the risk designations on the holding tanks at the Wellheads which held the Shale Liquids until they were transferred to the Tankers for transport at the transload facility. QEP Resources' hazard classification of the Shale Liquids would ultimately indicate to the World Fuel Respondents, the Oil Respondents and the Rail Respondents, the hazard class of the Shale Liquids;

17.10.0.21 Unless the context indicates otherwise, MRO, Slawson, Arrow Midstream, Devlar Energy, Oasis Petroleum and QEP Resources will be referred to collectively as the "Oil Producer Respondents" for the purposes hereof;

The Lessor Respondents

17.10.1 Respondent Union Tank Car Company, ("Union Tank"), is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Chicago, Illinois. At all material times, Union Tank was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Union Tank was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.2 Respondent Trinity Industries, Inc., ("Trinity Industries"), is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Dallas, Texas. At all material times, Trinity Industries or a subsidiary thereof was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Industries was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.3 Respondent Trinity Rail Group, LLC, ("Trinity Rail"), is a corporation incorporated pursuant to the laws of Delaware, with its head office in Dallas, Texas and it is a subsidiary of Trinity Industries. At all material times, Trinity Rail was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Rail was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.3.1 Respondent Trinity Rail Leasing 2012 LLC ("Trinity Rail Leasing"), is a corporation incorporated pursuant to the laws of Delaware, with its head office in Dallas, Texas and it is a subsidiary of Trinity Industries. At all material times, Trinity Rail Leasing was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Trinity Rail Leasing was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.4 At all relevant times, the Respondents Trinity Rail, Trinity Industries and Trinity Rail Leasing (hereinafter collectively "Trinity") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Trinity Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.10.5 Respondent General Electric Railcar Services Corporation, ("GE Rail Services"), is a corporation incorporated pursuant to the laws of Delaware, with its head office in Chicago, Illinois. At all material times, GE Rail Services was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. GE Rail Services was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the Tankers along inadequate and deficient railways operated by the Rail World Respondents, as described herein;

17.10.5.1 Respondent Greenbrier Railcar LLC ("Greenbrier Railcar") is a corporation incorporated pursuant to the laws of Oregon, with its head office located in Portland, Oregon. At all material times, Greenbrier Railcar was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Greenbrier Railcar was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by MMA, as described herein;

17.10.5.2 Respondent Greenbrier Railcar Leasing, Inc. ("Greenbrier Railcar Leasing") is a corporation incorporated pursuant to the laws of Oregon, with its head office located in Lake Oswego, Oregon. At all material times, Greenbrier Railcar Leasing was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Greenbrier Railcar Leasing was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by MMA, as described herein;

17.10.5.3 At all relevant times, the Respondents Greenbrier Railcar and Greenbrier Railcar Leasing (hereinafter collectively "Greenbrier") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each Greenbrier

Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.10.5.4 Respondent American Railcar Leasing LLC ("American Railcar") is a corporation incorporated pursuant to the laws of Delaware, with its head office located in St Charles, Missouri. At all material times, American Railcar was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. American Railcar was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by MMA, as described herein;

17.10.5.5 Respondent American Railcar Leasing Canada Limited, ("American Railcar Canada"), is a corporation incorporated pursuant to the laws of Ontario, with its head office located in St Charles, Missouri. At all material times, American Railcar Canada was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. American Railcar Canada was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by MMA, as described herein;

17.10.5.6 At all relevant times, the Respondents American Railcar and American Railcar Canada (hereinafter collectively "American Railcar") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries with regard to the shipment of the Shale Liquids on the Train. As such, each American Railcar Respondent is individually as well as solidarily liable to the Petitioners and to the members of the Class for their injuries, losses and damages;

17.10.5.7 Respondent The CIT Group/Equipment Financing, Inc. ("CIT Group") is a corporation incorporated pursuant to the laws of Delaware, with its head office located in Livingston, New Jersey. At all material times, CIT Group was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. CIT Group was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by MMA, as described herein;

17.10.5.8 Respondent Procor Limited/Procor Limitée ("Procor") is a corporation incorporated pursuant to the laws of Ontario, with its head office located in Oakville, Ontario. At all material times, Procor was the lessor/supplier of the Tankers leased by Western Petroleum which transported Shale Liquids from New Town, North Dakota towards St. John, New Brunswick on July 6, 2013 on the Train. Procor was either responsible for or was aware of the decision to use the Tankers to ship the Shale Liquids on the Train and of the decision to transport the tankers along inadequate and deficient railways operated by MMA, as described herein;

17.10.6 Unless the context indicates otherwise, the Union Tank, Trinity, GE Rail Services, Greenbrier, American Railcar, CIT Group and Procor Respondents will be referred to collectively as the "Lessor Respondents";

17.10.7 Respondent Canadian Pacific Railway ("CP Rail") is a Canadian Railway Company, federally incorporated with its head office in Calgary, Alberta. At all material times, CP Rail subcontracted the transport of the Shale Liquids on the Train to the Rail World Respondents;

17.10.8 Respondent Attorney General of Canada ("AG Canada") has delegated the responsibility for the regulatory framework required for the safe operation of federal railways in Canada to Transport Canada ("TC"). TC is the Canadian governmental agency responsible for the implementation of safe and secure transportation policies and programs for all forms of transportation, including, but not limited to, rail transport. At all material times, TC was responsible for governing and regulating federal rail safety and railway companies, including MMA Canada and its related companies and for regulating the transport of dangerous goods throughout the country. TC is also responsible for overseeing whether federally incorporated railway companies, including MMA Canada and its related subsidiaries, are in compliance with the regulatory framework, whether they have developed adequate Safety Management Systems ("SMSs") and importantly, it is also responsible for taking appropriate enforcement action when necessary;

17.10.9 In addition, AG Canada has created an independent administrative body called the Canadian Transportation Agency (the "Agency"). Within the federal transportation system, the Agency performs two (2) key functions. First, it acts as a quasi-judicial tribunal that serves to resolve transportation-related disputes. Further, as an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction;

17.11 All of the Respondents, whether directly or indirectly, are significantly involved in the train derailment that took place on July 6, 2013 in Lac-Mégantic, Quebec;

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;

The Highly Combustible Shale Liquids

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

18.0.1 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 (hereinafter "Fracking");

18.0.2 Fracking is the artificial fracturing of the rock formation, accomplished through the high pressure injection of sand, water and chemicals (which can include, *inter alia,* hydrochloric acid and ethylene glycol), in an attempt to release trapped oil and allow it to flow into the well;

18.0.3 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 as described in more detail below, the whole as appears more fully from a copy of a PowerPoint presentation prepared by MRO dated March 23, 2010, produced herein as **Exhibit R-1E.2**;

18.0.4 Following extraction, the stream of raw well production will include the crude oil, the light end liquids and the gases that were not flared, along with the materials and by-products of the Fracking process. These products are then mechanically separated into three (3) streams: produced salt water, gases and petroleum liquids, which include condensates, certain natural gas liquids and light oil. Depending on the effectiveness and appropriate calibration of the separation equipment which is controlled by the oil producers, varying quantities of gases are dissolved and/or mixed into the liquids, which

are then transported from the separation equipment to the well-pad storage tanks;

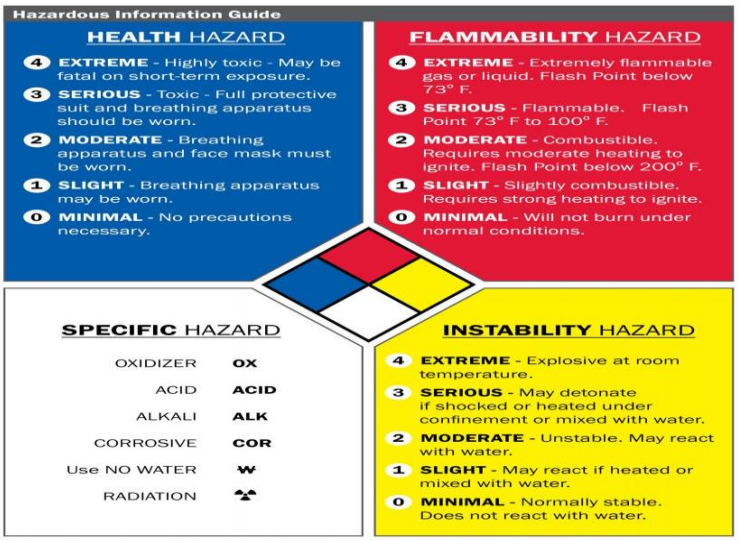
b) Dramatic Expansion in the Shipment of Crude Oil by Rail

18.0.5 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 R-1E.3**;

18.0.6 Canada has experienced an even greater 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 R-1E.4**;

c) Hazard Classification: The Misclassification of the Shale Liquids

18.0.7 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 need to carry diamond shaped warning placards to reflect the appropriate hazard classification of their contents. These placards typically conform with the National Fire Protection Agency's Standard System for the Identification of the Hazards of Materials for Emergency Response ("NFPA 704"), which provides levels of risk in 4 categories as is depicted below: on the left in blue is the risk to human health, at the top right in red is the risk of flammability, on the right in yellow is the risk of reactivity and on the bottom in white is any additional risk, such radioactivity. All of these risks are allocated on a scale of 1 to 4, with 1 being the lowest level of risk and 4 being the highest;



18.0.8 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 in the HMR. 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;

18.0.9 Class 3 flammable liquids being offered for transportation in commerce are further sub-categorized for risk into one of three packing groups ("PG") 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 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;

18.0.10 Material Safety Data Sheets ("MSDS"s)[2] 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 NFPA flammability risk level of 4; however, several well-pad storage tanks operated by MRO and Slawson 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 R-1E.5, and R-1E.6** respectively;

18.0.11 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

[2] Material safety data sheets ("MSDS"s) are a widely used system from cataloging information on chemicals, chemical compounds, and chemical mixtures.

TSBC's investigation (discussed in greater detail below), all cargo on the Tankers was billed out 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 R-1E.7**;

18.0.12 There is a positive duty to properly label substances and disclose chemical identities on the basis of physic-chemical, health and/or environmental risk. In Canada, the program known as the Workplace Hazardous Materials Information System ("WHMIS") establishes the requirements for MSDS's and is federally-administered by Health Canada under Part II of the *Hazardous Products Act, R.S.C., 1985, c. H-3*, (the "*Hazardous Products Act*");

d) Concerns about Bakken oil prior to the Derailment and the "Bakken Blitz"

18.0.13 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 issues of quality control in crude oil transported by rail, produced herein as **Exhibit R-1E.8**;

18.0.14 In Canada, H_2S is a substance on the *Ingredient Disclosure List, SOR/88-64*, which is established by the Governor in Council pursuant to section 17(1) of the *Hazardous Products Act*. There are disclosure requirements in the *Hazardous Products Act* when H_2S is at a concentration/weight of 1%, the whole as appears more fully from a copy of an extract of the *Ingredient Disclosure List*, produced herein as **Exhibit R-1E.9**;

18.0.15 Among the sources of this H_2S contamination in the Bakken oil are the adjacent rock formations which are being targeted for Fracking to increase oil production. One of these targets is the Lodgepole formation which has significant oil reserves, but is also part of the Madison formation which is well known for the presence of H_2S, such that disruption of the Lodgepole formation to release the oil is very likely to also release the H_2S from the Madison formation;

18.0.16 The concern about 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, 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 R-1E.10**;

18.0.17 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;

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

18.0.19 Indeed, in the months preceding the Train Derailment, local U.S. regulatory authorities had safety concerns about transporting crude oil from the Bakken region by rail. As a result of these concerns, "Operation Classification" or the "Bakken Blitz" was launched, a strategy which was to involve attending unannounced at fuel-loading sites, where the oil is transferred onto rail cars, to inspect and to test the oil to see whether it was more volatile than represented, to see whether the Shale Liquids were being appropriately classified and placarded and to ensure that sufficient precautions were being taken by producers, transporters, shippers and railways to ensure safe transport of petroleum liquids;

18.0.20 The planning for these inspections began in March of 2013, based on previous audits conducted by the U.S. Federal Railroad Administration ("FRA") and field observations by the U.S. Pipeline and Hazardous Materials Safety Administration ("PHMSA), which had uncovered inconsistencies with crude oil classification. Unfortunately, this operation did not begin until after the Train Derailment, the whole as appears more fully from a copy of the Globe and Mail article entitled "U.S. officials were probing safety of Bakken oil months before Lac-Mégantic" dated August 29, 2013, produced herein as **Exhibit R-1E.11;**

e) <u>The Role of the Oil Producer Respondents</u>

18.0.21 World Fuel listed <u>the Oil Producer Respondents</u> as the exclusive producers in its oil purchases from oil wells around the Fort Berthold Reservation in North Dakota in or around June of 2013, i.e. immediately prior to the Train Derailment;

18.0.22 As the operators of the wells and as "offerors of hazardous materials for transportation in commerce", <u>the Oil Producer Respondents</u> were responsible for testing and determining the composition and content of the petroleum liquids that they were ultimately offering for sale and transportation;

18.0.23 This inquiry should have resulted in posting accurate signage on the post-production storage tanks containing the Shale Liquids and should have

provided accurate information so that the appropriate PG classification would be allocated to the Shale Liquids by subsequent parties involved in the transportation of the Shale Liquids;

18.0.24 Notwithstanding that Bakken oil had regularly been found to contain high levels of volatile gases and light liquids, that elevated concentrations of H_2S had been detected in wells adjacent to those from which the Shale Liquids were drawn, and the flammability and transportation risk classifications for Bakken oil in the MSDSs prepared by other oil companies (i.e. NFPA flammability risk of 4 and PG I or II), observations of well-pad storage tanks operated by the Oil Producer Respondents even after the Train Derailment indicated a hazard classification of only 3 for flammability and the Shale Liquids were billed out as being PG III product;

f) The Respondents Knew that the Shale Liquids were Volatile and Misclassified

18.1 Prior to July 5, 2013, Irving Oil contracted with World Fuel for the purchase and transport of Shale Liquids, known by all of the Respondents to be obtained from the Bakken formation in North Dakota. As noted above, these Shale Liquids were known to the Respondents 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 signaled and inadequate precautions were taken to ensure safe transport;

18.1.0.0.1 Since November 2, 2012, the Irving Oil Respondents caused 67 "unit trains" containing Hazardous Goods in the form of Shale Liquids to be imported. In total, 3,830 oil tanker cars containing the Bakken Shale Liquids were imported by the Irving Oil Respondents. This followed the importation by the Irving Oil Respondents of a "test load" of Bakken Shale Liquids in June 2012;

18.1.0.0.2 On November 2, 2013, the Irving Oil Respondents effected an analysis of the Shale Liquids from one of the oil wells located in the Bakken region. The results of these analyses 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, the Irving Oil Respondents labelled the Shale Liquids being *returned* from Irving Oil's refinery under the more volatile and explosive "Class 3 Packing Group I". In the end, the Irving Oil Respondents had caused some 3,830 oil tanker cars containing the Bakken Shale Liquids to be mislabelled in direct violation of section 5 (a) of the regulations relating to the Transport of Dangerous Goods, 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 R-1E.12**;

18.1.0.0.3 In particular, court documents released by the World Fuel Respondents to TC establish that the Irving Oil Respondents were regularly receiving tanker cars from MMAR with paperwork indicating that the Shale Liquids were not particularly volatile, i.e. labelled as Packing Group III. However, Irving Oil then returned the same tanker cars, empty, to the shipper, with a more volatile classification for the residual oil, i.e. labelled as Packing Group I, the whole as appears more fully from a copy of the Globe and Mail article entitled "Police seize Irving Oil records in probe of Lac-Megantic disaster" dated December 13, 2013, produced herein as **Exhibit R-1E.13**;

18.1.0.0.4 In addition, regulators in the United States levied fines on oil producers, including MRO, for failing to properly test crude oil from the Bakken region. Regulators found that 11 out of 18 samples of Shale Liquids were improperly classified, the whole as appears more fully from a copy of the Washington Street Journal article entitled "Firms Fined Over Volatile Oil in Rails" dated February 4, 2014, produced herein as **Exhibit R-1.E.14**;

18.1.0.1 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 R-1F**;

18.1.1 All Respondents knew or ought to have known that the Shale Liquids were much more volatile, explosive and combustible than typical crude oil, that they were a highly flammable mixture of multiple petroleum substances, including hydrogen sulfide gas. The Respondents 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;

18.2 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 further subcontracted to 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 from the Lessor Respondents for this purpose;

18.3 On or about July 5, 2013, the CP Rail train reached Côte Saint-Luc, Quebec, where the carriage of the 72 Tankers was transferred to Respondent MMAR;

18.4 The MMAR track upon which the Train was travelling was an "excepted track". Trains travelling on this track were only permitted to travel approximately 10 miles per hour (MPH) and could not carry hazardous materials;

The Train Derailment

19. On July 5, 2013, at approximately 11:25 PM, Respondent Harding, the one (1) engineer employed by Respondent MMAR to operate the Train, parked and tied down the 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 (MMAR) Press Release entitled "Derailment in Lac-Mégantic, Quebec" dated July 6, 2013, produced herein as **Exhibit R-2**;

20. 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 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 failed to apply any or insufficient hand brakes, thereby failing to act in accordance with existing requirements, regulations, and policy;

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, leaving the train unattended. The Train was emitting smoke at that time;

25. At approximately 11:30 PM, residents of Nantes noticed a significant amount of smoke coming from the Train's first locomotive, 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. In accordance with procedure, the fire department turned off the running engine so as to prevent the fire from accessing the engine's fuel;

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. Neither Respondent Harding nor another properly qualified engineer attended;

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 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 Harding or any other qualified engineer to ensure the safety and security of the Train, particularly its braking system. Instead, they simply left without taking appropriate and necessary measures to secure the Train;

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 and business centre of the town, incinerating and killing almost fifty (50) people (hereinafter referred to as the "Train Derailment");

31. Between 1:15 AM and 4:00 AM, 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 R-5**;

32. In the aftermath of the Train Derailment and Explosion, 47 deaths have been confirmed and 3 people suspected to have died in the explosion remain missing. Numerous people also sustained extensive physical injuries as a result of the blasts;

33. 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;

34. The 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, Rail World Respondents, through their chairman and president admitted responsibility for the Train Derailment, destruction and deaths caused by the Train Derailment, explosion and fire. 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.”

The Respondent MMAR’s Poor Safety Record

35.1 At all material times, the Rail World Respondents had a duty to ensure that MMAR operated safely, that each train operated by MMAR including the Train was adequately staffed to ensure the safety of all goods transported, and that MMAR’s accident and incident rate was not higher than national averages, and it failed in all of these duties;

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), making it one of the most unsafe railway operators in North America;

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 Rail World Respondents’ 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). In particular, it

had a special duty to ensure the usage of adequate train crews of at least two (2) engineers when transporting highly flammable Shale Liquids through urban and residential areas;

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 the 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, MMAR Canada. Rail World is, effectively, the alter-ego of these companies through which it is able to exercise various business transactions;

53.0.1 Overall, the Rail World Respondents, through their policies and practices, operated MMAR without adequate staffing and safety precautions, thereby resulting in an increased likelihood of accidents and incidents involving trains that placed members of the public at an elevated risk of harm;

The DOT-111 Tankers are Prone to Rupture and Explosion

53.1 DOT-111 tank cars, also known as CTC-111A tank cars, were leased Western Petroleum from the Lessor Respondents. 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 all Respondents, and are known by regulators to be highly vulnerable to leaks, ruptures and explosions;

53.2 Respondents 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 R-12**;

53.3 All Respondents knew or ought to have known that the TSBC also noted that the DOT-111 tank's 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. Accidents in Canada, alone, where DOT-111 design flaws were ultimately identified as a contributing causal factor to the damage that were caused are numerous and include:

a. the January 30, 1994 derailment of 23 freight cars northwest of Sudbury, Ontario, in which three DOT-111 tanks cars containing dangerous goods failed and released product; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 30, 1994, produced herein as **Exhibit R-13**;

b. the October 17, 1994 derailment of six tank cars containing methanol in Lethbridge, Alberta. Four derailed DOT-111 tank cars failed and released approximately 230,700 litres of methanol. A 20-square-block area of the city was evacuated; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated October 17, 1994, produced herein as **Exhibit R-14**;

c. the January 21, 1995 derailment of 28 freight cars of sulfuric acid near Gouin, Quebec. Eleven DOT-111 tanks failed and released 230,000 litres of sulphuric acid, causing considerable environmental damage; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 21, 1995, produced herein as **Exhibit R-15**;

d. the August 27, 1999 derailment of a DOT-111 tank that failed and released 5,000 gallons of combustible product in Cornwall, Ontario, resulting in a temporary evacuation of customers and staff from nearby businesses; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated August 27, 1999, produced herein as **Exhibit R-16**; and

e. the May 2, 2005 collision of 74 freight cars, in which a DOT-11 tank failed and released 98,000 litres of denatured alcohol, resulting in the evacuation of 200 people; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated May 2, 2005, produced herein as **Exhibit R-17**;

53.4 Flaws in the design of the DOT-111 tank cars that were known or ought to have been known by the Respondents 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 R-18**;

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;

53.5 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. None of the tankers in question had received the design reinforcement changes described above;

53.6 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 R-12). Respondents 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;

53.7 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;

53.7.1 Prior to the Train Derailment, there had been increasing numbers of incidents involving damage to tank cars in crude oil service in the form of severe corrosion of the internal surface of the tank, man-way covers, and

valves and fittings, possibly resulting from contamination of the crude oil by materials used in the Fracking process that are corrosive to the tank car tank and service equipment (Exhibit R-1E.3);

53.8 Respondents 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. The Respondents 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;

TC Ought to have Forbidden the Transport of the Shale Liquids on the Train

53.8.1 As discussed further below, TC was intimately familiar with the dubious history of MMA Canada, including its very poor safety record which included multiple violations in respect of failing to apply brakes on stationary trains and cars in and around the area of Nantes, Sherbrooke and elsewhere within the province of Quebec. In particular, TC was well aware of the fact that:

a) MMA Canada had been found to be in repeated violation of section 112 of the Canadian Railway Operating Rules ("CROR") in relation to MMA Canada trains being *left unattended without adequate or any brakes applied*;

b) MMA Canada had the poorest safety record of any railroad in North America;

c) the Bakken Shale Liquids being transported on the Train from North Dakota to the Irving Refinery were highly volatile and explosive and should have been labelled as "Packing Group I", but were, in fact, mislabelled as "Packing Group II" or "Packing Group III", or could potentially be classified as Hazard Class 2.1, which is the designation for flammable gases;

d) MMA Canada was operating its trains with a single conductor, notwithstanding the fact that TC knew that they were transporting highly volatile and explosive Bakken Shale Liquids and gases and that it would be highly unsafe to do so;

e) the deplorable condition of MMA's track leading to Lac-Mégantic from CP's Côte Saint-Luc yard in Montreal was, in part, considered "excepted track" and was subject to numerous low speed limits and was in a generally dilapidated condition and entirely inappropriate for

transport of the Bakken Shale Liquids and gases, crude oil or other hazardous substances;

f) TC knew that the heavy trains hauling the Bakken Shale Liquids should only be transported by Class I railroad operators and not by operators like MMA Canada and/or MMAR but failed to take any steps to prevent the Train from proceeding through MMA's "excepted track" with it substandard operator;

53.8.2 Given this knowledge, TC had a primary responsibility to properly oversee, manage, monitor and enforce its own regulations, including adherence to an effective Safety Management Systems ("SMS") as well as the responsibility to suspend the transport of all Bakken Shale Liquids from Côte Saint-Luc, Quebec to St. John, New Brunswick, in the face of open non-compliance by MMA Canada. However, TC failed to take appropriate measures to ensure safe and secure operations by MMA Canada and it is therefore responsible to the class members as a result of its laxity in this regard;

TC Knew that MMA Canada Had The Poorest Safety Record of any Railroad in North America and TC Failed to Effectively Sanction or Establish an Effective Audit of MMA Canada

53.8.3 According to Canada's Transportation Safety Board, MMA Canada had been involved in at least 129 accidents since 2003 in Canada alone, including 14 main track derailments, making it the most unsafe railway operator in North America;

53.8.4 In addition to MMA Canada's excessive accident record, TC also conducted a series of investigations and interventions with MMAR and/or with MMA Canada in this period;

53.8.5 On June 23, 2004, October 5, 2004, April 2005, November 29, 2005, June 21, 2006, May 3, 2007, December 19, 2007, January 25, 2008, March 3, 2008, October 8, 2008, May 22, 2009, June 8, 2009, July 17, 2009, October 14, 2011, February 21, 2012, February 23, 2012, February 29, 2012, March 2, 2012, August 31, 2012 and May 22, 2013, MMAR and/or MMA Canada were found to have violated several sections of the CROR;

53.8.6 While there were a wide variety of sanctions made against MMAR and/or MMA Canada, many of the infractions revolved around specific Rule 112 of the CROR violations which included a failure to correctly apply brakes to stationary trains, including October 5, 2004, April 2005, November 29, 2005, June 21, 2006, May 3, 2007, July 17, 2009, October 14, 2011, and February 23, 2012, the whole as appears more from a list of TC's interventions with MMA Canada, produced herein as **Exhibit R-18.1**;

53.8.7 Internal TC governmental records revealed at least one (1) instance of a MMA Canada "runaway train" as further evidence of MMA Canada's or MMAR's repeated non-compliance with the CROR. Indeed, TC specifically noted on March 2, 2012 in its safety reports relating to MMA Canada and MMAR (Exhibit R-18.1) that the repeated failure by these operators to apply sufficient brakes, could:

> "…**reasonably be expected to develop into a situation in which a person could be injured or made to be ill, or damage could be caused to the environment or property"**;

53.8.8 Despite being aware of these repeated violations in the time leading up to the Train Derailment, TC's wholly failed to impose any sanctions whatsoever in relation to these incidents. As a result, MMA Canada and MMAR carried on with their serial non-compliance with the CROR safety regulations. TC improperly allowed MMA Canada to continue to operate unsafely and without regulatory compliance;

53.8.9 TC performed an audit of MMA Canada from March 8 to 24, 2010. This audit focused on MMA's processes and procedures related to the CROR's Railway Freight and Passenger Train Brake Inspection and Safety Rules (Train Brake Rules), Railway Freight Car Inspection and Safety Rules (Freight Car Rules) and associated elements of the company's SMS;

53.8.10 The audit revealed very serious deficiencies in MMA's documented processes and procedures in the performance of proficiency tests, train inspection and train brake tests and the analysis of related test results, corrective actions and follow-ups;

53.8.11 The verification phase revealed instances of inconsistent application of processes and non-compliance with the CROR. The audit revealed that a number of employees were not even conversant with the CROR at all;

53.8.12 A follow-up on the audit was made by equipment inspectors in September 2010 and the results were inconclusive. A subsequent inspection was then conducted to verify compliance with the operating rules that had been given special attention during the audit. This follow-up was done in October 2011 and non-compliance with the rules was, again, noted;

53.8.13 An audit of MMA Canada's implementation of the Railway Safety Management System (SMS) Regulations with respect to train operations focusing on the management of accidents and incidents involving train operations and employees as defined by the *Railway Employee Qualification Standards Regulations* (SOR/87-150) was conducted by TC from October to November 2012;

53.8.14 While TC did perform audits, the audits suffered from various fundamental problems including, but not limited to:

a) An overly-narrow focus in that the guidance and tools provided to inspectors were missing key elements which prevented them from effectively planning, conducting, concluding and following-up on findings,

b) The absence of a quality assurance plan to continuously improve its oversight of rail safety,

c) An insufficient number of inspectors who had ambiguous mandates, and

d) A resulting lack of or, complete absence of, key information including the federal railways' risk assessments and information about sections of rail track used in transporting dangerous goods;

53.8.15 TC was deficient in establishing an effective plan whereby its agents could properly audit federal railway compliance by MMA Canada with safety standards and whereby it could properly supervise its agents. Perhaps most importantly, TC had no plan to improve its deficient audit system;

53.8.16 TC was clearly deficient and grossly negligent in its oversight role as it has failed to establish any effective or sustainable oversight approach in the face of MMA Canada's open non-compliance with its regulations. As a result, TC failed to provide a minimum level of assurance that MMA Canada was operating safely (i.e. its own mandate);

TC Permitted Hazardous Goods to be Transported on "Excepted Track" Designation

53.8.17 The MMA Canada stretch of rail track upon which the Train was travelling in Eastern Quebec through Lac Megantic was designated as an "excepted track". 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 TC's internal communications;

53.8.18 TC was aware that MMA Canada was not permitted to transport dangerous goods on this "excepted track" and yet, it nonetheless permitted the almost daily transport of the highly combustible and volatile Bakken Shale Liquids on it in contravention of its obligations. Under the circumstances, TC was required to take immediate action to halt any shipments of dangerous goods, including the Shale Liquids, over this "excepted track", but failed in its responsibility to take any meaningful steps in this regard. Had it carried out its regulatory function adequately, the disastrous Train Derailment would not have occurred;

TC Granted Permission For Single Person Train Operator ("SPTO") to Transport Hazardous Goods

53.8.19 In or around July 2009, MMA Canada sought permission to operate their trains with one conductor as a SPTO in the Lac-Mégantic region. TC noted at that time that this initiative would prompt a significant change in operations and that the surrounding communities and properties would be exposed to a much greater risk than if the train had two (2) conductors onboard. In addition, the increased risk for train derailment was also known by TC at the time that it improperly and carelessly granted permission for the SPTO;

53.8.20 Further, in or around December 2011, MMAR and MMA Canada sought to extend the regions in which they would operate trains with a SPTO. TC similarly noted that this would provoke a significant change in operations and would pose a greater risk to the crew, surrounding communities and properties;

53.8.21 Despite these red flags and heightened safety risks to the crew, surrounding communities and properties, as has been noted in TC's internal communications, TC nevertheless allowed MMAR and MMA Canada to operate their trains with a single conductor through Lac Megantic;

53.8.22 Further, TC failed to review this SPTO policy when MMA began to transport highly volatile and dangerous goods, including the Bakken Shale Liquids. TC was grossly negligent in allowing MMA to transport dangerous goods with only one conductor;

Report of the Auditor-General of Canada

53.8.23 The Office of the Auditor General of Canada conducted a performance audit of TC and its role in the oversight of rail safety in the fall of 2013. Important findings which were known to TC *prior* to the accident were made in this report and are detailed below, the whole as appears more fully from a copy of this report, produced herein as **Exhibit R-18.2**;

53.8.24 TC had given only temporary or interim approval for half of the Emergency Response Assistance Plans ("ERAPs") that are required to be submitted by the regulated companies. Thus, dangerous products have been shipped for years without TC doing a detailed verification of the companies' emergency response plans;

53.8.25 The Auditor General also found that:

a) TC does not have a risk-based planning process or an accurate inventory of companies posing the greatest risk in transporting dangerous goods,

b) TC "lacks a consistent approach to planning and implementing compliance activities. As a consequence, it cannot ensure that sites are inspected according to the highest risk",

c) In cases examined by the audit where inspections found non-compliance with federal regulations for transporting dangerous goods, almost three-quarters showed incomplete, or no evidence, of corrective action having been taken, and

d) A previous TC internal audit (2006) had identified similar flaws in TC's management practices, many of which had still not been remedied;

53.8.26 TC promised to implement the recommendations, including improving the tracking of hazardous products and following up on safety risks identified by inspectors. But by April 2013, it still had not fully complied with key recommendations of the Auditor-General, including those relating to roles and responsibilities regarding inspections, and ensuring compliance from the industry. In fact, the compliance deadline was extended to April 2014 as a result;

Failure of the Canadian Transportation Agency to Ensure that MMA Canada Carried Adequate Insurance

53.8.27 According to the Railway Third Party Liability Insurance Coverage Regulations, pursuant to subsection 92(3) of the *Canada Transportation Act*, the Canadian Transportation Agency (the "Agency") is required to conduct a risk assessment to determine whether the third-party liability insurance is adequate. Despite its knowledge of MMAR's poor safety record, as detailed herein, and despite the potentially colossal extent of damages if an accident should occur near a populated area while transporting hazardous materials, including the Shale Liquids, the Agency failed to conduct an appropriate risk assessment and failed to ensure that MMAR and its related companies were appropriately and adequately insured in the event of an accident;

53.8.28 At the time that XL entered into its insurance contract with MMA Canada in April of 2013, the Agency was fully aware of MMA Canada's poor safety record, as detailed above, as well as the fact that MMA Canada was engaged in the regular (almost daily) shipments of hazardous materials in the form of highly volatile Shale Liquids "unit trains" from Montreal, Quebec to Saint John, NB. Accordingly, the potential for a serious and devastating accident was exceedingly high;

53.8.29 However, at the time XL entered into the agreement to provide insurance to MMAR (endorsement to Policy No. RLC003808301, as appears more fully from a copy of the Insurance Policy, produced herein, under seal as **Exhibit R-18.2.1**) effective April 1, 2013, or at any time thereafter, the Agency failed to conduct an appropriate risk assessment and wholly failed to ensure that MMA Canada and its

related companies were appropriately and adequately insured in the event of an accident;

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

53.8.30 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;

53.8.31 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 reduced over 4,000 employee positions, including more than 20% of the total employees of the company. This included a large number of yard workers in the CP Côte Saint-Luc, Quebec rail yards who were laid off, as well as hundreds of employee positions relating to train safety and maintenance;

53.8.32 At the same time, CP Rail significantly increased its business of transporting crude oil by rail from Western North America and specifically, 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. It was also known that some CP Rail's secondary branch lines, including the lines previously sold to the Respondent MMA Canada in Quebec, needed to be substantially upgraded 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 could pose significantly increased safety hazards;

53.8.33 However, in order to earn as large a profit on the transporting of the unit trains as possible and, in accordance with the requirements of its "partnership" arrangements with MMA, Dakota Plains and World Fuel as described below, CP, as the "arranger" of the shipment, chose to ignore the well known safety concerns in relation to MMA and its track and caused the oil unit trains to use MMA Canada's routing to deliver the Shale Liquids to Irving Oil. This is the same routing chosen by CP, as "arranger" of these same shipments dating back to November 2, 2012. Since that time, CP, as arranger, had caused 3,830 oil tanker cars to be shipped along the MMA line to Irving's refinery. CP also knew, or turned a blind eye to the fact that all of these oil tanker cars were mislabelled, as described above (Exhibit R-1D.2);

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

53.8.34 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 Respondents and the Dakota Plains Respondents to supply East Coast refineries, including the refinery operated by the Irving Oil Respondents in New Brunswick. CP Rail and its partners, World Fuel and Dakota Plains, and 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;

53.8.35 Pursuant to these plans, CP Rail agreed to transport highly volatile, gas infused Bakken Shale Liquids utilizing DOT-111 Tankers, which were known to be much less expensive to acquire and operate but were also known to be far more dangerous and inappropriate for the safe hauling of volatile Bakken Shale Liquids. The use of these less expensive, substandard, unsafe railcars was done 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.

53.8.36 As part of the partnership agreements between CP Rail, World Fuel, Dakota Plains and their subsidiaries, they agreed to build 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;

53.8.37 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 Fuels 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;

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

53.8.38 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 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. CP Rail and

MMAR maintained a broad set of commercial, mutually beneficial 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;

53.8.39 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. In addition, CP Rail was well aware of the inadequate staffing policies and 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;

53.8.40 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", 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. This excepted track was inappropriate for a run-away "engineer-less", heavy train carrying 72 cars of Bakken crude oil which derailed at very high speed in Lac-Mégantic on July 6, 2013;

53.8.41 In July 2013, CP Rail was also aware that MMA had had an average rate of 38.81 accidents and incidents per million truck miles traveled, (which was more than double the US 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 acknowledged that as result of its determination (after the takeover by Pershing Square) to develop much more business 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;

53.8.42 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 Québec;

53.8.43 CP Rail was also aware that Respondent Burkhart, the Chairman of MMAR, had been known as having the worst safety record of any railroad executive in North America and had been ordered, in respect of other railroads he had controlled as far back as 1997, to comply with "strict remedial measures" to improve the safety of railroads he operated by the U.S. Federal Railroad Administration. MMA had, to the knowledge of CP Rail and the other Respondents, a record of runaway trains, oil spills, train derailments and other similar problems in the period leading up to the Train Derailment;

53.8.44 Notwithstanding these clear indicators, CP Rail and the other Respondents 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, the Respondents 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) The Respondents' knowledge of the extremely volatile and explosive nature of the Bakken Shale Liquids

53.8.45 CP Rail entered into contracts with the Irving Oil Respondents, the World Fuel Respondents, the Dakota Plains Respondents 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;

53.8.46 CP Rail moved the 72 tanker car train from the Dakota Plains transload 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;

53.8.47 By 2012, CP Rail, the World Fuel Respondents and the Dakota Plains Respondents were 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, 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;

53.8.48 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 the Oil Producers, shippers and importers including the Irving Oil Respondents in respect of the Bakken Shale Liquids, 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 R-18.3**;

53.8.49 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 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 and through the town of Lac-Mégantic. However, CP Rail and its partners permitted, assisted with, or were willfully blind as to the the mislabelling by the Irving Oil Respondents and other respondents 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;

53.8.50 CP Rail and the other Respondents were aware that as a result of the misclassification of the Bakken crude oil, which stated the contents were "Class III Packing Group III" (Exhibit R-18.3) that these would be considered the least dangerous flammable liquids and as such, CP Rail could use the badly-maintained and low-cost MMA rail system to ship the Bakken Shale Liquids through Lac-Mégantic to the Irving Oil Respondents' refinery. Despite this knowledge, CP Rail decided to ship the World Fuel Respondents' Shale Liquids to the Irving Oil Respondents utilizing MMA's much cheaper, but less well-maintained and more dangerous route, and bypassing a longer, but much safer CN route;

e) 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

53.8.51 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 vapor 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;

53.8.52 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 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;

53.8.53 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;

53.8.54 Both CP Rail employees and MMA were aware that the lead locomotive used to transport the MMA train from Montreal to Lac-Mégantic had a visibly faulty engine, the whole as appears more from a copy of a picture of this engine, produced herein as **Exhibit R-18.4**. Nevertheless, this engine was used as the lead locomotive with the knowledge that its airbrake system would be the system primarily used to brake the train and, as was the case on the evening of July 5, 2013, if the train was left "parked" outside the presence of the engineer, this braking system would be indispensable in preventing a catastrophic accident resulting from a runaway train;

53.8.55 However, CP Rail personnel who assembled the MMA train took no action in response to the defective engine and instead, used the defective lead locomotives engine rather than another MMA or CP Rail locomotive in a satisfactory operating condition as the lead locomotive. This defective lead locomotive caught fire in Nantes, Quebec at approximately 11:00 PM on July 5, 2013, while the train was parked without an engineer on board. At this point, the air brake system of this defective locomotive was the only brake system that could have prevented the train from "running away" down the track from Nantes to Lac-Mégantic;

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

Regulatory Action following the Train Derailment

a) The U.S. Federal Railroad Authority

53.9 In the aftermath of the Train Derailment, the FRA circulated a letter (Exhibit R-1E.3) to the American Petroleum Institute indicating its concerns including "…the proper classification of crude oil being shipped by rail, the subsequent determination or selection of the proper tank car packaging used for transporting crude oil, and the corresponding tank car outage requirements";

53.10 This letter also noted that because crude oil transported by rail is often derived from different sources and then blended, it was critical that shippers determine the proper classification of the crude oil in accordance with the HMR;

53.11 The FRA also noted that audits of crude oil loading facilities had indicated that the classification of crude oil was being based solely on the basis of MSDS data provided by the consignee to the shipper without the shipper being aware of validation of the values of the crude oil properties. These audits further indicated that such MSDS data was not gleaned from any recently conducted tests and that

misclassification was occurring. These practices constituted a misuse of the crude oil HMR packaging exceptions and reflected subsequent violations of the HMR;

53.12 The FRA also concluded that when crude oil is loaded into tank cars, it is critical that that the existence and concentration of specific elements or compounds be identified, along with the corrosivity of the materials to the tank car tanks and service equipment. Proper identification of these elements enables a shipper to ensure the reliability of the tank car. Proper identification also enables a shipper to determine if there is a need for an interior coating or lining, alternative materials of construction for valves and fittings, and performance requirements for fluid sealing elements, such as gaskets and o-rings;

53.13 As a result of these various concerns, the FRA advised that it was investigating whether crude is being properly classified in the U.S. and whether proper tank car packagings are being used for transportation;

53.14 A Safety Advisory issued jointly by the FRA and the PHMSA on August 2, 2013, reiterated these concerns about the proper classification of crude oil. In particular, the Advisory discussed the safety implications of ensuring that the Packing Group classification was correct, as this can affect the transportation requirements under the HMR, the whole as appears more fully from a copy of the Safety Advisory dated August 2, 2013, produced herein as **Exhibit R-19**;

b) <u>Update on the Transportation Safety Board Investigation</u>

53.15 The TSBC is continuing its investigation of the Train Derailment and final conclusions have not yet been reached with respect to the cause or causes of the tragedy; however, in a news release issued on September 11, 2013, the TSBC advised that safety advisory letters had been issued to Transport Canada and to PHMSA, calling on these authorities to ensure that the properties of the dangerous goods being imported or transported are accurately determined and documented for safe transportation;

53.16 The news release and referenced letters also advised that a preliminary review of TSBC test results reflected that the level of hazard posed by the petroleum crude oil transported in the Tankers was not accurately documented. In particular, the Shale Liquids were reported as being offered for transport, packaged and transported in a manner which represented a lower hazard, as a less volatile flammable liquid and, as previously noted, all cargo was billed out as PG III product;

53.17 The TSBC also noted that the lower flash point of the Shale Liquids explained, in part, why they ignited so quickly once the DOT-111 tanks cars were breached and also called into question the adequacy of the DOT-111 cars for use in the transport of large quantities of low flash flammable liquids;

53.18 Further testing continues to be performed on the product samples as well as on components of the Tankers as can be seen from the Rail Safety Advisory Letter to Transport Canada from the TSBC (Exhibit R-1E.7) and the whole as appears more fully from a copy of the subject news release and a copy of the letter to PHMSA, both dated September 11, 2013 and produced herein as **Exhibits R-20** and **R-21**, respectively;

D) The Faults

54. The Respondents had a duty to the Petitioners 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;

54.1 The Respondents had a duty to the Petitioners 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;

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. <u>With regards to the Oil Respondents and the Oil Producer Respondents:</u>

a.a) they failed to ensure that the raw well product was adequately processed and separated to remove any significant content of volatile vapours, gases and/or highly flammable light ends from the Shale Liquids before they were transported from North Dakota to Lac-Mégantic;

a.b) alternatively, they knowingly added, or allowed to be added or knew to be added to the Shale Liquids, quantities of highly flammable and volatile light end petroleum liquids and/or vapours and/or gases and/or blended the crude oil with condensate;

a.c) they failed to conduct any or any adequate well-site testing to determine the composition of the Shale Liquids prior to transport, such that the hazard classification indicated for the Shale Liquids was not and could not have been an accurate reflection of the content of the cargo being shipped;

a.d) in failing to properly determine the composition of the contents of the Shale Liquids and in failing to properly classify the hazard rating of the Shale Liquids, they could not properly determine the shipping

requirements of the Shale Liquids, including whether the Shale Liquids required transport via reinforced and pressurized tank cars rather than DOT-111 tank cars;

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

a.1) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly labeled and transported as hazardous materials;

b) they 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;

c) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;

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

d.1) they 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;

d.2) they failed and/or neglected to hire a safe and qualified railway operator that would only operate locomotives in good working order, instead they directly or indirectly contracted with MMAR which had a poor safety record and which railway tracks were considered to be excepted;

d.3) they failed and/or neglected to hire a safe and qualified railway operator that would have been adequately capitalized and insured in the event that such an incident occurred and substantial damages were required to be paid to Petitioners and members of the Class, including those killed and injured as a result of the Train Derailment;

e) 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;

f) they failed and/or neglected to promulgate, implement and enforce adequate rules and regulations pertaining to the safe shipment of the Shale Liquids by train in accordance with all industry and regulatory standards;

g) they hired insufficient and incompetent employees and servants, and are liable for the acts, omissions or negligence of same;

h) they failed or neglected to properly instruct and educate their employees on how to safely transfer Shale Liquids by train and had inadequate operating standards and protocols;

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

B. <u>With regards to the Rail World Respondents:</u>

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 adequately inspect the Train and its equipment before leaving it unattended on July 5, 2013;

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

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;

e.1) they failed and/or neglected to ensure that a qualified train engineer or any other qualified employee inspected the train following the fire;

e.2) they failed and/or neglected to contact Respondent Harding following the fire to inform him that the fire had occurred, that the Train's engine had been turned off, and that the Train's air brakes were no longer operational;

e.3) 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

e.4) they failed and/or neglected to implement appropriate and adequate safety protocols to follow in emergency situations;

e.5) they failed and/or neglected to adequately train their employees in safety protocols in emergency situations;

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 and/or limited the scope of resulting damage;

o. 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;

p. they allowed MMAR, MMAC, and/or MMA Canada to operate without adequate capitalization, including maintaining both adequate capital and adequate liability insurance coverage, in the event that such an incident occurred and damages needed to be paid;

C. <u>With regards to the Lessor Respondents:</u>

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

b) they 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;

c) they knew or ought to have known and/or failed to make any inquiries regarding the hazardous and flammable nature of the Shale Liquids when they ought to have done so, thereby allowing a hazardous and flammable liquid to be transported in an unsafe manner;

d) they failed and/or neglected to inspect or to adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;

e) they failed and/or neglected to promulgate, to implement and to enforce rules and regulations pertaining to the safe shipment of the Shale Liquids by train;

f) they hired incompetent employees and servants, and are liable for the acts, omissions and/or negligence of same;

g) they failed to or neglected to properly instruct and educate their employees on the transfer Shale Liquids by train; and

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

D. <u>With regards to the CP Rail Respondent:</u>

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 Petitioners 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;

E. <u>With regards to the AG Canada Respondent:</u>

a) <u>TC failed to establish an effective audit to provide a minimum level of assurance that federal railways have implemented SMSs</u>;

b) <u>The audits that TC did conduct were too narrowly focused, i.e. guidance and tools provided to inspectors are missing key elements which would help TC to ensure effectiveness of its auditors who cannot effectively plan and conduct audits and inspections and follow up on findings</u>;

c) <u>TC has failed to implement a quality assurance plan to continuously improve its oversight of rail safety</u>;

d) TC was deficient in establishing an effective plan whereby its agents could properly audit compliance with safety standards and whereby it could properly supervise its agents and TC had no plan to improve this deficient audit system;

e) TC failed to target the higher risk railways and the most significant safety risks and had no plan for improvement;

f) TC failed to assess whether its workforce had the required skills needed to conduct inspections and SMS audits and failed to properly train its staff in auditing skills;

g) TC has failed to ensure that its field operators have the skills necessary to perform adequate audits even if it provided the proper tools and in either case, has failed to train the inspectors in skills needed to do audits of SMSs;

h) TC has failed to fully implement the recommendations made by the Auditor-General following its' audit of TC;

i) TC has conducted many inspections and some audits to identify non-compliance with rail safety regulations, rules, and engineering standards. However, the TC has failed to systematically collect and use important and relevant railway safety performance and risk data to ensure that its oversight activities are targeting the higher-risk railways and the most significant safety risks;

j) Despite the fact that federal railways were required 12 years ago to implement safety management systems for managing their safety risks and complying with safety requirements, TC has yet to establish an audit approach that provides a minimum level of assurance that federal railways have done so;

k) TC was aware of MMA Canada's poor safety record and clear lack of compliance with its regulatory framework ; however, it neglected to take action to adequately oversee the implementation and operation of its policy decisions, resulting in a patent case of laxity on its part;

l) TC was aware that the DOT-111 tankers had a propensity to puncture during derailments and that they were neither designed to nor safe enough to carry hazardous products; however, TC was grossly negligent in not taking any action to either require the railway companies to replace their tankers or to transport hazardous materials in more secure tankers;

m) TC failed to take immediate or even delayed action to cease the shipments of dangerous goods over the deteriorated "excepted track";

n) TC failed conduct an appropriate risk assessment in allowing MMA to operate its trains with only one (1) conductor;

o) TC failed to implement and to enforce rules and regulations pertaining to the safe operation of the Train;

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

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

r) TC has failed to appropriately monitor and/or conduct due diligence with respect to MMA's activities, including the transport of dangerous and hazardous goods on "excepted track" and operating trains with only one conductor;

F. With regards to the Canadian Transportation Agency:

a) it failed to ensure that MMA Canada and/or MMAR and its related companies were adequately insured in the event of an accident;

b) it failed to conduct an appropriate risk assessment in determining the level of insurance that should have been carried by MMA Canada and/or MMAR;

55.1 The Train Derailment and the resulting injuries and damages were caused by the Respondents. The Respondents knew or should have known about the volatility of the Shale Liquids, the defects and unsuitability of the DOT-111 tankers used to transport the Shale Liquids, the poor safety record of the Rail World Respondents, and the fact that transport of a dangerous substance was occurring in a residential area;

55.2 The Respondents had a duty to take care to minimize all safety risks associated with the transportation of the Shale Liquids by ensuring that the Shale Liquids were transported in properly reinforced tanks with adequate safety features to reduce the impact of collision and likelihood of failure; by ensuring that the railway used to ship the Shale Liquids had a strong safety record and low record of collisions; and by ensuring that all staff involved in the transport of the Shale Liquids were adequately trained and that the Train would be adequately staffed during the trip to New Brunswick; and failed to do so;

55.3 This negligence and/or recklessness and the resulting risk of harm was directed towards the general public, which in turn materialized as against the

Petitioners and the Class Members. The Respondents knowingly endangered the safety of the Petitioners and the Class Members by shipping the Shale Liquids, a highly flammable and inherently dangerous product, through residential areas in a manner that was known to be dangerous and to result in an increased likelihood of collision, explosion and fire;

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;

Petitioner Jacques

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

71.2 Petitioner 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;

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

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

71.5 Petitioner Jacques' home was also his place of business;

71.6 As a result of the Train Derailment, Petitioner 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;

71.7 Petitioner 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;

71.8 Petitioner Jacques' damages are a direct and proximate result of the Respondents' conduct;

71.9 In consequence of the foregoing, Petitioner Jacques is justified in claiming damages;

Petitioner Parent

71.10 Petitioner Parent used to reside at 5060 Boulevard des Vétérans in Lac-Mégantic, Quebec;

71.11 The night of the Train Derailment, Petitioner 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;

71.12 Petitioner Parent's home was also his place of business;

71.13 As a result of the Train Derailment, Petitioner 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;

71.14 Petitioner 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;

71.15 Petitioner Parent`s damages are a direct and proximate result of the Respondents' conduct;

71.16 In consequence of the foregoing, Petitioner Parent 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 Respondents 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 Shale Liquids 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 Rail World 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 Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents, the Oil Producer Respondents, the Lessor Respondents, the CP Rail Respondent and the AG Canada fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

f.2 Did the AG Canada fail and/or was it negligent in exercising reasonable care to ensure that MMAR was adequately insured?

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 Rail World 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 Mégantic

93. A great number of the members of the class reside in the judicial district of Mégantic;

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;

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 or being employed by a person resident in or a business located in Lac-Mégantic, 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 Shale Liquids 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 Rail World 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 Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents, the Oil Producer Respondents, the Lessor Respondents, the CP Rail Respondent and the AG Canada fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

f.2 Did the AG Canada fail and/or was it negligent in exercising reasonable care to ensure that MMAR was adequately insured?

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 Rail World 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;

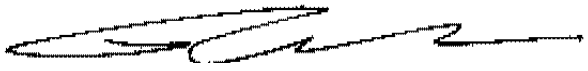
ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE (national edition), LE DEVOIR, LA TRIBUNE, L'ÉCHO DE FRONTENAC and the LE JOURNAL DE QUÉBEC;

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, February 19, 2014



ME DANIEL E. LAROCHELLE
Attorney for the Petitioners

Montréal, February 19, 2014

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

NOTICE OF PRESENTATION

TO: **MARATHON OIL COMPANY**
5555 San Felipe Road
Houston, Texas, 77056, USA

AND: **ARROW MIDSTREAM HOLDINGS, LLC**
6100 S Yale Ave, Suite 1700
Tulsa, Oklahoma, 74136, USA

AND: **DEVLAR ENERGY MARKETING, LLC**
384 Inverness Parkway Suite 150
Englewood, Colorado, 80112, USA

AND: **OASIS PETROLEUM INC.**
1001 Fannin St., Suite 202
Houston, Texas, 77002, USA

AND: **OASIS PETROLEUM LLC**
1021 Main Street, Suite 1150
Houston, Texas, 77002-6508, USA

AND: **QEP RESOURCES, INC.**
1050 17th Street, Suite 500
Denver, Colorado, 80265, USA

AND: **GREENBRIER RAILCAR LEASING, INC.**
One Centerpointe Drive, Suite 200
Lake Oswego, Oregon, 97035, USA

AND: **GREENBRIER RAILCAR LLC**
One Centerpointe Drive, Suite 200
Lake Oswego, Oregon, 97035, USA

AND: **AMERICAN RAILCAR LEASING LLC**
100 Clark Street, Suite 201
St. Charles, Missouri, 63301, USA

AND: **AMERICAN RAILCAR LEASING CANADA LIMITED**
100 Clark Street, Suite 201
St. Charles, Missouri, 63301, USA

AND: **THE CIT GROUP/EQUIPMENT FINANCING, INC.**
1 CIT Drive, MS#2108-A
Livingston, New Jersey, 07039, USA

AND: **PROCOR LIMITED/PROCOR LIMITÉE**
2001 Speers Road
Oakville, Ontario, L6J 5E1

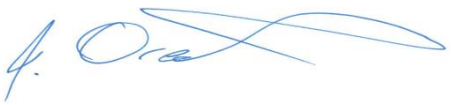
AND: **ATTORNEY GENERAL OF CANADA**
Guy-Favreau Complex, East Tower
9th Floor, 200 René-Levesque Boulevard West
Montreal, Quebec, H2Z 1X4

TAKE NOTICE that the present motion will be presentable for adjudication before the Superior Court, at the Palais de Justice in Sherbrooke, located at 375, Rue King, Sherbrooke, Quebec, J1H 6B9, in room 2 on the 24th day of March, 2014 at 9h00 in the morning, or as soon as the Court so decides.

Lac-Mégantic, February 19, 2014

ME DANIEL E. LAROCHELLE
Attorney for the Petitioners

Montréal, February 19, 2014



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

CANADA

PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

NO: 450-06-000001-135

(Class Action)
SUPERIOR COURT

YANNICK GAGNÉ

and

GUY OUELLET

and

SERGE JACQUES

and

LOUIS-SERGES PARENT

Petitioners

-vs.-

RAIL WORLD, INC.

and

RAIL WORLD HOLDINGS, LLC.

and

MONTREAL, MAINE & ATLANTIC RAILWAY LTD.

and

EARLSTON ASSOCIATES L.P.

and

PEA VINE CORPORATION

and

MONTREAL, MAINE & ATLANTIC CORPORATION

and

MONTREAL, MAINE & ATLANTIC CANADA COMPANY

and

EDWARD BURKHARDT

and

ROBERT GRINDROD

and

GAINOR RYAN

and

DONALD GARDNER, JR.

and

JOE MCGONIGLE

and

CATHY ALDANA

and

THOMAS HARDING

and

IRVING OIL LIMITED

and

IRVING OIL COMPANY, LIMITED

and

IRVING OIL OPERATIONS GENERAL PARTNER LIMITED

and

IRVING OIL OPERATIONS LIMITED

and

IRVING OIL COMMERCIAL G.P,

and

WORLD FUEL SERVICES CORP.

and

WORLD FUEL SERVICES, INC.

and

WORLD FUEL SERVICES CANADA, INC.

and

DAKOTA PLAINS HOLDINGS, INC.

and

DAKOTA PLAINS MARKETING, LLC

and

DPTS MARKETING LLC

and

DAKOTA PLAINS TRANSLOADING, LLC

and

DAKOTA PETROLEUM TRANSPORT SOLUTIONS, LLC

and

WESTERN PETROLEUM COMPANY

and

PETROLEUM TRANSPORT SOLUTIONS, LLC

and

STROBEL STAROSTKA TRANSFER, LLC

and

MARATHON OIL CORPORATION

and

MARATHON OIL COMPANY

and

SLAWSON EXPLORATION COMPANY, INC.

and

ARROW MIDSTREAM HOLDINGS, LLC

and

DEVLAR ENERGY MARKETING, LLC

and

OASIS PETROLEUM INC.

And

OASIS PETROLEUM LLC

and

QEP RESOURCES, INC.

and

UNION TANK CAR COMPANY

and

TRINITY INDUSTRIES, INC.

and

TRINITY RAIL GROUP, LLC

and

TRINITY RAIL LEASING 2012 LLC

and

GENERAL ELECTRIC RAILCAR SERVICES

and

GREENBRIER RAILCAR LEASING, INC.

and

GREENBRIER RAILCAR LLC

and

AMERICAN RAILCAR LEASING LLC

and

AMERICAN RAILCAR LEASING CANADA LIMITED

and

THE CIT GROUP/EQUIPMENT FINANCING, INC.

and

PROCOR LIMITED PROCOR LIMITEE

and

CANADIAN PACIFIC RAILWAY COMPANY

and

ATTORNEY GENERAL OF CANADA

Respondents

and

XL INSURANCE COMPANY LIMITED

and

XL GROUP PLC

Mises-en-cause

NOTICE OF DISCLOSURE OF EXHIBITS

TAKE NOTICE that the Petitioners intend producing the following exhibits at the hearing:

R-1A: Copy of an extract from the Registraire des enterprises for Respondent Montreal, Maine & Atlantic Railway, Ltd.;

R-1B: Copy of an extract from the Registraire des enterprises for Respondent Montreal, Maine & Atlantic Canada Company;

R-1C: Copy of an extract from the Registraire des enterprises for Respondent Irving Oil Company, Limited;

R-1D: Copy of an extract from the Registraire des enterprises for Respondent Irving Oil Operations Limited;

R-1D.1: Copy of an extract from the Registraire des entreprises for Respondent Irving Oil Commercial G.P.;

R-1E: Copy of an extract from the Registraire des enterprises for and World Fuel Services Canada, Inc.;

R-1E.1: Copy of the 10-Q SEC Filing of Respondent Dakota Plains Holding, Inc.;

R-1E.2: Copy of a PowerPoint presentation prepared by MRO dated March 23, 2010;

R-1E.3: Copy of the correspondence from the Federal Railroad Administration to the American Petroleum Institute dated July 29, 2013;

R-1E.4: 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;

R-1E.5: Copy of the Cenovus Energy Inc. MSDS dated November 2, 2012;

R-1E.6: Copy of the Enbridge Pipelines Inc. MSDS dated June 8, 2011;

R-1E.7: Copy of the Rail Safety Advisory Letter to Transport Canada from the TSBC, dated September 11, 2013;

R-1E.8: Copy of the PowerPoint presentation prepared by Irving Oil with respect to issues of quality control in crude oil transported by rail;

R-1E.9: Copy of an extract of the *Ingredient Disclosure List*;

R-1E.10: Copy of the Order Accepting Tariff Filing by the U.S. Federal Energy Regulatory Commission ("FERC") dated June 6, 2013;

R-1E.11: Copy of the Globe and Mail article entitled "U.S. officials were probing safety of Bakken oil months before Lac-Mégantic" dated August 29, 2013;

R-1E.12: Copy of the Dénonciation en vue d'obtenir un mandat de perquisition, dated December 11, 2013;

R-1.E.13: Copy of the Globe and Mail article entitled "Police seize Irving Oil records in probe of Lac-Megantic disaster" dated December 13, 2013;

R-1.E.14: Copy of the Washington Street Journal article entitled “Firms Fined Over Volatile Oil in Rails” dated February 4, 2014;

R-1F: Copy of the Globe and Mail article entitled “Blast probe turns to oil composition” dated July 19, 2013;

R-2: Copy of the Montreal, Maine and Atlantic Railway Press Release entitled “Derailment in Lac-Mégantic, Quebec” dated July 6, 2013;

R-3: Copy of the National Post graphic article entitled “The Night a Train Destroyed a Town”;

R-4: Copy of the Wall Street Journal article entitled “Brakes Cited in Quebec Wreck” dated July 10, 2013;

R-5: Copy of the National Post article entitled “Death Toll Rises to 13 with Dozens More Still Missing” dated July 9, 2013;

R-6: 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*;

R-7: Copy of the Wall Street Journal article entitled “Runaway Quebec Train's Owner Battled Safety Issues” dated July 9, 2013;

R-8: Copy of the Bureau of Remediation & Waste Management report number B-97-2013;

R-9: Copy of the La Presse article entitled “Déversement de 13 000 litres de diesel à Frontenac, près de Lac-Mégantic” dated June 11, 2013;

R-10: Copy of The Gazette article entitled “Railway companies cutting back crew” dated July 10, 2013;

R-11: Copy of The Star article entitled “Lac Megantic: Railway's history of cost-cutting” dated July 11, 2013;

R-12: Copy of the U.S. NTSB Safety Recommendation dated March 2, 2012;

R-13: Copy of TSBC Railway Occurrence Report dated January 30, 1994;

R-14: Copy of TSBC Railway Occurrence Report dated October 17, 1994;

R-15: Copy of TSBC Railway Occurrence Report dated January 21, 1995;

R-16: Copy of TSBC Railway Investigation Report dated August 27, 1999;

R-17: Copy of TSBC Railway Investigation Report dated May 2, 2005;

R-18: 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;

R-18.1: List of TC's interventions with MMA Canada;

R-18.2: Copy of the Report of the Office of the Auditor General of Canada, dated fall 2013;

R-18.2.1: Copy of the Insurance Policy No. RLC003808301, under seal;

R-18.3: Copy of CP's Exhibit CP-7, the Bill of Lading for unit Train 282;

R-18.4: Copy of a picture of the Engine of Unit Train 282;

R-19: Copy of the Safety Advisory dated August 2, 2013;

R-20: Copy of the subject news release dated September 11, 2013;

R-21: Copy of the letter to PHMSA, dated September 11, 2013;

Lac-Mégantic, February 19, 2014

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ME DANIEL E. LAROCHELLE
Attorney for the Petitioners

Montréal, February 19, 2014

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