

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MÉGANTIC

(Class Action)
SUPERIOR COURT

File N° : 480-06-000001-132

**GUY OUELLET, SERGE JACQUES,
LOUIS-SERGE PARENT**

Plaintiffs

v.

**MONTREAL MAINE & ATLANTIC CANADA
COMPANY**

and

THOMAS HARDING

and

CANADIAN PACIFIC RAILWAY COMPANY

Defendants

and

ROBERT J. KEACH, solely in his capacity
as the estate representative of Montreal,
Maine & Atlantic Railway, Ltd., having a
place of business at Bernstein, Shur, Sawyer
& Nelson, P.A., 100 Middle Street, P.O. Box
9729, Portland, ME 04104-5029

and

[...]

Third [Party]

**AMENDED APPLICATION BY CANADIAN PACIFIC RAILWAY
COMPANY ("CP") FOR PRESERVATION OF EVIDENCE AND
COMMUNICATION OF DOCUMENTS**

(Art. 20, 221 of the *Code of Civil Procedure* (CCP))

**TO THE HONOURABLE JUSTICE MARTIN BUREAU, J.S.C., CP RESPECTFULLY
SUBMITS THE FOLLOWING:**

1. CP is being sued in a class action for a train derailment which occurred in Lac-Mégantic on July 6, 2013, as are also Defendants Montreal Maine & Atlantic Canada Company ("MMAC") and Thomas Harding ("Harding");

2. In its Plea dated June 1st, 2017, CP alleges that the faults which caused this derailment are well known and that none of these faults, even remotely, implicates CP. CP further alleges that the sole cause of the derailment is the negligence of Defendants MMAC, its employee, Defendant Harding and its parent company, Montreal Maine & Atlantic Railway Ltd. ("MMAR", collectively and indistinctly referred to hereinafter with MMAC as "MMA");
3. CP put MMA on notice to preserve all evidence relevant to these proceedings, following the above-mentioned train derailment, as appears from a letter sent on April 14, 2014 by CP's counsels to MMA, attached hereto as **Exhibit P-1**;
4. On July 14, 2017, the parties advised the Court that they intend to begin the examinations on discovery early in 2018 and that they have elected to begin with MMA's representatives, MMAC being a party in this matter subject to pre-trial examination, including with respect to documentary disclosure purposes;
5. In anticipation of the forthcoming examinations on discovery of MMA's representatives, CP has, at this stage, identified a number of documents for the purposes of these examinations, as appears from the said request for documents, attached hereto as **Exhibit P-2**;
6. MMAC is not represented by counsel in the present matter and has not filed any Appearance. However, [...] MMA's documents are currently in possession of and/or control of [...] Robert J. Keach, in his capacity as estate representative in MMAR's bankruptcy;
7. Consequently, [...] Robert J. Keach [is] impleaded in this Application as third [party], for the sole reason that [he is] believed to be in possession and/or control of MMA's documents;
- 7.1 The Richter Advisory Group Inc. informed CP that it does not have possession of the MMA documents covered by this demand, the whole as appears from an email from their attorney, Mtre. Sylvain Vauclair, attached hereto as **Exhibit P-3**;
8. CP therefore requests from this Court that the following orders be rendered, in order to facilitate having access to and obtaining communication of the documents enumerated in Exhibit P-2;

FOR THESE REASONS, CP RESPECTFULLY REQUESTS FROM THE COURT THAT IT:

- A. **ORDERS** Robert J. Keach, solely in his capacity as the estate representative of Montreal, Maine & Atlantic Railway, Ltd., [...] to preserve all the documents in [his] possession and/or control concerning Montreal Maine & Atlantic Canada Company and Montreal Maine & Atlantic Railway, for the purposes of the present proceedings, up until these proceedings are officially concluded by final judgment;

- B. **ORDERS** Robert J. Keach, solely in his capacity as the estate representative of Montreal, Maine & Atlantic Railway, Ltd. [...] to take all the appropriate measures to communicate to CP all the documents in [his] possession and/or control responsive to CP's request for documents (Exhibit P-2), within the delay as shall be determined by this Court;
- C. **ORDERS** any other measures deemed appropriate to facilitate the process for the communication of the documents, as requested in Exhibit P-2;
- D. **COSTS TO FOLLOW.**

Montreal, [October 20], 2017

Borden Ladner Gervais

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Mtre. François Grondin

Mtre. Patrick Plante

Borden Ladner Gervais LLP

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AFFIDAVIT

I, the undersigned, Patrick Plante, practising my profession as a lawyer with Borden Ladner Gervais LLP located at 1000 De La Gauchetière Street West, Suite 900, Montréal, Province of Québec, H3B 5H4, solemnly declare:


1. I am one of the lawyers for the Defendant Canadian Pacific Railway Company in the present case;
2. I have read the attached *Amended Application by Canadian Pacific Railway Company for preservation of evidence and communication of documents* and all the facts set forth are true.

AND I HAVE SIGNED:



PATRICK PLANTE

Solemnly declared before me in
Montréal, this 20th day of October, 2017



Commissioner for Oaths for Québec



NOTICE OF PRESENTATION

TO: Mtre. Joël Rochon
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Third Party

TAKE NOTICE that the Defendant Canadian Pacific Railway Company's *Amended Application by Canadian Pacific Railway Company for preservation of evidence and communication of documents* will be submitted for adjudication before one of the Honourable Judges of the Superior Court sitting in Chambers in and for the District of Lac-Mégantic at the Lac-Mégantic Courthouse, located at 5527 Frontenac Street, Lac-Mégantic, on **October 24, 2017, at 9:00 a.m., in Room 300**, or as soon thereafter as counsel may be heard.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, October 20, 2017



BORDEN LADNER GERVAIS LLP

**Attorneys for the Defendant
Canadian Pacific Railway Company**

Grenier, H  l  ne

De: Sylvain Vaclair <svauclair@woods.qc.ca>
Envoy  : October-16-17 2:52 PM
  : Pratte, Guy J.; Grondin, Fran  ois; Plante, Patrick; adurocher@fasken.com
Objet: RE: NOTIFICATION - Application by Canadian Pacific Railway Company for preservation of evidence and communication of documents- Court No. 480-06-000001-132

Cher confr  re,

Nous faisons suite    nos entretiens t  l  phoniques au sujet de votre requ  te intitul  e « Application by Canadian Pacific Railway Company for preservation of evidence and communication of documents » et confirmons par les pr  sentes que notre cliente Richter Groupe Conseil Inc   s-qualit  s contr  leur aux proc  dures de MMAC aux termes de la LACC n'a ni la saisine ni aucune autre possession l  gale des registres, documents corporatifs ou papiers commerciaux de MMAC et qu'elle n'est pas autrement en possession de ces documents ou de tout autre document qui pourrait correspondre    un document vis   par votre requ  te sauf possiblement quelques documents dont elle aurait pu recevoir copie dans le cadre des proc  dures de MMAC aux termes de la LACC.

Salutations.



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Cc : Pratte, Guy J.; Grondin, Fran  ois; Plante, Patrick; adurocher@fasken.com
Objet : NOTIFICATION - Application by Canadian Pacific Railway Company for preservation of evidence and communication of documents- Court No. 480-06-000001-132

**NOTIFICATION BY ELECTRONIC
COURIER TRANSMISSION SLIP
(ARTICLE 134 C.P.C.)**

DATE:

Montr  al, September 28, 2017

SENDER:

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COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:

File number: 480-06-000001-132

Parties: GUY OUELLET *et al*

Plaintiffs

v.

MONTREAL MAINE & ATLANTIC CANADA COMPANY *et al*

Defendants

and

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Third Parties

Nature: APPLICATION BY CANADIAN PACIFIC RAILWAY COMPANY FOR PRESERVATION OF EVIDENCE AND COMMUNICATION OF DOCUMENTS AND EXHIBITS P-1 TO P-2

Number of pages: 21
(attachments only)

BLG
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Adjointe de/Assistant to : André J. Barette et/and François Grondin

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Pour notification de procédures/ For notification of proceedings: notification@blg.com

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SUPERIOR COURT

Class action

District of Mégantic

File No.: 480-06-000001-132

GUY OUELLET *et al.*

Plaintiffs

vs.

**MONTREAL MAINE & ATLANTIC CANADA
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Defendants

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and

[...]

Third [Party]

**AMENDED APPLICATION BY CANADIAN
PACIFIC RAILWAY COMPANY FOR
PRESERVATION OF EVIDENCE AND
COMMUNICATION OF DOCUMENTS AND
EXHIBIT P-3**

Amount: \$

Nature:

Code:

COPY FOR NOTIFICATION

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