

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-000623-120

(...)

V [REDACTED] KELLY, [REDACTED]
[REDACTED]
[REDACTED]

Petitioner

-vs-

LAKESHORE GENERAL HOSPITAL /
HÔPITAL GÉNÉRAL DU LAKESHORE

-and-

GILLES BOURDON

Respondents

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

(...)

TO THE HONOURABLE JUSTICE GENEVIÈVE MARCOTTE OF THE SUPERIOR
COURT OF QUEBEC, APPOINTED TO PRESIDE IN THE PRESENT MATTER, THE
PETITIONER STATES THE FOLLOWING:

GENERAL PRESENTATION

1. Petitioner wishes to institute a class action on behalf of the following group, of which Petitioner is a member, namely:

- All persons (including their estates, successors, spouse or partner, child, grandchild, parent, grandparent and sibling), who underwent a colonoscopy performed by Dr. Gilles Bourdon at the Lakeshore General Hospital (hereinafter the "LGH") and who were not alerted at the time to any issues or conditions requiring further testing or treatment, excluded are those persons who, between the time of the said colonoscopy performed by Dr. Bourdon and the LGH's September 12, 2012 news conference which announced the recall of all colonoscopy patients of Dr. Bourdon, underwent another colonoscopy performed by a different doctor who also did not alert the patient to any issues or conditions requiring further testing or treatment, or any other Group or Sub-Groups to be determined by the Court;

(hereinafter Class Members are collectively referred to as "Class Member(s)", "Group Member(s)", the "Group", the "Class" or "Patients");

2. At all relevant times Respondent the Lakeshore General Hospital / *Hôpital Général du Lakeshore* (hereinafter the "LGH") operated a hospital in the City of Pointe-Claire, Quebec;
3. Respondent Dr. Gilles Bourdon is a medical doctor and surgeon who treated all of the Patients (Class Members) at either the LGH premises or at his clinic located across the street from the LGH (or elsewhere). Among other procedures, Dr. Bourdon conducted colonoscopies of his patients;
4. Dr. Bourdon's practice is presently restricted by the *College des médecins* and he cannot perform colonoscopies or other major surgeries, the whole as more fully detailed hereinbelow. He also no longer works for the LGH;
5. Petitioner is 84 years old and was diagnosed with and was treated for colon cancer, the whole as more fully detailed hereinbelow;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

6. Petitioner received the following letter dated September 10, 2012 from the LGH, a copy of which is filed herewith as **Exhibit R-1A**:

Centre de santé et de services sociaux
de l'Ouest-de-l'Île
West Island
Health and Social Services Centre

September 10, 2012

E. KELLY
[REDACTED]
[REDACTED]
QUÉBEC J. [REDACTED]

Subject : Repeat of an examination carried out at the West Island Health and Social Services Centre

Sir,

In reviewing our endoscopy files, we noted that you underwent a colonoscopy between 2009 and 2012 at the Lakeshore General Hospital.

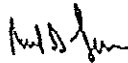
The review of the files shows that some tests carried out by a physician may have been incomplete. It is possible that a part of your intestine (colon) may not have been adequately visualized. This can occur on occasion, and is not itself an exceptional situation, but follow-up is required. There is, therefore, no reason for you to be concerned. However, in order to provide the optimal quality of service to which you are entitled, we would like to offer you the opportunity to repeat this examination. A new colonoscopy will allow you, as well as us, to dispel any concerns or questions.

We ask that you contact us by calling 514-630-2105, indicating that you have received this letter. We will make arrangements with you, if necessary, for an appointment as soon as possible. If you have any questions, we will do our best to answer them in a satisfactory manner. This special telephone line is available Monday to Friday, from 8:30 a.m. to 4:30 p.m. If you call outside of these hours, you can leave a message with your phone number and a team member will call you back.

We strive to provide you with the best possible care.

Yours truly,

The President of the Council of Physicians, Dentists and Pharmacists



Dr Richard D. Germain, MD

Attached, you will find a colonoscopy preparation document. Please read it carefully and bring it to your pharmacist so he/she can help you choose the right preparation formula.

7. As appears from various media reports on the issue which followed the LGH's September 12, 2012 news conference, which media reports or articles are filed herewith as though recited at length, *en liasse*, as **Exhibit R-3**, the LGH confirmed that a total of 684 Patients (most of which are Class Members) were involved and had been sent the same notification letter as received by the Petitioner, informing them of the botched colonoscopy;
8. At the time of the LGH's September 12, 2012 news conference, the LGH refused to name the specific doctor involved who had apparently conducted all the colonoscopies in question but it confirmed that he had left the LGH in January 2012 for unrelated reasons. In fact, Dr. Richard G. Germain, M.D., the President of the Lakeshore's Council of Physicians, Dentists and Pharmacists (who also signed the R-1A notification letter) indicated during the LGH's news conference that the LGH's legal counsel advised it not to release the name of the physician in order to "avoid litigation";
9. The R-3 media reports indicate that the unnamed doctor in question might not have examined the colon all the way to its upper end and therefore missed possible problems, such as precancerous or malignant lesions;
10. As also reported by the media reports (R-3), the LGH had apparently discovered evidence of incomplete colonoscopies in April 2012 following "routine quality-control review". As mentioned above, the LGH only proceeded to inform the public and the Class Members in September 2012, which Petitioner holds to be an unreasonable delay which put the Class Members' health at risk;
11. The LGH further confirmed during its September 12, 2012 press conference that normally, a physician who conducts a colonoscopy must probe to the end of the colon and take pictures as proof of having completed the procedure. However, the review found that the general surgeon in question did not take pictures showing the "landmarks" at the end of the colon and he did not provide additional documentation. The absence of pictures raised doubts for the LGH that the physician might have missed so-called flat lesions along the right end of the colon;
12. All that being said, following the said press conference, it was confirmed that Respondent Dr. Bourdon was in fact the doctor who conducted all of the colonoscopies in issue in this proceeding;
13. On September 25, 2012, Petitioner was interviewed by the Montreal Gazette which published an article about Petitioner's situation, a copy of which is filed

herewith as **Exhibit R-4**. Not wanting his real name to be published at the time, the Petitioner went by the pseudonym Ron Timmins;

14. In or about February 2010, the Petitioner had underwent a routine colonoscopy performed by Dr. Bourdon but was not made aware by any of the Respondents of any problems which would cause concern or which would require further testing;
15. After receiving the R-1A notification letter, the Petitioner underwent a second colonoscopy with Dr. Nadeem Ahmed at the LGH wherein the Petitioner was told that he had a cancerous tumour;
16. Dr. Ahmed (who formed part of the panel conducting the LGH's September 12, 2012 press conference) also informed the Petitioner that Dr. Bourdon did not adequately visualize the colon and should have at the very least seen a polyp, if not the tumour, when conducting the previous colonoscopy;
17. On October 9, 2012, the Petitioner underwent surgery to have the tumour removed by Dr. Sharon Dalrymple at the LGH;
18. Following this surgery, the Petitioner was unable to walk, likely due to the epidural administered prior to the surgery, and had to spend three (3) weeks in the hospital followed by physiotherapy treatments;
19. As a preventative measure, Dr. Dalrymple also suggested that the Petitioner undergo chemotherapy treatments;
20. From December 4, 2012 to May 24, 2013, the Petitioner underwent chemotherapy treatments at the LGH, every second week for a total of 12 rounds of chemotherapy;
21. Furthermore, two (2) days before each of these chemotherapy appointments, the Petitioner had to go to the LGH in order to have blood tests conducted;
22. The Petitioner's health situation caused inconvenience, stress, loss of time and expenses on himself and his wife, namely his wife having to visit him every day while in the hospital, his wife taking him to the LGH for the chemotherapy treatments and the blood tests, as well as the parking costs (of approximately 12\$ for each visit) and extra gas charges (aside of course for the damages, inconvenience, pain and suffering relating to having to undergo said treatments). Accordingly, Petitioner hereby claims from Respondents compensatory damages in an amount to be determined by the Court on the merits of the case;

23. The Petitioner and his wife are parents to two (2) children with special needs, a daughter with Cerebral Palsy and a son with chronic epilepsy;
24. Taking care of these children combined with the Petitioner's health problems caused serious inconveniences for both the Petitioner and his wife;
25. In addition, in the summer of 2012, the Petitioner and his wife had booked a vacation for January 2013. Once Petitioner was made aware that he had to undergo chemotherapy treatments, he and his wife were forced to cancel their vacation;
26. As a result of this, the Petitioner lost \$1,200 he had paid for a cruise and \$1,100 he had paid for airline tickets. Petitioner also lost the use of a time-share that had been booked as well for that same period. Petitioner hereby claims from Respondents compensatory damages in this regard as well;
27. Petitioner has therefore clearly suffered and will continue to suffer damages as a result of the botched colonoscopies conducted by Respondents;

The case of the late Jocelyne Montminy and the disciplinary past of Dr. Bourdon:

28. Following the institution of the present proceedings, namely on or about October 1, 2012, Mr. Jacques Gaucher sent a letter to the undersigned attorneys, detailing the death of his wife Jocelyne Montminy, who had passed away from colon cancer on November 1, 2011, the whole as more fully appears from a copy of the said October 1, 2012 letter together with its attached exchange of correspondence between Mr. Gaucher and the LGH, filed herewith as though recited at length herein, as **Exhibit R-5, en liasse**;
29. The correspondence provided to the undersigned attorney by Mr. Gaucher confirm the following (as more fully appears from Exhibit R-5):
 - a) On April 17, 2008, Dr. Bourdon conducted a colonoscopy of Mrs. Montminy. Dr. Bourdon did not alert Mrs. Montminy to any issues or conditions requiring further testing or treatment;
 - b) Approximately two (2) years later, Mrs. Montminy suffered extreme abdominal pains during many months and after consulting medical professionals, a second colonoscopy was conducted on August 11, 2010 by Dr. Nadeem Ahmed at the LGH (already mentioned above) which

uncovered a very large cancerous tumour, of a size that would take more than 2 years to develop according to the information gathered by Mr. Gaucher. The cancer had already spread to Mrs. Montminy's liver and lungs;

- c) By letter dated November 29, 2010 addressed to the *Commissaire local aux plaintes et à la qualité des services - Hôpital general du Lakeshore*, Mr. Gaucher filed a formal complaint concerning the 2008 colonoscopy he alleged that Dr. Bourdon had conducted and botched. He also mentions in his letter that Dr. Bourdon "*est reconnu pour son laxisme et son manque de professionnalisme et qu'il avait d'ailleurs déjà été suspendu pour de telles raisons*". Mr. Gaucher also mentions that his wife's chances of survival were slim but that he wanted to hopefully prevent other Lakeshore patients from suffering the same fate as his wife;
- d) By letter dated November 30, 2010, the LGH confirmed receipt of Mr. Gaucher's November 29, 2010 complaint and confirmed that same would be referred to Dr. Louis de Repentigny, "*médecin examinateur désigné par le conseil d'administration*";
- e) By letter dated January 4, 2011, Dr. Louis de Repentigny, *Médecin examinateur* acting on behalf of the LGH, denied all liability and denied any negligence by Dr. Bourdon concerning the April 2008 colonoscopy, Dr. de Repentigny stating the following *inter alia*:

"Par ailleurs, il est impossible de vérifier à posteriori l'interprétation normale de la colonoscopie du 17 avril 2008 puisqu'aucune photographie ni vidéo n'a été pris lors de cet examen. Toutefois, Dr Bourdon n'a pas été négligent à cet égard puisqu'il n'existe présentement aucune recommandation officielle de produire des photos ou vidéos lors des colonoscopies de dépistage afin de documenter visuellement au dossier les résultats de l'examen."

- f) Dr. de Repentigny therefore concluded that there was no objective evidence to conclude that Dr. Bourdon had been negligent concerning the April 2008 colonoscopy of Mrs. Montminy;
- g) After reading about the above-mentioned colonoscopy recall in September 2012 by the LGH, Mr. Gaucher sent a September 24, 2012 letter to Dr. de Repentigny at the LGH (a copy of which is also included in Exhibit R-5);

30. Petitioner notes that in its January 4, 2011 letter to Mr. Gaucher, the LGH denies all liability concerning the April 2008 colonoscopy basing itself on the fact that there is no "*recommandation officielle*" requiring the taking of photography or video during a colonoscopy however, and as stated above, during the September 12, 2012 press conference which announced the colonoscopy recall, the LGH specifically mentioned that it was conducting the recall because it had no picture or video confirmation of what was visualized by Dr. Bourdon during the 684 colonoscopies in question;
31. In fact and as alleged above, during the said press conference, the LGH confirmed that normally, a physician who conducts a colonoscopy must probe to the end of the colon and take pictures as proof of having completed the procedure and that the review found that generally Dr. Bourdon did not show pictures showing the "landmark" at the end of the colon and that he did not provide the additional documents. This is obviously not what the LGH was confirming to Mr. Gaucher in its January 4, 2011 letter (Exhibit P-5);
32. The LGH also confirmed during the September 12, 2012 press conference that the absence of pictures raised doubts that the physician might have missed so-called flat lesions along the right end of the colon;
33. Accordingly, and at the very least, the LGH was made aware of this lack of pictures or video taking by Dr. Bourdon when it received the November 29, 2010 letter from Mr. Gaucher (Exhibit R-5) but the LGH continued to permit Dr. Bourdon to conduct colonoscopies on many of the Class Members and did not conduct a verification of Dr. Bourdon's other colonoscopy files at the time;
34. Instead, the LGH refused to admit any liability or negligence concerning the death of Mrs. Montminy, as appears from Exhibit R-5, and the LGH waited from November 2010 to September 2012 before conducting a recall concerning close to 700 other patients having had colonoscopies conducted by Dr. Bourdon between 2009 and 2012;
35. Finally, Petitioner files herewith as **Exhibit R-6** *en liasse*, as though recited at length herein, various recent media reports detailing Dr. Bourdon's prior negligence and disciplinary past, as well as an October 28, 2011 complaint filed with the *Conseil de discipline du Collège des médecins du Québec* and a March 18, 2009 decision rendered by the *Conseil de discipline du Collège des médecins du Québec*, both concerning Dr. Bourdon;

36. The LGH was therefore aware or should have been aware of Dr. Bourdon's disciplinary past and prior errors committed (as appears from Exhibits R-5 and R-6) and the LGH was therefore negligent when it either engaged the services of Dr. Bourdon without the proper verifications, and/or permitted Dr. Bourdon to conduct the colonoscopies in issue in this case, and/or failed to properly monitor or supervise Dr. Bourdon's procedures, and/or failed to conduct verifications of Dr. Bourdon's files and records in a timely manner, the whole having facilitated and caused the damages suffered by the Class Members herein;

Facts having occurred following the LGH's September 12, 2012 press conference:

37. The LGH arbitrarily chose to send the R-1A notification letters only to those patients who had underwent a colonoscopy at the LGH, conducted by Dr. Bourdon, from 2009 to 2012. During its September 12, 2012 press conference, the LGH also mentioned this 3 year period from 2009 to 2012;
38. However, Dr. Bourdon was conducting colonoscopies at the LGH before 2009, such as in the case of the late Jocelyne Montminy (See Exhibit R-5);
39. Following the September 12, 2012 press conference, certain Patients who had underwent a colonoscopy conducted by Dr. Bourdon prior to 2009, contacted the LGH and insisted on undergoing a further colonoscopy under the same announced recall, the whole presumably in order to rule out cancer;
40. The LGH agreed to include these patients in the recall but it did not publically announce that it was expanding the recall to include all pre-2009 Bourdon Patients, nor did it send out further notification letters;
41. This was all reported by the Montreal Gazette on November 8, 2012, which confirmed that as of that date, 23 additional patients in this situation had already been booked for follow-up exams, the whole as more fully appears from a copy of November 8, 2012 Montreal Gazette article, filed herewith as **Exhibit R-7**;
42. Petitioner is not aware of the total number of pre-2009 patients in this situation, nor of how many of these patients indeed contacted the LGH to schedule a colonoscopy under the recall, the LGH being summoned to confirm these figures to the Court and to confirm if any of said patients were ultimately diagnosed with cancer or other issues requiring further testing or treatments;

43. On June 20, 2013, the LGH issued a public statement, a copy of which is filed herewith as **Exhibit R-8**, as though recited at length herein;
44. As appears from its June 20, 2013 statement (R-8), the LGH confirmed that following its September 2012 colonoscopy recall:

"Out of the 684 patients involved, 469 patients agreed to repeat the colonoscopy, 80% of whom had it done at the Lakeshore General Hospital".
45. The R-8 statement, mentioning the 684 figure, obviously does not take into account the pre-2009 patients mentioned above, who also had follow up procedures conducted;
46. As further appears from the June 20, 2013 statement (R-8), the LGH admitted and confirmed that:

"A malignant lesion was detected in only 1.7% of the 469 patients who participated";
47. The said R-8 statement does not provide details concerning the remaining Patients not included in the 469 mentioned;

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

48. Each of the Class Members (including the Petitioner) underwent a colonoscopy at the LGH, conducted by Dr. Bourdon;
49. Many Class Members received a R-1A notification letter from the LGH and/or learned about the colonoscopy recall following the LGH's September 12, 2012 press conference;
50. Each Class Member and the Petitioner has and will suffer stress, fear and anxiety after receiving the notification letter (if they even received it all), or after otherwise learning of the colonoscopy recall;
51. Each of the Class Members reasonably feared that they could have colon cancer which could have been caught earlier (and perhaps even caught in time to be prevented);

52. Most if not all of the Class Members had (or will have) to undergo a further painful and/or very uncomfortable colonoscopy, which in and of itself is an inconvenience and entails a loss of time and money, including without limitation lost wages, parking costs, gas costs, as well as the costs for the medications and/or products required to be taken or administered prior to the recall colonoscopy itself;
53. Certain Class Members, such as the Petitioner, already developed colon cancer and have (or already had) to undergo surgery and/or other treatments, the whole as also confirmed by the LGH in its June 20, 2013 public statement (R-8);
54. Finally, the undersigned attorneys have been contacted by many Class Members in this case, some of which have provided their detailed stories by e-mail, letter or submission on the undersigned attorneys' website, copies of said submissions being filed herewith as **Exhibit R-9 en liasse**, as though recited at length herein;
55. These Exhibit R-9 submissions by Class Members further evidence the types and/or extent of damages suffered by Class Members in this case and Petitioner is justified to rely on *inter alia* these submissions in order further support his *prima facie* burden of demonstration herein;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

56. The composition of the Group makes the application of Article 59 or 67 C.C.P. impractical for the following reasons:
 - a) the over 684 Class Members are likely scattered across the City of Montreal, and possibly other cities;
 - b) the Class Members cannot be reached by the Petitioner or his attorneys since only the Respondents have the list of the Class Members;
 - c) all the facts alleged in the preceding paragraphs make the application of Articles 59 or 67 C.C.P. impossible;

57. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents negligently conduct improper or incomplete colonoscopies of the Class members before the September 12, 2012 press conference?
 - b) Where Respondents negligent in the manner in which they reviewed or controlled the colonoscopy files and/or the manner and delays in which they notified the Class Members?
 - c) Are Respondents liable to pay compensatory damages to the Class Members, and if so in which amounts?
 - d) Are Respondents liable to pay moral damages to the Class Members, and if so in which amounts?
 - e) Are Respondents liable to pay punitive or exemplary damages to the Class Members, and if so in which amounts?
58. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

59. The action that Petitioner wishes to institute for the benefit of the Class Members is an action in damages for negligence and medical malpractice;
60. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants solidarily to pay to the Class Members compensatory damages in an amount to be determined by the Court;

CONDEMN Defendants solidarily to pay to the Class Members moral damages in an amount to be determined by the Court;

CONDEMN Defendants solidarily to pay an amount in punitive / exemplary damages to the Class Members, in an amount to be determined by the Court;

GRANT the class action of Petitioner on behalf of all the Class Members;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternatively by individual liquidation, the whole in accordance with Articles 1031 and following of the C.P.C.;

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

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

61. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) the LGH is located in the judicial District of the Montreal and Dr. Bourdon practices in the judicial District of Montreal;
 - b) the colonoscopies in question were all conducted at the LGH, in judicial District of Montreal;
 - c) most if not all of the Class Members reside in the judicial District of Montreal;
 - d) the undersigned attorneys representing the Petitioner and the proposed Group, and the attorneys for the Respondents, practice law in the judicial District of Montreal;
62. Petitioner who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the group for the following reason:
- a) He underwent a colonoscopy at the LGH, conducted by Dr. Bourdon, in or about February 2010 and he received the R-1A notification letter informing him of the botched colonoscopies;

b) Following receipt of the R-1A notification letter, he underwent a second colonoscopy;

c) He was diagnosed with colon cancer and underwent surgery, chemotherapy and rehabilitation;

d) He was interviewed by the Montreal Gazette in September 2012 (Exhibit R-4), the whole in order to further inform Class Members of the issues surrounding the LGH's colonoscopy recall;

e) He has already and will continue to suffer anxiety, inconvenience, stress, loss of time, and out-of-pocket expenses as a result thereof;

f) He understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interest of the Members of the Group;

g) He is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard and Petitioner is ready and available to manage and direct the present action in the interest of the Members of the Group that Petitioner wishes to represent;

h) Petitioner is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;

i) His interests are not antagonistic to those of other members of the group;

j) He has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;

k) He, with the assistance of the undersigned attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

63. 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 for negligence and medical malpractice;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

All persons (including their estates, successors, spouse or partner, child, grandchild, parent, grandparent and sibling), who underwent a colonoscopy performed by Dr. Gilles Bourdon at the Lakeshore General Hospital (hereinafter the "LGH") and who were not alerted at the time to any issues or conditions requiring further testing or treatment, excluded are those persons who, between the time of the said colonoscopy performed by Dr. Bourdon and the LGH's September 12, 2012 news conference which announced the recall of all colonoscopy patients of Dr. Bourdon, underwent another colonoscopy performed by a different doctor who also did not alert the patient to any issues or conditions requiring further testing or treatment, or any other Group or Sub-Groups 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 conduct improper or incomplete colonoscopies of the Class members before the September 12, 2012 press conference?
- b) Where Respondents negligent in the manner in which they reviewed or controlled the colonoscopy files and/or the manner and delays in which they notified the Class Members?
- c) Are Respondents liable to pay compensatory damages to the Class Members, and if so in which amounts?
- d) Are Respondents liable to pay moral damages to the Class Members, and if so in which amounts?

e) Are Respondents liable to pay punitive or exemplary damages to the Class Members, and if so in which amounts?

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

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants solidarily to pay to the Class Members compensatory damages in an amount to be determined by the Court;

CONDEMN Defendants solidarily to pay to the Class Members moral damages in an amount to be determined by the Court;

CONDEMN Defendants solidarily to pay an amount in punitive / exemplary damages to the Class Members, in an amount to be determined by the Court;

GRANT the class action of Petitioner on behalf of all the Class Members;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternatively by individual liquidation, the whole in accordance with Articles 1031 and following of the C.P.C.;

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

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all members of the group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

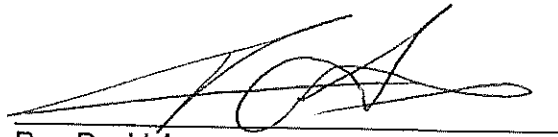
FIX the delay of exclusion at 30 days from the date of the publication of the notice to the members;

ORDER the publication of a notice to the members of the Group in accordance with Article 1006 C.C.P. and convene the parties to a subsequent hearing in this regard;

THE WHOLE with costs against the Respondents on the present motion, including the costs related to preparation and publication of the notices to class members.

MONTREAL, SEPTEMBER 9, 2013

LEX GROUP INC.

A handwritten signature in black ink, appearing to read 'DAVID ASSOR', is written over a horizontal line.

Per: David Assor
Attorneys for Petitioner