

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE) THURSDAY, THE 23 DAY
PERELL) OF MARCH, 2015

BETWEEN:

**SANDRA LUNDY, DAVID CARMICHAEL,
ALLISON KACZMAREK and MARC COUROUX**

Plaintiffs

and

VIA RAIL CANADA INC. and CANADIAN NATIONAL RAILWAY COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS JUDGMENT arises from a motion heard March 12, 2015, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, in the presence of counsel for all parties, judgment having been reserved until this day.

UPON READING the pleadings, the certification order and the fresh as amended statement of defence of the defendants, amended April 29, 2013, and the admissions of the defendants therein, the facts and motion records on the motion, and upon the defendants having paid the costs that were finally assessed by this court in its reasons for decision dated June 1, 2015, and on hearing the submissions of counsel.

1. **THIS COURT ORDERS AND ADJUDGES** that judgment shall be awarded to the class on the common issues, as answered below.



2. **THIS COURT ORDERS AND ADJUDGES** that the class shall be defined as the following persons:
 - a) all persons who were passengers on VIA Train 92 on February 26, 2012 when it was derailed near Burlington, Ontario, excluding VIA's employees and CN's employees (the "Class"); and
 - b) the living partners, spouses, children, grandchildren, parents, grandparents or siblings of a Class Member, or where such family member has died, the personal representative of the estate of the deceased family member (the "Family Class").
3. **THIS COURT ADJUDGES** that the claims asserted by the class were for (i) negligence, and (ii) breach of contract.
4. **THIS COURT ADJUDGES** that the defendants admitted common issues 1, 2, 3 and 5.
5. **THIS COURT ORDERS AND ADJUDGES** that the common issues, as contained in the certification order, dated October 1, 2012, shall be answered as follows:
 - a. **Common Issue 1:** the defendants owed a duty of care to the class members when VIA Train 92 derailed on February 26, 2012;
 - b. **Common Issue 2:** the defendants breached the standard of care owed to the class members;
 - c. **Common Issue 3:** the defendants breached the contract with the class members when VIA Rail Train 92 derailed on February 26, 2012;

- d. **Common Issue 4:** the determination of individual issues shall be subject to an individual issues litigation plan and further order of this Court; and
 - e. **Common Issue 5:** the defendants are liable to pay prejudgment and post judgment interest on compensatory damages proved at rates to be agreed upon or determined under the *Courts of Justice Act*.
6. **THIS COURT ORDERS AND ADJUDGES** that individual hearings shall be held to determine the individual damages owing to the class members, if any, along with the applicable prejudgment and post judgment interest, if any, subject to further order of this Court and approval of an individual issues litigation plan.
7. **THIS COURT ORDERS** that notice shall be provided to the class of this judgment and the process by which individual issues shall be resolved. The process of distribution of the notice shall be by regular post to the last known address of each class member, or by email (the "Notice"). The content of such Notices shall be determined by further order of this Court.

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LE / DANS LE REGISTRE NO.:

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AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:



PERELL J.



DAVID CARMICHAEL

Plaintiff

and

VIA RAIL CANADA INC. and
CANADIAN NATIONAL RAILWAY COMPANY
Defendants

Court File No: CV-12-447653-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

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