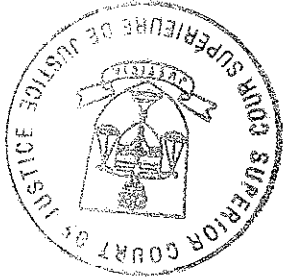


Court File No.:

CV-12-447414
OCCP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN



SANDRA LUNDY

Plaintiff

and

VIA RAIL CANADA INC. and CANADIAN NATIONAL RAILWAY COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

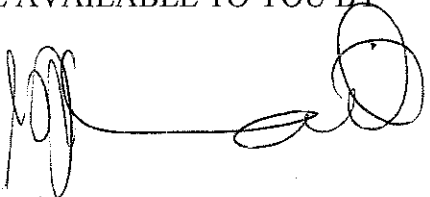
If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: February 28, 2012

Issued by:


Registrar

S. Chandradat
Registrar

Address of Court Office:

393 University Ave. - 10th Fl
Toronto, Ontario
M5G 1E6

TO:
VIA RAIL CANADA INC.
2 Place Ville-Marie
Montreal, Quebec
H3B 2C9

AND TO:
CANADIAN NATIONAL RAILWAY
COMPANY
277 Front Street West
Toronto, Ontario
M5V 2X7

CLAIM

DEFINED TERMS

1. The following terms and definitions apply throughout this notice of action:

- (a) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (b) “**Class**” and “**Class Members**” means all persons who were passengers on **Via Train 92** on February 26, 2012, and their family members within the meaning of the *FLA*, which departed from Niagara Falls, Ontario, en route to Toronto, Ontario, when it left the tracks at approximately 3:30 p.m. near Burlington, Ontario;
- (c) “**CN**” means Canadian National Railway Company;
- (d) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (e) “**Excluded Persons**” means employees of **Via** or **CN** who were passengers on **Train 92**;
- (f) “**FLA**” means *Family Law Act*, R.S.O. 1990 c.F.3;
- (g) “**Sandra**” means Sandra Lundy;
- (h) “**Train 92**” means **Via** train #92, which departed from Niagara Falls, Ontario, at or about 2:06 p.m. on February 26, 2012, en route to Toronto, Ontario, and left the tracks at approximately 3:30 p.m. near Burlington, Ontario; and
- (i) “**Via**” means Via Rail Canada Inc..

RELIEF CLAIMED

2. Sandra claims on her own behalf and on behalf of the other Class Members:

- (a) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing her as the representative plaintiff of the Class;
- (b) a declaration that the defendants were negligent and are liable in damages;

- (c) a declaration that Via was in breach of contract and is liable in damages;
- (d) general damages in the amount of \$10 million for negligence and breach of contract, or such other sum as this court finds appropriate at the trial of the common issues;
- (e) prejudgment interest and postjudgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;
- (f) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, the costs of distribution of an award under s. 24 or 25 of the *CPA*, including the costs of notice associated with the distribution and the fees payable to a person administering the distribution pursuant to s. 26(9) of the *CPA*;
- (g) an order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues; and
- (h) such further and other relief as to this Honourable Court seems just.

3. Sandra resides in the City of Niagara Falls. On February 26, 2012, Sandra was a passenger aboard Via Train 92 when it left the tracks at approximately 3:30 p.m near Burlington, Ontario.

4. Via is a Canadian corporation, with its head office in Montreal, Quebec, which carries on business in Ontario. At all material times, Via was the owner and operator of Train 92. Via is vicariously responsible for the acts and omissions of its employees.

5. CN is a Canadian corporation which carries on business in Ontario. At all material times, CN was the owner and operator of the track upon which Train 92 was travelling at the time of the derailment and as such was responsible for the maintenance of and the proper operation of the track and the switching devices.

6. Train 92 departed from Niagara Falls at or about 2:06 p.m. on Sunday, February 26, 2012, destined for Toronto.

7. In or about the City of Burlington, Train 92 switched abruptly from the track and collided with a building, causing all six passenger cars to leave the rails.

8. As a result of the derailment, Sandra and the other Class Members suffered injury and damages.

9. The plaintiff pleads that the defendants were negligent and that Via Rail was in breach of its contract with each Class Member. CN was in law responsible for the acts and omissions of its employees and agents, including those responsible for the operation of the switches in Burlington.

10. The plaintiff pleads that by virtue of the defendants' negligence and breach of contract, the defendants, or either of them are liable in damages to them and to the Class Members and their family members.

11. The plaintiff pleads and relies on the *CJA*, *CPA* and *FLA*.

12. The plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario.

February 28, 2012

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Lawyers for the plaintiff

#981763

(Short Title of Proceedings)

Sandra Lundy v. Via Rail Canada Inc. et al

Court File No CV-12-447414

CCP

SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

Notice of Action

(Name, Address & Telephone No.
of Solicitor or Party)

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