

CANADA

(Class Action)  
SUPERIOR COURT

PROVINCE OF QUEBEC  
DISTRICT OF TERREBONNE  
NO: 700-06-000006-116

nouveau numéro

500-06-000640-132

LYDIA KENNEDY [REDACTED]

Petitioner;

V./

COLACEM CANADA INC. [REDACTED]

Defendant;

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE**  
**(Articles 1002 CCP and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF TERREBONNE, YOUR PETITIONER STATES AS FOLLOWS :**

**General presentation**

1. The Petitioner wishes to institute a class action on behalf of the following group, of which she is a member (the "Group"):

All natural persons who, in the three (3) years prior to the filing of this Motion for Authorization, resided or operated a business in either Grenville-sur-la-Rouge OR Harrington, Quebec AND within a five (5) kilometre radius of the Colacem cement and

concrete production plant (the "Plant"), located on Kilmar Road in Grenville-sur-la-Rouge, Quebec.

2. Colacem Canada Inc. ("Colacem") is a private company with a head office in Laval, Quebec. Colacem operates a cement and concrete production plant on Kilmar Road, in Grenville-sur-la-Rouge, Quebec.
3. From the time that it began operating the Plant, in or around May 2007, Colacem has caused nuisance to its neighbours in Grenville-sur-la-Rouge and Harrington, Quebec. That nuisance has taken the form of significant dust emissions, noise, odours, dirt, pollution and excessive truck traffic to and from the Plant.
4. In addition, the operations of the Plant pose health and safety risks to the Members of the Group.
5. The Petitioner seeks damages, including future damages, for nuisance and for the losses that she and other Members of the Group have suffered as a result of the operations of Colacem beginning in or about May 2007 and continuing to the date of this Motion for Authorization. Such losses include but are not limited to property damage and diminution of property values.

### **The Petitioner**

6. The Petitioner Lydia Kennedy is a resident of Grenville-sur-la-Rouge, Quebec and has suffered damages as a result of the ongoing operations of the Defendant Colacem.
7. Ms. Kennedy moved to Grenville-sur-la-Rouge with her family in 1982. Her home, located on a crescent bordering Grenville Lake, is located less than 1km north of Colacem's plant.
8. As a result of Colacem's operations, Ms. Kennedy has suffered and continues to suffer from excessive neighbourhood annoyances, including but not limited to dust, noise and odours.

9. Ms. Kennedy's home is frequently affected by particulates of dust and other pollutants emanating from the Colacem plant. The dust has negatively impacted Ms. Kennedy's quality of life and the enjoyment of her property, often driving her and her family indoors and forcing them to keep windows closed, even during the summer. Ms. Kennedy's garden is covered with dust and she is unable to hang her laundry out to dry, as she would otherwise do.
10. As a result of the ongoing emissions from Colacem, Ms. Kennedy has become concerned about the negative effects on the environment that surrounds her property. She is also fearful for her health; among other things, the dust aggravates her asthma.
11. The loud and frequent noise from the Plant and from the transport trucks also causes neighbourhood annoyances to Ms. Kennedy. She hears the heavy truck traffic from her home, including the beeping noise of the trucks backing up at the Plant.
12. Ms. Kennedy is disturbed by chemical odours emanating from the Plant. The odours are generally strongest in the morning.
13. Finally, Ms. Kennedy has suffered property damages in excess of \$30,000 as a result of Colacem's significant dust emissions. The dust emanating from Colacem sticks to surfaces and is difficult to remove, causing considerable damage over time. In particular, Ms. Kennedy has sustained the following damage to her property:
  - i. **Windows:** cannot simply be wiped clean with water; a vinegar solution is required to remove the dust. Several windows are damaged and require replacement.
  - ii. **Shingles:** coated in dust and damaged.
  - iii. **Pick-up Truck:** the windows must be scrubbed with vinegar every morning; the body paint has worn away and become pitted in certain spots.

- iv. **Deck:** coated in dust and damaged.
- v. **Patio table, chairs and BBQ:** coated in dust, resulting in a gritty, sandpaper-like surface texture.
- vi. **Boat:** body paint and interior carpet have been damaged.
- vii. **Lawn tractor:** body paint and seat are damaged.
- viii. **4-wheeler:** body paint is damaged.

### **The Defendant**

- 14. Colacem is a private company established in May 2007 pursuant to the *Canada Business Corporations Act*, RSC 1985, c. C-44. Colacem has a head office in Laval, Quebec and is a subsidiary of an Italian company, Colacem Canada S.p.A.
- 15. Colacem operates a large cement and concrete production plant at 1235 Kilmar Road, in the municipality of Grenville-sur-la-Rouge, Quebec (the "Site"). The Plant is serviced by more than a dozen trucking companies, including the Bertrand trucking company that is owned by Colacem. Trucks carrying shipments to and from the Plant on Kilmar Road travel through the municipalities of Harrington and Grenville-sur-la-Rouge.

### **History of the Site**

- 16. From approximately 1907 to 1992, an active mine operated by Canadian Refractories Limited ("CRL") was located at the Site. In addition to the mine, CRL operated a oil-fired kiln during that time. After CRL ceased operations, the Site remained vacant until sold to a company named Ciment Cemco Inc. ("Cemco") in 2004.
- 17. Cemco operated the mine for a number of years, during which several complaints relating to dust emissions were received by the company. Cemco settled the claims of certain residents in or around April 2007.

18. Cemco sold the Site to Colacem in or around May 2007.

### **Colacem's Continued Failure to Prevent Dust Emissions**

19. Since at least October 2007, Colacem has caused significant dust emissions to escape into the surrounding area. Those dust emissions are ongoing.
20. Piles of uncovered coal are located at the Site, where Colacem currently operates a coal-fired cement kiln, **[photographs of the Site are attached hereto as P-1, P-2 and P-3]**.
21. In February 2009, it was reported that Colacem's neighbours were concerned about "black snow" in their communities. In an article written by *The Review* entitled "Residents worried about black snow" **[P-4 hereto]**, the mayor of Grenville-sur-la-Rouge confirmed that there was a problem with dark smoke emanating from the Colacem Plant:

Residents living about one kilometre away from a cement manufacturer on the Kilmar Road said they are concerned about what's coming out of the plant's chimneys.

[...]

On Thursday, February 12, snow at Grenville Lake that was away from dirty roads was covered in a black substance. Further down the mountain, snow in fields remained white.

[...]

Allan Young, who lives on Concession 10 and once worked at the cement manufacturer under its previous owners, said he is concerned for his health and the health of his neighbours.

"It's just terrible here," he said. "The snow is all black. The cedar trees have a grey coating. It's got to be toxic to some point, because they burn coal."

*Grenville-sur-la-Rouge Mayor Gary Cowan said Colacem does burn coal and said when he traveled to Grenville Lake on Saturday, he noticed a lot of dark smoke coming from the chimney.*

*"There's quite a discharge of soot and coal," Cowan said.*

*Colacem General Manager Moreno Capolli said the company has been performing maintenance on the chimney, and also on the dust collector, which allegedly malfunctioned recently.*

Young criticized the plant for not shutting down during maintenance, which he said should be normal practice, as he said it appeared to remain operational.

[emphasis added]

22. Colacem has consistently blamed malfunctioning dust collectors for the ongoing dust emissions affecting the environment and nearby residents. For instance, in *The Review's* August 17, 2009 article entitled "Lawsuit threatened against cement plant" [P-5 hereto], an inspector for Quebec's Ministère du Développement durable, de l'Environnement et des Parcs ("MDDEP"), confirmed that Colacem's dust collectors had already failed twice that year:

Pierre Henri, an inspector for Quebec's ministry of parks and environment, said he inspected the Colacem cement factory on July 31.

Henri said the plant's dust collectors - a series of fabric filters resembling socks - were found to be *faulty for the second time this year.*

*While repairs had been made after a series of complaints in February, Henri said the repairs apparently did not last.*

Now the provincial government has told the company it needs to find a permanent solution.

"We determined there was a function that was not adequate with the dust catcher, there were a few problems with it. The company should be sending us information soon to attest this has been repaired," Henri said.

[emphasis added]

23. In or around August 2009, Colacem admitted that the plant was sending dust into the neighbourhood in recent months. In *The Review's* "Cement plant: dust isn't dangerous," [P-6 hereto], it was reported that Colacem vowed to fix the problem by the fall, by installing a new dust filtration system:

*The Colacem cement factory is preparing to install an entirely new dust filtration system, which might cost more than \$300,000.*

*Company representatives admit the plant has been producing rock dust lately and sending it into the neighbourhood.*

However, the company says it has done everything in its power to reduce the dust and says the powder is non-toxic.

*They promise a complete and permanent end to the dust problem by fall.*

On August 31, plant manager Maxime Leduc visited the Review's offices.

He was accompanied by Guillaume Rocher, who has been retained as legal counsel by Colacem.

While both men agreed *the dust could be "inconvenient" for residents*, they argued the company was not responsible for any damages.

*The company representatives also argued the dust was not a health risk, even calling it "all natural," because it is made of minerals and no worse than the dust lifted by cars on a dirt road.*

[emphasis added]

24. In that same article, plant manager Maxime Leduc admitted that, despite the continuous problems with the filtration system and the ongoing dust emissions, Colcaem did *not* stop production:

Leduc says that Colacem slowed production to reduce dust — he estimates the difference as "going from 50 to 30," — but *did not stop production due to the financial loss it would cause.*

He said the problem was fixed in February, but the dust problem resurfaced again in the summer.

"If our customers cannot get their product with us, they will go elsewhere," Leduc said. "And you have to understand even a hole the size of a pencil in one of our hundreds of filters can cause dust to escape."

He added that Colacem has planted 5,000 trees in the region to act as a natural barrier and offset the dust.

### **Within guidelines**

Colacem has been making industrial quantities of cement since 2007 in Grenville-sur-la-Rouge, in the former site of a brick factory.

[...]

*In February of this year the company received a letter from the municipality informing it of citizen complaints, and Leduc said this has been heard.*

But he argued, the company needs more time.

"At all times we have been within the provincial guidelines. But our company's position is not that we have to respect the guidelines and stop there — we are ready to invest in the plant to have it perform. *This is not a patch, we will fix this for good,*" Leduc said.

[emphasis added]

25. In February 2010, the mayor of Grenville-sur-la-Rouge announced that a committee had been formed in order to address "ongoing dust pollution from the Colacem cement plant." The problems caused by Colacem were reported in an article from *The Review* entitled "Beleaguered municipality forms pollution and revitalization committees" **[P-7 hereto]**:

Mayor Jean-Marc Fillion informed residents that the Colacem committee [...] recently met with the head of the region's health department to discuss the health risks of the pollution. To their surprise, Fillion noted, the official was not aware of the cement plant's existence.

Furthermore, the mayor said, the provincial environment ministry does not conduct independent investigations of a plant's emissions; rather, it relies on the company to submit its own reports.

[...]

*In an interview after the meeting, Fillion said the Colacem cement plant is both a problem for the Kilmar Road, as the transport trucks are its principal users, and for nearby residents, through the emission of pollutant dust.*

*"This dust is very bad for the cars, for the paint, and it's sticky - it doesn't wash off," he began. "But what [people] don't see is that when you burn coal and make cement, there are particles in the air that are very dangerous for*



*the lungs. We have to convince [Colacem] to stop this pollution and to do something for the road. It has to be done."*

When asked what he meant, the mayor stated: "We'll get them to pay for it. They will need convincing but we will make headway.

"I am preparing myself to meet Colacem."

[...]

*In the post-meeting interview, Fillion also said the installation of new filters at the Colacem plant last spring was something that should have been done "years ago."*

He reiterated his demand for the environment ministry to independently monitor Colacem's emissions, rather than use the company's submitted data: "The government should hire a consultant; *we don't know how much they are emitting and it worries me. They have to stop. They will have to do something.*

"The environment ministry has never closed an industry plant because of jobs. I can understand we need jobs - I'm a businessman - but we have to do something for residents. They need help to do something for themselves, and I will help them.

*"It doesn't make sense for them to live in this condition. They have worked hard all their lives and they should have a clean environment."*

"*We have to do something,*" he repeated.

[emphasis added]

## **MDDEP Intervention**

26. The MDDEP began to receive complaints from citizens adversely affected by Colacem's operations as early as October 2007.
27. MDDEP Inspection Reports from February 23, 2009, July 31, 2009, March 3, 2010, April 28, 2010 and November 3, 2010 **[P-8, P-9, P-10, P-11 and P-12 hereto]** confirmed the following:
  - i. Colacem's filters were not working at optimal levels;
  - ii. a number of filter bags were broken;

- iii. significant amounts of dust had escaped;
  - iv. there were many sources of dust emissions at the Site; and
  - v. Kilmar Road, particularly at the entrance to the Site, was in very poor condition and was an important source of dust emissions in the area.
28. Colacem received four infraction notices from the MDDEP, on the following dates : March 17, 2009, August 6, 2009, March 22, 2010 and May 17, 2010 [**P-13, P-14, P-15 and P-16 hereto**]. The infractions were issued in connection with Colacem's:
- i. failure to notify the MDDEP of the accidental presence of a contaminant in the environment, contrary to s. 21 of the *Environment Quality Act*, RSQ, chapter Q-2 ("*EQA*");
  - ii. failure to operate equipment in an optimal manner during production hours, contrary to s. 12 of the *Regulation respecting the application of the Environment Quality Act*, c. Q-2, r. 3;
  - iii. unauthorized use of a dangerous material that is likely to release contaminants into the environment, contrary to s. 22 of the *EQA*; and
  - iv. release of a contaminant (particulate matter) that is likely to endanger the welfare of human beings and to cause damage to or otherwise impair the quality of vegetation and wildlife, contrary to s. 20 of the *EQA*.
29. On or about November 8, 2010, permission to install yet another dust filter was granted to Colacem by the MDDEP [**P-17 hereto**].
30. Despite the intervention from the MDDEP and despite the promises made by Colacem, the dust emissions continue.

### **Nuisance Caused to Members of the Group**

31. The Petitioner and Members of the Group have suffered neighbourhood annoyances beyond the limit of tolerance, contrary to article 976 of the *Civil Code of Québec*, SQ 1991, c. 64 ("*CCQ*").

### **Affected Area**

32. To the Petitioner's knowledge, there are at least 60 homes negatively impacted by the ongoing operations of Colacem. These homes, situated in two bordering municipalities (Grenville-sur-la-Rouge and Harrington), are located within approximately a 5 km radius of the Site. **[For illustration purposes only, and subject to any future expert reports/analyses, an approximate map of the area affected by Colacem is attached hereto as P-18.]**
33. Grenville-sur-la-Rouge is a municipality with a population of approximately 2,700.
34. Harrington is a municipality with a population of approximately 774.

### **Dust Emissions, Noise and Odours from Colacem's Plant**

35. The dust emitted by Colacem has ruined gardens, stained vehicles, windows and the siding on homes of the residents in this area. The dust has also destroyed shingled roofing as well as tin roofing. **[Photographs of property damage are attached hereto as P-19, P-20, P-21, P-22 and P-23.]**
36. Members of the Group are required to scrape car windshields and windows clean with vinegar and razor blades. Water, Windex, and other common solutions are ineffective against Colacem's dust.
37. Members of the Group experience a mist of black powder on their properties and report black snow in the winter months.
38. The dust adheres to trees and falls into the lakes bordering the homes of certain Members of the Group.
39. Members of the Group frequently keep their windows closed and avoid sitting outside. The dust aggravates respiratory conditions and causes sore throats among Members of the Group.

40. Members of the Group, including but not limited to those residing on the 10<sup>th</sup> Concession, wear face masks outside when tending to their lawns, due to the presence of the dust from Colacem.
41. Members of the Group are concerned about the quality of the air, as well as the quality of fruits and vegetables from their gardens.
42. The quality of well-water is also a concern for Members of the Group.
43. In addition to the dust emissions, Colacem's neighbours are suffering nuisance relating to noise and odours emanating from the Site.

#### **Release of Toxins and Air Pollutants**

44. Colacem submits data regarding its emissions to the Government of Canada via the National Pollutant Release Inventory ("NPRI"). The NPRI is a federally-legislated and publicly-accessible inventory of pollutant releases. Colacem is required to report to the NPRI annually. The self-reported data does not appear to be subject to any independent verification.
45. Colacem is required to report the release of contaminants if they rise above specific NPRI thresholds, which are based on the quantity of contaminants released into the air, not the quantity manufactured, processed or used.
46. NPRI data for the years 2007, 2008 and 2009<sup>1</sup> shows that Colacem released 209 tonnes of sulphur dioxide (SO<sub>2</sub>), 488 tonnes of carbon monoxide (CO), 1452 tonnes of nitrogen oxide (NO<sub>2</sub>) and 293 tonnes of particulate matter (PM), 43 tonnes of which was PM<sub>10</sub> (particulate matter smaller than 10 micrometres<sup>2</sup>) and 25 tonnes of which was PM<sub>2.5</sub> (particulate matter smaller than 2.5 micrometres).

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<sup>1</sup> To date, Colacem has failed to report to the NPRI for the year 2010.

<sup>2</sup> 1 micrometre is equivalent to 0.001 millimetres.

47. The following chart outlines Colacem's annual release of contaminants and the corresponding NPRI threshold for reporting purposes, expressed in tonnes:

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>NPRI threshold</b>
<b>SO2</b>	39	41	129	20
<b>CO</b>	89	267	132	20
<b>NO2</b>	574	544	334	20
<b>TPM (total particulate matter)</b>	94	96	103	20
<b>PM10</b>	22	9	12	0.5
<b>PM2.5</b>	12	5	8	0.3

48. The PM released by Colacem is considered part of its "On-Site Releases" according to the NPRI data. Colacem's PM releases are attributable to both "Releases to Air" and to "Road Dust". The following chart represents the TPM attributable to both Colacem's air emissions and road dust (expressed in tonnes) for the years 2007, 2008 and 2009.

	<b>2007</b>	<b>2008</b>	<b>2009</b>
<b>Releases to Air</b>	27	11	16
<b>Road Dust</b>	67	85	87
<b>TPM</b>	94	96	103

49. All of the contaminants released and reported by Colacem have negative impacts on human health and the environment. For instance, SO2 is a major air pollutant with significant health risks, including respiratory illness. SO2 can lead to acid rain formation. NO2 is also a significant air pollutant that can contribute to acid rain. For its part, CO2 is a highly toxic gas with known risks to human health.
50. Finally, increased levels of airborne PM have been linked to health risks, such as heart disease, lung cancer and respiratory problems.

51. Since it began operating in or around May 2007, Colacem has emitted contaminants, including but not limited to those described above. The contaminants pose a risk to the health and well-being of Members of the Group.
52. There are no other industries operating within 5 kilometres of Colacem.

### **Heavy Truck Traffic**

53. The transport trucks servicing Colacem's cement plant generally access the area via two major highways: Highway #327 to the Northeast of the Plant or Highway #148 to the South.
54. Trucks exiting Highway #327 generally travel west on Harrington Road, through the municipality of Harrington, as a short-cut to the Plant. Harrington Road is a narrow two-lane rural road without shoulders. **[See photographs attached hereto as P-24, P-25, P-26, P-27, P-28 and P-29.]**
55. Once on Harrington Road, the trucks then proceed south on Kilmar Road en route to Colacem.
56. Alternatively, trucks exiting Highway #148 turn north onto Kilmar Road on their way to Colacem. Kilmar Road, like Harrington Road, is a 2-lane winding road that has suffered serious damage as a result of the heavy trucks travelling to and from the Plant.
57. Recently, the municipality of Grenville-sur-la-Rouge developed a plan to carry out improvements on a section of Kilmar Road. The plan was described in *The Review's* May 11, 2011 article entitled "Council outlines \$2.3-million spending on Kilmar Road" **[P-30 hereto]:**

*The plan covers about five kilometres of Kilmar Road, half of which is located in front of the Colacem cement plant. Work is expected to begin this August and be finished by the end of the construction season.*

*Mayor John Saywell said the municipality is planning to ask the owners of the Colacem cement plant to repair its 2.5-kilometre portion of the repairs, namely between Lac Grenville and Concession 10 Road. The municipality's position is that the heavy-industrial company's trucks are also responsible for the current condition of the road.*

*"We hope they will do it," Saywell told residents, adding the municipality could resort to leaving that portion untouched during the repair. "By leaving a space in front of Colacem, it becomes obvious that it's them, and it leaves them in a position to get it done."*

[emphasis added]

58. Members of the Group residing or operating a business on the truck route experience neighbourhood annoyances by reason of the volume of large transport trucks passing through their communities. The trucks, which often number 100 per day, come within 10 to 25 feet of many homes.
59. The truck traffic is heaviest between the months of April and December, with the months of October and November being extremely heavy. Generally speaking, the truck traffic begins at 5 a.m. and continues throughout the day until 7 or 8 p.m. At certain times throughout the month, the trucks run 24 hours per day, including weekends, for up to a week in duration.
60. Frequent accidents involving these transport trucks, particularly on Harrington Road, are reported by Members of the Group.
61. Members of the Group routinely suffer sleep disturbances due to the noise created by the trucks.
62. Members of the Group face risks to their health and safety by reason of the size of the trucks, the proximity of the trucks to their homes, the frequency of accidents involving the trucks, and the dust and fumes emanating from the truck traffic.
63. The increased truck traffic creates air pollutants including but not limited to PM2.5 and PM10.

64. Finally, Members of the Group on Harrington Road are no longer able to receive mail directly to their homes due to safety concerns cited by Canada Post [**P-31 hereto**].
65. Colacem, through its contractors and/or agents, including but not limited to the Bertrand company owned by Colacem, has caused nuisance to Class Members as a result of the excessive truck traffic in the municipalities of Harrington and Grenville-sur-la-Rouge.
66. But for Colacem's presence and ongoing operations on Kilmar Road, Members of the Group would not be suffering from the disturbances related to the Plant's truck traffic.

#### **Property Damage**

67. As particularized herein, the Petitioner and Members of the Group have suffered property damage as a result of Colacem's operations. Such damage includes but is not limited to: windows, siding, roofing, vehicles, patios, decks and outdoor furniture.

#### **Diminution of Property Values**

68. As a result of the operations of Colacem, Members of the Group have suffered a diminution of property values between 15 and 20%.
69. Members of the Group report significant difficulty in selling their homes. It is not unusual for residents in the affected area to wait 2 or 3 years before finding a buyer for their home, and this, at a considerably reduced price.
70. Both the dust that covers properties and the steady truck traffic discourage potential buyers who are seeking a home in a peaceful and scenic countryside.



## **The Defendant's Negligence**

71. In the alternative, it is alleged that the Defendant was negligent in failing to prevent repeated dust emissions, failing to comply with regulatory standards and in failing to ensure that its agents and/or contractors operate trucks in a safe, reasonable manner, on a suitable route.

### **Dust Emissions**

72. Colacem owed a duty to the Petitioner and to persons and entities similarly situated, at law and under article 1457 of the *CCQ*, to ensure proper functioning of the Plant.

73. The Defendant knew or ought reasonably to have known that a failure to ensure that its dust filtration systems were operating properly would cause harm to residents in the surrounding area.

74. Moreover, the Defendant knew or ought reasonably to have known that the release of contaminants, including but not limited to dust emissions, would result in harm to neighbouring residents and business owners.

75. The reasonable standard of care expected in the circumstances required the Defendant to properly maintain its dust filtration systems, and to suspend operations until problems were resolved, thereby avoiding the release of dust and/or contaminants.

76. The Defendant failed to meet the required standard of care by repeatedly emitting contaminants and/or dust into the environment, and by continuing production when it knew or ought to have known that its dust filtration systems were not operating in an optimal manner – all contrary to regulatory standards.

77. Accordingly, the Defendant has violated its duties to the Petitioner and to persons or entities similarly situated.

78. The negligence of the Defendant has resulted in damage to the Petitioner and to Members of the Group as pleaded herein.

**Dangerous and Excessive Truck Traffic**

79. Colacem owed a duty to the Petitioner and to persons and entities similarly situated, at law and under article 1457 of the *CCQ*, to ensure that the trucks driven by its agents and/or contractors, operate in a safe, reasonable manner on a route that is suitable for the volume of traffic created by the Plant.

80. The Defendant knew or ought reasonably to have known that a failure to ensure that its agents and/or contractors were operating trucks safely and reasonably would cause harm to residents on the truck route, as pleaded herein.

81. The reasonable standard of care expected in the circumstances required the Defendant to ensure that its agents and/or contractors operate the trucks servicing its Plant in a manner that does not jeopardize the health and safety of Members of the Group.

82. The Defendant failed to meet the required standard of care by failing to supervise its agents and/or contractors.

83. Moreover, the Defendant failed to meet the standard of care by failing to require that trucks servicing its Plant follow a specified route that is appropriate for the size and volume of traffic, in all of the circumstances.

84. Accordingly, the Defendant has violated its duties to the Petitioner and to persons or entities similarly situated.

85. The negligence of the Defendant has resulted in damage to the Petitioner and to Members of the Group as pleaded herein.

### **Damages**

86. As a result of the conduct of the Defendant as pleaded, the Petitioner and each Member of the Group has suffered loss and damage as particularized herein.

87. The Petitioner and other Members of the Group are also entitled to recover, as damages or costs, the costs of administering the plan to distribute the recovery in this action.

### **Conditions required to institute a class action**

88. The composition of the group makes the application of articles 59 or 67 C.C.P. impracticable for the following reasons:

- i. Based on an estimated 60 affected homes in the area surrounding the Colacem plant, the number of persons included in the group is estimated to be more than 120;
- ii. The names and addresses of all persons to be included in the group are not known to the Petitioner;
- iii. Given that the class period is 3 years in length and that the group includes current and former residents and business owners, it would be difficult if not impossible to identify and locate all affected persons without the mechanism of a class action;
- iv. All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 *CCP* impossible.

89. The claims of the Members of the Group raise identical, similar or related questions of fact or law, namely:

- i. Is the Defendant liable in nuisance to the Members of the Group?
- ii. Is the Defendant liable in negligence to the Members of the Group?
- iii. What prejudice was sustained by the Petitioner and the Members of the Group as a result of the Defendant's actions or omissions?
- iv. Are Members of the Group entitled to compensatory damages for property damage?
- v. Are Members of the Group entitled to damages for diminution of property values?
- vi. Are Members of the Group entitled to punitive, exemplary and/or moral damages?
- vii. Are Members of the Group entitled to an injunction enjoining the Defendant to respect its duties as a good neighbour, on the basis of either ss. 19.1 and 19.2 of the *EQA* or s. 761 of the *Code of Civil Procedure, RSQ*, chapter C-25 ("CCP")?

90. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

#### **Nature of the action and conclusions sought**

91. The action that the Petitioner wishes to institute for the benefit of the Members of the Group is an action in damages;

92. The conclusions that the Petitioner seeks to introduce by way of a motion to institute proceedings are:

**GRANT** the Petitioner's action against the Defendant;

**CONDEMN** the Defendant to pay to the Members of the Group damages for nuisance;

**CONDEMN** the Defendant to pay to the Members of the Group compensatory damages for all monetary losses;

**CONDEMN** the Defendant to pay to the Members of the Group punitive, exemplary and/or moral damages;

**GRANT** the class action of the Petitioner on behalf of all Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 *CCP*;

**THE WHOLE** with interest and additional indemnity provided for in the *CCQ* and with full costs and expenses including expert's fees and publication fees to provide notice to Members of the Group;

93. The Petitioner suggests that this class action be exercised before the Superior Court in the district of TERREBONNE for the following reasons:

- i. The Petitioner is domiciled in the district of Terrebonne;
- ii. Most of the Members of the Group reside in the district of Terrebonne;
- iii. The Defendant carries out its operations in the district of Terrebonne;

iv. The alleged nuisance occurred, and continues to occur, in the district of Terrebonne.

94. The Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interests of the Members of the Group for the following reasons:

i. The Petitioner understands the nature of the action;

ii. The Petitioner has been in contact with several residents in both Grenville-sur-la-Rouge and Harrington to obtain evidence and personal statements;

iii. The Petitioner has provided counsel with valuable information and evidence;

iv. The Petitioner is available to dedicate the time necessary for an action to collaborate with Members of the Group;

v. The Petitioner's interests are not in conflict with those of other Members of the Group.

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

All natural persons who, in the three (3) years prior to the filing of this Motion for Authorization, resided or operated a business in either Grenville-sur-la-Rouge OR Harrington, Quebec AND within a five (5) kilometre radius of the Colacem cement and concrete production plant (the "Plant"), located on Kilmar Road in Grenville-sur-la-Rouge, Quebec.

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- i. Is the Defendant liable in nuisance to the Members of the Group?
- ii. Is the Defendant liable in negligence to the Members of the Group?
- iii. What prejudice was sustained by the Petitioner and the Members of the Group as a result of the Defendant's acts or omissions?
- iv. Are Members of the Group entitled to compensatory damages for property damage?
- v. Are Members of the Group entitled to damages for diminution of property values?
- vi. Are Members of the Group entitled to punitive, exemplary and/or moral damages?
- vii. Are Members of the Group entitled to an injunction enjoining the Defendant to respect its duties as a good neighbour, on the basis of either ss. 19.1 and 19.2 of the *EQA* or s. 761 of the *CCP*?

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

**GRANT** the Petitioner's action against the Defendant;

**CONDEMN** the Defendant to pay to the Members of the Group damages in the amount of \$10 million or such other sum as this Court finds appropriate for damages related to nuisance;

**CONDEMN** the Defendant to pay to the Members of the Group compensatory damages in the amount of \$10 million or such other sum as this Court finds appropriate for all monetary losses;

**CONDEMN** the Defendant to pay \$5 million, or such other sum as this Court finds appropriate, in punitive, exemplary and/or moral damages;

**GRANT** the class action of the Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Members of the Group in accordance with articles 1037 to 1040 *CCP*;

**THE WHOLE** with interest and additional indemnity provided for in the *CCQ* and with full costs and expenses, including expert's fees and publication fees to provide notice to Members of the Group;

**DECLARE** that all Members of the Group who have not requested their exclusion from the group in the prescribed delay are 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  
Members of the Group;

**ORDER** the publication of a notice to the Members of the Group in accordance with article  
1006 *CCP*;

**THE WHOLE** with costs to follow.

Quebec City June 8, 2011

(s) SISKINDS, DESMEULES

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SISKINDS, DESMEULES, AVOCATS  
(Me Simon Hébert)  
Lawyers for the Petitioner

## **SCHEDULE 1**

### **NOTICE TO DEFENDANT**

Take notice that the plaintiff has filed this action or application in the office of the Superior Court of the judicial district of Terrebonne.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the courthouse of St-Jérôme located at 25, rue de Martigny Ouest, St-Jérôme, Québec, J7Y 4Z1 within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10 day period.

If you file an appearance, the action or application will be presented before the court on July 28, 2011, at 9h00 a.m., in room B104 of the courthouse. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the court may hear the case, unless you have made a written agreement with the plaintiff or the plaintiff's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

These exhibits are available on request.

Quebec City June 8, 2011

(s) SISKINDS, DESMEULES

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SISKINDS, DESMEULES, AVOCATS  
(Me Simon Hébert)  
Lawyers for the Petitioner

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF TERREBONNE  
(Class Action)  
SUI  
NO

700-06-000006-116

28592

LYDIA KENNEDY

Petitioner

v.

COLACEM CANADA INC.

Defendant

MOTION TO AUTHORIZE THE BRINGING  
OF A CLASS ACTION AND TO OBTAIN THE  
STATUS OF REPRESENTATIVE (Articles  
1002 CCP and following)

BB-6852

Casier 15

Mr. Simon Hébert

N/D : 67-099

**SISKINDS, DESMEULES** | ANOMATS  
SENCHL

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