

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
NO: 500-06-000640-132

(Class Action)
SUPERIOR COURT

LYDIA KENNEDY, 


Petitioner

v.

COLACEM CANADA INC., 


Defendant

MOTION INTRODUCTIVE OF CLASS ACTION PROCEEDINGS

**TO THE HONOURABLE JUSTICE DONALD BISSON OF THE QUÉBEC SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, YOUR PETITIONER STATES AS
FOLLOWS:**

The Judgment Authorizing The Class Action And The Class Definition

1. On January 29, 2015, the Honourable Justice Donald Bisson of the Superior Court, authorized the bringing of a class action on behalf of the following Group (the "Group"):

"All natural persons who are residing or have resided full or part time between June 8, 2008 and January 29, 2015 in the following zone : either the municipality of Grenville-sur-la-Rouge or the municipality of Harrington, in Québec, AND within a five (5) kilometre radius of the Colacem Canada Inc. cement production plant, located on Kilmar Road in Grenville-sur-la-Rouge, Québec.

AND

All legal persons who are or have been, between June 8, 2008 and January 29, 2015, owners or lessees of a piece of land, an immovable or a business located in this same zone. To qualify, a legal person must not, between June 8, 2010 and June 8, 2011, have

NOTICE TO DEFENDANT
(Article 119.C.C.P.)

TAKE NOTICE that the Plaintiff has filed this action or Application in the office of the **SUPERIOR COURT** for the Judicial District of **Montréal**.

To file an answer to this Action or Application, you must first file an Appearance, personally or by advocate, at the Courthouse of Montréal, located at 1 Notre-Dame Street East, Montréal, Québec, 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 inquiry of the 10-day period.

If you file an Appearance, the Action or Application will be presented on a day to be determined by the court. On that date the Court may exercise such powers as are necessary to ensure the orderly progress of the proceedings or the Court may hear the case, unless you make a written agreement with the Plaintiffs or the Plaintiffs' advocate on a timetable for the orderly progress of the proceedings. The timetable must be filed in the office of the Court.

In support of the Motion Introductive of Class Action Proceedings, the Petitioner discloses the following Exhibits:-

- EXHIBIT P-1: Colacem Canada Inc.'s information sheet on the Registraire des entreprises du Québec;
- EXHIBIT P-2: Photograph of the Site;
- EXHIBIT P-3: Photograph of the Site;
- EXHIBIT P-4: Article entitled «Residents worried about black snow»;
- EXHIBIT P-5: Article entitled «Lawsuit threatened against cement plant»;
- EXHIBIT P-6: Article entitled «Cement plant: dust isn't dangerous»;
- EXHIBIT P-7: Article entitled «Beleaguered municipality forms pollution and revitalization committees»;
- EXHIBIT P-8: MDDEP Inspection report from February 23, 2009;
- EXHIBIT P-9: MDDEP Inspection report from July 31, 2009;
- EXHIBIT P-10: MDDEP Inspection report from March 3, 2010;
- EXHIBIT P-11: MDDEP Inspection report from April 28, 2010;

had under its direction or control more than 50 persons bound to it by contract and must not be dealing at arm's length with Mrs. Lydia Kennedy, class representative."

2. On February 11, 2015, a copy of the *«Re-Re-Amended Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative (Articles 1002 CCP and following)»* was served on the Attorney General of Québec in accordance with article 19.5 of the *Environment Quality Act* (the "EQA");
3. A copy of the current *«Motion Introductive of Class Action Proceedings»* will also be served on the Attorney General of Québec in accordance with article 19.5 of the EQA;
4. On February 23, 2015, a rectified judgement was rendered in order to correct minor clerical issues with the class definition;
5. The judgement rendered by the Honourable Justice Bisson describes in detail the legal basis and factual allegations of the class action;
6. More precisely, the Court explains the alleged neighbourhood annoyances, the extracontractual fault, the injunction sought and the damages claimed;
7. In regard to neighbourhood annoyances, the Court considers that there is a colour of right relating to dust emissions, noise, truck traffic and odours;
8. As for the Defendant's extracontractual fault, the Court is of the opinion that there is sufficient colour of right relating to dust emissions;
9. In addition, the conclusions seeking an injunction relating to dust emissions, noise, truck traffic, odours, toxins and pollutants were deemed to possess the required colour of right based on Articles 19.1, 19.2 and 19.3 of the EQA;
10. Finally, the Court concluded that there was a colour of right for compensatory and moral damages in the amount of \$15,000,000.00 for the following:
 - Trouble and Inconveniences relating to the neighbourhood annoyances and the extracontractual fault of the Defendant;
 - Material and monetary losses related to the properties, lands, vehicles, windows, siding, patios, outdoor furniture, boats, lawnmowers, all-terrain vehicles and other movable goods located outside;
 - Diminution of property values;
 - Aggravation of existing respiratory diseases and sore throats.
11. The Court determined that the principal questions to be dealt with collectively will be as follows:

1. Are members of the Group affected by one or all of the following annoyances, based on the fact that they are neighbours of the plant operated by Colacem Canada Inc. located on Kilmar Road, in Grenville-sur-la-Rouge, Québec, which are: dust emissions, noise, traffic from trucks belonging to this company or to its agents (frequency of passage, time of passage, speed and proximity to homes) and odours?
2. Can the annoyances suffered by the members of Group be considered as «abnormal and excessive»?
3. Are the « abnormal and excessive » annoyances suffered by all the members of the Group? If not, by whom?
4. Is the company of Colacem Canada Inc. liable for the neighbourhood annoyances identified?
5. Did the company of Colacem Canada Inc. commit an extracontractual fault in regards to the emission of dust?
6. Are members of the Group entitled to compensatory and moral damages due to the acts, omissions and neighbourhood nuisances of the company of Colacem Canada Inc.?
7. Specifically, are the members of the Group entitled to compensatory damages due to the material damages caused to their properties?
8. Specifically, are the members of the Group entitled to damages due to the diminution of the value of their properties?
9. What injuries, in fact, have been suffered by the members of the Group following the acts, omissions and neighbourhood nuisances reproached to Colacem Canada Inc.?
10. Is the company of Colacem Canada Inc. in violation of Articles 19.1, 19.2 and 19.3 of the *Environment Quality Act* by emitting various contaminants in the atmosphere?
11. Do the members of the Group have the right to an injunction ordering the company of Colacem Canada Inc. to respect its obligations as a good neighbour in accordance with Article 976 CcQ, Articles 19.1, 19.2 and 19.3 of the *Environment Quality Act* and/or Article 751 Cpc?

The Notices to members and the opt-out deadline

12. In accordance with the judgement rendered on February 23, 2015, notices to the members of the Group were published in the following four (4) newspapers:
 - La Presse (French publication);
 - L'Argenteuil (regional French publication);
 - The Gazette (English publication);

- The Review (regional English publication).

13. The notices in La Presse and the Gazette were published in the Saturday edition of each newspaper dated March 21, 2015;
14. The notices in L'Argenteuil and The Review were published in the weekly edition of each newspaper dated March 25, 2015;
15. The opt-out deadline was fixed at April 25, 2015 in all the notices published and as of the day of this motion, there have been no members who have requested their exclusion from the class action;

The Petitioner

16. The Petitioner, Lydia Kennedy ("Lydia"), is a long-term resident of the rural municipality of Grenville-sur-la-Rouge, Québec and has suffered damages as a result of the operations of Colacem Canada Inc. ("Colacem");
17. Lydia's family has lived in Grenville-sur-la-Rouge for more than thirty (30) years. The Kennedy home is located along Grenville Lake and is less than one kilometre (1 km) from the Colacem cement plant;
18. As a result of the Colacem's operations, Lydia has, and continues to, be exposed to: noxious odours; noises that are intrusive and irritating; and, particulate matter falling from the air;
19. Lydia's home is frequently impacted by particulate matter being a mixture of solid particles and liquid droplets emanating from Colacem's plant. The continued exposure to the particulate matter has negatively impacted Lydia's quality of life and the use and enjoyment of her property.
20. The particulate matter emitted from the Colacem plant often forces Lydia's family indoors resulting in Lydia and her family becoming prisoners in their own home even during the summer months. Lydia's garden is often covered with particulate matter making it difficult to grow anything, and she is unable to hang her laundry out to dry;
21. As a result of the ongoing emissions from Colacem's plant, Lydia has become concerned about her health; among other things, the particulate matter is known to aggravate her asthma;
22. The loud and frequent noises emanating from the plant and the transport trucks constantly driving in front of her home are pervasive, intrusive and annoying while the other sounds of the area generally are not. Lydia hears the heavy truck traffic from her home, including the beeping noise of the trucks backing up at the plant which predominate and overtake the neighbourhood noise, disrupting Lydia's regular routine;
23. Lydia is regularly disturbed by the pervasive chemical odours emanating from the plant and penetrating the neighbourhood. The odours are generally the most prevalent in the morning hours;

24. Lydia has suffered property damages as a result of the Colacem's emissions of particulate matter. Particulate matter is the term used to describe a mixture of solid particles and liquid droplets found in air and includes particles, such as dust, dirt, soot, or smoke, among others.
25. The particulate matter emanating from the Colacem plant sticks to surfaces making it impossible to remove with normal cleaning, resulting in considerable damage over time. Lydia has sustained the following damage to her property from the particulate matter:
- i. **Windows:** cannot be cleaned with a normal cleaner and a vinegar solution is required to remove the particulate matter. Several windows have been scratched, pitted and damaged from the constant exposure and require replacement.
 - ii. **Shingles:** are coated in particulate matter and damaged.
 - iii. **Pick-up Truck:** the windows require scrubbing every morning with vinegar and the body paint has worn away and become pitted in several areas.
 - iv. **Deck:** coated in particulate matter and damaged.
 - v. **Patio table, chairs and BBQ:** coated in particulate matter, resulting in a gritty, sandpaper-like 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

26. The Defendant, Colacem, is a privately owned company established in May 2007 pursuant to the Canada Business Corporations Act, RSC 1985, c. C-44. Colacem has a head office in Laval, Québec and is a subsidiary of an Italian company, Colacem Canada S.p.A., the whole as appears from the Information sheet on the Registraire des entreprises du Québec, a copy of which is produced herewith as Exhibit P-1;
27. Colacem operates a large cement production plant located at 1235 Kilmar Road, in the Municipality of Grenville-sur-la-Rouge, Québec. The plant is serviced by more than a dozen trucking companies, including the Bertrand trucking company that is owned and operated by Colacem. The trucks carrying shipments to and from the Colacem plant travel through the local municipalities of Harrington and Grenville-sur-la-Rouge;
28. Since it began its operations, in or around May 2007, Colacem's operations has, and continues to, cause several nuisances to its neighbours in Grenville-sur-la-Rouge and Harrington, Québec. These nuisances have taken the form of significant emissions of particulate matter, intrusive noise, offensive

odours, excessive truck traffic, all resulting in the release of toxins and pollutants into the neighbourhoods and impact the use and enjoyment of properties in the area;

History of the Site

29. For eighty-five years between 1907 to 1992, the Colacem site was used as an active magnesite mine operated by Canadian Refractories Limited (“CRL”). CRL also operated an oil-fired kiln during the time it occupied the property. After CRL ceased operations, the site remained vacant until sold to a company named Ciment Cemco Inc. (“Cemco”) in 2004;
30. Cemco operated a cement plant for several years, during which time the residents made several complaints about the ongoing emissions of particulate matter. Cemco settled the claims of certain residents in or around April 2007, one month before selling the company to Colacem in May 2007;

Colacem’s Continued Failure to Prevent the Emission of Particulate Matter

31. Since approximately October 2007, Colacem’s operations have caused significant emissions of particulate matter to escape into the neighbourhoods surrounding the plant, the whole as appears from a photograph taken in October 2010, a copy of which is produced herewith as **Exhibit P-2**;
32. Numerous piles of uncovered coal are situated on the Colacem property where it operates a coal-fired cement kiln, the whole as appears from a photograph taken in October 2010, a copy of which is produced herewith as **Exhibit P-3**;
33. On February 12, 2009, residents in the area of the Colacem plant were concerned about “black snow” falling in their communities. In an article written by *The Review* entitled “Residents worried about black snow”, the Mayor of Grenville-sur-la-Rouge confirmed that there was a problem with dark smoke emanating from Colacem’s plant, the whole as appears from the article, a copy of which is produced herewith as **Exhibit P-4**:

"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]

34. Colacem has blamed malfunctioning dust collectors for the problems associated with the ongoing emissions of particulate matter impacting the nearby residents. In *The Review's* August 17, 2009 article entitled "Lawsuit threatened against cement plant", an inspector for Québec's Ministère du Développement durable, de l'Environnement et des Parcs ("MDDEP"), confirmed that the Colacem's dust collectors already failed at least twice that year, the whole as appears from the article, a copy of which is produced herewith as **Exhibit P-5**:

Pierre Henri, an inspector for Québec'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]

35. On September 4, 2009, Colacem publicly admitted that the plant was sending dust (particulate matter) into the surrounding neighbourhoods. *The Review's* article entitled "Cement plant: dust isn't dangerous", reported that Colacem vowed to fix the problem by the fall 2009, by installing a new dust

filtration system, the whole as appears from the article, a copy of which is produced herewith as **Exhibit P-6:**

"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]

36. In that same article (Exhibit P-6), Colacem plant manager Maxime Leduc admitted that, despite the continuous problems with the filtration system and the ongoing particulate matter emissions, the Defendant 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]

37. On February 24, 2010, the Mayor of Grenville-sur-la-Rouge announced that a committee had been formed in order to address "ongoing dust pollution from the Defendant's cement plant." The problems caused by Colacem were reported in an article from *The Review* entitled "Beleaguered municipality forms pollution and revitalization committees", the whole as appears from the article, a copy of which is produced herewith as **Exhibit P-7**:

"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

38. The MDDEP began receiving complaints from Lydia and area residents living in close proximity and adversely affected by the Colacem's operations in October 2007 merely five months after it began its operations;
39. MDDEP Inspection Reports on February 23, 2009, July 31, 2009, March 3, 2010, April 28, 2010 and November 3, 2010 confirmed the following, the whole as appears from the Inspection Reports, copies of which are produced herewith as **Exhibits P-8, P-9, P-10, P-11 and P-12**:
 - 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 numerous sources of particulate matter emissions at the Site; and
 - v. Kilmar Road, particularly at the entrance to the plant, was in very poor condition and was an important source of dust emissions in the area.

40. The MDDEP issued infraction notices to Colacem on March 17, 2009, August 6, 2009, March 22, 2010 and May 17, 2010, the whole as appears from the Infraction Notices, copies of which are produced herewith as Exhibits **P-13, P-14, P-15 and P-16**. The infractions were issued in connection with the Defendant's:
- i. failure to notify the MDDEP of the accidental presence of a contaminant in the environment, contrary to s. 21 of the 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.
41. Between 2009 to 2013, the MDDEP granted six (6) requests to the Colacem to install ten (10) dust filters throughout the plant, the whole as appears from the MDDEP Permissions, copies of which are produced *en liasse* herewith as **Exhibit P-17**;
42. Despite the intervention from the MDDEP and promises made by Colacem, the emissions of particulate matter have continued;

Nuisance Caused to Members of the Group

43. Lydia and members of the Group in the neighbourhood have, and continue to, suffer annoyances beyond the limit of tolerance, contrary to article 976 of the CcQ;

▪ Affected Area

44. To the best of Lydia's knowledge, there are numerous homes and businesses negatively impacted by Colacem's operations. These homes and businesses, situated in two municipalities (Grenville-sur-la-Rouge and Harrington), are located within approximately a five kilometre (5 km) radius of the plant site, the whole as appears from the approximate map of the area affected, a copy of which is produced herewith as **Exhibit P-18** and subject to any future expert reports/analyses;
45. Lydia has researched and obtained information from the municipality of Grenville-sur-la-Rouge regarding the addresses of the homes and businesses that are located within a five-kilometre (5 km) radius the Colacem plant, the whole as appears from documents of the municipality, copies of which are produced *en liasse* herewith as **Exhibit P-19** and subject to any future expert reports/analyses;
46. The exhibits found at Exhibit P-19 *en liasse* consist of emails from the Building Inspector and Environment of Grenville-sur-la-Rouge, a map showing a 5-km radius of the Plant and four (4) graphic matrices of the affected area, all of which are relevant to the Group;

47. Lydia has researched and obtained information from the municipality of Harrington regarding the addresses of the homes and businesses located within a 5-km radius of the Colacem plant, the whole as appears from documents of the municipality, copies of which are produced *en liasse* herewith as **Exhibit P-20** and subject to any future expert reports/analyses;
48. The exhibits found at Exhibit P-20 *en liasse* consist of emails from the Director of Planning and Environment of Harrington, a map showing a 5-km radius of the plant and a list of the addresses and names of the property owners in the affected area, all of which are relevant to the Group;
49. Grenville-sur-la-Rouge is a small rural municipality with a population of approximately 2,700;
50. Harrington is also a small rural municipality with a population of approximately 850;
- **Particulate Emissions, Noise and Odours from Colacem's Plant**
51. The particulate matter emitted by the Colacem has ruined gardens, stained and pitted vehicles, windows, lawn machines, decks, siding and roofs of homes of the residents and businesses located in the area. The particulate matter has also destroyed shingles and tin roofing, the whole as appears from photographs taken in October 2008 and 2010, copies of which are produced herewith as **Exhibits P-21, P-22, P-23, P-24 and P-25** and subject to any future expert reports/analyses;
52. Members of the Group are required to scrape car windshields and clean windows with vinegar and razor blades. Water, Windex, and other common cleaning materials are ineffective against the particulate matter;
53. Members of the Group experience an intrusive mist of black powder on their properties and report black snow falling in the winter months;
54. The particulate matter adheres to trees, gardens, lawns and falls into the lakes bordering the homes of certain members of the Group;
55. Members of the Group are forced to keep their windows shut and are unable to sit outside. The particulate matter aggravates respiratory conditions and causes sore throats to members of the Group;
56. Members of the Group, including but not limited to those residing on the 10th Concession, wear face masks when working outdoors for fear of exposure to the particulate matter emitting from the Colacem plant;
57. Members of the Group are increasingly concerned about the quality of the air they are breathing;
58. In addition to the constant particulate matter emissions disrupting the neighbourhood, Lydia and her neighbours are negatively impacted by the irritating noise and unbearable odours that emanate from Colacem's plant;

▪ **NPRI Release of Toxins and Air Pollutants**

59. 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 to air, water and land, as well as disposals and transfers for recycling. Colacem is required to report to the NPRI annually;
60. If one or more NPRI substances was manufactured, processed or used at the facility during the year, and the total number of hours worked at the facility exceeded the 20,000 hour employee threshold, being approximately ten (10) full-time employees, the facility needs to determine the total amount of each NPRI substance. A report is also required for facilities operating stationary combustion equipment for criteria air contaminants, regardless of the number of employee hours, if the release thresholds are met;
61. Companies meeting the federal government reporting requirements but fail to report, do not report on time, or knowingly submit false or misleading information can be subject to the penalties set out in the *Canadian Environmental Protection Act, 1999*;
62. Colacem is required to report the release of contaminants if they rise above the specific NPRI thresholds, that are based on the quantity of contaminants released into the air, not the quantity manufactured, processed or used;
63. NPRI data for the years 2007, 2008 and 2009 shows that Colacem released 209 tonnes of sulphur dioxide (SO₂), 488 tonnes of carbon monoxide (CO), 1452 tonnes of nitrogen oxides (NO₂) and 293 tonnes of particulate matter (PM), 43 tonnes of which was PM₁₀ (particulate matter smaller than 10 micrometres¹) and 25 tonnes of which was PM_{2.5} (particulate matter smaller than 2.5 micrometres). The NPRI data for the years 2010, 2011 and 2012 show a continued increase in the emissions of these contaminants;
64. Sulphur dioxide (SO₂) is an invisible gas having a nasty, sharp smell and when inhaled can irritate the nose, throat and airways resulting in coughing, wheezing, shortness of breath and a tight feeling around the chest. Those most at risk of developing problems when exposed to sulphur dioxide are people with asthma or similar conditions;
65. Carbon monoxide (CO) is a colourless, odourless, tasteless and toxic gas. Low levels of exposure to CO can result in mild effects that are often confused with the flu such as headaches, dizziness, disorientation, nausea and fatigue;
66. Nitrogen oxides (NO₂) include the gases nitrogen oxide (NO), nitrogen dioxide (NO₂) and when it is breathed in can result in adverse effects on the respiratory system;
67. Particulate matter (PM) is a general term for a mixture of solid particles and liquid droplets in air and includes smoke, fumes, dust, ashes, among other materials. Total Particulate Matter (TPM) is airborne particulate matter having an upper size limit of approximately 100 microns. PM₁₀ is particulate matter that is 10 microns or less in size. Fine particulate matter, PM_{2.5}, is particulate matter that is 2.5

¹ 1 micrometre or micron is equivalent to 0.001 millimetres.

microns or less in size. Exposure to PM results in aggravated cardiac and respiratory diseases such as asthma, bronchitis and emphysema and various forms of heart disease;

68. The following charts outlines Colacem's annual release of contaminants and the corresponding NPRI threshold for reporting purposes, expressed in tonnes, the whole as appears from the Historical Substance Reports, copies of which are produced *en liasse* herewith as **Exhibit P-26**:

	2007	2008	2009	NPRI threshold
SO ₂	39	41	129	20
CO	89	267	132	20
NO ₂	574	544	334	20
TPM (total particulate matter)	94	96	103	20
PM ₁₀	22	9	12	0.5
PM _{2.5}	12	5	8	0.3

	2010	2011	2012	NPRI threshold
SO ₂	456	3.2	41	20
CO	349	111	165	20
NO ₂	354	170	327	20
TPM (total particulate matter)	100	86	59	20
PM ₁₀	12	14	8.5	0.5
PM _{2.5}	8.3	6.6	6.5	0.3

69. The particulate matter released by the Colacem is considered part of its "On-Site Releases" according to the NPRI data. Colacem's particulate matter releases are attributable to both "Releases to Air" and to "Road Dust". The charts set out below indicates the total particulate matter (TPM) reported for Colacem's air emissions and road dust (expressed in tonnes) for the years 2007 to 2012;

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

	2010	2011	2012
Releases to Air	17	78	50
Road Dust	83	9	9
TPM	100	86	59

70. All of the contaminants released and reported by Colacem negatively impact human health and the environment. SO₂ is an air pollutant with significant health risks, including respiratory illness. SO₂ can lead to the creation of acid rain. NO₂ is also a significant air pollutant that is known to contribute to acid rain. CO is a highly toxic gas with known risks to human health;
71. Increased levels of airborne PM have been linked to health risks, such as heart disease, lung cancer and respiratory problems, the whole subject to any future expert reports/analyses;
72. Since it began operating in or around May 2007, Colacem has continually emitted contaminants impacting the surrounding neighbourhood, including but not limited to those described above. The contaminants pose a risk to the environment and the health and well-being of members of the Group;
- **Heavy Truck Traffic**
73. The transport trucks servicing the Colacem's cement plant access the area via three (3) major highways: Highway #327 to the Northeast of the plant or Highways #148 and/or #50 to the South;
74. 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 very narrow two-lane rural road without shoulders, the whole as appears from photographs taken in September and November 2010, copies of which are produced herewith as **Exhibits P-27, P-28, P-29, P-30 and P-31**;
75. Once on Harrington Road, the trucks then proceed south on Kilmar Road en route to Colacem;
76. Alternatively, trucks exiting Highways #148 and/or #50 turn north onto Kilmar Road on their way to the Colacem's plant. Kilmar Road, similar to Harrington Road, is a two-lane winding rural road that has suffered serious damage as a result of the heavy trucks travelling to and from the plant;
77. 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", the whole as appears from the article, a copy of which is produced herewith as **Exhibit P-32**:

"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]

78. On March 5, 2012, the Municipality of Harrington stated in its "Plan d'urbanisme" that Harrington Road was not intended for truck traffic. The municipality indicated that measures should be taken to make Harrington Road safe for users as revealed in an excerpt from the "Plan d'urbanisme", the whole as appears from an excerpt of the "Plan d'urbanisme", a copy of which is produced herewith as **Exhibit P-33**;
79. Members of the Group residing or operating a business along the truck route experience neighbourhood annoyances by reason of the volume of large transport trucks passing through their neighbourhood. The trucks, that can be up to 100 per day, come within 10 to 25 feet of many homes;
80. The truck traffic is heaviest between the months of April and December, with the months of October and November being extremely heavy. Generally, the truck traffic begins at 5 a.m. and continues throughout the day until 7:00 or 8:00 P.M.. There are times when the trucks use the local roads 24 hours per day, including weekends, for up to a week in duration;
81. Frequent accidents involving the transport trucks, particularly along Harrington Road, are regularly reported by Members of the Group;
82. Members of the Group routinely suffer sleep disturbances due to the noise and vibration created by the trucks using local roads;
83. Members of the Group face risks to their health by reason of the size of the trucks, the proximity of the trucks to their homes, the frequency of accidents involving the trucks, and exposure to the exhaust dust and fumes, the whole subject to any future expert reports/analyses;
84. The continual truck traffic throughout the local roads results in the release of air pollutants including but not limited to PM_{2.5} and PM₁₀;
85. Colacem, through its contractors and/or agents, including but not limited to the Bertrand company, owned and operated by Colacem, has caused a nuisance to members of the Group as a result of the excessive truck traffic using the local roads;
86. 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 continual truck traffic generated by the cement plant;

▪ **Property Damage**

87. As particularized herein, Lydia 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, lawn mowers, exterior finishes, and outdoor furniture, the whole subject to any future expert reports/analyses;

▪ **Diminution of Property Values**

88. As a result of the operations of Colacem, members of the Group have suffered a reduction in property values between 15 and 20%, the whole subject to any future expert reports/analyses;
89. 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 selling their home at a considerably reduced price;
90. The particulate matter that constantly covers the properties coupled with the steady flow of truck traffic, noise and odours discourage potential buyers from the area who are seeking a home in a peaceful, scenic and rural countryside;

The Defendant's Negligence

91. Colacem was, and continues to be, negligent in failing to prevent repeated emissions of particulate matter into the local neighbourhoods;

▪ **Dust Emissions**

92. Colacem owed a duty to Lydia and any other persons and businesses similarly situated, at law and under Article 1457 of the CcQ, to ensure that the plant's operations were up-to-date and properly functioning;
93. Colacem knew or ought reasonably to have known that a failure to ensure that its dust filtration systems were operating properly would result in harm to residents and businesses in the surrounding neighbourhoods;
94. Colacem knew or ought reasonably to have known that the release of particulate matter, would result in harm to neighbouring residents and business owners, the whole subject to any future expert reports/analyses;
95. The reasonable standard of care expected in the circumstances required Colacem to properly maintain its dust filtration systems, and to cease operations until the problems identified or the problems that Colacem ought to have known to exist with the dust infiltration system were resolved, thereby avoiding the release of particulate matter, dust and/or other contaminants into the surrounding neighbourhoods;

96. Colacem failed to meet the required standard of care by repeatedly emitting particulate matter, 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;
97. Accordingly, Colacem has violated its duties to Lydia and to persons and/or businesses similarly situated;
98. The negligence of Colacem constitute a fault and has resulted in damage to Lydia and to members of the Group as pleaded herein;

Permanent Injunction

99. In accordance with the EQA, Lydia and the members of the Group have a right to a healthy environment and neighbourhood free from contaminants, noise, odour and the constant intrusion of truck traffic;
100. In order to ensure that Colacem respects its obligations to the environment and to ensure that Lydia and the members of the Group are free from the neighbourhood annoyances alleged, a permanent injunction is requested against Colacem;
101. The permanent injunction sought by Lydia is as follows:
 - An order that Colacem maintain operational at all times the dust collection system that is necessary to avoid particulate matter emissions;
 - An order that Colacem limit its truck traffic entering and existing the plant to and from the plant between business hours of 9:00 A.M. to 5:00 P.M. on weekdays and prohibit truck traffic on weekends and holidays in order to reduce the noise and vibrations caused by the truck traffic;
 - An order that Colacem limit the number of trucks travelling to and from the plant on a daily basis in order to reduce the noise, vibrations caused by the truck traffic;
 - An order that Colacem put in place controls to limit the odours released during the production of cement to an acceptable limit;
 - An order that Colacem limit the emissions of toxins and pollutants to protect the right of Lydia and members of the Group to a healthy environment accordance with Articles 19.1, 19.2 and 19.3 of the *Environment Quality Act*;
 - An order that Colacem provide a yearly update to class counsel for Lydia and to the Court of all measures taken to limit the emissions of particulate matter to acceptable levels, reduce noise levels and truck traffic, limit odours and the emissions of toxins and pollutants for a period of five (5) years after the judgment to be rendered in the present action.

Damages

102. The ongoing neighbourhood nuisances caused by Colacem are beyond the limit of tolerance that neighbours owe to each other, according to the nature and location of their land. The annoyances suffered by Lydia and the members of the Group as a result of Colacem's operations are well beyond normal tolerance limits in the circumstances;
103. Colacem's negligence constitutes a fault;
104. The members of the Group have suffered similar damages as Lydia and the facts alleged apply to them in accordance with the conclusions sought;
105. As a result of the conduct of the Colacem as pleaded, Lydia and members of the Group have suffered compensatory and moral damages in the total amount of FIFTEEN MILLION DOLLARS (\$15,000,000 CND);
106. The distribution of the amounts recovered in this action can be determined by creating sub-classes of members depending on the location of their home and/or business in correlation with the damages incurred;
107. Lydia 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;
108. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions;
109. The present motion is well-founded in fact and in law.

WHEREFORE, PETITIONER PRAYS FOR JUDGMENT OF THIS HONOURABLE COURT:

GRANT the Motion Introductive of Class Action Proceedings against the Defendant, Colacem;

GRANT the class action of the Petitioner on behalf of all the members of the Group;

CONDEMN the Defendant, Colacem, to pay Lydia Kennedy, the Petitioner, and members of the Group compensatory and moral damages in the amount of FIFTEEN MILLION DOLLARS (\$15 000 000 CND), with interest and the additional indemnity provided by law, calculated from June 8th, 2008, or any other such sum that the Court may find appropriate for damages related to the neighbourhood nuisances and the extracontractual liability;

ORDER the collective recovery of this amount;

ORDER the treatment of individual claims of each of the members of the Group in accordance with Articles 1037 to 1040 Cpc;

ISSUE a permanent injunction against the Defendant, Colacem;

ORDER the Defendant to respect its obligations as a good neighbour and to cease its releases of contaminants and pollutants in excess of acceptable standards as follows;

- Maintain operational at all times, during the production of cement, the necessary dust collectors in order to avoid excessive emissions of particulate matter;
- Limit the amount of truck traffic entering and exiting the plant to the hours of 9:00 A.M. to 5:00 P.M. on weekdays and prohibit truck traffic on local roads on weekends and holidays;
- Limit the amount of truck traffic entering and existing the plant on a daily basis to an agreed upon level that results in the reduction of unacceptable noise and vibration in the neighbourhoods;
- Limit the odours released during the production of cement to levels that do not result in any impacts on the surrounding neighbourhoods;
- Limit the emissions of toxins and pollutants to protect the right of Lydia and members of the Group to a healthy environment accordance with Articles 19.1, 19.2 and 19.3 of the *Environment Quality Act*;
- Provide a yearly update to class counsel for Lydia and to the Court of all measures taken to limit the emissions of particulate matter to acceptable levels, reduce noise levels and truck traffic, limit odours and the emissions of toxins and pollutants for a period of five (5) years after the judgment to be rendered in the present action.

THE WHOLE WITH COSTS, including interest and the additional indemnity provided for in the CcQ and with full costs and expenses, including expert fees, notice fees and fees relating to administering the plan of distribution of the recovery in this action.

Montréal, April 28, 2015

Siskinds, Desmeules, Avocats, S.E.N.C.R.L.
SISKINDS, DESMEULES, AVOCATS, S.E.N.C.R.L.
Lawyers for the Petitioner

NOTICE TO DEFENDANT
(Article 119.C.C.P.)

TAKE NOTICE that the Plaintiff has filed this action or Application in the office of the **SUPERIOR COURT** for the Judicial District of **Montréal**.

To file an answer to this Action or Application, you must first file an Appearance, personally or by advocate, at the Courthouse of Montréal, located at 1 Notre-Dame Street East, Montréal, Québec, 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 inquiry of the 10-day period.

If you file an Appearance, the Action or Application will be presented on a day to be determined by the court. On that date the Court may exercise such powers as are necessary to ensure the orderly progress of the proceedings or the Court may hear the case, unless you make a written agreement with the Plaintiffs or the Plaintiffs' advocate on a timetable for the orderly progress of the proceedings. The timetable must be filed in the office of the Court.

In support of the Motion Introductive of Class Action Proceedings, the Petitioner discloses the following Exhibits:-

- EXHIBIT P-1: Colacem Canada Inc.'s information sheet on the Registraire des entreprises du Québec;
- EXHIBIT P-2: Photograph of the Site;
- EXHIBIT P-3: Photograph of the Site;
- EXHIBIT P-4: Article entitled «Residents worried about black snow»;
- EXHIBIT P-5: Article entitled «Lawsuit threatened against cement plant»;
- EXHIBIT P-6: Article entitled «Cement plant: dust isn't dangerous»;
- EXHIBIT P-7: Article entitled «Beleaguered municipality forms pollution and revitalization committees»;
- EXHIBIT P-8: MDDEP Inspection report from February 23, 2009;
- EXHIBIT P-9: MDDEP Inspection report from July 31, 2009;
- EXHIBIT P-10: MDDEP Inspection report from March 3, 2010;
- EXHIBIT P-11: MDDEP Inspection report from April 28, 2010;

- EXHIBIT P-12: MDDEP Inspection report from November 3, 2010;
- EXHIBIT P-13: Infraction notice from the MDDEP March 17, 2009;
- EXHIBIT P-14: Infraction notice from the MDDEP August 6, 2009;
- EXHIBIT P-15: Infraction notice from the MDDEP March 22, 2010;
- EXHIBIT P-16: Infraction notice from the MDDEP May 17, 2010;
- EXHIBIT P-17: Permissions to install dust filters (*en liasse*);
- EXHIBIT P-18: Approximate map of the area affected by Colacem;
- EXHIBIT P-19: Documents from the municipality of Grenville-sur-la-Rouge regarding the addresses of the homes and businesses located within a 5 km radius of the Plant (*en liasse*);
- EXHIBIT P-20: Documents from the municipality of Harrington regarding the addresses of the homes and businesses located within a 5 km radius of the Plant (*en liasse*);
- EXHIBIT P-21: Photograph of property damage;
- EXHIBIT P-22: Photograph of property damage;
- EXHIBIT P-23: Photograph of property damage;
- EXHIBIT P-24: Photograph of property damage;
- EXHIBIT P-25: Photograph of property damage;
- EXHIBIT P-26: Historical Substance Reports for Colacem Canada Inc. – Kilmar Plant – 2007 to 2012 – Environment Canada (*en liasse*);
- EXHIBIT P-27: Photograph of Harrington Road;
- EXHIBIT P-28: Photograph of Harrington Road;
- EXHIBIT P-29: Photograph of Harrington Road;
- EXHIBIT P-30: Photograph of Harrington Road;
- EXHIBIT P-31: Photograph of Harrington Road;
- EXHIBIT P-32: Article entitled «Council outlines \$2.3-million spending on Kilmar Road»;

EXHIBIT P-33: Excerpt from the "Plan d'urbanisme" of the municipality of Harrington, dated March 5, 2012.

These exhibits are available upon request.

Montréal, April 28, 2015

Siskinds, Desmeules, Avocats, S.E.N.C.R.L.
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Lawyers for the Petitioner

No: 500-06-000640-132

SUPERIOR COURT (Class Action)
DISTRICT OF MONTRÉAL

LYDIA KENNEDY
Petitioner

V.

COLACEM CANADA INC.
Defendant

**MOTION INTRODUCTIVE OF CLASS
ACTION PROCEEDINGS**

Me Sammy Elhemr
N/dossier: 67-099

BS2497

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