

C A N A D A

(CLASS ACTIONS)  
SUPERIOR COURT

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

N°: 500-06-000657-136

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**OPTION CONSOMMATEURS**

Plaintiff

**JEAN-CLAUDE CHARLET**

Designated Person

v.

**NIPPON YUSEN KABUSHIKI KAISHA  
ET AL.**

Defendants

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**APPLICATION BY WWL VEHICLE SERVICES CANADA LTD. FOR LEAVE TO  
ADDUCE RELEVANT EVIDENCE  
(Article 574 C.C.P.)**

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**TO THE HONOURABLE JUSTICE DONALD BISSON OF THE SUPERIOR COURT  
OF QUEBEC, SITTING IN THE JUDICIAL DISTRICT OF MONTREAL, DEFENDANT  
WWL VEHICLE SERVICES CANADA LTD. SUBMITS THE FOLLOWING:**

**INTRODUCTION**

1. The Defendant WWL VEHICLE SERVICES CANADA LTD. ("**WWL VSC**") seeks leave to file additional evidence for the purpose of the authorization hearing;
2. More specifically, WWL VSC seeks leave to file a short Sworn Statement containing neutral and objective evidence, in order to ensure that the Court has before it the necessary neutral facts and essential information to fairly determine

whether the conditions of article 575 C.C.P. are met against WWL VSC, and whether it should authorize the bringing of a class action against it;

3. The evidence which WWL VSC wishes to present is contained in the attached draft Sworn Statement, filed in support of these presents as **Annex A**. This short statement provides essential information concerning WWL VSC and, *inter alia*, its business activities, with a view to completing the record;
4. This evidence demonstrates that the allegations of the *Modified Motion to Institute a Class Action (April 12, 2018)* are inaccurate as against WWL VSC. The Court must be informed of these facts to determine if a *prima facie* case has been made against WWL VSC, or if it should be removed from the putative class action;
5. Moreover, this evidence assists in determining an appropriate group description and identifying the questions to be dealt with collectively, if necessary, as required by article 576 C.C.P.;
6. It is essential for the Court to have the benefit of this evidence to make informed decisions at the authorization stage.

### **PROCEDURAL BACKGROUND**

7. On or about July 25, 2013, Jean-Claude Charlet instituted a class action against multiple Defendants, including WWL VSC, the whole as more fully appears from the Court record;
8. On or about February 7, 2017, a *Modified Application for Authorization to Institute a Class Action* was filed, in which, amongst other things, Option Consommateurs was added as Plaintiff and Jean-Claude Charlet was made the Designated Person, the whole as more fully appears from the Court record;
9. On or about April 12, 2018, the Plaintiff served a further *Modified Application for Authorization to Institute a Class Action (April 12, 2018)*, adding two additional Defendants, the whole as more fully appears from the Court record;

10. In its *Modified Application for Authorization to Institute a Class Action (April 12, 2018)*, the Plaintiff proposes that the following class be authorized:

“Toute personne qui a acheté au Québec des services de transport maritime par navire roulier (Ro-Ro) ou qui a acheté ou loué au Québec un véhicule neuf ayant été transporté par navire roulier (Ro-Ro) entre le premier février 1997 et le 31 décembre 2012.”

11. Thus, roll-on/roll-off services, as defined by the Plaintiff in its *Modified Application for Authorization to Institute a Class Action (April 12, 2018)*, are at the core of this class action:

“3. Les navires rouliers ou Ro-Ro (“**Ro-Ro**”) peuvent transporter plusieurs centaines de voitures, de camions ou d’autres véhicules motorisés, incluant de la machinerie agricole et de l’équipement de construction (collectivement les “**Véhicules**”).

4. Les navires Ro-Ro doivent leur appellation au mode de chargement et de déchargement de la marchandise qu’ils transportent. Ils sont conçus de façon à permettre aux Véhicules qu’ils transportent de rouler depuis la rampe portuaire vers la rampe du navire et inversement (*roll-on/roll-off*), par opposition aux navires transportant des conteneurs qui sont chargés verticalement pas des grues.”

12. The Plaintiff does not specifically allege whether WWL VSC provides Ro-Ro transportation services, and does not make any specific allegations of wrongdoing against WWL VSC in its *Modified Application to Institute Proceedings (April 12, 2018)*;

13. In fact, the *Modified Application for Authorization to Institute a Class Action (April 12, 2018)* does not contain any precise and palpable allegations of fact regarding WWL VSC;
14. The only particularized allegations regarding WWL VSC allege that it is a Canadian maritime company, that it is controlled by WWL AS, that its activities are interrelated with those of certain other Defendants, and that it operates a business in Canada that applied directives relating to furnishing Ro-Ro transportation services, as appears from paragraphs 25, 26, 27 and 43.01 of the *Modified Application for Authorization to Institute a Class Action (April 12, 2018)*;
15. The Plaintiff does not allege any facts concerning the business operations or the specific conduct of WWL VSC;
16. Many of Plaintiff's allegations generally make reference to the "Defendants" in a vague and generalized manner, without making a factual distinction between them;
17. The Sworn Statement that WWL VSC wishes to file will allow this Honourable Court to be made aware of WWL VSC's actual business activities during the proposed class period, and to rectify the record regarding same;

#### **APPLICATION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE**

18. WWL VSC respectfully submits that additional evidence is necessary, useful and reasonable for this Honourable Court to rule on the *Modified Application for Authorization to Institute a Class Action (April 12, 2018)*, as the Sworn Statement provides relevant facts that will assist the Court in determining whether the proposed Plaintiff has a *prima facie* case against WWL VSC;
19. The additional evidence in the form of a Sworn Statement will ensure that WWL VSC protects its right to objectively answer vague, ambiguous and general allegations of fact which, if not answered by objective and relevant evidence,

would lead this Honourable Court in the wrong direction while assessing whether the threshold required to authorize the class action is met;

20. The additional evidence proposed by WWL VSC will allow this Honourable Court to decide whether the criteria for authorization are met against it, not only in the interest of proportionality, but also for the better administration of justice by ensuring a thorough and comprehensive debate regarding authorization;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present Application;

**ALLOW** WWL VSC to file an executed Sworn Statement substantially similar to the draft communicated herewith as **Annex A**, within thirty (30) days of judgment to be rendered on this Application;

**THE WHOLE** without costs, save in the event of contestation.

MONTREAL, November 22, 2018

*DLA Piper (Canada) LLP*  
**DLA Piper (Canada) LLP**  
Mtre. Tania da Silva  
1501 McGill College Ave., Suite 1400  
Montréal QC H3A 3M8  
E-mail: 514-392-8427  
Fax: 514-392-8374  
Attorney for Defendants Eukor Car  
Carriers Inc., WWL Vehicle Services  
Canada Ltd., WILH Wilhelmsen ASA,  
WILH Wilhelmsen Holding ASA,  
Wallenius Wilhelmsen Logistics America  
LLC, Wallenius Wilhelmsen Logistics AS  
and Wallenius Lines AB  
Our reference: 089457-00002

## NOTICE OF PRESENTATION

To:

Me Maxime Nasr  
Me Anaïs Kadian  
[mnasr@belleaulapointe.com](mailto:mnasr@belleaulapointe.com)  
[akadian@belleaulapointe.com](mailto:akadian@belleaulapointe.com)

BELLEAU LAPOINTE, S.E.N.C.R.L.  
306, Place d'youville  
Office B-10  
Montreal QC H2Y 2B6

Attorneys for the petitioner Option  
Consommateurs and Jean-Claude  
Charlet

Me Guillaume Boudreau-Simard  
Me Yves Martineau  
[gboudreausimard@stikeman.com](mailto:gboudreausimard@stikeman.com)  
[ymartineau@stikeman.com](mailto:ymartineau@stikeman.com)

STIKEMAN ELIOTT LLP  
1155 Boulevard Rene-Levesque West  
41st Floor  
Montreal QC H3B 3V2

Attorneys for Nippon Yusen Kabushiki  
Kaisha, NYK Line (North America)  
Inc. and NYK Line (Canada) Inc.

Me Éric Vallières  
Me Gabrielle Lachance-Touchette  
[eric.vallieres@mcmillan.ca](mailto:eric.vallieres@mcmillan.ca)  
[gabrielle.lachance-  
touchette@mcmillan.ca](mailto:gabrielle.lachance-<br/>touchette@mcmillan.ca)

McMILLAN, S.E.N.C.R.L., S.R.L.  
1000 Sherbrooke St. West  
Suite 2700  
Montreal QC H3A 3G4

Attorneys for Kawasaki Kisen Kaisha Ltd.  
and "K" Line America, Inc.

Me Robert Torralbo  
Me Simon Seida  
[robert.torralbo@blakes.com](mailto:robert.torralbo@blakes.com)  
[simon.seida@blakes.com](mailto:simon.seida@blakes.com)

BLAKE, CASSELS & GRAYDON LLP  
1, Place Ville-Marie  
Office 3000  
Montreal QC H3B 4N8

Attorneys for Mitsui O.S.K. Lines LTD,  
Mitsui O.S.K. Bulk Shipping (U. S. A. )  
Inc., Nissan Motor Car Carrier Co.  
LTD. and World Logistics Service  
(USA) Inc.

Me Eric Prefontaine  
Me Jessica Harding  
[eprefontaine@osler.com](mailto:eprefontaine@osler.com)  
[jharding@osler.com](mailto:jharding@osler.com)

OSLER, HOSKIN & HARCOURT  
1000, de la Gauchetiere Street West  
Office 2100  
Montreal QC H3B 4W5

Attorneys for Hoegh Autoliners AS  
and Hoegh Autoliners Inc.

Me Nick Rodrigo  
[nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com)

DAVIES WARD PHILLIPS & VINEBERG,  
S.E.N.C.R.L.  
1501 McGill College Avenue  
26th Floor  
Montreal QC H3A 3N9

Attorneys for Compania Sud  
Americana De Vapores S.A.

**TAKE NOTICE** that the foregoing *Application for Leave to Adduce Relevant Evidence* will be presented for adjudication before the Honourable Donald Bisson, J.S.C., on January 14, 2019, at a time and place to be confirmed.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTRÉAL, November 22, 2018

*DLA Piper (Canada) LLP*

**DLA Piper (Canada) LLP**

Mtre. Tania da Silva

1501 McGill College Ave., Suite 1400

Montréal QC H3A 3M8

E-mail: 514-392-8427

Fax: 514-392-8374

Attorney for Defendants Eukor Car

Carriers Inc., WWL Vehicle Services

Canada Ltd., WILH Wilhelmsen ASA,

WILH Wilhelmsen Holding ASA,

Wallenius Wilhelmsen Logistics America

LLC, Wallenius Wilhelmsen Logistics AS

and Wallenius Lines AB

Our reference: 089457-00002

**ANNEX A**

C A N A D A

(CLASS ACTIONS)  
**SUPERIOR COURT**

PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

N°: 500-06-000657-136

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**OPTION CONSOMMATEURS**

Plaintiff

**JEAN-CLAUDE CHARLET**

Designated Person

v.

**NIPPON YUSEN KABUSHIKI KAISHA  
ET AL.**

Defendants

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**SWORN STATEMENT**

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I, the undersigned Howard Williams, businessman, exercising my profession at 100 - 820 Dock Road, Annacis Island, Delta, British Columbia, SWEAR THAT:

1. I am the Vice President and General Manager of WWL Vehicle Services Canada Ltd. ("**WWL VSC**") and have been employed by WWL VSC since December 1997. From December 1997 to the spring of 2000, I was employed as the Senior Financial Officer of WWL VSC, before transitioning to my current position as Vice President and General Manager in or around March 2000. I am familiar with the business and operations of WWL VSC. I am also aware of other "Wallenius Wilhelmsen Group" companies, identified as Defendants, namely Wilh.



Wilhelmsen Holding ASA; Wilh. Wilhelmsen ASA; Wallenius Wilhelmsen Logistics Americas, LLC; Wallenius Lines AB; and Wallenius Wilhelmsen Logistics AS (collectively the "**WWL Group**"). I have personal knowledge of the facts and matters declared in this Sworn Statement, except where they are stated to be made upon information and belief and where so stated I verily believe them to be true.

2. I am authorized by WWL VSC to provide this Sworn Statement.
3. I am informed by Kevin Wright, counsel to the WWL Group, that the Plaintiff has filed a *Modified Application for Authorization to Institute a Class Action (April 12, 2018)* against numerous Defendants, including WWL VSC, concerning an alleged conspiracy to fix prices with respect to the provision of roll-on/roll-off ("**Ro-Ro**") ocean transportation services.
4. I am informed by Mr. Wright that the *Modified Application for Authorization to Institute a Class Action (April 12, 2018)* proposes a class period that covers from February 1, 1997 to December 31, 2012 (the "**Proposed Class Period**").
5. WWL VCS was incorporated as a British Columbia company on September 24, 1997 under the name Annacis Auto Terminals (1997) Ltd. Attached and marked as **Exhibit "A"** is a true copy of a British Columbia company search for WWL VCS. WWL VCS changed its name to "WWL Vehicle Services Canada Ltd." on December 5, 2005.
6. During the period from its incorporation until April 2005, WWL VSC was owned by several companies within the Nissan Group, the final one being Distribution and Auto Services, Inc. ("**DAS**"), an affiliate of Nissan North America, Inc. On or about May 1, 2005, DAS was acquired by 2W Americas Holdings, LLC (a 50% owned company of WWL Holdings Americas, LLC, which was 100% owned by Wallenius Wilhelmsen Logistics AS, now known as Wallenius Wilhelmsen Ocean AS) and thereby also acquired WWL VSC. DAS is now known as WWL Vehicle

Services Americas, Inc. Prior to May 1, 2005, WWL VSC had no relation to the WWL Group.

7. WWL VSC does not now, nor did it at any point during the Proposed Class Period, carry on business in Quebec. WWL VSC has never maintained offices, facilities, employees or places of business in Quebec.
8. During the Proposed Class Period, WWL VSC operated a terminal at Annacis Island, British Columbia, at which vehicles and other cargo were received, including vehicles shipped by Ro-Ro. After a Ro-Ro vessel carrying vehicles arrived at Annacis Island, stevedoring companies would unload the vehicles and place them in the facility. After that, WWL VSC provided vehicle processing services including receipt, accessory installation, mechanical repairs and other basic services, as well as optional storage and vehicle maintenance services (the “**Terminal Services**”). As part of providing the Terminal Services, when vehicles were released for shipment, WWL VSC loaded units onto rail or tender units in its truck delivery zone for truck pickup and shipment. The fees WWL VSC charged for its Terminal Services were distinct from the cost of Ro-Ro transportation services provided by other companies.
9. At all times during the Proposed Class Period, as it does presently, WWL VSC provided the Terminal Services to a variety of customers. The majority of vehicles for which WWL VSC provided the Terminal Services during the Proposed Class Period were not shipped by a member of the WWL Group.
10. Moreover, at no point during the Proposed Class Period, did WWL VSC operate ocean carriers, or provide or offer to provide transportation of vehicles or other items by Ro-Ro. During the Proposed Class Period WWL VSC had no involvement in the arrangement of Ro-Ro transportation services.
11. Consequently, WWL VSC did not offer or provide the Ro-Ro transportation services identified by Plaintiff as being the subject of the price fixing conspiracy alleged in its *Modified Application for Authorization to Institute a Class Action*

(April 12, 2018), and more particularly did not provide Ro-Ro transportation services for new vehicles having been purchased or leased in Quebec during the Proposed Class Period.

12. WWL VSC has not been charged or found in any jurisdiction to have violated any antitrust or competition laws with respect to Ro-Ro transportation services, or otherwise.

SWORN BEFORE ME at Vancouver, )  
British Columbia, on this \_\_\_\_\_ day of )  
\_\_\_\_\_, 2018. )  
\_\_\_\_\_) \_\_\_\_\_  
A Commissioner for taking Affidavits for ) HOWARD WILLIAMS  
British Columbia. )

## Deakin, Carol

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**From:** Deakin, Carol  
**Sent:** 22 novembre 2018 16:39  
**To:** 'mnasr@belleaulapointe.com'; 'akadian@belleaulapointe.com'; 'nrodrigo@dwpv.com'; 'eprefontaine@osler.com'; 'jharding@osler.com'; 'ymartineau@stikeman.com'; 'gboudreausimard@stikeman.com'; 'robert.torralbo@blakes.com'; 'simon.seida@blakes.com'; 'eric.vallieres@mcmillan.ca'; 'gabrielle.lachance-touchette@mcmillan.ca'  
**Cc:** Da Silva, Tania  
**Subject:** NOTIFICATION: Option Consommateurs v. Nippon Yusen Kabushiki Kaisha et al. / C.S.M: 500-06-000657-136 (O/F 089457-00002)  
**Attachments:** Application by WWL Vehicle Services Canada Ltd. for Leave to Adduce Relevant Evidence and Annex A (Sworn Statement).PDF

### NOTIFICATION BY E-MAIL – TRANSMISSION SLIP

(Articles 133 and 134 C.C.P.)

Date:	November 22, 2018	Time:	See e-mail header
<b>FROM:</b>			
Name:	Mtre. Tania da Silva	Our file:	089457-00002
E-mail:	<a href="mailto:tania.dasilva@dlapiper.com">tania.dasilva@dlapiper.com</a>	Telephone:	514-392-8427
<b>TO:</b>			
Me Maxime Nasr Me Anaïs Kadian <b>BELLEAU LAPOINTE, S.E.N.C.R.L.</b> <a href="mailto:mnasr@belleaulapointe.com">mnasr@belleaulapointe.com</a> <a href="mailto:akadian@belleaulapointe.com">akadian@belleaulapointe.com</a>		Me Yves Martineau Me Guillaume Boudreau-Simard <b>STIKEMAN ELLIOTT S.E.N.C.R.L., S.R.L.</b> <a href="mailto:ymartineau@stikeman.com">ymartineau@stikeman.com</a> <a href="mailto:gboudreausimard@stikeman.com">gboudreausimard@stikeman.com</a>	
Me Nicholas Rodrigo <b>DAVIES WARD PHILLIPS &amp; VINEBERG LLP</b> <a href="mailto:nrodrigo@dwpv.com">nrodrigo@dwpv.com</a>		Me Robert J. Torralbo Me Simon Seida <b>BLAKE, CASSELS &amp; GRAYDON LLP</b> <a href="mailto:robert.torralbo@blakes.com">robert.torralbo@blakes.com</a> <a href="mailto:simon.seida@blakes.com">simon.seida@blakes.com</a>	
Me Éric Préfontaine Me Jessica Harding <b>OSLER, HOSKIN &amp; HARCOURT</b> <a href="mailto:eprefontaine@osler.com">eprefontaine@osler.com</a> <a href="mailto:jharding@osler.com">jharding@osler.com</a>		Me Éric Vallières Me Gabrielle Lachance-Touchette <b>MCMILLAN S.E.N.C.R.L., S.R.L.</b> <a href="mailto:eric.vallieres@mcmillan.ca">eric.vallieres@mcmillan.ca</a> <a href="mailto:gabrielle.lachance-touchette@mcmillan.ca">gabrielle.lachance-touchette@mcmillan.ca</a>	
Nature of the document notified:			

Court number:	500-06-000657-136
Name of Parties:	<p><b>OPTION CONSOMMATEURS</b></p> <p style="text-align: right;">Plaintiff</p> <p><b>JEAN-CLAUDE CHARLET</b></p> <p style="text-align: right;">Designated Person</p> <p>v.</p> <p><b>NIPPON YUSEN KABUSHIKI KAISHA ET AL.</b></p> <p style="text-align: right;">Defendants</p>
Nature of document:	<b>APPLICATION BY WWL VEHICLE SERVICES CANADA LTD. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE and ANNEX A (Sworn Statement)</b>
Number of pages:	11

**Carol Deakin**  
 Legal Assistant  
 T 514.392.8431  
 F 514.392.1999  
 E  
 carol.deakin@dlapiper.com




DLA Piper (Canada)  
 LLP.  
 Suite 1400, McGill  
 College Tower  
 1501 McGill College  
 Avenue  
 Montréal QC H3A  
 3M8

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<b>SUPERIOR COURT (CLASS ACTIONS)</b>	
N° : 500-06-000657-136	
PROVINCE OF QUÉBEC DISTRICT OF MONTREAL	
<b>OPTION CONSOMMATEURS</b>	Plaintiff
<b>JEAN-CLAUDE CHARLET</b>	Designated Person
v.	
<b>NIPPON YUSEN KABUSHIKI KAISHA ET AL.</b>	Defendants
APPLICATION BY WWL VEHICLE SERVICES CANADA LTD. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE and ANNEXE A (SWORN STATEMENT)	
<b>ORIGINAL</b>	
<b>Mtre Tania da Silva</b>	<b>O/F: 089457-00002</b>
	
1501, McGill College Ave. Suite 1400 Montréal (Québec) H3A 3M8 Phone: (514) 392-8427 Fax : (514) 392-8374 Email : <a href="mailto:tania.dasilva@dlapiper.com">tania.dasilva@dlapiper.com</a> <b>BH 0834</b>	