C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

C.A. : 500-09-028290-195
C.S. : 500-06-000657-136

COURT OF APPEAL

EUKOR CAR CARRIERS, INC., legal person having a place of business at 736-1 Yeoksam-dong, Gangnam-gu SEOUL 135-983, South Korea

and

WILH. WILHELMSEN ASA, legal person having a place of business Strandveien 20, Lysaker, 1324, Norway

and

WILH. WILHELMSEN HOLDING ASA, legal person having a place of business at Strandveien 20, Lysaker, 1366, Norway

and

WALLENIUS WILHELMSEN LOGISTICS AMERICAS, LLC, legal person having a place of business at 188 Broadway, Woodcliff Lake, NJ 07677, U.S.A.

and

WALLENIUS WILHELMSEN LOGISTICS AS, legal person having a place of business at Strandveien 12, Lysaker, 1366, Norway

and

WALLENIUS LINES AB, legal person having a place of business at Swedenborgsgatan 19, Stockholm, Sweden

and

MITSUI O.S.K. LINES, LTD., legal person having a place of business at 2-1-1, Toranomon, Minato-ku, Tokyo, 105-8688, Japan

and

MITSUI O.S.K. BULK SHIPPING (U.S.A.), INC., legal person having a place of business at Plaza 5, suite 1710, Jersey City, NJ 07311, U.S.A.

and

NISSAN MOTOR CAR CARRIER CO., LTD., legal person having a place of business Hibiya Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan

and

WORLD LOGISTICS SERVICE (USA) INC., legal person having a place of business at 1040-111, West Ocean, Long Beach, CA 90802-4622, U.S.A.

APPELLANTS/Defendants

v.

OPTION CONSOMMATEURS, domiciled and residing at House of Sustainable Development 50 St. Catherine St. W., Suite 440 Montréal, QC, H2X 3V4, Canada

RESPONDENT/Plaintiff

and

JEAN-CLAUDE CHARLET, domiciled and residing at 86, Renoir St., Repentigny, QC, J5Y 3A2, Canada

RESPONDENT/Designated Person

v.

KAWASAKI KISEN KAISHA LTD., legal person having a place of business at 1-1, Uchisaiwaicho 2-chome, Chiyoda-ku, Tokyo, 100-8540, Japan

and

"K" LINE AMERICA INC., legal person having a place of business at 8730 Stony Point Parkway 400, Richmond, VA 23235, U.S.A.

and

NIPPON YUSEN KABUSHIKI KAISHA, legal person having a place of business at 3-2, Marunouchi 2 chome, Chiyoda-ku, Tokyo, 100-0005, Japan

and

NYK LINE (NORTH AMERICA) INC., legal person having a place of business at 19001 Harborgate Way, Torrance, CA, 90501, U.S.A.

and

NYK LINE (CANADA), INC., legal person having a place of business at 1 Yonge Street, Suite 1101, Toronto, ON, M5E 1E5, Canada

and

HÖEGH AUTOLINERS AS, legal person having a place of business at Drammensveien 134, NO-0212, Oslo, Norway

and

HÖEGH AUTOLINERS INC., legal person having a place of business at 2615 Port Industrial Drive, Jacksonville, FL, 32226, U.S.A.

IMPLEADED PARTIES/Defendants

MODIFIED APPLICATION FOR LEAVE TO APPEAL
(Articles 357, 578 C.C.P.)
EUKOR CAR CARRIERS, INC., WILH. WILHELMSEN ASA, WILH. WILHELMSEN HOLDING ASA, WALLENIUS WILHELMSEN LOGISTICS AMERICAS, LLC, WALLENIUS WILHELMSEN LOGISTICS AS, WALLENIUS LINES AB[1], 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.
May 17, 2019

---

[1] The named Defendant Wilh. Wilhelmsen ASA has changed its name and is now named Wallenius Wilhelmsen ASA. The named Defendant Wallenius Wilhelmsen Logistics AS has also changed its name and is now known as Wallenius Wilhelmsen Ocean AS.

TO ONE OF THE HONOURABLE JUDGES OF THE COURT OF APPEAL SITTING IN THE DISTRICT OF MONTREAL, APPELLANTS HEREBY RESPECTFULLY SUBMIT:

I. INTRODUCTION

1. After a hearing in first instance lasting one day on March 25, 2019, the Honourable Justice Donald Bisson of the Superior Court of Quebec, district of Montreal, rendered judgment on April 1, 2019 in the Court file bearing number 500-06-000657-136 (the "**Judgment**"), the whole as more fully appears from a copy of the Judgement (**Schedule I**). The Notice of Judgment is dated April 4, 2019, the whole as more fully appears from a copy of the Notice of Judgment (**Schedule II**).

2. The Judgment granted Option Consommateurs' (the "**Respondent**") *Modified Application for Authorization to Institute a Class Action (April 12, 2018)* (the "**Application**") and authorized the institution of a class action against the Appellants and the Impleaded Parties, the whole as more fully appears from a copy of the Application (**Schedule III**).

3. The Appellants seek leave to appeal the Judgment, as it is apparent that the first instance Judge committed errors of law and manifest and decisive errors of fact in his appreciation of whether the Respondent's Application met the authorization criteria at Art. 575(1) and 575(2) of the *Code of Civil Procedure*, RLRQ c. C-25.01 (the "**CCP**"). If leave is granted, this Court will have its first opportunity in a competition law case to develop and refine the principles of commonality articulated by the Supreme Court of Canada in *Infineon* and *Vivendi*.

4. As is more fully set out below, the Appellants seek leave to appeal the Judgment based on the fact that:

(a) The Judge committed a decisive error in fact by determining that the proposed class action dealt only with a single alleged conspiracy that he described as "the Cartel"[2]; and

---

[2] Judgment at para 76 (**Schedule I**).

(b) The Judge committed decisive errors in law by:

(i) Determining that the existence of "the Cartel" was a common question that would advance a non-negligible part of each class member's claim, and ignoring that each class member would have to show that Defendants reached an agreement pertaining to the RoRo contract under which their vehicle was shipped; and

(ii) Authorizing the remaining proposed common issues on the basis of his affirmative answer to the first question, rather than evaluating whether each was a proper common question.

5. For the reasons set out above and detailed at Title III below, it is in the interests of justice that this Court grants the Appellants leave to appeal the Judgment.

II. OVERVIEW

The Respondent sought to bring a class action against the Appellants and the Impleaded Parties for extra-contractual liability and compensatory damages under Sections 36 and 45 of the *Competition Act*[3] and the civil liability regime of the *Civil Code of Québec* on the grounds that they colluded to unduly restrict competition and unreasonably raise the price of maritime transportation services by roll-on/roll-off ships ("**RoRo**"), on behalf of the following class:

> Any person who purchased in Quebec marine transportation services by roll-on/roll-off vessels (Ro-Ro) or who purchased or leased in Quebec a new vehicle that was transported by roll-on/roll-off vessel (Ro-Ro) between February 1, 1997 and December 31, 2012.[4] (Our translation.)

6. In its Application, the Respondent proposed the following as common questions (in translation):

> 57. Did the Defendants conspire, did they form a coalition or did they enter into an agreement or an arrangement having the effect of unduly restricting competition in the sale of transport services by Ro-Ro, and, in the affirmative, during what period did this cartel produce its effect on the members of the group?

---

[3] RSC 1985, c C-34.

[4] Application at para 2 (**Schedule III**).

58. Does the Defendants' participation in the Cartel constitute a fault engaging their solidary liability towards the members of the group?

59. Did the Cartel have the effect of creating an increase in the price paid for the purchase of transport services by Ro-Ro or for the purchase or lease of Vehicles having been transported on a Ro-Ro ship and sold or leased in Quebec? In the affirmative, does this increase constitute a damage for each of the members of the group?

60. What is the total amount of damages suffered by the whole of the members of the group?

61. Is the solidary liability of the Defendants engaged with respect to the following expenses incurred or to be incurred on behalf of the members of the group in the present matter:

61.1 The costs of investigation;

61.2 The cost of the extrajudicial fees of the attorneys for the Representative and the members of the group; and

61.3 The cost of the extrajudicial disbursements of the attorneys for the Representative and the members of the group?[5]

7. As the Appellants[6] argued, having regard to distinctive characteristics of RoRo services, such questions lacked commonality and did not satisfy Art. 575(1) of the CCP. Moreover, critical allegations in the Application were impermissibly vague, imprecise and lacked a "good colour of right", contrary to Art. 575(2) of the CCP, the whole as more fully appears from a copy of the Argument Plans submitted to the Court by the Appellants (**Schedule IV**).

8. The undisputed evidence on the record is that, unlike the situation in *Infineon*,[7] the supply of RoRo services does not take the form of a worldwide market where such services would be negotiated and purchased on a global basis. Instead, like other industries related to transportation, such as the airline industry,[8] the evidence established that RoRo services are sold and purchased in relation to specific routes (i.e.

---

[5] Application at paras 57–61 (**Schedule III**).
[6] EUKOR Car Carriers, Inc., Wilh. Wilhemsen ASA, Wilh. Wilhemsen Holdings ASA, Wallenius Wilhemsen Logistics America LLC, Wallenius Wilhemsen Logistics AS, and Wallenius Lines AB.
[7] *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59.
[8] *The Commissioner of Competition v. Air Canada et al.,* File No. CT-2011-004, Notice of Application at para 40-42 and Consent Agreement at para 29.

origin to destination).[9] Further, not all Defendants are present on all of the maritime routes where RoRo services are offered.[10]

9. The nature of the services and how they are bought and sold factored into the disposition of various foreign government investigations on which the Plaintiff relies.[11] Generally, the conclusions were that certain RoRo supply contracts, on certain routes for certain vehicle manufacturers at certain times were subject to anticompetitive conduct. With respect to a given RoRo services supply contract, whether any Defendants reached an agreement to fix bid prices, which Defendants were invited to bid or involved, the terms of their arrangement, and whether the arrangement was then implemented or succeeded, all depended on unique circumstances. One cannot extrapolate from a single contract-specific arrangement that the implicated RoRo service providers also arranged the terms of supply for any other specific contract.[12]

10. This is significant because class members' claims must share a substantial common ingredient to justify a class action.[13] An issue will be "common" only where its resolution is necessary to the resolution of each member's claim.[14] The underlying question is whether allowing the suit to proceed as a class action serves the concern for judicial economy by avoiding duplicated fact-finding or legal analysis.[15]

11. The crux of the dispute regarding Art. 575(1) CCP is the Plaintiff's general allegation that between 1997 and 2012, the Defendants conspired in Canada "and elsewhere". Without any details, the Plaintiff defines this as "the Cartel".[16] The Plaintiff

---

[9] Sworn Statement by Mr. Nuboyuki Yokoyama, dated November 30, 2018 at paras 12-13 (**Schedule V**); Judgment para 18 (**Schedule I**). See also WWL/EUKOR Argument Plan at paras 9, 23-28 (**Schedule IV**). In fact, the Application acknowledges the existence of a network of maritime routes (at para 40) (**Schedule III**).

[10] Sworn Statement by Mr. Nuboyuki Yokoyama, dated November 30, 2018 at paras 12-15 (**Schedule V**).

[11] Exhibit R-10, Consent Agreements and Orders of the Competition Tribunal of South Africa and NYK (Annexure "A") at 4–10 (**Schedule VI**); Exhibit R-24, COFECE (Mexico) press release (**Schedule VII**); Exhibit R-20, judgment of the Federal Court of Australia dated August 3, 2017 regarding NYK at para 51 (**Schedule VIII**).

[12] WWL/EUKOR Argument Plan at paras 29-38 (**Schedule IV**).

[13] *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1 at para 41, citing *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para 39.

[14] *Ibid.*

[15] *Vivendi* at paras 41-44.

[16] Application at para 43 (**Schedule III**).

then proposes an imprecise common question of whether the Defendants conspired, without reference to geography, or the routes or RoRo supply contracts at issue.[17]

12. Such imprecision is an attempt to mask the fact that there is no real single question. Instead, the question necessary to the resolution of each member's claim is whether Defendants conspired, in a manner contrary to the *Competition Act*, in a way that affected the particular RoRo supply contract by which that member's vehicle was shipped. That cannot be determined commonly for all class members without repetition or duplication of the analysis. Separate analysis of the conduct of Defendants will be required for each RoRo supply contract on particular routes for shipments to Canada.

III. DETAILED GROUNDS FOR APPEAL

13. The Appellants seek leave to appeal the Judgment, as it is apparent that the first instance Judge committed the following errors of law and fact in the Judgment:

i) Error because there is no single "Cartel" issue common to the class

14. With respect, the first instance Judge decisively erred in law and fact in his assessment of the Art. 575(1) criterion and in concluding that the questions proposed by Respondent advance a non-negligible part of the claims without a repetition of the legal analysis and are therefore similar, identical, or related.[18] The Application should have been rejected. Alternatively, it should have been allowed with fewer and narrower common issues.

15. First, the Judge misapprehended that WWL/EUKOR argued that the answer to common questions must solve "100% of each member's case".[19] WWL/EUKOR accept that a common question "only has to allow for the substantial advancement of a non-negligible part of the claims, without repetition of the legal analysis."[20] The issue here is which, if any, of the Respondent's proposed questions meets that threshold.

---

[17] Application at para 57 (**Schedule III**).
[18] Judgment at paras 69-77 (**Schedule I**).
[19] Judgment at para 75 (our translation) (**Schedule I**).
[20] Judgment at para 69 (our translation) (**Schedule I**).

16. Second, the Judge concluded that "[t]he existence of the Cartel is at the heart of all the claims of all the members of the class."[21] This statement is imprecise and clearly an error. Instead, the relevant question for each class member is whether the contract by which his or her vehicle was shipped was the subject of a conspiracy contrary to the *Competition Act*. This question is not common across the class.

17. The first instance Judge reasoned that even if the contracts were managed by route, that did not exclude the possibility that the conspiracy would have been global. He stated that the colour of right is that the conspiracy is global.[22] With respect, such theory is not presented in the Application and is not supported by the exhibits. The Application only baldly alleges the conclusion that Defendants conspired in Canada and elsewhere without explaining the geographic market(s) or what they conspired about.[23] It does not say what the Defendants did except to refer to certain government investigations.[24] The exhibits relating to such investigations do not, in fact, give colour of right to the Judge's theory that there may have been a single relevant global conspiracy that could be addressed without looking at agreements or arrangements made with respect to specific RoRo contracts. Instead, the exhibits clearly demonstrate that various government agencies reached different conclusions with respect to specific routes, contracts, and vehicle manufacturers at different times that would require separate considerations.[25] In other words, contract-specific inquiries are required.

18. The Judge also erred by treating issues about what he described as the "international market" (a term not used in the Application) and its geographical boundaries as potential "defences", while noting that defences are not the subject of authorization.[26] The onus to show the nature and scope of the Defendants' alleged

---

[21] Judgment at para 76 (our translation) (**Schedule I**).
[22] Judgment at para 57 (**Schedule I**).
[23] Application at para 43 (**Schedule III**).
[24] Application at paras 43.1-43.27 (**Schedule III**).
[25] See, e.g., Exhibit R-10, Consent Agreements and Orders of the Competition Tribunal of South Africa and NYK (Annexure "A") at 4–10 (**Schedule VI**); Exhibit R-19, Press Releases of the Competition Commission of South Africa regarding K-Line and Hoegh (**Schedule IX**); Exhibit R-24, COFECE (Mexico) press release (**Schedule VII**); Exhibit R-20, judgment of the Federal Court of Australia dated August 3, 2017 regarding NYK at para 51 (**Schedule VIII**).
[26] Judgment at paras 57-58, 73 (**Schedule I**).

misconduct, including the market in which competition was unduly restricted, lies with the Plaintiff[27] and is not a positive defence.

19. The present case is unlike the *Université Laval* case cited by the Judge, which involved a positive defence of "fair dealing" in a copyright case.[28] Instead, to meet its onus at trial in answering its first proposed question, the Respondent would need to provide evidence demonstrating, and the Court would need to undertake, route-specific and period-specific legal analyses of each potential alleged conspiracy, to ask whether Defendants conspired with respect to the contract by which the proposed class member's vehicle was shipped.

20. As such, the Judge erred in indicating that the first question proposed was likely to influence the outcome of the action and advance a non-negligible part of the claims *without a repetition of the legal analysis*. The question is not identical, similar, or related as required by the criterion set by Art. 575(1) CCP.

21. The remaining proposed questions depend on the commonality of the first question; thus they also do not meet the test in Art. 575(1) CCP.

ii) Error in authorizing the common questions as proposed

22. It is possible for a court to authorize a single significant issue without authorizing other matters the diverse class members may ultimately need to establish. In *Vivendi*, the Supreme Court considered a single pension plan joined by all class members. Although there were certain differences between the class members who joined the plan at different times, there was a significant common question for all members: could the defendant company unilaterally amend the plan? The class action was authorized to deal with that significant common question.[29]

---

[27] *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606 at pp. 651-652; "As a preliminary step, definition of the relevant market is required... it comprises both geographical and product or service aspects..."

[28] *Société québécoise de gestion collective des droits de reproduction (Copibec) c. Université Laval*, 2017 QCCA 199 at paras 67-74.

[29] *Vivendi* at paras 11, 30, 79 and 81. The Court found that the purpose of all six proposed common questions was to answer the more general question whether the 2009 amendments are valid or lawful.

23. Unlike *Vivendi*, there is no single contract or plan applicable to all class members in the present case. Therefore, this proceeding should not have been authorized at all.

24. Even if there was some general question about the existence of a cartel that might be common to all class members, which the Appellants deny, that does not imply that all questions regarding cartel conduct required to establish fault or liability are common or should be authorized. The Judge erred by not restricting any common cartel question to a narrow question that was truly common.

25. Establishing that there was a cartel in a general sense would not allow a given class member to show that the Defendants had committed a fault against him or her. The class member must still show that two or more Defendants made further agreements and arrangements with respect to the particular RoRo services contract by which that class member's vehicle was shipped.

26. At most, such questions might be common amongst a group of class members who bought vehicles of the same manufacturer shipped under the same RoRo services contract. For example, in *Jacques*[30] the plaintiff sought to authorize a class action on behalf of all persons who purchased gasoline or diesel fuel between January 1, 2002 and June 12, 2008 in the regions of Victoriaville, Thetford Mines and Sherbrooke/Magog.[31] In other words, the plaintiff alleged "a cartel" affecting all four municipalities. The defendants argued and the Court accepted that this approach inappropriately combined regions; the analysis would need to be region-specific and therefore sub-classes were required.[32]

27. The first instance Judge erred by authorizing a common question purporting to determine the existence and application of a cartel across all class members without, at a minimum, dividing the class into sub-classes. If he had addressed the need for sub-classes, he would have also had to address whether they were proportional, as there were likely hundreds of RoRo supply contracts applicable to shipment of over twenty

---

[30] *Jacques c. Petro-Canada*, 2009 QCCS 5603.
[31] *Ibid.* at para 5.
[32] *Ibid.* at paras 42-81.

automobile manufacturers with foreign plants in multiple countries over the course of the nearly 16-year proposed class period.

28. If this Court grants leave, it will have an opportunity to address the principles concerning the formulation of common questions and the potential use of sub-classes, to deal with differently-situated class members.

iii) Error in failing to address the remaining proposed common questions

29. The first instance Judge clearly erred by not addressing at all why the second and third proposed common questions satisfied Art. 575(1). The second question concerns whether the Defendants were solidarily liable. Based on the evidence before the Court, this analysis would need to be contract-specific. It would depend on which Defendants were invited to bid and then allegedly colluded with respect to particular RoRo contracts. Indeed, the Application (correctly) does not allege that each Defendant participated on each route or had the opportunity to bid for each contract.[33]

30. The third proposed common question concerns whether "the Cartel" increased the prices paid for the purchases or leases of vehicles transported by RoRo. Under Section 36(1) of the *Competition Act*, to establish liability each class member must establish that they suffered loss or damage as a result of illegal conduct. The responses to this question will again depend on which RoRo services contracts, if any, were the subject of a conspiracy contrary to the *Competition Act*. Furthermore, unlike the situation in *Infineon*, proof of harm will require separate analysis for each class member. This Court has recognized that the purchase or lease of new vehicles involves highly individualistic negotiations.[34] Whether the result of a given negotiation led to the passing on of a higher cost imposed on the vehicle manufacturer cannot be determined for the numerous class members who bought the same model vehicle (let alone different vehicles transported under different contracts) without repetition of the analysis.

---

[33] Had the Application done so, it would be without colour of right as shown from the discussion in the government investigations in South Africa, Mexico, and Australia: Application Exhibits R-10 (**Schedule VI**), R-20 (**Schedule VIII**) and R-24 (**Schedule VII**).

[34] *Harmegnies c. Toyota Canada*, 2007 QCCS 539 at paras 44–45, EYB 2007-114429, aff'd 2008 QCCA 380, EYB 2008-130376, leave to appeal to SCC refused, 32587 (25 September 2008).

31. The fourth question, related to aggregate damages, depends on which class members can establish liability. As the proposed questions dealing with liability do not satisfy Art. 575(1) CCP, there is also no basis to authorize the fourth question. Furthermore, the Judge incorrectly cited *Infineon* in holding that the Respondent had demonstrated an aggregate loss and a transfer of loss from direct purchasers to indirect purchasers.[35] Rather, *Infineon* stands for the proposition that *if* an aggregate loss can be demonstrated, how that loss is to be divided among class members does not need to be addressed at the authorization stage.[36] Unlike the circumstances in *Infineon*, here the evidence establishes that there are no direct purchasers of RoRo services located in Quebec. Thus, no aggregate loss could have been shared between direct and indirect purchasers in Quebec. The Judge erred in law in finding that the Defendants' allegedly artificially raised prices of RoRo services could serve to establish that class members had suffered damages without any evidence of passing on provided by the Respondent.

IV. CONCLUSION

32. The errors of the Honourable Justice Bisson led him to the erroneous conclusion that the questions proposed by the Respondent were identical, similar, or related.

33. The Respondent's Application does not meet Art. 575(1) CCP or alternatively, is based on allegations lacking a good colour of right, contrary to Art. 575(2).

34. On Appeal, the Appellants will ask this Court to allow the Appeal, to set aside the Judgement of the Honourable Justice Bisson dated April 1, 2019, to dismiss the *Modified Application for Authorization to Institute a Class Action (April 12, 2018)*, and to condemn the Respondent to the costs in first instance and in appeal; alternatively, that the matter be remitted to the Honourable Justice Bisson to address the formulation of appropriate sub-classes.

35. This Application for leave to appeal is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

---

[35] Judgment at para 63.
[36] *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59, at paras. 125-126.

GRANT this Application for Leave to Appeal;

AUTHORIZE Appellants to appeal from the judgement rendered by the Honourable Justice Donald Bisson on April 1, 2019 of the Superior Court of Québec, district of Montreal, in the file bearing number 500-06-000657-136;

SET the appeal at a date to be determined by the Court;

THE WHOLE with legal costs to follow.

MONTREAL, May 17, 2019

DLA Piper

DLA Piper (Canada) LLP
Me Tania da Silva
1501 McGill College Ave., suite 1400
Montréal QC H3A 3M8
Telephone: 514-392-8427
Fax: 514-392-8374
Email: tania.dasilva@dlapiper.com
Attorney for Appellant-Defendants EUKOR Car Carriers. Inc., Wilh. Wilhelmsen ASA, Wilh. Wilhelmsen Holding ASA, Wallenius Wilhelmsen Logistics America LLC, Wallenius Wilhelmsen Logistics AS and Wallenius Lines AB
Our reference: 089457-00002

MONTREAL, May 17, 2019

Blake, Cassels & Graydon LLP

Blake, Cassels & Graydon LLP
Me Simon J. Seida
1 Place Ville Marie, Suite 3000
Montréal QC H3B 4N8
Telephone: 514-482-4103
Fax: 514-482-4000
Email: simon.seida@blakes.com
Attorneys for Appellant-Defendants Mitsui O.S.K. Lines, Ltd., Mistui O.S.K. Bulk Shipping (U.S.A.) Inc., Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (USA) Inc.

SOLEMN DECLARATION

EUKOR CAR CARRIERS, INC., WILH. WILHELMSEN ASA, WILH. WILHELMSEN HOLDING ASA, WALLENIUS WILHELMSEN LOGISTICS AMERICAS, LLC, WALLENIUS WILHELMSEN LOGISTICS AS, WALLENIUS LINES AB, MITSUI O.S.K. LINES, LTD., MISTUI O.S.K. BULK SHIPPING (U.S.A.) INC., NISSAN MOTOR CAR CARRIER CO., LTD. AND WORLD LOGISTICS SERVICE (USA) INC.

Dated May 17, 2019

I, the undersigned **TANIA DA SILVA**, attorney, practising law with the firm DLA Piper (Canada) LLP, located at 1501 McGill College Avenue, Suite 1400, in the city and district of Montreal, certify the following:

1. I am the one of the attorneys for EUKOR Car Carriers. Inc., Wilh. Wilhelmsen ASA, Wilh. Wilhelmsen Holding ASA, Wallenius Wilhelmsen Logistics America LLC, Wallenius Wilhelmsen Logistics AS and Wallenius Lines AB in the present matter;

2. All of the facts alleged in the *Application for Leave to Appeal* are true.

AND I HAVE SIGNED

TANIA DA SILVA

SOLEMNLY AFFIRMED before me
in Montreal, on May 17, 2019

Joannie Boire
207704
COMMISSAIRE À L'ASSERMENTATION
Pour le Québec
Québec

Commissioner of Oaths for Quebec

NOTICE OF PRESENTATION

TO:

Me Maxime Nasr
BELLEAU LAPOINTE S.E.N.C.R.L.
300 place D'Youville
B-10
Montréal QC H2Y 2B6
Phone : (514) 987-6672
Phone : (514) 987-6700
Fax : (514) 987-6886
Email: mnasr@belleaulapointe.com

Attorneys for Option Consommateurs and Jean-Claude Charlet/Respondents

Me Guillaume Boudreau-Simard
STIKEMAN ELLIOTT S.E.N.C.R.L., S.R.L.
1155, blvd René-Lévesque W
41st Floor
Montréal, QC, H3B 3V2
Phone : (514) 397-3694
Fax : (514) 397-3621
Email :
gboudreausimard@stikeman.com

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

Me Éric Préfontaine
Phone : (514) 904-5282
Email: eprefontaine@osler.com
Me Céline Legendre
Phone : (514) 904-8108
Email: clegendre@osler.com
OSLER, HOSKIN & HARCOURT
1000, Gauchetière St. W
Office 2100
Montréal, QC, H3B 4W5
Fax : (514) 904-8101

Attorneys for Höegh Autoliners AS and Höegh Autoliners Inc./Impleaded parties

Me Simon Jun Seida
Phone : (514) 982-4000
E-mail : simon.seida@blakes.com
Me Matthew Millman-Pilon
Phone : (514) 982-4071
Email Matthew.millman-pilon@blakes.com
BLAKE, CASSELS & GRAYDON LLP
1, Pl. Ville-Marie
Office 3000
Montréal QC H3B 4N8
Fax : (514) 982-4099

Attorneys for Mitsui O.S.K. Lines LTD, Mitsui O.S.K. Bulk Shipping (U.S.A.) Inc., Nissan Motor Car Carrie Co. LTD. and World Logistics Services (USA) inc./Appelants

Me Éric Vallières
Phone : (514) 987-5068
Email: eric.vallieres@mcmillan.ca
Me Gabrielle Lachance-Touchette
Phone : (514) 375-5151
Email: gabrielle.lachance-touchette@mcmillan.ca

MCMILLAN S.E.N.C.R.L., S.R.L.
1000, Sherbrooke St. W
Office 2700
Montréal, QC, H3A 3G4

Attorneys for Kawasaki Kisen Kaisha, ltd and K Line America, inc./Impleaded parties

NOTICE IS HEREBY GIVEN that EUKOR Car Carriers. Inc., Wilh. Wilhelmsen ASA, Wilh. Wilhelmsen Holding ASA, Wallenius Wilhelmsen Logistics America LLC, Wallenius Wilhelmsen Logistics AS, Wallenius Lines AB, Mitsui O.S.K. Lines, Ltd., Mistui O.S.K. Bulk Shipping (U.S.A.) Inc., Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (USA) Inc.'s *Modified Application for Leave to Appeal* (Art. 357, 578 C.C.P.) will be presented before a judge of the Court of Appeal sitting at Édifice Ernest-Cormier, located at 100, Notre-Dame St. E., in Montreal, on **June 10, 2019**, at **9:30 a.m.** in Courtroom **RC-18**.

PLEASE GOVERN YOURSELVES ACCORDINGLY

MONTREAL, May 17, 2019

DLA Piper

DLA Piper (Canada) LLP
Me Tania da Silva
1501 McGill College Ave., suite 1400
Montréal QC H3A 3M8
Telephone: 514-392-8427
Fax: 514-392-8374
Email: tania.dasilva@dlapiper.com
Attorneys for Appellant-Defendants EUKOR Car Carriers. Inc., Wilh. Wilhelmsen ASA, Wilh. Wilhelmsen Holding ASA, Wallenius Wilhelmsen Logistics America LLC, Wallenius Wilhelmsen Logistics AS and Wallenius Lines AB
Our reference: 089457-00002

MONTREAL, May 17, 2019

Blake, Cassels & Graydon LLP
Me Simon J. Seida
1 Place Ville Marie, Suite 3000
Montréal QC H3B 4N8
Telephone: 514-482-4103
Fax: 514-482-4000
Email: simon.seida@blakes.com
Attorneys for Appellant-Defendants Mitsui O.S.K. Lines, Ltd., Mistui O.S.K. Bulk Shipping (U.S.A.) Inc., Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (USA) Inc.

LIST OF SCHEDULES OF APPLICATION FOR LEAVE TO APPEAL

Schedule I:	Judgment in the Court file bearing number 500-06-000657-136 rendered by the Honourable Justice Donald Bisson of the Superior Court of Quebec, district of Montreal, on April 1, 2019;
Schedule II:	*Notice of Judgment* dated April 4, 2019;
Schedule III:	*Modified Application for Authorization to Institute a Class Action,* dated April 12, 2018;
Schedule IV:	Argument Plans submitted to the Superior Court of Québec by the Appellants
Schedule V:	Sworn Statement by Noboyuki Yokoyama dated November 30, 2018;
Schedule VI:	Exhibit R-10, (Consent Agreements and Orders of the Competition Tribunal of South Africa);
Schedule VII:	Exhibit R-24, (COFELE (Mexico) press release));
Schedule VIII:	Exhibit R-20, (Judgment of the Federal Court of Australia dated August 3, 2017);
Schedule XI:	Exhibit R-19, (Press release of the Competition Commission of South Africa).

MONTREAL, May 17, 2019

DLA Piper (Canada) LLP
Me Tania da Silva
1501 McGill College Ave., Suite 1400
Montréal, QC, H3A 3M8
Telephone: 514-392-8427
Fax: 514-392-8374
Email: tania.dasilva@dlapiper.com
Attorneys for Appellant-Defendants EUKOR Car Carriers. Inc., Wilh. Wilhelmsen ASA, Wilh. Wilhelmsen Holding ASA, Wallenius Wilhelmsen Logistics America LLC, Wallenius Wilhelmsen Logistics AS and Wallenius Lines AB
Our reference: 089457-00002

MONTREAL, May 17, 2019

Blake, Cassels & Graydon LLP

Blake, Cassels & Graydon LLP
Me Simon J. Seida
1 Place Ville Marie, Suite 3000
Montréal, QC, H3B 4N8
Telephone: 514-482-4103
Fax: 514-482-4000
Email: simon.seida@blakes.com
Attorneys for Appellant-Defendants Mitsui O.S.K. Lines, Ltd., Mistui O.S.K. Bulk Shipping (U.S.A.) Inc., Nissan Motor Car Carrier Co., Ltd. and World Logistics Service (USA) Inc.

COURT OF APPEAL
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

C.A.: 500-09-028290-195
C.S.: 500-06-000657-136

EUKOR CAR CARRIERS, INC. & als

APPELANTS

v.

OPTION CONSOMMATEURS

-and-

JEAN-CLAUDE CHARLET

RESPONDENTS

v.

KAWASAKI KISEN KAISHA LTD. & als

IMPLEADED PARTIES

MODIFIED APPLICATION FOR LEAVE TO APPEAL
(Articles 357, 578 C.C.P.) OF APPELANTS

ORIGINAL FOR THE COURT OF APPEAL

Mtre Tania da Silva **O/F: 089457-00002**
TDS/jb

DLA PIPER

1501, McGill College Ave.
Suite 1400
Montréal (Québec) H3A 3M8
Phone: (514) 392-8427
Fax : (514) 392-8374
Email : tania.dasilva@dlapiper.com

BH 0834