

NOTICE OF JUDGMENT AND INDIVIDUAL PARTICIPATION IN THE 2012 VIA RAIL DERAILMENT CLASS ACTION

This Notice may affect your rights. Please read carefully

THE CLASS ACTION

This action in the Ontario Superior Court of Justice arises out of a train derailment which occurred near Burlington, Ontario on February 26, 2012 at approximately 3:30 p.m. The defendants are Via Rail Canada Inc. ("VIA") and Canadian National Railway Company ("CN").

This notice is directed to the **CLASS MEMBERS** who did not previously opt out or accept an offer to settle and are all persons who were passengers on VIA Train 92 on February 26, 2012 when it was derailed near Burlington, Ontario, excluding VIA's employees and CN's employees.

This notice is also directed to the **FAMILY CLASS MEMBERS** who are the living partners, spouses, children, grandchildren, parents, grandparents or siblings of a Class Member, or where such family member has died, the personal representative of the estate of the deceased family member.

JUDGMENT ON COMMON ISSUES

On March 23, 2015, Justice Perell granted judgment and determined common issues with respect to the liability of the defendants in favour of the Class Members. The Judgment is posted at www.viaclassaction.com. Class Members may now be entitled to compensation.

VIA'S OFFER TO SETTLE

If you are a Class Member, as described above, you are entitled to immediate compensation by accepting VIA's enclosed offer to settle. The offer must be accepted within 30 days. To accept the offer, return the Rule 49 settlement offer to Class Counsel along with a copy of the attached release signed by you.

Any counter-offer may be sent to Class Counsel within the same 30 days.

If the matter is not settled, you must file an Application Record with documents supporting your claims, in the manner and timeframes set out below, to be entitled to any compensation for injuries.

THE PROCEDURE FOR ESTABLISHING YOUR CLAIM

- 1) If you do not settle your claim by **July 26, 2016**, then you will have until **October 24, 2016**, to deliver a Notice of Application with supporting affidavits, including an affidavit of documents, to the defendants (the "**Application Record**").
- 2) If you deliver an Application Record, the defendants will then have an opportunity to deliver a Responding Application Record, including an affidavit of documents, within 90 days from when you delivered the Application Record.
- 3) Depending on the amount of damages you are claiming in your Notice of Application, there will be different procedures which follow:

- a. **Claims under \$50,000:** After receiving your Application Record, the defendants may schedule a medical assessment of the Class Member within 60 days of the delivery of the Responding Application Record. A judge of the Ontario Superior Court of Justice will then review the materials, including any written arguments. The judge may rule on the amount of damages based on the written record, but may also direct that oral submissions be given, following which, the judge will make a ruling on the amount of compensation.
 - b. **Claims of \$50,000-\$100,000:** After receiving your Application Record, the defendants may schedule a medical assessment of the Class Member within 60 days of the delivery of their materials. The parties have a right to cross-examination which must take place within 120 days of receiving the defendants' materials. Once these steps are complete, a judge of the Ontario Superior Court of Justice will hear a motion for damages and make a ruling on the amount of compensation.
 - c. **Claims over \$100,000:** If the claim is not settled after you have delivered your Application Record, the claim will proceed as a trial of an issue before a judge of the Ontario Superior Court of Justice in accordance with the *Rules of Civil Procedure*, including the discovery rights and expert report obligations under those *Rules*.
- 4) All parties' appeal rights from any decision on the determination of the individual claims are in accordance with s. 30 of the *Class Proceedings Act, 1992*.

FAILURE TO TAKE THESE STEPS WILL RESULT IN YOU NOT BEING ENTITLED TO ASSERT AN INDIVIDUAL CLAIM, EXCEPT WITH LEAVE OF THE COURT

INFORMATION

This Notice is a summary of some of the terms of the Individual Issues Litigation Plan. If there is a conflict between the provisions of this Notice and the terms of the Individual Issues Litigation Plan, the Individual Issues Litigation Plan prevails.

This Notice was approved by the Ontario Superior Court of Justice. The court offices will be unable to answer any questions about the matters in this Notice. You are encouraged to contact Class Counsel with any questions:

Charney Lawyers Tel: 416.964.7950
602-151 Bloor St. West Fax: 416.964.7416
Toronto, ON M5S 1P7 Email: info@charneylawyers.com

Sutts, Strosberg LLP Tel: 1.519.561.6294
600-251 Goyeau Street Fax: 1.866.316.5311
Windsor, ON N9A 6V4 Email: viaclassaction@strosbergco.com

Koskie Minsky LLP Tel: 416.977.8353
900-20 Queen St. West Fax: 416.977.3316
Toronto, ON M5H 3R3 Email: viarailclassaction@kmlaw.ca