

Form 39.08

2015



Hfx No. 438657

**SUPREME COURT OF NOVA SCOTIA**

BETWEEN:

**KATHLEEN CARROLL-BYRNE, ASHER HODARA and  
GEORGES LIBOY**

PLAINTIFFS

– AND –

**AIR CANADA, AIRBUS S.A.S., NAV CANADA, HALIFAX  
INTERNATIONAL AIRPORT AUTHORITY, THE  
ATTORNEY GENERAL OF CANADA** representing His  
Majesty the King in Right of Canada, **JOHN DOE #1** and **JOHN  
DOE #2**

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c.28

**AFFIDAVIT OF MALANGA GEORGES LIBOY  
(Motion to Approve Settlement and Motion to Approve Fee and Disbursements)**

I, Malanga Georges Liboy, of Saint Bernard, in the Province of Nova Scotia, hereby affirm and say:

1. I am one of the three Representative Plaintiffs in this proceeding.
2. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated to be based on information and belief.
3. Where I make statements that are not within my personal knowledge, I have stated the source of the information and believe that information to be true. I do verily believe the information from each source cited to be true.

4. I am providing this affidavit in support of the Plaintiffs' separate motions, scheduled for June 22, 2026, to approve the Settlement Agreement dated February 20, 2026 (the "Settlement Agreement") and to approve the Class Counsel Fee and Disbursements.
5. Except where otherwise indicated or required by context, the capitalized terms that are not defined in this affidavit have the meanings given to them in the Settlement Agreement.

**A. Time Spent and Activities Undertaken in Advancing the Litigation**

6. I swore an Affidavit on March 23, 2016, in support of the certification motion in this proceeding. I adopt that evidence here as true and correct and will not repeat all of my evidence from that affidavit.
7. I was a passenger on Air Canada Flight 624 when it crash landed on the runway at the Halifax Stanfield International Airport on March 29, 2015.
8. As one of the Representative Plaintiffs, I have taken on several responsibilities in an effort to fairly and adequately represent the interests of the Class Members and to advance this litigation on their behalf.
9. I retained the law firm of Wagners to act as Class Counsel and have worked closely with them to advance this claim on behalf of the Class. I first met with Wagners in April 2015.
10. Since retaining Wagners as Class Counsel, I have committed time and effort to ensure the effective prosecution of this action. I provided Class Counsel with information for the drafting of the original Notice of Action and Statement of Claim, as well as subsequent

amendments. I reviewed these documents to ensure they accurately reflected my experience and what I understood were the claims being advanced on behalf of the Class.

11. I provided detailed information for the drafting of my affidavit in support of the certification motion, reviewed drafts, provided input, and reviewed edits. I executed the affidavit once satisfied with its contents.
12. I attended an out-of-court discovery examination on August 31, 2017, during which I was asked questions relating to my experience of the crash on March 29, 2015, and the allegations in the claim.
13. I communicated with Class Counsel on numerous occasions to provide information, discuss the progression of the case, prepare for discovery examinations on my evidence, and discuss and provide instructions on the exchange of numerous settlement proposals.
14. Class Counsel have kept me informed of and offered advice regarding the factual and legal contexts of this claim, including the status of the litigation, the issues in dispute, and the strategic considerations that impacted a potential resolution.
15. Over the course of several years, I have received regular updates from Class Counsel and have provided instructions in relation to settlement negotiations concerning the proposed resolution of the Action as a whole, including the overall settlement approach, the positions to be advanced on behalf of the Class, and the conduct of negotiations at the Judicial Settlement Conference, mediations, and related discussions.
16. For clarity, my involvement related to resolution of the Action as a whole, and I was not consulted on, nor did I provide instructions with respect to, each of the individual

negotiations concerning the assessment or valuation of individual Class Members' damages.

17. Throughout this process of negotiation and settlement, I remained actively engaged, considering settlement proposals and recommendations provided by my lawyers and providing my input and instructions on the settlement pursued on behalf of the Class.
18. Throughout the lengthy process of negotiation and settlement, I have endeavoured to ensure that the settlement terms ultimately agreed upon are fair, reasonable, and in the best interests of the Class as a whole.

#### **B. The Proposed Settlement**

19. Class Counsel have explained to me the terms of the Settlement Agreement. These explanations have occurred both over the phone and in writing.
20. I provided instructions regarding the Settlement Agreement, which I understand is subject to Court approval.
21. I have communicated with Raymond Wagner, KC, Maddy Carter and Kate Boyle, lawyers at Wagners, about the settlement terms, including as the full details of the Settlement Agreement were still being negotiated and finalized. I accept their opinion that the final Settlement Agreement is fair, reasonable, and in the best interests of the Class. After reviewing the terms and considering their advice, I provided instructions to accept the Defendants' offer.
22. From my own experience as a Representative Plaintiff in this proceeding and based on my discussions with Class Counsel, I understand and believe that without this Settlement:

- (a) it is uncertain whether or when Class Members would receive an award of compensation, and what the amount would be. Even if liability against one or more Defendants were established, it could take many years to reach the point of distributing compensation due to the length of a common issues trial, the possibility of appeals and the need for an individualized assessment of each Class Member's damages;
- (b) the outcome of a common issues trial is uncertain, and even a successful outcome at the common issues stage would not, on its own, result in compensation for Class Members, given that it is focused on the Defendants' liability only. I understand that individual Class Members would still be required to participate in further, and potentially adversarial, individual assessment processes to establish their damages, which would involve additional delay, cost, and uncertainty; and
- (c) even if a common issues trial were successful, if liability were found only against the Air Canada Defendants, international passengers' claims for psychological or emotional harm could be excluded from compensation unless those harms were found to be caused by a bodily injury.

23. I am informed by Class Counsel and believe that such delays and additional costs would not necessarily result in higher compensation for Class Members.

24. As a Representative Plaintiff, I recommend the Settlement Agreement to the Court for approval.

### **C. Honorarium**

25. My evidence above summarizes the discharge by me of my responsibilities as a Representative Plaintiff in this matter. I believe I have been fully engaged in the process throughout the litigation.
26. I understand that Class Counsel is requesting the Court's approval of payment to me of a \$2,500 honorarium. I support Class Counsel's request for approval of this, having regard to the time, responsibility, and involvement I undertook as a Representative Plaintiff over many years.
27. Over the course of this litigation, I have devoted significant time and effort to advancing this case on behalf of the Class. This includes all of the steps I described above.

### **D. Class Counsel Fee**

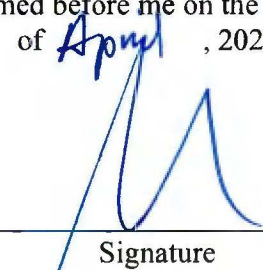
28. On July 24, 2015, I signed a Contingency Fee Agreement ("CFA") and Indemnity Agreement with Wagners, after reviewing the terms of these arrangements with Mr. Wagner and Ms. Carter. Attached hereto and marked as **Exhibit "A"** is a copy of the Contingency Fee Agreement. Attached hereto and marked as **Exhibit "B"** is a copy of the Indemnity Agreement.
29. I was fully aware at that time and understood that Class Counsel would fund the litigation throughout and would only be paid in the event of success, either by way of judgment or settlement. I also understood that Class Counsel would indemnify me for any adverse costs award that may be granted in this proceeding.



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This is Exhibit "A" referred to  
in the affidavit of Malanga "Georges" Liboy,  
affirmed before me on the 29<sup>th</sup> day  
of April, 2026.



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Signature

GERARD N. POTHIER  
A Barrister of the Supreme Court  
of Nova Scotia

EXHIBIT "A"

Contingency Fee Agreement pursuant to Nova Scotia Civil Procedure Rule 77.14

**SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**MALANGA GEORGES LIBOY**

**PARTY OF THE FIRST PART**

**-and-**

**THE LAW PRACTICE OF WAGNER & ASSOCIATES INC.  
Known As WAGNERS**

**PARTY OF THE SECOND PART**

**CONTINGENCY FEE AGREEMENT**

**PART I – BACKGROUND**

1. Malanga Georges Liboy, residing in Church Point, Province of Nova Scotia, hereby retains and employs the law firm of Wagners as my solicitors and hereby authorizes them to institute a Class Proceeding pursuant to the *Class Proceedings Act*, S.N.S. 2007, c. 28. Malanga Georges Liboy is hereinafter referred to as the “client”.

2. The Law Practice of Wagner & Associates Inc., known as Wagners, Barristers and Solicitors, have their principal place of business located at 1869 Upper Water Street, 3<sup>rd</sup> floor, Pontac House, Halifax, Nova Scotia, B3J 1S9, and are hereinafter referred to as the “solicitor”.

3. I agree that I will be named as Representative Plaintiff on behalf of all persons who were passengers of Air Canada flight 624. As a Representative Plaintiff, I state that I was a passenger of Air Canada flight 624. I agree to co-operate in the litigation, to be available when required, to give instructions when asked to do so and to participate fully in the litigation process to its conclusion. I authorize Wagners to take such actions and to conduct such proceedings as they may consider necessary or proper for the conduct of the proceeding.

4. i) The contingency upon which compensation is to be based is the successful adjudication of liability or the successful arrival at settlement. If the client is unsuccessful on liability or settlement, there will be no solicitor's fees payable. If the client is successful on liability or settlement, there will be compensation payable to the solicitor in the percentages as stated in paragraph 5.

ii) The client will be responsible regardless of results for all reasonable and proper disbursements and expenses incurred by the solicitor. Proper disbursement and expenses paid by the solicitor will be invoiced to the client. Repayment to the solicitor shall be made by the client as soon as reasonably possible after invoicing.

iii) Other than for payment of all reasonable and proper disbursements and expenses, no compensation other than the amounts collected by the solicitor is payable by the client excluding costs awarded against the client. Costs awarded against the client are the subject to the attached Indemnity Agreement entered into between the parties.

iv) The Law Practice of Wagner & Associates Inc. may, at its discretion, finance any reasonable and proper disbursement and expense which exceeds \$1,000.00 through a Third Party Financing Company of its choice. Interest accumulated as a result of the aforementioned Financing for all reasonable and proper disbursements funded in the above noted manner will be at the rate required by the Third Party Financing Company. The interest charges will be treated as a reasonable and proper disbursement and expense as if part of the original invoice.

v) All disbursements and fees including HST are subject to the approval of the Supreme Court of Nova Scotia or other competent jurisdictions pursuant to the provisions of the relevant class proceedings acts.

## **PART II – PERCENTAGES RECOVERABLE**

5. I understand that Wagners shall be entitled to a legal fee, which is a percentage of the total value of any settlement or judgment to the class inclusive of any award of costs. The client shall pay, after all reasonable and proper disbursements have been deducted, twenty-five percent (25%) of the collected compensation if the action is settled before certification. The client shall pay, after all reasonable and proper disbursements have been deducted, thirty percent (30%) of the collected compensation if the action is settled after certification but before trial. The client shall pay, after all reasonable and proper disbursements have been deducted, thirty-three and a third percent (33 <sup>1</sup>/<sub>3</sub>%) of the collected or awarded compensation if the action is settled after commencement of trial. I understand that in addition to any legal fee, Wagners shall be entitled to recover from any settlement or judgment all disbursements incurred along with interest that

has accrued on such disbursements, including financing costs charged by a third party indemnity or financing company.

### **PART III – SETTLEMENT DUTIES AND OBLIGATIONS**

6. In the event that the solicitor is able to bring this matter to a resolution by way of fault of liability (or a percentage thereof) to benefit the client, it is understood by the parties that no offer of settlement shall be binding upon the client unless specifically accepted by the client.

7. In the event that the defendant or his/her authorized agent makes an offer to settle, the solicitor will review the offer with the client and provide the client with an opinion. Should the client reject an offer which has been recommended by the solicitor then such rejection may be taken as a serious loss of confidence between the solicitor and the client which may justify the solicitor withdrawing legal services.

8. If the client:

- (i) rejects an offer of settlement recommended by the solicitor as an acceptable resolution to the matter;
- (ii) or should the client refuse to co-operate in the litigation process;
- (iii) or should the client discharge the solicitor;

there shall be due to the solicitor the applicable percentage as outlined above on any offer of settlement that has been made which represents a reasonable valuation of the claim plus the reasonable and proper disbursements and expense paid by the solicitor in the advancement of

the client's case; or, if no offer has been made or a nominal or unreasonable offer has been made then reasonable and proper disbursements and expenses paid by the solicitor plus fees in an amount equal to a reasonable representation of the time spent working on the client's file based upon the solicitor's hourly rate. The current hourly rates which are subject to change without notice are: Raymond F. Wagner, seven hundred and fifty dollars (\$750.00); Anna Marie Butler, five hundred dollars (\$500.00); Michael Dull, three hundred and fifty dollars (\$350.00); Madeleine Carter, three hundred dollars (\$300.00); Loreatha Boehner, two hundred and fifty dollars (\$250.00); and Lisa Wagner, two hundred dollars (\$200.00). If Wagners employs solicitors not stated above after the signing of this Agreement the solicitor's rates will be added to this agreement without notice at a rate commensurate with their experience. In addition, applicable service taxes will be charged to the fees as set out in the governing legislation which are subject to adjustment from time to time.

#### **PART IV – MISCELLANEOUS**

9. The collected or awarded compensation includes all damage awards for which the client is entitled to by law, as well as interest and costs awarded in favour of the client.
10. In the event of a structured settlement, the purchase value of the annuity structured shall be used to calculate that component of the collected or awarded compensation.
11. The Contingency Fee Agreement does not cover any appeal by the client or the defendants in the proposed action. Fees on appeal shall be calculated as an additional 5% on the percentages that would have been applicable had the matter resolved without an appeal.

12. Harmonized Sales Tax will be applied in addition to the amount of compensation for legal services in the percentages and in the amounts as indicated in the governing legislation.

13. The client has the right to have this Agreement and any payment due under it reviewed for the reasonableness and necessity of the charges by an adjudicator under the *Small Claims Court Act* or a judge. In addition, all fees, HST, and disbursements require Court approval pursuant to the relevant class proceedings act(s).

14. This Agreement shall be governed by the Laws of the Province of Nova Scotia.

DATED this 24th day of July A.D., 2015, at Halifax, in the County of Halifax, Province of Nova Scotia

SIGNED, SEALED AND DELIVERED In the presence of

[Signature]  
WITNESS

Paulin Malabris

Raymond Wagner  
WITNESS

[Signature]  
MALANGA GEORGES LIBOY

[Signature]  
WAGNERS

I acknowledge receipt of a true copy of the Contingency Fee Agreement on the 24th day of July, 2015 at Halifax, in the County of Halifax, Province of Nova Scotia

[Signature]  
WITNESS

Paulin Malabris

[Signature]  
MALANGA GEORGES LIBOY

I acknowledge that I have been advised by Wagner & Associates that I have a right to seek independent legal advice with respect to this Agreement prior to signing this contract.

[Signature]  
WITNESS

Malabris, Paulin

[Signature]  
MALANGA GEORGES LIBOY

2015

**SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**MALANGA GEORGES LIBOY**

**PARTY OF THE FIRST PART**

**-and-**

**THE LAW PRACTICE OF WAGNER & ASSOCIATES INC.  
Known As WAGNERS**

**PARTY OF THE SECOND PART**

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**CONTINGENCY FEE AGREEMENT**

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**THE LAW PRACTICE OF  
WAGNER & ASSOCIATES  
Barristers and Solicitors  
P.O. Box 756, Central RPO  
1869 Upper Water Street  
3<sup>rd</sup> Floor, Pontac House  
Halifax NS B3J 1S9**

**Attn: RFW/rc  
File: 88600**

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This is Exhibit "B" referred to  
in the affidavit of Malanga "Georges" Liboy,  
affirmed before me on the <sup>21<sup>st</sup></sup> day  
of <sup>April</sup>, 2026.



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Signature

**GERARD N. POTHIER**  
A Barrister of the Supreme Court  
of Nova Scotia

EXHIBIT "B"

INDEMNITY AGREEMENT

FOR VALUE RECEIVED, Wagners agrees to indemnify and save harmless Malanga Georges Liboy ("Indemnatee") and his successors and assigns, from any claim, action, liability, loss, damage or suit, arising from the following:

Any claim for court costs that may be assessed against him as a result of being the named representative plaintiff in a proposed class action on behalf of himself and all persons who were passengers of Air Canada Flight 624.

In the event of any asserted claim, the Indemnatee shall provide the undersigned reasonably timely written notice of same, and thereafter the undersigned shall at its own expense defend, protect and save harmless Indemnatee against said claim or any loss or liability thereunder.

In the further event the undersigned shall fail to so defend and/or indemnify and save harmless, then in such instance the Indemnatee shall have full rights to defend, pay or settle the claim on his own behalf without notice to the undersigned and with full rights to recourse against the undersigned for all fees, costs, expenses and payments made or agreed to be paid to discharge said claim.

Upon default, the undersigned further agrees to pay all reasonable legal fees necessary to enforce this agreement.

This agreement shall be unlimited as to amount or duration.


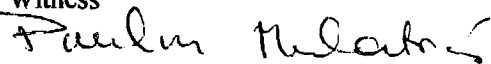
This agreement shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

This agreement is private to the parties to this agreement and shall only be disclosed to third parties if it is necessary to enforce the agreement and in that event shall only be disclosed to the extent necessary to enforce the agreement.

IN WITNESS WHEREOF the parties hereto have duly executed these presents on the .24th.... day of ...July..... 20.15..

Raymond Wagner  
Witness

  
\_\_\_\_\_  
WAGNERS

  
\_\_\_\_\_  
Witness  


  
\_\_\_\_\_  
MALANGA GEORGES LIBOY