

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kotai v. Queen of the North (Ship)*,  
2010 BCSC 1180

Date: 20100823  
Docket: S062025  
Registry: Vancouver

ADMIRALTY ACTION *In Rem* against the Ship “Queen of the North”  
and *In Personam*

Between:

**Alexander Steven Kotai, Maria Giovanna Kotai,  
Barney Norman Dudoward, and Robert Peter Smith**

Plaintiffs

And

**The Owner and all Others Interested in the Ship “Queen of the North”,  
British Columbia Ferry Services Inc.,  
Colin Henthorne, Karl Lilgert, and Karen Briker**

Defendants

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Before: The Honourable Mr. Justice Joyce

## **Reasons for Judgment**

Counsel for the Plaintiffs:

J.A. Hanson and  
M. Willemse (Articled Student)

Counsel for the Defendant British Columbia  
Ferry Services Inc.:

W.G. Wharton and  
D.S. Jarrett

Counsel for the Public Guardian and Trustee  
of British Columbia

C.M. Cunningham and  
A. Williams (Articled Student)

Place and Date of Hearing:

Vancouver, B.C.  
July 22 and August 19, 2010

Place and Date of Judgment:

Vancouver, B.C.  
August 23, 2010

**A. INTRODUCTION**

[1] This class action arose out of a marine accident that occurred on March 22, 2006, in the waters of Wright Sound off the coast of British Columbia, when the ferry, “Queen of the North”, failed to make a necessary course correction, struck ground on Gil Island and subsequently sank. There were 59 passengers and 42 crew members on board the “Queen of the North” when she sank. Most of the passengers and crew were safely evacuated into life rafts and life boats. Sadly, two passengers, Mr. Gerald Foisy and Ms. Shirley Rosette perished.

[2] This action is one of a number of proceedings that were brought as a result of this incident. This action was commenced on March 27, 2006, on behalf of a number of passengers and their dependants against the owner of the ship, British Columbia Ferry Services Inc. (“B.C. Ferries”), the captain and two of the officers who were on the bridge at the time the “Queen of the North” struck Gil Island. On November 26, 2007, the action was certified as a class action under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (“CPA”).

[3] After over four years of litigation, the parties have reached an agreement to settle the class action. This application is brought by the plaintiffs, supported by B.C. Ferries, the only remaining defendant, for court approval of the settlement pursuant to s. 35 of the CPA and approval of counsel fees and disbursements pursuant to s. 38 of the CPA. Because several of the passengers who were on board the “Queen of the North” when she sank were infants, the parties sought the comments of the Public Guardian and Trustee of British Columbia with respect to the proposed settlement pursuant to s. 40(10) of the *Infants Act*, R.S.B.C. 1996, c. 223. The Public Guardian and Trustee has provided comments and does not support approval of the settlement, on the ground that, in his opinion, the amount designated for some of the infant claimants is too low. No other claimants have voiced any opposition to the proposed settlement.

[4] For the reasons that follow, I have concluded that the proposed settlement is fair and reasonable, is in the best interests of the class as a whole and should be

approved. I have also concluded that the payment of counsel fees and disbursements as proposed in the settlement should be approved.

**B. BACKGROUND AND CONDUCT OF THE LITIGATION**

[5] On March 27, 2006, five days after the “Queen of the North” sank, Alexander and Maria Kotai, two of the surviving passengers, commenced this action for damages under the provisions of the *Marine Liability Act*, S.C. 2001, c.6 (“*MLA*”), seeking to represent the surviving passengers on the ferry as a class.

[6] Under the provisions of the *MLA*, the defendants are entitled to the benefit of monetary limits of liability unless the plaintiffs can prove that damage resulted from an act or omission “done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result”.

[7] On November 26, 2007, Brenner C.J. (as he then was) certified the proceeding as a class proceeding. The certification order also added Barney Dudoward and Robert Smith as plaintiffs and defined six subclasses of claimants:

1. Passengers whose unpaid claims exceed the limits of liability established under the *MLA* and who are resident in British Columbia;
2. Passengers whose unpaid claims exceed the limits of liability established under the *MLA* and who are not resident in British Columbia;
3. Passengers whose unpaid claims do not exceed the limits of liability established under the *MLA* and who are resident in British Columbia;
4. Passengers whose unpaid claims do not exceed the limits of liability established under the *MLA* and who are not resident in British Columbia;
5. "Dependants" of those persons who were passengers and who are resident in British Columbia; and

6. "Dependants" of those persons who were passengers and who are not resident in British Columbia.

[8] Maria Kotai was appointed to represent subclasses 1 and 2; Barney Dudoward was appointed to represent subclasses 3 and 4 and Robert Smith was appointed to represent subclasses 5 and 6. The certification order also certified ten issues as "common issues".

[9] B.C. Ferries at all times admitted liability for the sinking of the "Queen of the North" and any damages proven to have resulted from the sinking as are recoverable under the *MLA*.

[10] During the months following the certification process, the following matters were resolved:

- (a) the plaintiffs abandoned their action as against the personal defendants;
- (b) the plaintiffs abandoned their claim for punitive damages;
- (c) the plaintiff abandoned any attempt to "break" the limits of liability provided by the *MLA*;
- (d) B.C. Ferries abandoned its position, for the purpose of this action only, that damages of a psychological nature were not recoverable under the *MLA*. It agreed, for the purpose of this action only, that damages, if any, for personal injury, including damages of a psychological nature, will be recoverable if otherwise recoverable at common law.

[11] The foregoing concessions and agreements left for determination the value of the claims of the individual class members. In total, 48 passengers advised plaintiffs' counsel that they wished to advance claims under the class action. A further 11 dependants gave notice of their intention to advance dependant claims in accordance with the certification order.

[12] In order to assess the value of the individual claims, the plaintiffs' lawyers collected various types of evidence, including clinical records, medical-legal reports from psychologists and general practitioners, as well as various forms of income loss documentation. The plaintiffs' lawyers presented their assessments of the individual claims to B.C. Ferries' lawyers, who were not prepared to accept those assessments.

[13] In the spring of 2009, B.C. Ferries provided offers of settlement to various class members. On April 17, 2009, one class member, Faye Clifford, instructed the plaintiffs' lawyers to accept an offer of \$1,000.00 plus \$300.00 contribution towards legal expenses and \$376.00 in disbursements in settlement of her claim. Another class member, Jean Wilson, settled her claim directly with B.C. Ferries and received \$750.00. This individual subsequently commenced her own proceeding, although she did not formally opt out of the class proceeding. That action was eventually settled by B.C. Ferries paying an additional amount to cover disbursements.

[14] In an effort to resolve the matter of the determination of the value of individual claims, counsel for the parties agreed to a process whereby the court would conduct a number of "mini-trials" to assess the damages of individual claimants. Six such mini-trials were conducted by me during the weeks of April 27, 2009 and June 15, 2009.

[15] A fundamental issue that was common in all of the mini-trials was the threshold, if any, that must be met before a plaintiff in British Columbia is entitled to recover damages for "pure psychological injuries" unaccompanied by physical injury. That was the nature of the claim for the vast majority of the claimants.

[16] On October 14, 2009, I rendered judgment in the six mini-trials (*Kotai v. Queen of the North (Ship)* 2009 BCSC 1405 ("*Kotai*")), in which I held that, in the case of pure psychological injuries, under the law that applies in British Columbia "there remains a requirement that the claimants prove not just psychological disturbance or upset as a result of the defendant's negligence but also that their psychological disturbance rises to the level of a recognizable psychiatric illness"

(*Kotai* at para. 69). A corollary of this conclusion is that it is unlikely, if not impossible, that a person can meet that threshold without being able to adduce opinion evidence from an appropriate expert who is qualified to make such a diagnosis.

[17] As a result of my ruling, the plaintiffs faced a considerable hurdle in establishing an entitlement to damages on behalf of the claimants. It is the opinion of counsel for the plaintiffs that, for a number of claimants, they would simply not be able to meet the threshold. For others, the cost of obtaining expert opinion evidence would be substantial and the risk that the evidence would not be sufficient to prove a recognizable psychiatric illness would be significant.

[18] The plaintiffs filed a notice of appeal from this judgment but did not prosecute the appeal, believing that the more provident course was to pursue settlement discussions and try to negotiate a settlement that would provide compensation to the class without exposing the class members to additional costs, in circumstances where recovery was questionable.

[19] From their review of the evidence then available for the various class members, plaintiffs' counsel identified 20 passenger claimants whose claims appeared to involve emotional upset that fell short of the necessary threshold for recovery. This narrowed substantially the number of claims where the assessments were in dispute.

[20] In an effort to narrow the gap, the parties attended a judicial settlement conference before Punnett J. on January 7 and 8, 2010. The settlement conference was apparently useful in helping the parties redefine their settlement positions, but it did not result in an agreement.

[21] In March 2010, B.C. Ferries put forward a proposal to settle all of the claims of the class members except the claims of Mr. and Mrs. Foran and their dependants, who live in Australia. These claims were excluded because of the lack of information required for an assessment of damages. Further discussions took place between

counsel after B.C. Ferries made this proposal but the parties were unable to reach an agreement.

[22] As the parties had reached an impasse, they agreed to ask the former Chief Justice, D.I. Brenner, Q.C., to mediate. Mediation sessions were held on May 3 and 4, 2010, as a result of which the parties reached an agreement that B.C. Ferries would provide the sum of \$354,600.00 in total to satisfy the claims of all class members, except the Foran claims.

[23] During the mediation, Mr. Brenner reviewed the materials available on each passenger claim, with the exception of the 20 claimants whom counsel had already determined could not meet the threshold, and provided individual assessments on each claim. In the case of those class members whose claims had been assessed by the court in the mini-trials, Mr. Brenner simply adopted those assessments.

[24] As a result of all of these efforts, the parties were able to achieve the settlement that has been presented to this court for consideration and approval.

**C. THE PROPOSED SETTLEMENT**

[25] The proposed settlement involves the payment of the sum of \$354,600.00 (the "Settlement Fund") in satisfaction of the claims of all class members, with the exception of the Forans and their dependants. It is proposed that, if the settlement is approved, the class action will be decertified and the Foran claims will proceed independently.

[26] It is proposed that, from the Settlement Fund, plaintiffs' counsel first be paid the disbursements that they have incurred on behalf of the class members in the amount of \$153,085.40, inclusive of interest and HST, leaving a fund of \$201,514.60.

[27] From that remaining fund, it is proposed that plaintiffs' counsel be paid legal fees in the amount of \$60,239.05, inclusive of HST. Counsel fees are based on 30% of the recovery, net of disbursements, pursuant to contingency fee contracts and

subject to the following two adjustments. First, counsel for the plaintiffs have agreed not to claim a fee in respect of that portion of the settlement that is allocated to the plaintiffs Alexander and Maria Kotai. In that way, the Kotais would receive some modest compensation, at the expense of counsel rather than the other claimants, for the time and effort that they devoted to this litigation. The second minor adjustment relates to \$300.00 of the Settlement Fund that is allocated to the amount of compensation for legal fees recoverable by Faye Clifford, who settled independently.

[28] It is proposed that the funds remaining after payment of fees and disbursements, which would be \$141,275.55, be paid out to or on behalf of the members of the class who were passengers in accordance with the schedule that is appended to these reasons as Appendix A.

[29] Not included in the class members who are listed in Appendix A is Ms. Trina Benedict, who was paid a total of \$51,792 by B.C. Ferries at an earlier time. It is proposed that that amount be considered full satisfaction of her claim. Plaintiffs' counsel makes no claim for fees in respect of the monies paid to Ms. Benedict. Ms. Benedict was made aware of the position to be taken by plaintiffs' counsel and of the hearing date. The only response was a letter from her current physician advising that it would be counter-therapeutic for her to engage in any court proceedings at this time.

[30] The claimants in Appendix A are divided into two main categories. Category A comprised those passengers whose claims, in the view of plaintiffs' counsel, amount only to psychological "upset" of a degree that does not meet the threshold for recovery at trial. In arriving at the settlement proposal, it was decided to allocate a modest \$500 to each of these claimants, in recognition of the trauma that they suffered, even though it was unlikely that the court would award damages.

[31] Category B is comprised of those claims where the evidence is such that plaintiffs' counsel believes they could meet the threshold for liability, or at least that there is a reasonable probability of meeting the threshold. Category B is divided into five groups. These are groups that were identified by Mr. Brenner, when he did his

individual assessments, based on the extent of the damages and an assessment of the risks of not being able to establish the threshold for recoverability.

[32] Mr. Brenner's assessments are shown in the third column of Appendix A. It is proposed that the difference between the total amount available for distribution amongst the class members after payment of legal fees and disbursements (\$201,514.60) and the total of the individual assessments made by Mr. Brenner (\$179,300.00), namely \$22,214.60 be divided equally amongst the claimants in category B, with the exception of Barney Dudoward and Frank Bolton, whose claims were assessed in *Kotai*.

[33] Mr. Brenner has provided the court with his recommendation in support of the settlement.

#### **POSITION OF THE CLASS MEMBERS OTHER THAN THE INFANTS**

[34] Maria Kotai and Barney Dudoward, representing both passenger subclasses, instructed their counsel to accept the settlement proposal, including the distribution as proposed in Appendix A. Plaintiffs' counsel sent a letter to all members of the passenger subclass advising them of the settlement, the proposed allocation and the details of the settlement process and have been able to confirm from all passenger subclass members or their spouses that the letters were received. Mr. Hanson advised the court that while some of the passengers expressed disappointment at the amount of recovery, none of them filed any formal opposition and none of them appeared at the hearing to approve the settlement, with the exception of the Public Guardian and Trustee. Mr. Hanson advised the court that most of the members of the passenger subclass expressed to him a keen desire to have this matter concluded and that they are content, if not happy, with the settlement.

[35] It is apparent that the proposed settlement provides no compensation for the dependant subclasses. The plaintiffs' counsel is of the opinion that none of the claims of dependants have sufficient value to be economically pursued. While Mr. Hanson did not formally seek instructions from Mr. Smith, representing the

dependant subclasses, to agree to the settlement, Mr. Smith was advised of the settlement and has not taken any steps to oppose it.

**D. POSITION OF THE PUBLIC GUARDIAN AND TRUSTEE**

[36] As I indicated earlier, counsel for the plaintiffs sought the comments of the Public Guardian and Trustee with regard to this settlement since eight members of the class are under the age of 19 years. The infants are identified in Appendix A. Plaintiffs’ counsel places five of these claimants under the “Upset” category and the other three in Group 5.

[37] Counsel for the Public Guardian and Trustee does not suggest that the decision with respect to the threshold question was wrong and that the plaintiffs should have pursued the appeal. Rather, the ground for objecting to the settlement is simply that, in the opinion of the Public Guardian and Trustee, the proposed recovery by some, but not all of the infants, is less than it ought to be. The position of the Public Guardian and Trustee is reflected in the following chart:

<b>Claimant</b>	<b>Amount Proposed in Settlement</b>	<b>Public Guardian and Trustee’s Submission</b>
Zachary Caldwell	\$500.00	\$2,500.00
Amber Caldwell	\$500.00	\$500.00
Eric Caldwell	\$500.00	\$3,000.00
Ry-Lee Pearson	\$500.00	\$3,000.00 to \$5,000.00
Josh Snow	\$500.00	\$500.00
Alyssa Van Drunnen	\$1,965.85	says more information is required in order to assess
Dalton Pearson	\$1,965.85	\$8,000.00 to \$12,000.00
Makenna Harding	\$3,465.85	\$8,000.00 to \$12,000.00

**E. DISCUSSION AND ANALYSIS - APPROVAL OF SETTLEMENT**

**1. The Law**

[38] Settlement of a class proceeding requires the approval of the court. Section 35 of the *CPA* provides that:

A class proceeding may be settled, discontinued or abandoned only

- (a) with the approval of the court, and
- (b) on the terms the court considers appropriate.

[39] The *CPA* itself does not specify criteria that the court is to apply on an application to approve the settlement of a class proceeding. The case law is clear, however, that the test to be applied is whether the settlement is fair, reasonable and in the best interests of the class as a whole, not whether it meets the demands of a particular member (*Dabbs v. Sun Life Assurance Company of Canada*, [1998] O.J. No. 2811 (“*Dabbs*”) at para. 11; *Haney Iron Works Ltd. v. Manufacturers Life Insurance Co. (c.o.b. Manulife Financial)*, [1998] B.C.J. No. 2936 (“*Haney*”) at para. 27; *Sawatzky v. Societe Chirurgicale Instrumentarium Inc.*, [1999] B.C.J. No. 1814 (*Sawatzky*) at para. 19; *Fakhri v. Alfalfa’s Canada, Inc. (c.o.b. Caper’s Community Market)*, [2005] B.C.J. No. 1723 (“*Fakhri*”) at para. 8; and *Cardozo v. Becton, Dickinson and Co.*, [2005] B.C.J. No. 2683 at para. 16).

[40] Reasonableness does not mean perfection. As Brenner J. (as he then was) observed in *Sawatzky* at para. 21:

**21** A settlement must fall within a zone or range of reasonableness. The range of reasonableness has been described as follows:

All settlements are the product of compromise and a process of give and take and settlements rarely give all parties exactly what they want. Fairness is not a standard of perfection. Reasonableness allows for a range of possible resolutions. A less than perfect settlement may be in the best interest of those affected by it when compared to the alternative of the risks and costs of litigation.

[41] The court has the power to approve or reject a settlement, but may not modify or alter a settlement (*Haney* at para. 22; *Sawatzky* at para. 20; *Fakhri* at para. 9).

[42] The courts have identified a number of factors that should be considered when deciding whether to approve a settlement of a class action. Gerow J. summarized them in *Fakhri* at para. 8:

**8** The test for approval is whether the settlement is fair and reasonable and in the best interests of the class as a whole. Factors which courts have considered in making that determination include:

1. the likelihood of recovery or the likelihood of success;
2. the amount and nature of discovery evidence;
3. settlement terms and conditions;
4. recommendations and experience of counsel;
5. future expense and likely duration of litigation;
6. recommendations of neutral parties, if any;
7. number of objectors and nature of objections;
8. presence of good faith and absence of collusion;
9. degree and nature of communications by counsel and the representative plaintiffs with class members during litigation;
10. information conveying to the court the dynamics of, and the positions taken by the parties during the negotiation.

See *Sawatzky v. Societe Chirugicale Instrumentarium Inc.* (1999), 71 B.C.L.R. (3d) 51, at [paragraph] 19 (S.C.); *Haney Iron Works Ltd. v. Manufacturers Life Insurance Co.* (1998), 169 D.L.R. (4th) 565 at [paragraph] 23 (B.C.S.C.); *Dabbs v. Sun Life Assurance Co. of Canada* (1998), 40 O.R. (3d) 429 (Gen. Div.) affd (1998), 41 O.R. (3d) 97 (C.A.); leave to appeal to the S.C.C. refused, [1998] S.C.C.A. No. 372; *Parsons v. Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151 (Ont. S.C.J.).

[43] As Winkler J. noted in *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 at para. 73 the foregoing factors are guides that are to be given such weight as is appropriate in the circumstances. The “settlement approval exercise is not merely a mechanical seriatim application of each of the factors”.

### **3. Application of principles to the proposed settlement**

#### *a. The objections raised by the Public Guardian and Trustee*

[44] I think it is important to note at the outset of my analysis that this action is different from most class actions in this respect: unlike the majority of cases, in this proceeding all members of the class are known. Consequently, unlike most cases,

the proposed settlement is not one that will affect a large number of individuals whose identity is not yet known. That is not to say, of course, that the court is not required to scrutinize the settlement carefully, particularly as the interests of infant claimants are involved. However, it is possible for the court to say, in this case, that all persons whose interests will be determined by this proposed settlement have been made aware of it. No objection to it exists, except that coming from the Public Guardian and Trustee, exercising his duty to protect the interests of the infants in the class.

[45] I turn, then, to a consideration of the objections voiced by the Public Guardian and Trustee. When plaintiffs' counsel forwarded the settlement proposal to the Public Guardian and Trustee for comments, counsel for the Public Guardian and Trustee initially responded as follows:

In our experience, infants may suffer PTSD symptoms but they may not, for any number of reasons, have undergone the type of assessment which Dr. Wilansky was able to provide for the Court [on the Barney Dudoward assessment]. It appears that Adjusters and Legal Counsel are frequently prepared to determine quantum based on the PTSD type of symptoms an infant suffered even though the infant may not have had a formal diagnosis of PTSD. This may be because the parties believe that the amount of the settlement would not be significantly different with a formal diagnosis and the parties may not wish to incur what they may perceive to be an unnecessary expense for an expert report.

When the Public Guardian and Trustee assesses psychological injuries, we rely on information provided by the parent/guardian, and possibly the child, as well as any available medical information. In the cases you have submitted for review, the medical information is thin and we have no information from the parent/guardian/child. We have therefore prepared a Questionnaire which we are hoping the infants' parents/guardians could complete. We are optimistic that this will provide the Public Guardian and Trustee with the information we need to assess the infants' settlement proposals.

I believe that what we are requesting is in keeping with the way the Honourable Mr. Justice Joyce approached the case of Joshua Snow. Mr. Justice Joyce commented in his assessment of Joshua Snow's case that there was no medical evidence with respect to the emotional or psychological effects of the experience on Joshua. Nonetheless, Mr. Justice Joyce listened carefully to the evidence of Joshua and his mother before determining that Joshua had not suffered a compensable psychological injury.

[46] Plaintiffs' counsel forwarded the questionnaires provided by the Public Guardian and Trustee to the parents/guardians of the infant claimants.

[47] I will address the comments and concerns of the Public Guardian and Trustee as they relate to each of the infant claimants.

*Zachary Caldwell*

[48] Plaintiffs' counsel has assessed this claim as being one that falls within the "upset" category, that is, a claim in which they would not be able to establish the necessary threshold for recovery - that the incident caused this claimant to suffer from a "recognizable psychiatric illness". It is proposed that he receive \$500.00 on account of the emotional upset he suffered. The Public Guardian and Trustee assesses Zachary's claim at \$2,500.00.

[49] Zachary Caldwell was two years and nine months old at the time of the accident. There are no medical records relating to Zachary. The questionnaire completed by his mother indicated that Zachary "had nightmares every night for three years" and that he had "fear about being on a boat, he always thought they would sink". Despite these observations by his mother, Zachary was never seen by a medical specialist in connection with this incident. There is no indication of Zachary's current state. Counsel for the Public Guardian and Trustee states that "the evidence in Zachary's case leaves much to be desired" and opines that "we believe that it was likely reassuring for Zachary that he was with his mother 'at all times' during the incident". The Public Guardian and Trustee further states that:

Since Zachary's nightmares were not sufficiently concerning for the family to seek medical attention, we would be prepared to recommend a settlement of \$2,500 for nightmares and boat-related anxiety.

[My emphasis.]

[50] It appears to me that the assessment made by plaintiffs' counsel is likely correct and that, if this claim were to be assessed by the court, it would not meet the necessary threshold for recovery. As I have indicated, the claims must be measured against the current state of the law of this Province and pure psychological injury

that falls short of a recognizable psychiatric illness is not compensable. I am of the view that damages would not be payable for the “nightmares and boat-related anxiety” experienced by this young boy, even though I accept they are real. I am unable to say that the amount proposed for Zachary Caldwell is unfair to him, given the law as I have found it to be, let alone that it provides a basis for concluding that the proposed settlement is unfair or unreasonable to the class as a whole.

*Amber Caldwell*

[51] Plaintiffs’ counsel has assessed the claim of Amber Caldwell as falling within the category of “upset claims” for which a payment of \$500.00 is proposed. The Public Guardian and Trustee is in agreement with the compensation proposed for Amber under the settlement.

[52] Amber Caldwell was five years old at the time of the sinking. Her mother indicated that she was nervous on boats and afraid of water following the accident but did not describe any problems with nightmares, night terrors, other sleeping problems or problems with flashbacks, separation anxiety, excessive worrying, phobias or general functioning.

*Eric Caldwell*

[53] Plaintiffs’ counsel has assessed the claim of Eric Caldwell as falling within the category of “upset claims” for which a payment of \$500.00 is proposed. The Public Guardian and Trustee would assess Zachary’s claim at \$3,000.00.

[54] Eric Caldwell was seven years and eight months old at the time of the accident. Eric’s mother indicated that following the accident, Eric suffered from nightmares a few times each week for about two and one-half years and that, for about two years, he displayed fear of boats and water. She said Eric’s behaviour regressed following the accident. He did not act his age, was easily frustrated and became more withdrawn around other children. She said these changes persisted for about three years.

[55] Eric's school records indicate that there were behavioural issues before the accident. Interestingly, for the school term that immediately followed the accident, Eric's teacher noted improvements in his behaviour, although he still would cry when frustrated. Educational testing in March 2009, when Eric was in grade 5, indicated that Eric was performing well below grade level, but there is nothing to suggest that his poor performance was related to the accident as opposed to his innate abilities.

[56] Eric rarely saw a doctor and did not see his family doctor following the accident. In February 2008, Eric's doctor made a referral for psychiatric assessment but there is no indication the assessment was ever done. The lack of any documents from the psychiatrist, other than her letter acknowledging the referral and stating that an appointment would be arranged, leads me to infer it was not done.

[57] The Public Guardian and Trustee noted that Eric exhibited some behavioural and emotional difficulties prior to the accident that may have been related to his cognitive difficulties and opined that his experience on the "Queen of the North" "likely aggravated Eric's existing behaviour and emotional difficulties". The Public Guardian and Trustee opined that "[h]ad Eric seen a medical practitioner, we believe it is likely that he would have been diagnosed with some period of post traumatic stress and anxiety".

[58] With respect, it appears to me that there is a high degree of speculation in this opinion. The fact is that Eric was not assessed at the time by a medical professional so there is no contemporaneous expert evidence that could be used to support a claim that he suffered Post Traumatic Stress Disorder or any other recognizable psychiatric illness as a result of the accident. There would be significant cost to engage in an assessment at this time, even if it might be possible to make a diagnosis retroactively.

[59] In my view, there are very serious litigation risks associated with this particular claim. When I weigh those risks and the cost of further investigation, the ensuing delay in resolving not just his claim but all of the claims, on the one hand, against the benefit of concluding this matter for the class as a whole and enabling all

concerned to put this sad experience behind them and get on with their lives, I am persuaded that the settlement should not be denied because of the possibility that the court might assess this claim at a value two or three thousand dollars greater than the settlement would provide.

*Ry-Lee Pearson*

[60] Plaintiffs' counsel has assessed the claim of Ry-Lee Pearson as falling within the category of "upset claims" for which a payment of \$500.00 is proposed. The Public Guardian and Trustee would assess Ry-Lee's claim at \$3,000.00 to \$5,000.00.

[61] Miss Pearson was six years and four months old at the time of the accident. She was in the company of her mother and brother. It appears that initially following the accident, Ry-Lee was largely unaffected by the incident. Her doctor noted on April 6, 2006, that she "seems relatively unaffected by the trauma of the affair". Her mother, however, was apparently experiencing stress and anxiety and was referred to a Mr. Brudenell for assessment and counselling. Ms. Pearson arranged with Mr. Brudenell that he would also assess and counsel Ry-Lee.

[62] Mr. Brudenell counselled Ry-Lee for what he believed to be Post Traumatic Stress Disorder (PTSD). He saw her on two occasions in July and once in September 2006. He suggested closing the file after Ry-Lee did not attend a session scheduled for September 29, 2006 because he believe she was doing quite well.

[63] Mr. Brudenell is a counsellor who has a Masters Degree in some discipline, is a registered marriage and family therapist and an art therapist but he does not have the qualifications necessary to diagnose PTSD. There is, in fact, no medical diagnosis of PTSD for Miss Pearson. On August 14, 2008, Ry-Lee's physician, Dr. Bakshi, wrote:

According to mom Ry-Lee went through some counseling with Dr. Brudenell (sic) and these seem to have helped her. At the moment there are no parental concerns regarding eight year-old Ry-Lee. Apart from initial nervousness to go onto a ferry which happened for the first few times after the incident, she has done pretty well and has been on several trips since then. There are no symptoms to suggest any current mental health problems

with regards to Ry-Lee Pearson. Her general examination revealed a normal eight year old girl who was slightly shy.

Ry-Lee has not gone through any kind of tests and is not on any treatment. My impression of Ry-Lee is that she went through a period of post-traumatic stress immediately after the incident but as a child she has recovered excellently and is presently a normal eight year old girl. I have got no concerns regarding her mental health nor do the parents.

[64] In my view, the impression that Ry-Lee went through a period of stress as a result of the trauma of the accident is a far cry from a diagnosis of PTSD. I do not agree, therefore, with the submission of the Public Guardian and Trustee that there is a diagnosis of PTSD. In my view plaintiffs' counsel is likely correct in his assessment that he would not be able to meet the threshold that is required for the recovery of damages for the upset that Ry-Lee suffered.

[65] In my view, the proposed settlement is fair and reasonable in relation to Ry-Lee Pearson.

*Joshua Snow*

[66] In a mini-trial this court assessed the claim of Joshua Snow as not achieving the threshold necessary for recovery. The Public Guardian and Trustee does not challenge that finding and agrees that a payment of \$500.00 for Joshua Snow would be reasonable in the circumstances.

*Alyssa Van Drunnen*

[67] Plaintiffs' counsel has assessed the claim of Alyssa Van Drunnen as falling within that category of claims that are "apparently compensable", that is where there is a reasonable likelihood of establishing the threshold for recovery. Under the settlement, a payment of \$1,965.85 is proposed for Miss Van Drunnen. The Public Guardian and Trustee is of the opinion that there is insufficient information to permit any assessment of this claim.

[68] Miss Van Drunnen was six years old at the time of the accident. She was in the company of her mother, Ms. Benedict. Miss Van Drunnen's parents were

separated at the time of the accident and her mother married Mr. Benedict shortly afterwards. It appears that the relationship between Ms. Benedict and Miss Van Drunnen's father was acrimonious.

[69] After the sinking, Miss Van Drunnen attended counselling and sandtray therapy with Lawrence Collins. On April 10, 2006, Ms. Collins reported that Alyssa "seems to be doing well" and was "capable of discussing the accident with no sign of trauma response, disassociation or fantasy thinking".

[70] Miss Van Drunnen saw two other counsellors, whose records were not provided.

[71] The medical evidence regarding Miss Van Drunnen comes from a paediatrician, Dr. Simons, who saw Miss Van Drunnen on referral in September, October and November 2009 and February 2010. Ms. Benedict reported to Dr. Simons that Miss Van Drunnen's father had been abusive and threatening during their time together. There was an occasion when he broke into Ms. Benedict's house and did considerable damage, including breaking Alyssa's toys. Alyssa experienced flashbacks concerning the broken toys. In his first consultation report, dated September 25, 2009, Dr. Simon stated, "I think that Alyssa has post traumatic stress, but this is more from the extremely abusive relationship of her parents and the events after this".

[72] Counsel for the Public Guardian and Trustee expresses puzzlement at the foregoing statement given that the parents separated approximately five years previously and Ms. Benedict had entered into a seemingly happy relationship with Mr. Benedict. However, it appears that Ms. Benedict's former partner continued to harass her because, on October 7, 2009, Ms. Benedict reported to Dr. Simons that she was suffering stress and anxiety because of harassment by her ex-partner.

[73] On November 10, 2009, Dr. Simons saw Alyssa "in follow-up for stress". He noted that "she still wants to keep all doors locked and is worried that her parents

may split, but these feeling have not stopped her from doing things”. There is no mention of stress or anxiety relating to the sinking.

[74] On February 17, 2010, Dr. Simons stated that Alyssa reported having some trouble sleeping but had no bad dreams. On that day, she appeared quite happy to talk and was happier than her mother. Dr. Simons opined that she “probably still has continued Post Traumatic Stress Disorder but is also concerned about her mother”.

[75] The Public Guardian and Trustee would like to see a medical-legal report from Alyssa’s family doctor giving an overview of her mental health issues and an opinion regarding Alyssa’s response to the sinking of the “Queen of the North” before assessing her claim.

[76] As matters stand, it appears to me that there is a real issue of causation with regard to this claim, which would pose a significant litigation risk if the matter were pursued. Further medical evidence might overcome that risk but, as I have already indicated, one must consider the costs associated with the further prosecution of these claims, both financial costs and the stress of further litigation and weigh those costs against the potential additional benefit that might be obtained. The results achieved by this settlement may fall short of what individual claimants think they should receive, but it provides the certainty of some recovery without further expense.

[77] In addition to the issue of causation, there is a question of the degree to which Miss Van Drunnen’s psychological injuries have affected and are likely to affect her normal activities. While Alyssa has reported some difficulty with sleep and some problems at school she appears to be functioning quite well.

[78] The governing principle must be kept in mind - is the settlement fair and reasonable to the class as a whole. Perfection is not the test. It may be felt that some claimants are undercompensated while some might be overcompensated by comparison. That is, to some extent, the nature of a class action. By joining in this class proceeding, the claimants have enjoyed the benefit of not have to prosecute

individual claims, but they have also accepted that their individual interests must be subordinated to the interest of the class as a whole.

[79] I do not believe that the settlement should be refused because of the possibility that further litigation would result in somewhat higher award for Alyssa. I do not believe that pursuing the litigation, as opposed to settling on the terms proposed, is in the best interests of Alyssa or in the best interests of the class as a whole.

*Dalton Pearson*

[80] Plaintiffs' counsel has assessed the claim of Dalton Pearson as falling within that category of claims that are "apparently compensable". Under the settlement, a payment of \$1,965.85 is proposed for Dalton. The Public Guardian and Trustee is of the opinion that a sum of \$8,000.00 to \$12,000.00, plus the cost of future counselling, would be reasonable compensation for Dalton.

[81] Dalton Pearson was nine years old at the time of the accident. He was in the company of this mother. Dalton has a modified school program due to numerous learning challenges that were present before the accident. He has always had somewhat of an anxious and introverted temperament. Dalton's mother noted an increase in his anxiety level following the sinking and, as a result, attended three sessions of counselling with Mr. Brudenell in July and September of 2006. Mr. Brudenell made a preliminary diagnosis of post traumatic stress but, as I indicated earlier, it is my view that Mr. Brudenell is not qualified to make a diagnosis of PTSD.

[82] In September 2007, Dalton's family doctor referred him to Dr. Slater, a general consulting paediatrician because of anxiety and refusal to go to school. Dalton's mother related to Dr. Slater that Dalton was experiencing nightmares and sleepwalking and disliked going to school. Dr. Slater thought that Dalton had "a generalized anxiety disorder" and referred him to Dr. Coxon, a child and adolescent psychiatrist.

[83] In her consultation report dated January 16, 2008, Dr. Coxon reported as follows:

There are no symptoms suggestive of PTSD and while Dalton and the family were on a ferry that sank two years ago, they got off quite early and didn't actually see the sinking. He has no nightmares about this or any daytime flashbacks. While in the past he did think more about ferries, has been on several since and both mom and Dalton deny any ongoing worries about ferries.

[84] Further, under the heading "Impression", Dr. Coxon wrote:

There is no evidence today of any mood disorder for (sic) any anxiety features that are significant to warrant a full blown diagnosis of an anxiety disorder though he does have some tendencies to catastrophize.

[85] Dr. Coxon also observed that "his anxieties are not functionally impairing and not present on a daily basis.

[86] Based upon the expert medical evidence, it is my view that there is a very real risk that if this claim were litigated the court would find that Dalton's psychological condition does not rise to the level of a psychiatric disorder caused by the accident. Further, the emotional disturbance that Dalton has experienced and may still be experiencing appears to be relatively mild and not functionally impairing.

[87] With respect, I have to disagree with the view of the Public Guardian and Trustee. In my view, the proposed payout for Dalton Pearson is reasonable considering the evidence of his emotional or psychological distress and when compared with the other claimants.

*Makenna Harding*

[88] Plaintiffs' counsel has assessed the claim of Makenna Harding as falling within that category of claims that are "apparently compensable". Under the settlement, a payment of \$3,465.85 is proposed for Makenna. The Public Guardian and Trustee is of the opinion that a sum of \$8,000.00 to \$12,000.00, including the cost of future counselling would be reasonable compensation for Makenna.

[89] Makenna Harding was nine years old at the time of the accident and was in the company of her mother and grandfather, a seasoned seaman, when the “Queen of the North” sank. During the evacuation process, Makenna was quite brave and did not cry or panic.

[90] Makenna has a strong and supportive family consisting of her mother, stepfather, grandparents and two siblings.

[91] Makenna’s grandfather took Makenna to see his doctor, Dr. Zyrd, on April 1 and 3, 2006, for reassurance. On April 3, 2006, Dr. Zyrd noted that Makenna was initially very quiet but then opened up about how scary the experience was and how she felt insecure and disoriented. He thought that Makenna seemed to be recovering and reassured by her grandfather.

[92] After the accident Makenna exhibited signs of fear and anxiety. Her parents reported that she became much more clingy and dependent at home, sought a lot of physical attention and did not want to be away from her mother. She also complained of “butterflies” in her stomach and frequent headaches when she anticipated being around water or boats.

[93] Makenna was referred to a registered psychologist, Dr. Nelson, whom she saw on four occasions in September 2007. Doctor Nelson noted that many of the symptoms the parents had noticed had subsided somewhat in frequency by the time of the first visit but that Makenna was still seeking the safety of sleeping with her mother once or twice a month and was having frequent nightmares and night terrors concerning the sinking.

[94] Dr. Nelson diagnosed PTSD. Dr. Nelson used the sessions to draw out Makenna’s fears and memories of the trauma and provided her with strategies and tools to reduce her anxiety and restore her to “her personal sense of autonomy and mastery”. By the third session, Makenna and her mother reported a considerable reduction in frequency of nightmares and other symptoms of anxiety. In a telephone contact in early 2008, Dr. Nelson was told that Makenna and her family had taken

the ferry to Prince Rupert with only minimal additional support provided by her parents on the first part of the trip. Makenna had no further contact with Dr. Nelson.

[95] In a follow-up report dated December 28, 2008, Dr. Nelson commented on potential long-term effects and said:

As far as comments on present or long term disability with a child victim, as described in the report, that is impossible to predict. A long term disability is certainly not expected in this case but many other variables, including further sensitizing experiences, could have an impact, as described. Mackenna's presentation also included many 'protective factors' that would be expected to mitigate against long term sequelae.

[96] The Public Guardian and Trustee notes that Makenna appears to have suffered quietly for quite a long time before she received treatment, but also notes that the treatment appears to have been very effective. The fact that treatment was not sought for approximately a year and one-half after the accident may, on the other hand, indicate that the symptoms, while present and real, were not significantly interfering with Makenna's day to day activities. Treatment was sought, when it was, in part because the family planned a trip by ferry at Christmas of 2007 and her parents were concerned about heightened anxiety surrounding a ferry trip.

[97] Given the expert evidence available it and the lack of any other causative factors, it appears that Makenna's claim would clearly meet the threshold for recovery. However, I would describe the magnitude of the psychological injury and its effect on Makenna as moderate. She appears to have been successfully treated with only a few sessions with the psychologist.

[98] I am not persuaded that the recovery proposed for Makenna Pearson is out of the range of reasonableness in all the circumstances.

*b. Review of factors generally*

[99] As I indicated earlier, the biggest hurdle faced by claimants in this case is to prove that their psychological injuries rise to the level of a recognizable psychiatric illness. Because that test has a medical component, it is my view that save for some

extraordinary circumstances, proof of that fact will require expert evidence from medical practitioners who are qualified to make a psychiatric or psychological diagnosis. I do not doubt that most, if not all of the passengers on board the “Queen of the North” that fateful night experienced a frightening event that caused emotional upset of one sort or another - to a greater or lesser degree and for a shorter or longer time, depending on the individual. But the law, as a matter of policy, places limits on what is recoverable loss and this settlement must be viewed in light of the law that applies to this sort of injury.

[100] I am satisfied that the settlement has been negotiated by counsel bearing in mind the difficult task facing the claimants in establishing the threshold for many of the claimants. It is the opinion of experienced counsel that nearly half of the claimants would likely fail to meet the threshold if the claims were assessed by the court. For many of those claims that fall into Category B, while there is evidence upon which the plaintiffs’ could rely in support of the threshold, B.C. Ferries has not conceded the point and would no doubt challenge the opinions of the plaintiffs’ experts through vigorous cross-examination, as happened during the mini-trials, and through expert evidence of its own.

[101] This settlement has been arrived at taking into account the litigation risk as assessed by experienced counsel. It has also been arrived at after the claims were individually assessed by a former judge of this court and experienced mediator, who supports the settlement. While the decision as to whether a settlement is fair and reasonable to the class is for this court to make, I am entitled to consider and do consider the recommendation of counsel and of Mr. Brenner, who is a neutral party.

[102] While there is more investigation that could be done in respect of the individual claims, I am satisfied that there has been sufficient investigation to justify and support the settlement. As I have said more than once before, further investigation would come at a significant financial cost. Moreover, it would further delay concluding this matter, which I consider to be contrary to the best interests of

the class members. The survivors of the sinking of the “Queen of the North” need to have this matter finally brought to an end so that they can move forward.

[103] The amounts that will be recovered are disappointing to many of the claimants but I am advised by counsel for the plaintiffs, and I accept, that the settlement was the result of hard bargaining and is the best compromise settlement that can be achieved.

[104] The settlement is not objected to by any class members other than by the infants, through the Office of the Public Guardian and Trustee, who had done what is required of him under his statutory mandate to protect the interests of the infants. If those claims were litigated to judgment individually, with further resources expended to obtain additional evidence for the court, the gross recovery might be greater. However, for the reasons I have tried to articulate, including the fact that these claims are bound up in a class proceeding where the interests of the class as a whole must prevail, I am satisfied that the objections raised on behalf of the infants ought not to preclude approval of the settlement.

**F. LEGAL FEES AND DISBURSEMENTS**

[105] Court approval of the legal fees of the plaintiffs’ lawyers is sought under s. 38 of the *CPA*, which provides:

- 38(1) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff must be in writing and must
  - (a) state the terms under which fees and disbursements are to be paid,
  - (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding, and
  - (c) state the method by which payment is to be made, whether by lump sum or otherwise.
- (2) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff is not enforceable unless approved by the court, on the application of the solicitor.

[106] On March 26, 2006 and September 27, 2007, the plaintiffs’ lawyers entered into written fee agreements with Alexander and Maria Kotai and Barney Dudoward,

respectively, by which the parties agreed that the lawyers would be paid 30% of all amounts recovered together with “all reasonable, proper, and necessary disbursements”. The plaintiffs’ lawyers seek a fee based on 30% of the amount recovered, exclusive of the amounts that payable to Alexander and Maria Kotai, as set out in Appendix A. They seek fees of \$53,784.87 plus HST in the amount of \$6,454.18, for a total of \$60,239.05.

[107] The plaintiffs’ lawyers funded all disbursements in connection with the conduct of this class proceeding and seek to recover those disbursements in the total amount of \$153,085.40, inclusive of interest and HST.

[108] None of the class members or the Public Guardian and Trustee has raised any objection to the amount of fees and disbursements claimed.

[109] The amount of fees claimed represents a relatively small fraction of the value, on an hourly basis, of the work done by the plaintiffs’ lawyers and paralegals on this matter. Mr. Hanson recorded 1,133 hours, which at his ordinary billing rate represents \$368,225.00 in billable time. His paralegal (subsequently articulated student) and another paralegal in his firm also spent extensive time on the matter. I am satisfied that the fees that are claimed are fair and reasonable and I approve them.

[110] Likewise, there was no objection to the claim for disbursements and I find that they were reasonably and necessarily incurred. I approve payment of the disbursements from the Settlement Fund.

**G. TERMS OF THE ORDER**

[111] Having heard further submissions from counsel on August 19, 2010, concerning the form of order that should flow if the settlement is approved, I am satisfied there should be an order on the following terms:

1. Settlement in the amount of \$348,005.36 (the “Settlement Fund”) is fair and reasonable and in the best interests of the Class Members in the Resident Passenger Subclass as set out in the attached Schedule I

(attach a schedule that is in conformity with the payouts set out in Appendix A to these Reasons, but which identifies the Resident Passenger Claims and the Non-resident Passenger Claims) and is approved;

2. Settlement in the amount of \$6,594.64 is fair and reasonable and in the best interests of the Class Members in the Non-Resident Passenger Subclass as set out in the attached Schedule I and is approved;
3. Class Counsel will mail Notice of the Settlement Approval by regular post to all Class Members;
4. Class Counsel fees and disbursements are approved in the amount of \$213,324.45 and shall be paid out of the Settlement Fund, broken down as follows:
  - (a) \$153,085.40 for disbursements inclusive of interest and HST; and
  - (b) \$60,239.05 for fees inclusive of HST.
5. The balance of the Settlement Fund, in the amount of \$141,275.55 (after payment of Class counsel Counsel fees and disbursements) shall be paid to the individual Class Members.
6. The Certification Order in this proceeding is amended by adding Cazanne Foran, Dean Foran, Kenneth Scott and Julie Scott as named Plaintiffs in the within proceeding; by removing Alexander Steven Kotai, Maria Giovanna Kotai, Barney Norman Dudoward, and Robert Peter Smith as named Plaintiffs; by removing Colin Henthorne, Karl Lilgert and Karen Briker, as Defendants; and the style of proceeding is amended to reflect these changes.

7. The claims of all Class Members are dismissed as if after a trial on the merits, except for the claims of Cazanne Foran, Dean Foran, Kenneth Scott and Julie Scott.
  
8. The Class proceeding is decertified and shall continue as a regular proceeding. The Plaintiffs shall have 90 days after the date of this Order to amend their pleadings and the Defendant, British Columbia Ferry Services Inc., shall have 30 days thereafter to file its amended pleadings.
  
9. There will be no Order for costs of this motion or in the action to date.

“B.M. Joyce J.”

## Appendix A

## Schedule of Payout

No.	Name	Assessed Value	Gross Payout	Fees	HST	Net Payout
<b>CATEGORY A - "UPSET "CLAIMS</b>						
1	Allison, Richard	\$500.00	\$500.00	\$150.00	\$18.00	\$332.00
2	<i>Caldwell, Zachary</i> <sup>1</sup>	500.00	500.00	150.00	18.00	332.00
3	<i>Caldwell, Amber</i> <sup>1</sup>	500.00	500.00	150.00	18.00	332.00
4	Caldwell, Trevor	500.00	500.00	150.00	18.00	332.00
5	Caldwell, Shelley	500.00	500.00	150.00	18.00	332.00
6	<i>Caldwell, Eric</i> <sup>1</sup>	500.00	500.00	150.00	18.00	332.00
7	Clifford, Faye	1,300.00 <sup>2</sup>	1,300.00	300.00	36.00	964.00
8	Harding, Robert	500.00	500.00	150.00	18.00	332.00
9	Hill, Harold	500.00	500.00	150.00	18.00	332.00
10	Jackson, Kirby	500.00	500.00	150.00	18.00	332.00
11	Kavanagh, S.	500.00	500.00	150.00	18.00	332.00
12	McDonald, Ryan	500.00	500.00	150.00	18.00	332.00
13	Mitchell, Lawrence	500.00	500.00	150.00	18.00	332.00
14	Pawley, Drew	500.00	500.00	150.00	18.00	332.00
15	<i>Pearson, Ry-Lee</i> <sup>1</sup>	500.00	500.00	150.00	18.00	332.00
16	Reid, Logan	500.00	500.00	150.00	18.00	332.00
17	<i>Snow, Josh</i> <sup>1</sup>	500.00 <sup>3</sup>	500.00	150.00	18.00	332.00
18	Wilson, Les	500.00 <sup>3</sup>	500.00	150.00	18.00	332.00
19	Wilson, Jean	0.00 <sup>4</sup>	0.00	0.00	0.00	0.00
20	Rice, Sylvia	500.00	500.00	150.00	18.00	332.00

## CATEGORY B - APPARENTLY COMPENSABLE CLAIMS

**Group #1**

21	Seabrook, Brandice	35,000.00	36,965.90	10,789.77	1,294.77	23,881.36
22	Seabrook, Clive	10,000.00	10,965.85	3,289.76	394.77	7,281.32
23	Thompson, Ernie	20,000.00	20,965.85	6,289.76	754.77	13,921.32
24	Duncan, Leanne	7,500.00	8,465.85	2,539.76	304.77	5621.32
25	Kotai, Maria	10,000.00	10,965.85	0	0	10,965.85
26	Kotai, Alex	10,000.00	10,965.85	0	0	10,965.85

**Group #2**

27	Duncan, Sandra	7,000.00	7,965.85	2,389.76	286.77	5,289.32
28	Jackson, Patsy	5,000.00	5,965.85	1,789.76	214.77	3,961.32
29	Jones, Sandra	5,000.00	5,965.85	1,789.76	214.77	3,961.32
30	Waggoner, Megan	5,000.00	5,965.85	1,789.76	214.77	3,961.32
31	Dudoward, Barney	12,000.00 <sup>3</sup>	12,000.00	3,600.00	432.00	7,968.00

**Group #3**

32	Thomson, Sandra	5,000.00	5,965.85	1,789.76	214.77	3,961.32
33	Rice, Doug	2,000.00	2,965.85	889.76	106.77	1,969.32
34	Mitchell, Julia	4,000.00	4,965.85	1,489.76	178.77	3,297.32
35	Lawrence, Jill	4,000.00	4,965.85	1,489.76	178.77	3,297.32
36	Smith, Karen	6,000.00	6,965.85	2089.76	250.77	4,625.32

**Group #4**

37	Jackson, Dion	2,000.00	2,965.85	889.76	106.77	1,969.32
38	Bolton, Frank	7,500.00 <sup>3</sup>	7,500	889.76	106.77	4,980.00

**Group #5**

39	Van Drunnen, Allysa <sup>1</sup>	1,000.00	1,965.85	589.76	70.77	1,305.32
40	Pearson, Tillie Anne	2,000.00	2,965.85	889.76	106.77	1,969.32
41	Pearson, Dalton <sup>1</sup>	1,000.00	1,965.85	589.76	70.77	1,305.32

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42	Harding, Makenna <sup>1</sup>	2,500.00	3,465.85	1,039.76	124.77	2,301.32
43	Corah, Michael	3,000.00	3,965.85	1,189.76	142.77	2,633.32
44	Condrotte, Margaret	1,000.00	1,965.85	589.76	70.77	1,305.32
45	Allison, Betty	1,500.00	2,465.85	739.76	88.77	1,637.32
	Totals	\$179,300.00	\$201,514.60	\$53,784.87	\$6,454.18	\$141,275.55

## Notes:

1. Infant.
2. Settled previously for \$1000.00 plus \$300.00 contribution towards legal fees. Counsel fees are calculated on recovery of \$1,000.00.
3. Assessed in *Kotai*.
4. Settled independently - not included in this settlement.