

IN THE SUPREME COURT OF BRITISH COLUMBIA

ADMIRALTY ACTION In Rem Against
The Ship "Queen of the North"
And in personam

BETWEEN:

ALEXANDER STEVEN KOTAI and
MARIA GIOVANNA KOTAI

Plaintiffs

AND:

The Owners and all Others Interested
in the Ship, "Queen of the North", BRITISH COLUMBIA
FERRY SERVICES INC, and Colin Henthorne,
Karl Lilgert, and Karen Briker

Defendants

Brought pursuant to the Class Proceedings Act, RSBC 1996, c.50

O R D E R

BEFORE THE HONOURABLE)
MR. CHIEF JUSTICE BRENNER)

MONDAY, THE 26TH
DAY OF NOVEMBER, 2007

THE APPLICATION of the Plaintiffs coming on for hearing on November 26, 2007 at the Courthouse at 800 Smithe Street, Vancouver, British Columbia and on hearing James A. Hanson and David Varty, counsel for the Plaintiffs, and Gary Wharton, counsel for the Defendant, British Columbia Ferry Services Inc. and Christopher Giaschi for the Defendant, Karen Briker and Nils Daugulis for the Defendant, Colin Henthorne and Michael Frost for the Defendant, Karl Lilgert.

THIS COURT ORDERS THAT:

1. This action be certified as a class proceeding;
2. Barney Norman Dudoward be added as a plaintiff in this proceeding;
3. Robert Peter Smith be added as a Plaintiff in this proceeding;

4. The Amended Writ of Summons and Amended Statement of Claim be amended in the form of the Further Amended Writ of Summons and Further Amended Statement of Claim attached as Schedules #1 and #2 to this Order.
5. The subclasses be defined as:
 - i. Passengers on board the “Queen of the North” during her last voyage whose unpaid claims exceed the limits of liability established under the *Marine Liability Act*, S.C. 2001, c.6 and who are resident in British Columbia.
 - ii. Passengers on board the “Queen of the North” during her last voyage whose unpaid claims exceed the limits of liability established under the *Marine Liability Act*, S.C. 2001, c.6 and who are not resident in British Columbia.
 - iii. Passengers on board the “Queen of the North” during her last voyage whose unpaid claims do not exceed the limits of liability established under the *Marine Liability Act*, S.C. 2001, c.6 and who are resident in British Columbia.
 - iv. Passengers on board the “Queen of the North” during her last voyage whose unpaid claims do not exceed the limits of liability established under the *Marine Liability Act*, S.C. 2001, c.6 and who are not resident in British Columbia.
 - v. “Dependants” of those persons who were passengers on board the “Queen of the North” during her last voyage as that term is defined in the *Marine Liability Act*, S.C. 2001, c.6, section 4 and who are resident in British Columbia.
 - vi. “Dependants” of those persons who were passengers on board the “Queen of the North” during her last voyage as that term is defined in the *Marine Liability Act*, S.C. 2001, c.6, section 4 and who are not resident in British Columbia.
6. Maria Giovanna Kotai, Barney Norman Dudoward, and Robert Peter Smith be appointed to represent the following subclasses of persons:
 - (a) Maria Giovanna Kotai be appointed to represent the subclasses of passengers with unpaid claims exceeding the limits of liability established under the *Marine Liability Act*, S.C. 1001, c.6, who are either resident or non-resident in British Columbia;

- (b) Barney Norman Dudoward be appointed to represent the subclasses of passengers without unpaid claims exceeding the limits of liability established under the *Marine Liability Act*, S.C. 2001, c.6, who are either resident or non-resident in British Columbia;
 - (c) Robert Peter Smith be appointed to represent the subclasses of “dependants” who are either resident or non-resident in British Columbia.
7. The following questions be certified as common issues:
- 1. Are the Defendants liable to the members of the Class pursuant to the *Marine Liability Act*, S.C. 2001 c.6, Schedule 2, Part I;
 - 2. Can the Defendants limit their liability pursuant to the *Marine Liability Act*, S.C. 2001 c.6, Schedule 2, Part I;
 - 3. What is the scope of a “dependant’s” entitlement to compensation under the *Marine Liability Act*, S.C. 2001 c.6, Part I, section 6 (1) and (3);
 - 4. Are the members of the Class entitled to punitive damages;
 - 5. If the Class is entitled to punitive damages, what is the quantum of such damages, and is the Class entitled to an award of such damages on an aggregate basis pursuant to section 20 of the *Class Proceeding Act*;
 - 6. What is the scope of recovery under the *Marine Liability Act*, S.C. 2001 c.6, Schedule 2, Part I, in respect of psychological injuries;
 - 7. What were the circumstances surrounding the navigation of the “Queen of the North” during the period it sailed from Sainty Point to Gil Island during her last voyage;
 - 8. What were the circumstances surrounding the evacuation of the “Queen of the North” after it struck Gil Island;
 - 9. What were the circumstances surrounding the sinking of the “Queen of the North”;
 - 10. What were the circumstances surrounding the rescue and relocation of the passengers, who were on the last voyage of the “Queen of the North”
8. By January 14, 2008, Notice shall be given to the class members in the following manner:

- a) Plaintiffs' counsel will mail the Certification Notice and Opt Out/Opt In forms to the last known mailing address of all passengers, and to all dependants known to Plaintiffs' counsel by regular mail, enclosing a stamped, self addressed envelope for response;
- b) The Notice by mail shall be in the form attached as Schedule #3 to this Order;
- c) Notice will be published on the web site of Plaintiffs' counsel, along with Opt Out/Opt In forms. The form of this Notice will be identical to Schedule #3 to this Order;
- d) The cut off date for opting in and opting out shall be March 14, 2008.

BY THE COURT

REGISTRAR

APPROVED AS TO FORM:

Counsel for the Plaintiffs

Counsel for the Defendant, British Columbia
Ferry Services Inc.

Counsel for the Defendant, Colin Henthorne

Counsel for the Defendant, Karl Lilgert

Counsel for the Defendant, Karen Briker