

Schedule #3 (Notice by Mail)

LEGAL NOTICE – NOTICE OF CERTIFICATION

NOTICE TO ALL PASSENGERS ON THE QUEEN OF THE NORTH DURING HER LAST VOYAGE, AND TO ALL “DEPENDANTS” (FAMILY MEMBERS) OF SUCH PASSENGERS

In the matter of: Kotai v. BC Ferry Services Inc
(Court File no. S062025, Vancouver Registry; Supreme Court of British Columbia)

Introduction:

A class proceeding has been certified by the Court concerning claims of passengers on board the “Queen of the North” during her last voyage and their “dependants” (family members).

You are receiving this notice because you were either a passenger on the Queen of the North during her last voyage, or are a “dependant” of such a passenger. For the purposes of the relevant legislation, a “dependant” is defined as:

- (a) a son, daughter, stepson, stepdaughter, grandson, granddaughter, adopted son or daughter, or an individual for whom the injured or deceased person stood in the place of a parent;
- (b) a spouse, or an individual who was cohabiting with the injured or deceased person in a conjugal relationship having so cohabited for a period of at least one year; or
- (c) a brother, sister, father, mother, grandfather, grandmother, stepfather, stepmother, adoptive father or mother, or an individual who stood in the place of a parent.

The classes as certified by the Court include:

- 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 residents of 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 residents of British Columbia.

What is the Case About?

A lawsuit was commenced at the Vancouver Registry of the Supreme Court of British Columbia, pursuant to the Class Proceedings Act, for damages suffered by the Plaintiffs who were passengers on board the “Queen of the North” during her last sailing, and losses suffered by their “dependants”.

On November 26, 2007, the Supreme Court of British Columbia ruled that the lawsuit may proceed as a class action. Ms Kotai, Mr Dudoward, and Mr Smith may act as representative Plaintiffs for the class action.

The class has been sub-divided into various subclasses for the purpose of ensuring that the class as a whole, and the different subclasses, are effectively represented in the proceedings. The class is separated into the following subclasses:

Ms Kotai represents the subclasses of passengers with unpaid claims exceeding the limits of liability established under the *Marine Liability Act*, S.C. 2001, c.6 who are either:

- (a) resident in British Columbia; or
- (b) not resident in British Columbia.

Mr Dudoward represents the subclasses of passengers with unpaid claims that do not exceed the limits of liability established under the *Marine Liability Act*, S.C. 2001, c.6, who are either:

- (a) resident in British Columbia; or
- (b) not resident in British Columbia.

Mr Smith represents the subclasses of “dependants” who are either:

- (a) resident in British Columbia; or
- (b) not resident in British Columbia.

Why the passengers have been divided into two subclasses:

The Defendant British Columbia Ferry Services Inc has admitted liability for the sinking, up to the limits of liability established under the Marine Liability Act. This means that if a passenger's claim falls within the statutory limits of approximately \$275,000 for personal injury, or approximately \$16,000 for lost property, British Columbia Ferry Services Inc has agreed to pay these damages, subject to settling the amount of the loss.

Under the Marine Liability Act, meanwhile, in order to establish an entitlement to an amount exceeding approximately \$275,000 for personal injury, or approximately \$16,000 for lost property, the Plaintiff must prove that the Defendant acted "recklessly and with knowledge that such loss would probably result."

The Defendants deny that they acted "recklessly." Those persons whose claims for damages for personal injury or for lost property exceed the statutory limits have an incentive to establish "recklessness" in order to challenge the limits of liability under the Marine Liability Act. Proving "recklessness" will involve additional cost, complexity and delay. Therefore, the class has been divided into two subclasses. One, represented by Mr Dudoward, will represent the group of persons whose unpaid claims fall within the limits of the Marine Liability Act, and therefore have no incentive to prove recklessness; the other represented by Maria Kotai, will represent the group of persons whose unpaid claims exceed these limits, and therefore have an incentive to prove recklessness.

Both subclasses are able to pursue a claim for punitive and aggravated damages.

It is possible that the group whose unpaid claims do not exceed the limits of liability under the Marine Liability Act may elect to settle their claims sooner and with less expense compared to the group who have an incentive to continue to pursue the issue of "recklessness". Decisions as to how the case proceeds for both subclasses, including decisions concerning providence of settlement versus continued litigation, will be decided by the representatives for the subclasses, with advice from counsel, and under the supervision of the Case Management Judge presiding over the case.

Who are the lawyers for the class?

The class is represented by the law firms of Hanson Wirsig Matheos and Varty and Company.

How Will the Case Proceed?

The case has two stages. The first stage is the resolution of the common issues. A list of the common issues is available from Hanson Wirsig Matheos and is found at their web site, www.hwm.ca

A date for the trial of these common issues will be set shortly. The representative Plaintiffs will instruct the lawyers for the class during the common issues stage of the class action. The lawyers must act in the interests of all class members.

If a class member wishes to participate on his or her own behalf at the common issues stage of the proceeding, he or she must make an application to the British Columbia Supreme Court.

Once the common issues are resolved, the Court will then determine what further steps class members must take in order to determine if each member is entitled to recover damages, and in what amount.

Counsel for the Plaintiff expects to make a proposal to the Court for alternate dispute resolution before the end of January, 2008. If successful, such alternate dispute resolution would permit the case to be resolved through a more expeditious and less time consuming manner.

How Do I participate in the class action and any possible recovery?

If you are a resident of British Columbia, and you want to participate in the class action, you do not need to complete an Opt In form. All persons resident in British Columbia who fall within the definition of the class are automatically included as members of the class. This includes passengers and dependants. All members of the class resident in British Columbia will be bound by the judgment of the Court on the common issues unless they have opted out of the class action. However, in order to assist us in determining into which category your claim falls, we ask that you complete and return the enclosed Questionnaire form.

If you are a resident in British Columbia and fall within the definition of the class but do not want to be a member of this class, you must opt out of the class by completing the "Opt Out" form, which is enclosed with this Notice as Schedule 1. To be effective, an "Opt Out" form must be delivered to Hanson Wirsig Matheos no later than March 14, 2008.

Those members of the class who choose to opt out will not recover any monies in this action.

If you are not a resident of British Columbia, but fall within the class definition, you will not be included in this class action unless you "opt in" to the class action. You must do this by completing an "Opt In" form. An "Opt In" form is enclosed with this Notice as Schedule 2. To be effective, "Opt In" forms must be delivered to Hanson Wirsig Matheos no later than March 14, 2008.

Non resident passengers and "dependants" must understand that if they fail to "opt in" to the class proceeding, their claims will be statute barred two years after the date of the

sinking (March 21, 2008). Therefore, non-resident “passengers” or “dependants” must either “opt in” to the class proceeding prior to March 14, 2008, or commence individual legal proceedings prior to March 21, 2008, or else their claims will be statute barred and they will not be able to bring claims for compensation.

Contact Information of Class Counsel

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| <p>JAMES A. HANSON Hanson Wirsig Matheos Barristers and Solicitors 210-15225 104th Avenue Surrey, BC V3R 6Y8</p> <p>Telephone: 604-583-2200 Fax: 604-583-3469 Email: lawyers@hwm.ca Website: www.hwm.ca</p> | <p>DAVID VARTY Varty & Company Barristers and Solicitors 900 – 555 Burrard Street Vancouver, BC V7X 1M8</p> <p>Telephone: 604-684-5356 Fax: 604-443-5001 Email: dvarty@smartt.com Website: www.vartylaw.ca</p> |
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Do I need to pay anything?

You do not need to pay any legal fees out of your own pocket.

If the case is successful, the fees payable to the lawyers for the class will be paid out of any judgment, and will not be paid directly by class members.

Any fee paid to lawyers for the class is subject to approval of the court. The representative plaintiffs have entered into a fee agreement with the lawyers for the class which provides for the lawyers to be paid 30% of a settlement or favourable judgment. When and if such a settlement, judgment, voluntary payment or execution or other benefit is obtained, the lawyers will apply to court for approval of a fee that is consistent with the terms of this agreement. The court will decide what amount is fair.

This arrangement compensates the lawyers for the risk they have assumed in advancing the case and the legal work performed. The lawyers do not receive any money to pay them for their work on the case unless the case is successful.

How do I find out more?

If you have any questions regarding this notice or the status of the class action, please visit Hanson Wirsig Matheos’ website at www.hwm.ca or contact Hanson Wirsig Matheos at 604-583-2200 (attention James Hanson) or by email to lawyers@hwm.ca

Schedule 1
- FOR BC RESIDENTS ONLY -
OPT OUT NOTICE

I do **not** want to participate in the class action:

Vancouver Registry No S062025

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

ALEXANDER STEVEN KOTAI and MARIA GIOVANNA KOTAI, BARNEY
NORMAN DUDOWARD and ROBERT PETER SMITH

Plaintiffs

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

Notice under the Class Proceedings Act, RSBC 1996, c.50

**I understand that if I complete this form, I will not be able to receive any monetary
award from this action.**

Print Name

Sign Name

Address

Date

MAIL THIS DOCUMENT NO LATER THAN **MARCH 14, 2008** TO:
Hanson Wirsig Matheos
#210 - 15225 104th Avenue
Surrey, BC V3R 6Y8
Attention: James Hanson

QUESTIONNAIRE

To be completed by residents of British Columbia who were passengers on the last voyage of the Queen of the North or a “dependant” of such passengers

Please answer the following questions so that you can be placed in the appropriate subclass:

1. I was a passenger on the last voyage of the Queen of the North Yes No
2. For a Passenger:
All my property claims have been paid Yes No

For the purposes of question 2, in the relevant legislation, “dependant” is defined in relation to an injured or deceased person as:

| | | |
|--|---|--|
| <i>A a son, daughter, stepson, stepdaughter, grandson, granddaughter, adopted son or daughter, or an individual for whom the injured or deceased person stood in the place of a parent</i> | <i>B a spouse, or an individual who was cohabiting with the injured or deceased person in a conjugal relationship having so cohabited for a period of at least one year</i> | <i>C a brother, sister, father, mother, grandfather, grandmother, stepfather, stepmother, adoptive father or mother, or an individual who stood in the place of a parent</i> |
|--|---|--|

[please circle column letter for applicable category of “dependants”]

3. I was a “dependant” of a passenger on the last voyage of the Queen of the North Yes No

Sign your name: _____ Date signed: _____

| | |
|--|---|
| <hr/> Print Your Name Address: _____ _____ _____ _____ | Mail this document no later than MARCH 14, 2008 to: Hanson Wirsig Matheos #210 - 15225 104 th Avenue Surrey, BC V3R 6Y8 Attention: James Hanson |
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Schedule 2
- FOR PERSONS NOT RESIDENTS IN BRITISH COLUMBIA -
OPT IN NOTICE

I **do** want to participate in the class action

In the matter of: Kotai v. BC Ferry Services Inc
(Court File no. S062025, Vancouver Registry; Supreme Court of British Columbia)

Please answer the following questions so that you can be placed in the appropriate subclass:

1. I was a passenger on the last voyage of the Queen of the North Yes No
2. For a Passenger:
All my property claims have been paid Yes No

For the purposes of question 3, in the relevant legislation, “dependant” is defined in relation to an injured or deceased person as:

| | | |
|--|---|--|
| <i>A a son, daughter, stepson, stepdaughter, grandson, granddaughter, adopted son or daughter, or an individual for whom the injured or deceased person stood in the place of a parent</i> | <i>B a spouse, or an individual who was cohabiting with the injured or deceased person in a conjugal relationship having so cohabited for a period of at least one year</i> | <i>C a brother, sister, father, mother, grandfather, grandmother, stepfather, stepmother, adoptive father or mother, or an individual who stood in the place of a parent</i> |
|--|---|--|

[please circle column letter for applicable category of “dependants”]

3. I was a “dependant” of a passenger on the last voyage of the Queen of the North Yes No

I understand that if I complete this form, I will be included in the within class action, and will not be able to bring an individual action for monetary relief.

I further understand that the statutory limitation period for bringing an individual action expires on March 21, 2008.

Sign your name: _____ Date signed: _____

| | |
|---|--|
| _____ Print Your Name Address: _____ _____ | Mail this document no later than MARCH 14, 2008 to: Hanson Wirsig Matheos #210 - 15225 104 th Avenue Surrey, BC V3R 6Y8 Attention: James Hanson |
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