

Schedule #1

No S062025  
Vancouver Registry:

**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,  
MARIA GIOVANNA KOTAI,  
BARNEY NORMAN DUDOWARD, and  
ROBERT PETER SMITH

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 R.S.B.C. 1996, c.50

Amended pursuant to the Order  
of Chief Justice Brenner  
made the 26th day of November, 2007

**FURTHER AMENDED WRIT OF SUMMONS**  
(Original filed on March 27, 2006 and amended on September 6, 2006)

Name and address of each Plaintiff: ALEXANDER STEVEN KOTAI  
c/o 900-555 Burrard Street  
Vancouver, British Columbia  
V7X 1M8

MARIA GIOVANNA KOTAI  
c/o 900-555 Burrard Street  
Vancouver, British Columbia  
V7X 1M8

BARNEY NORMAN DUDOWARD  
c/o 900-555 Burrard Street  
Vancouver, British Columbia  
V7X 1M8

ROBERT PETER SMITH  
c/o 900-555 Burrard Street  
Vancouver, British Columbia  
V7X 1M8

Description of Ship:

The "Queen of the North" is a passenger and motor vehicle ferry of 8,806 gross tons measuring 125 metres in length with a carrying capacity of 700 passengers and crew and 115 motor vehicles.

Name and address of the Defendants in personam:

BRITISH COLUMBIA FERRY SERVICES INC.  
1112 Fort Street  
Victoria, British Columbia  
V8V 4V2

Colin Henthorne  
c/o 3000-1055 West Georgia Street  
Vancouver, British Columbia  
V6E 3R3

Karl Lilgert  
c/o 208-4940 No. 3 Road  
Richmond, British Columbia  
V6X 3A5

Karen Briker  
c/o 401-815 Hornby Street  
Vancouver, British Columbia  
V6Z 2E6

ELIZABETH THE SECOND, by Grace of God, of the United Kingdom, Canada, and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

*To the defendant(s):*

TAKE NOTICE that this action has been commenced against you by the Plaintiffs for the claims set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set-off or counterclaim which you wish to have taken into account at trial, YOU MUST

- a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above Registry of this court, at the address shown below, within the Time for Appearance provided below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ, and
- b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, File a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the Registry.

APPLICATION FOR JUDGMENT AGAINST THE SHIP OR OTHER PROPERTY  
MAY BE TAKEN AGAINST YOU IF

- a) YOU FAIL to file the Appearance within the proper Time for Appearance provided below, or
- b) YOU FAIL to file the Statement of Defence within the Time for Defence provided below.

#### TIME FOR APPEARANCE

Service on ship:

The time for appearance is 7 days from the service of this writ on the ship (not including the day of service).

Service on defendants in personam:

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person, after service, shall be 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set, by order of the court, within that time]

**TIME FOR DEFENCE**

A Statement of Defence, must be filed and delivered to the plaintiff within 14 days after the later of

- a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- b) the end of the Time for Appearance provided for above.

A Statement of Defence filed on behalf of the ship or other property must set out the nature of the interest that you claim in the ship or other property.

(1) The address of the registry is:

The Law Courts  
800 Smithe Street  
Vancouver, B.C.  
V6Z 2E1

(2) The Plaintiffs' ADDRESS FOR DELIVERY is:

#210-15225 104<sup>th</sup> Avenue  
Surrey, British Columbia  
V3R 6Y8

Fax number for delivery:

604-583-3469

(3) The name and office address of the plaintiffs' solicitors is:

David Varty  
Varty & Company  
Barristers & Solicitors  
900-555 Burrard Street  
Vancouver, B.C.  
V7X 1M8

James A. Hanson  
Hanson Wirsig Matheos  
Barristers and Solicitors  
#210 - 15225 104<sup>th</sup> Avenue  
Surrey, British Columbia  
V3R 6Y8  
Telephone: 604-583-2200

The Plaintiffs' claim is attached.

Dated: March 27, 2006

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Solicitor for the Plaintiffs

**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,  
MARIA GIOVANNA KOTAI,  
BARNEY NORMAN DUDOWARD,  
and ROBERT PETER SMITH.

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

Amended pursuant to the Order  
of Chief Justice Brenner made  
the 26th day of November, 2007

**FURTHER AMENDED STATEMENT OF CLAIM**  
(original filed on March 27, 2006 and amended on September 6, 2006)

1. The Plaintiff, Alexander Steven Kotai is a retired counterperson residing at 208-1633 Dufferin Crescent, Nanaimo, British Columbia.
2. The Plaintiff Maria Giovanna Kotai is a secretary residing at 208-1633 Dufferin Crescent, Nanaimo, British Columbia.

3. The Plaintiff Barney Norman Dudoward is a commercial fisherman residing at 519 Honess Ave., Box 177, Waglisla, British Columbia, V0T 1Z0.
4. The Plaintiff Robert Peter Smith is a baggage handler residing at 95 Hayside Drive, Prince Rupert, in the Province of British Columbia, V8A 3Z1.
5. The Defendant, British Columbia Ferry Services Inc. is a corporation incorporated in the province of British Columbia with a registered office located at 1112 Fort Street, Victoria, in the Province of British Columbia and was at all material times the owner of the Defendant Ship "Queen of the North".
6. The Defendant Vessel, "Queen of the North", was a ferry passenger vessel of 8,889.46 gross tons, with a Port of Registry at Victoria, British Columbia, and at all material times was owned by the Defendant British Columbia Ferry Services Inc.
7. The Defendant, Colin Henthorne, is a ship's captain whose place of residence is better known to the Defendants than to the Plaintiffs.
8. The Defendant, Karl Lilgert, is a ship's 4<sup>th</sup> officer whose place of residence is better known to the Defendants than to the Plaintiffs.
9. The Defendant, Karen Briker, is a ship's deckhand whose place of residence is better known to the Defendants than to the Plaintiffs.
10. The Defendants, Colin Henthorne, Karl Lilgert, and Karen Briker, were at all material times responsible for the safe navigation of the "Queen of the North" through Wright Sound and over all waters necessary to complete the voyage from Prince Rupert to Port Hardy.

11. On or about March 22, 2006, and at all material times hereto, the Defendant British Columbia Ferry Services Inc. was the operator of the ship "Queen of the North" which was being operated as a passenger and motor vehicle ferry en route from Prince Rupert to Port Hardy, British Columbia with an arrival scheduled for approximately 1:30 pm Pacific Standard Time March 22, 2006, and the Defendants Colin Henthorne, Karl Lilgert, and Karen Briker were employees of the Defendants British Columbia Ferry Services Inc.
12. On or about March 22, 2006, the plaintiffs Maria Kotai and Barney Dudoward were paying passengers on the said "Queen of the North" ferry, which was being operated by the Defendant, British Columbia Ferry Services Inc. when the ferry struck a rock near Gil Island, British Columbia, took on water and sank.
13. On or about March 22, 2006, Karen Cheryl Smith, the wife of the Plaintiff, Robert Peter Smith, was a paying passenger on the said "Queen of the North" ferry.
14. The sinking was caused solely by the negligence and fault of the Defendants.
15. Particulars of the negligence of the Defendant British Columbia Ferry Services are as follows:

  - a) In failing to train its crew adequately or at all in the correct operation of the navigation equipment on board the ferry;
  - b) In failing to supervise the crew on the bridge to ensure that they were operating the navigation equipment correctly and performing all of their duties including keeping a proper lookout;
  - c) In failing to keep a proper lookout. The ferry captain and bridge crew of the said ferry, acting on behalf of the said Defendant, failed to use visual sightings adequately or at all, as well as other means to remain near the centre of the shipping channel

when they knew or ought to have known that even a small divergence from the prescribed course in the channel would pose a high risk of accident;

- d) In failing to operate at a safe speed;
- e) In failing to conduct an evacuation of the ferry in a way that prevented or minimized injuries; and,
- f) In continuing to operate the "Queen of the North" on its passenger routes when it knew or ought to have known that the single compartment hull design of the ferry made it more vulnerable to taking on water than a multiple compartment structure, which in turn made it more likely to sink if the hull were breached;

16. Particulars of the negligence of the Defendants, Colin Henthorne, Karl Lilgert, and Karen Briker, are as follows:

- a) Failing to navigate the vessel safely through Wright Sound;
- b) failure to acquire adequate skill for the safe operation of the vessel's navigation equipment;
- c) failure to operate the vessel's navigation equipment as recommended or required by the equipment manufacturers;
- d) temporary abandonment of their duty to monitor and operate the vessel's navigation equipment safely;
- e) failure to keep a proper lookout;
- f) failure to operate the vessel at a safe speed;
- g) such further and other acts of negligence which are better known to the Defendants Henthorne, Lilgert and Briker than to the Plaintiffs.

17. The Defendants, Colin Henthorne, Karl Lilgert, and Karen Briker, acted recklessly and with knowledge that the damage would probably result. Particulars of that recklessness include:

- a) Operating the vessel in such a manner as to cause it to come into collision with a

known, substantial and easily avoidable navigational hazard, Gil Island;

- b) Abandoning their duty to monitor and operate the vessel's navigational equipment in such a manner as to render the collision of the vessel with the shores of Wright Sound a likelihood;
- c) Such further and other acts of recklessness which are better known to the Defendants, Colin Henthorne, Karl Lilgert, and Karen Briker than to the Plaintiffs.

18. The Defendant British Columbia Ferry Services Inc. acted recklessly and with knowledge that the damage would probably result. Particulars of that recklessness include:

- a) Operating the Queen of the North while there was widespread use of cannabis by its crew members despite knowledge that impairment of crew members from cannabis use posed a clear risk to the travelling public and that such impairment increased the probability of resulting damage;
- b) Operating its fleet and the Queen of the North with an International Safety Management system that was dysfunctional despite receiving warnings of the probability of a catastrophic accident;
- c) Such further and other acts of recklessness which are better known to the Defendant British Columbia Ferry Services Inc.

19. The Plaintiffs and Karen Cheryl Smith, the wife of the Plaintiff, Robert Peter Smith, entered into a contract of carriage with the Defendant British Columbia Ferry Services Inc. and paid for transport of themselves and their motor vehicles by ferry from Prince Rupert to Port Hardy, British Columbia.

20. The Defendant British Columbia Ferry Services breached the said contract as a result of the sinking of the "Queen of the North" ferry.

21. As a result of the sinking of the said ferry, caused solely by the negligence, recklessness, and fault of the Defendants, the Plaintiffs were injured on or about March 22, 2006.

22. As a consequence of the aforesaid accident the Plaintiffs have suffered actual and prospective pecuniary loss and damage and general damages.
23. The Plaintiff Robert Peter Smith, was a dependant of passenger Karen Cheryl Smith, as the term dependant is defined in the Marine Liability Act, RSC 2001, c. 6 section 4 and as such suffered loss resulting from the injury to Karen Cheryl Smith and suffered the loss of guidance, care and companionship that he could reasonably have expected to receive from Karen Cheryl Smith if the injury had not occurred.
24. The Plaintiff Barney Dudoward suffered the loss of his luggage totalling an amount which is within the limits of liability established by the Marine Liability Act.
25. The Plaintiffs Maria and Alexander Kotai suffered the loss of their luggage totalling an amount which exceeds the limits of liability established by the Marine Liability Act.
26. The Plaintiff Maria Giovanni Kotai seeks to represent the subclasses of persons who were 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, SC 2001, c. 6 and who are either:
- (a) resident in British Columbia; or
  - (b) not resident in British Columbia.
27. The Plaintiff Barney Norman Dudoward seeks to represent the subclasses of persons who were 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, SC 2001, c. 6, and who are either:

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

28. The Plaintiff Robert Peter Smith seeks to represent the subclasses of persons who were “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, SC 2001, c. 6, section 4, and who are either:

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

**WHEREFORE** the Plaintiffs claim on their own behalf and on behalf of the specified subclasses:

- a) An order certifying the proceeding as a class proceeding;
- b) General damages;
- c) Special damages;
- d) Punitive damages;
- e) Aggravated damages;
- f) Costs pursuant to Section 37(2) of the Class Proceedings Act;
- g) Court order interest;

h) Such other relief as this honourable court may deem just;

PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of March, 2006.

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Solicitor for the Plaintiffs

THIS STATEMENT OF CLAIM is filed by David Varty of the firm Varty & Company, Barristers & Solicitors, whose place of business and address for delivery is 900 – 555 Burrard Street, Vancouver, British Columbia (604-684-5356) and James A. Hanson of the firm of Hanson Wirsig Matheos, Barristers & Solicitors, whose place of business and address for delivery is 210-15225 104th Avenue, Surrey, British Columbia (604-583-2200)