

2011 01G 0013CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

**BETWEEN:**

**HUGH GEORGE and BEN BELLOWS**

**PLAINTIFFS**

**AND:**

**HER MAJESTY THE QUEEN IN RIGHT OF  
NEWFOUNDLAND AND LABRADOR**

**DEFENDANT**

BROUGHT UNDER THE *CLASS ACTIONS ACT*  
BEFORE THE HONOURABLE MR. JUSTICE RICHARD LEBLANC,  
CASE MANAGEMENT JUDGE

**INTERLOCUTORY APPLICATION FOR CLASS CERTIFICATION**  
**(Inter Partes)**

<b>SUMMARY OF CURRENT DOCUMENT</b>	
Court File Number:	2011 01G 0013 CP
Date of Filing of Document:	February 16 , 2011
Name of Filing Party or Person:	Plaintiffs
Application to which Document being filed relates:	Application of Plaintiffs for an order certifying the action as a Class Action
Statement of purpose in filing:	Application.

**THE PLAINTIFFS** will apply to the Court, on a date to be fixed.

**PROPOSED METHOD OF HEARING:**

The application is to be heard orally.

**THE APPLICATION IS FOR:****CERTIFICATION**

1. An Order certifying this action as a Class Action;

**CLASS AND CLASS REPRESENTATIVE**

2. An Order describing as a "Class":

Persons or the estates of persons who were admitted as inpatients to a hospital, and the estates of persons who are deceased, as a result of a collision or near collision with a moose, while operating or occupying a motor vehicle on a highway in the island portion of Newfoundland and Labrador outside the boundaries of Gros Morne and Terra Nova National Parks.

Close family members of such persons or estates have suffered a loss of care, guidance and companionship.

The Class Period is the period from ten years before the bringing of this action, up to the opt-out date set by the Court in this action.

3. An Order appointing Hugh George and Ben Bellows as the representative plaintiffs of the Class;
4. An Order appointing the firm of Ches Crosbie Barristers as counsel to the Class ("Class Counsel");

**NATURE OF THE CLAIMS**

5. An Order stating the nature of the claims asserted on behalf of the Class to be:
  - (a) tort of strict liability;
  - (b) tort of public nuisance;
  - (c) tort of negligence.

**RELIEF SOUGHT**

6. An Order stating the relief sought by the Class members to be:
  - (a) All issues of the Defendant's liability and the remedies available against the Defendant.

**COMMON ISSUES**

7. An Order stating the "Common Issues" to be:
  - (1) Whether the Defendant is liable in tort of strict liability.
  - (2) Whether the Defendant is liable in tort of public nuisance.
  - (3) Whether the Defendant owes a duty of care to the owners and occupiers of motor vehicles to mitigate the risk of moose vehicle collisions.
  - (4) If so, what is the standard of care that the Defendant must meet with respect to this?
  - (5) Whether the Defendant is in breach of the standard of care.
  - (6) Whether, in relation to standards of conduct required by each of the above torts, the Defendant was required to implement mitigative measures which, on the balance of probabilities, would have reduced the risk of serious injury in moose vehicle collisions by 51% or more during the Class Period.

- (7) Whether, with respect to claims arising more than two years before the commencement of these proceedings, the running of time for limitation purposes has been postponed or suspended by the doctrine of discoverability.
- (8) Whether, with respect to claims arising more than two years before the commencement of these proceedings, the running of time for limitation purposes has been postponed or suspended by the equitable doctrine of concealment.

## **NOTICE**

8. An Order approving the form and content of notice to the Class (the "Notice").
9. An Order specifying that the following means shall be used to publish the Notice:
  - (a) the Notice shall be forwarded by Class Counsel to any person who requests it or who has retained Class Counsel and has provided contact information;
  - (b) the Notice shall be published in newspapers as agreed to by the parties, or failing agreement, as determined by the Court; and
  - (c) the Notice shall be posted on Class Counsel's website.
10. An Order requiring the Defendant to pay the cost of the Notice Programme.

## **OPT-OUTS**

11. An Order specifying that class members may opt out of this class action by sending a written election by mail to Class Counsel before a date to be fixed by the Court.

**THE GROUNDS FOR THE APPLICATION ARE:**

12. *The Class Actions Act;*
13. The Court should certify this proceeding as a class action because the Statement of Claim discloses a cause of action, there is an identifiable class of two or more persons, there are Common Issues raised in the pleadings, a class action is the preferable procedure, and the proposed representative plaintiffs fairly and adequately represent the interests of the Class, have produced a workable plan for advancing this litigation and notifying other class members, and do not have an interest in conflict with the interests of other Class members;
14. *Rule 7A.01(4) of the Rules of the Supreme Court;*
15. Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (i) the pleadings;
- (ii) the affidavits of Hugh George, Ben Bellows, Sheri Geehan, and Dr. Anthony Clevenger; and
- (iii) such further and other evidence as counsel may advise and this Honourable Court permit.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 16<sup>th</sup> day of February, 2011.

  
**CHES CROSBIE BARRISTERS**  
Solicitors for the Plaintiffs

169 Water Street, 4<sup>th</sup> Floor  
St. John's, NL A1C 1B1  
*Attention: Chesley F. Crosbie, Q.C.*

**TO: DEPARTMENT OF JUSTICE – CIVIL DIVISION**

Solicitors for the Defendant  
4<sup>th</sup> Floor, East Block, Confederation Building  
PO Box 8700  
St. John's, NL A1B 4J6  
*Attention: Rolf Pritchard*

**ISSUED** at St. John's, in the Province of Newfoundland and Labrador, this 16<sup>th</sup> day of February, 2011.

*Agd*  
Margaret Williams  
*Jurat Co-Ordinator*