

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

**CONSENT ORDER**

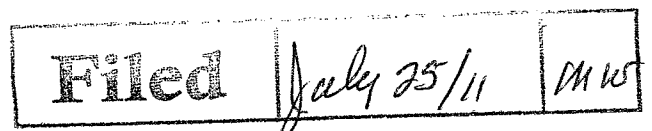
**THIS APPLICATION**, brought by the Plaintiffs, on consent, for an order certifying this action as a class action pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1, and other ancillary orders, was heard June 7, 2011, at St. John's, Newfoundland and Labrador.

**ON READING** the affidavits filed in support of this application by the Plaintiffs, the brief of the Plaintiffs filed, and on hearing the submissions of counsel for the parties,

1. **THIS COURT ORDERS** that this action be and hereby is certified as a class action pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1.
2. **THIS COURT ORDERS AND DECLARES** that:
  - (a) The "Class" shall be defined as:

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

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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.

All living children, parents and partners (as those terms are defined in the *Fatal Accidents Act*) and spouses of such persons or estates who have suffered a loss of care, guidance and companionship.

(b) The "Class Period" shall be defined as:

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. **THIS COURT ORDERS AND DECLARES** that Hugh George and Ben Bellows be and are hereby appointed as the representative plaintiffs for the Class and that Ches Crosbie Barristers be and hereby is appointed as class counsel ("Class Counsel").
4. **THIS COURT ORDERS AND DECLARES** that the claims asserted on behalf of the Classes to be tort of strict liability, tort of public nuisance and tort of negligence.
5. **THIS COURT ORDERS AND DECLARES** that the relief sought by the Class are issues of the Defendant's liability and the remedies available against the Defendant.
6. **THIS COURT ORDERS AND DECLARES** that the common issues for the Class are:
  - (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?

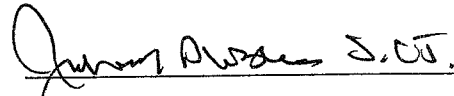
- (5) Whether the Defendant is in breach of the standard of care.
  - (6) Whether, in relation to standards of conduct required by each of the above torts, the Defendant was required to implement mitigative measures which, on the balance of probabilities, would have reduced the risk of serious injury 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.
7. **THIS COURT ORDERS** that within 30 days of the issuance of this Order, notice shall be provided to the Class by the Plaintiffs, causing notices in the form attached hereto as Exhibit "A" to be forwarded by Class Counsel by regular mail to any person who requests it or who has retained Class Counsel and has provided contact information. The notice shall also be published by publication twice in each of The Telegram and The Western Star and by publication on Class Counsel's website.

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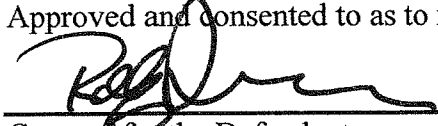
8. **THIS COURT ORDERS** that a Class member may opt out of this Class action by sending a written election by mail or facsimile to Class Counsel no later than 90 days from the date of the second publication of the notice attached hereto as Exhibit "A".

8.9. THIS COURT ORDERS that any person or estate not residing in Newfoundland and Labrador who wishes to opt in to the class action as certified must do so by sending a written notice to Class Counsel no later than 90 days from the date of publication of the notice attached hereto as Exhibit "A" on Class Counsel's website.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this <sup>25<sup>th</sup></sup> day of ~~July~~<sub>June</sub>, 2011.

  
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Approved and consented to as to form and content by:

  
\_\_\_\_\_

Counsel for the Defendant

  
\_\_\_\_\_

Counsel for the Plaintiffs

**Exhibit "A"**

**MOOSE VEHICLE COLLISION CLASS ACTION**

Attention: Victims, estates, and family members of victims of moose vehicle collisions in Newfoundland and Labrador

**THE ACTION**

**FEES AND DISBURSEMENTS**

A lawsuit was started in the Supreme Court of Newfoundland and Labrador on behalf of the following class:

- (a) 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.
- (b) All living children, parents and partners (as those terms are defined in the *Fatal Accidents Act*) and spouses of such persons or estates who have suffered a loss of care, guidance and companionship.<sup>1</sup>

The Class Period is from January 5, 2001 until 90 days from the date of the second publication of this notice.

By order dated <sup>July 25, 2011</sup> June 7, 2011 Justice LeBlanc of the Supreme Court of Newfoundland and Labrador certified the action *George and Bellows v. Her Majesty the Queen in right of Newfoundland and Labrador* as a class action, appointed Hugh George and Ben Bellows as representative plaintiffs for the class, and appointed the law firm of Ches Crosbie Barristers of St. John's as class counsel. This notice is given by order of Justice LeBlanc.

The lawsuit seeks damages for class members who have suffered losses as a result of being in a moose vehicle collision ("MVC") or as a result of being a family member who was injured or killed in a MVC. The lawsuit alleges that the Defendant is liable in negligence, tort of strict liability, and tort of public nuisance. The Court has not yet made findings on the merits of this case and the Defendant is denying any wrongdoing.

Plaintiffs' counsel have entered into an agreement with the representative plaintiffs with respect to legal fees and disbursements for the trial of the common issues. This agreement provides that plaintiffs' counsel will not receive payment for their work unless and until the class action is successful or costs are recovered from the defendant. This agreement must be approved by the Court.

Once the Court has determined the common issues, it may be necessary that each class member participate in individual proceedings to determine issues which are not common to the class in order to establish their own entitlement to damages. If a class member is successful in establishing damages on an individual basis, the class member will have to pay for legal services provided to them by their lawyers. This will include both the lawyer for the class and any lawyer retained to assist in establishing damages on an individual basis. These fees may be paid out of an individual's award of damages. If a class member is not successful in recovering damages individually, he or she could be liable to pay a portion of the defendant's expenses incurred with respect to such individual proceedings.

**RESIDENTS OF NEWFOUNDLAND AND LABRADOR**

Any person or estate in Newfoundland and Labrador who wishes to opt out of the class action as certified must do so by sending a written notice on or before [INSERT OPT OUT DATE] to Ches Crosbie Barristers. Persons in Newfoundland and Labrador not opting out will be bound by the Court's judgment whether favourable or not.

**NON-RESIDENTS OF NEWFOUNDLAND AND LABRADOR**

Any person or estate not residing in Newfoundland and Labrador who wishes to opt in to the class action as certified must do so by sending a written notice on or before [INSERT OPT OUT DATE] to Ches Crosbie Barristers. Persons not resident in Newfoundland and Labrador who opt in will be bound by the Court's judgment whether favourable or not.

**CONTACT INFORMATION**

For more information, or to opt out of or in to this action, contact Ches Crosbie Barristers:

Ches Crosbie Barristers  
169 Water Street, 4<sup>th</sup> Floor  
St. John's, NL A1C 1B1  
Tel: (709)579-4000  
Fax: (709)579-9671  
[www.chescrosbie.com](http://www.chescrosbie.com)  
[ccb@chescrosbie.com](mailto:ccb@chescrosbie.com)

<sup>1</sup> The *Fatal Accidents Act* definitions can be viewed online at [www.canlii.ca](http://www.canlii.ca) or by contacting Ches Crosbie Barristers and requesting a copy of the definitions.

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