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IN THE SUPREME COURT OF BRITISH COLUMBIA

ADMIRALTY ACTION IN REM AGAINST
THE SHIP "QUADRA QUEEN II" AND IN PERSONAM

BETWEEN:

ARTHUR SHAUGHNESSY, and
HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA

PLAINTIFFS

AND

THE OWNERS AND ALL OTHERS INTERESTED
IN THE SHIP "QUADRA QUEEN II" and
BRITISH COLUMBIA FERRY SERVICES INC.

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*

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

STATEMENT OF CLAIM

1. The Plaintiffs' claim arises from the Defendant's negligence in exposing the Plaintiff and other passengers to friable asbestos while aboard the *Quadra Queen II*. The events that are the subject of this action came to the Plaintiffs' knowledge in April of 2009, but occurred over the course of many years.

2. The Plaintiff, Arthur Shaughnessy, is a full-time RCMP constable in Alert Bay (on Cormorant Island), B.C. and who has been a passenger on the *Quadra Queen II* twice each working day during his employment in Port Hardy (on Vancouver Island) over the last 13 years. Mr. Shaughnessy has an address for service care of the Merchant Law Group LLP at 531 Quadra Street in Victoria, B.C. V8V 3S4.

3. Her Majesty the Queen in Right of the Province of British Columbia is a Plaintiff to this action pursuant to the *Health Care Cost Recovery Act (SBC 2008 c.27)* and who is subrogated for a *health care services claim* for the past and future costs of health care attributable to the injuries claimed by the Plaintiff and proposed class members in this action.

4. The Defendant, *Quadra Queen II,* is a passenger and vehicle ferry that operates between Alert Bay, Sointula (on Malcolm Island) and Port McNeil (on Vancouver Island), B.C. and commonly carries passengers including the Plaintiff and other commuting residents and school children.

5. The Defendant British Columbia Ferry Services Inc. (hereafter "B.C. Ferries") is a British Columbia company who carries on business as the owner and operator of a fleet of passenger and car ferries, including the *Quadra Queen II* and who has a registered office at 1112 Fort Street in Victoria B.C. V8V 4V2.

6. The proposed classes are:

    a. all passengers who suffered exposure to friable asbestos while in the passenger lounge of the *Quadra Queen II*, who are *residents* of British Columbia, including persons employed by B.C. Ferries who from time to time rode the *Quadra Queen II* as non-working passengers; and

    b. all passengers who suffered exposure to friable asbestos while in the passenger lounge of the *Quadra Queen II*, who are *non-residents* of British Columbia, including persons employed by B.C. Ferries who from time to time rode the *Quadra Queen II* as non-working passengers.

7. At all material times the Defendant, B.C. Ferries was an occupier of the *Quadra Queen II* who, through invitation to the Plaintiff as a passenger, owed a duty of care to the Plaintiff and the proposed class members, which duty included the responsibility to:

   a. ensure that the *Quadra Queen II* was reasonably safe;

   b. to warn when it was not reasonably safe;

   c. not to mislead when it was not reasonably safe; and

   d. to take immediate action to mitigate or correct unsafe circumstances.

8. The duty owed by the Defendant is an elevated duty, and one commensurate with that of a ferry service provider holding a monopoly on passenger/vehicle traffic between rural coastal communities who necessarily must place a high degree of trust in the Defendant.

9. In breach of its duty to the Plaintiff and the proposed class members, the Defendant B.C. Ferries committed the following acts and omissions:

   a. prior to September of 2008:

      i. failed to take measures to prevent the Plaintiff from becoming exposed to asbestos, including by failing to properly train crew on the nature of vermiculite insulation and the means to identify it, when;

         1. the Defendant was aware, or ought to have been aware, that the insulation on the deckhead of the passenger lounge in the *Quadra Queen II* was 2% actinolite asbestos bearing vermiculite (hereafter the "Asbestos Insulation"); and

2. was aware, or ought to have been aware, that the Asbestos Insulation in the passenger lounge deckhead was deteriorating and was likely to become friable, and therefore transmittable by air or by falling into the passenger space and coming into contact with passengers' respitory systems through hand to mouth/nose contact;

ii. permitted the passenger lounge to be marked with signage indicating the deckhead was free of asbestos when the Defendant knew it was not free of asbestos;

b. as of September 6, 2008:

i. was aware, as a result of advice provided to the Defendant by independent contractors retained by the Defendant, or otherwise:

1. that the insulation on the deckhead of the passenger lounge in the *Quadra Queen II* was Asbestos Insulation;

2. that the Asbestos Insulation was failing as a result of age, and vibration and other movement of the vessel;

3. that vibration and movement of the vessel that was typical during regular passenger carrying conditions caused the aged Asbestos Insulation to disintegrate, become airborne, and fall into the passenger lounge where it would come into contact with passengers;

4. that the Asbestos Insulation posed a danger to passengers and should be completely removed;

5. that attempting to seal, plastic-coat or laminate the Asbestos Insulation would cause accelerated deterioration of the Asbestos

Insulation and increase the likelihood of exposing passengers to asbestos;

6. that the signage in the passenger lounge indicating the deckhead was free from asbestos was incorrect;

ii. despite their awareness, intentionally or carelessly ignored, or unreasonably failed to follow, the advice of its independent contract and:

1. failed to remove the Asbestos Insulation;

2. failed to remove the Asbestos Insulation despite having reasonable opportunity to do so;

3. failed to warn passengers or crew of the presence of the Asbestos Insulation;

4. failed to otherwise prevent the exposure of passengers to the Asbestos Insulation;

5. continued to allow the presence of signage in the passenger lounge indicating the deckhead was free from asbestos when they knew it was not free of asbestos;

c. as of January 1, 2009, continued to allow the exposure of the Plaintiff and other passengers to the Asbestos Insulation, despite:

i. having been made aware, through advice of its own employee on January 1, 2009, that the Asbestos Insulation was at a state of advanced deterioration and actively becoming airborne and falling into the passenger lounge;

ii. having, though its employees creating internal records on January 10, 2009, characterised the failure of the Asbestos Insulation on the passenger lounge deckhead as a "*Priority Level 1: urgent – may be dangerous to life or health, immediate action is required*";

iii. having conducted air sample tests of the passenger lounge space while the *Quadra Queen II* was moored at the dock on about January 23, 2009, and in so doing:

1. unreasonably relied on those air samples to be representative of air conditions while the vessel was subject to the vibration and movement typical of it being underway with passengers aboard;

2. unreasonably failed to account for the risk of passengers being exposed to the Asbestos Insulation other than through airborne particulate, including coming into contact with passengers' respitory systems through hand to mouth/nose transmission of particulate that fell onto various surfaces of the passenger lounge, including chairs, tables, railings, flooring;

3. knowing, or as ought to have been known, that the sampling method was not representative of the typical passenger carrying conditions, provided the results of the air sample testing to the passengers, the crew and the general public, making misleading statement including:

   a. "testing showed no problems with air quality";
   b. "there is no airborne asbestos containing material";

iv. conducting air sample tests of the passenger lounge on about January 28, 2009, while the ship was at sea under typical passenger carrying conditions, which testing found significant amounts of airborne asbestos, measured by the contractor in the "low to moderate" range or airborne asbestos; and

1. subsequently failing to provide these results of the air quality test to the crew, passengers, public or the Workers Compensation Board of British Columbia (hereafter "WCB");

2. negligently or intentionally making incorrect statements to the crew, the passengers and the public that air sampling found no airborne asbestos, including the statement that "air quality tests have not found any asbestos in the air on board the vessel".

v. continuing to allow the presence of signage in the passenger lounge indicating the deckhead was free from asbestos when they knew it was not free from asbestos;

d. as of February 2, 2009:

i. failing to remove signage in the passenger lounge indicating the deckhead was free from asbestos when they knew it not be, and despite a WCB order requiring such removal;

ii. having been advised by WCB on February 2, 2009 that "*the employer has not prevented the release of airborne asbestos fibre*", subsequently acted unreasonably or in bad faith in demanding WCB "*rescind*" or "*amend*" the finding, which WCB later refused to do, when in fact the Defendant knew (as a result of their own January 28, 2009 air testing) at the time of making the demand to WCB that there had been airborne asbestos in the passenger lounge under normal passenger carrying conditions;

iii. unreasonably failing to accept and follow the advice of its environmental consultants to remove the Asbestos Insulation and not to attempt to seal, plastic-coat or laminate the Asbestos Insulation, which refusal and efforts by the Defendant to seal without removing the Asbestos Insulation on about February 6, 2009 resulted in the accelerated deterioration of parts of

the Asbestos Insulation and further exposure of the Plaintiff to asbestos fibres before the lounge was again closed in April of 2009.

10. In providing misleading statements to the Plaintiff and proposed class members regarding air quality and the risk of exposure to asbestos, and in attempting to influence valid findings of the WCB that the Defendant failed to prevent airborne asbestos, the Defendant has acted with intent to subvert, or with gross neglect in the subversion of, the true risk to passengers such as the Plaintiff. As such, the Defendant acted reprehensibly in light of its position of trust as a sole ferry service provider, and the Plaintiff seeks punitive or exemplary damages for such conduct.

11. As a result of the Defendant's breaches the Plaintiff has been exposed, both prior to September of 2008 and after September of 2008, to friable asbestos, both in airborne form and particulate form that was transmitted hand to mouth/nose, while riding as a passenger in the lounge of the *Quadra Queen II*.

12. As a result of the Defendant's breaches, and the Plaintiff's and each of the proposed class member's exposure to the asbestos, the Plaintiff and each of the class members have suffered injuries, including:

    a. inhalation of asbestos fibres;

    b. anxiety arising from the inhalation of asbestos fibres;

    c. undiagnosed lung disease arising from the inhalation of asbestos fibres;

    d. present anxiety, and other psychological injury, arising from the reasonable possibility of the inhalation of asbestos fibres;

    e. increased risk of the development of future lung disease;

    f. such other injuries as are discovered in the course of this action.

13. As a result of the Plaintiff's and each of the proposed class member's injuries, the Plaintiff and each of the proposed class members have and will incur damages, including:

a. costs of medical monitoring, including a marker x-ray for the purposes of monitoring any future deterioration in health due to the asbestos exposure;

b. costs of treatment for anxiety and other psychological injury;

c. travel costs associated with attending to medical monitoring and other treatment;

d. lost wages;

e. loss of quality of life; and

f. such other damages as are realized in the course of this action.

WHEREFORE THE PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

A. General damages for physical and psychological injury;
B. Damages for lost income;
C. Special damages;
D. Punitive or exemplary damages;
E. Costs;
F. That this action be certified as a class action pursuant to the *Class Proceedings Act (RSBC 1996, c.50);* and
G. Such other relief as this Honourable court deems just.

Dated: April 27, 2009

Solicitor for the Plaintiffs
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STATEMENT OF CLAIM

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