

**CANADA
PROVINCE OF SASKATCHEWAN**

**IN THE COURT OF QUEEN'S BENCH
JUDICIAL CENTRE OF REGINA**

BETWEEN:

**Glen Heitts and Blaine Heitts operating as a partnership
and Rick Alsager and John Doe**

Plaintiffs

-and-

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
As represented by the MINISTER OF AGRICULTURE AND AGRI-FOOD,
THE ATTORNEY GENERAL FOR CANADA**

Defendants

“Brought under *Class Actions Act*”

AMENDED STATEMENT OF CLAIM

NOTICE TO DEFENDANT

1. The Plaintiff may enter Judgment in accordance with this Statement of Claim or such Judgment as may be granted pursuant to the Rules of Court unless:

within 20 days if you were served in Saskatchewan

within 30 days if you were served elsewhere in Canada or in the United States of America

within 40 days if you were served outside of Canada or the United States of America (excluding the day of service) you serve a Statement of Defence on the Plaintiff and file a copy thereof in the Office of the Local Registrar of the Court for the Judicial Centre above-named.

2. In many cases a Defendant may have the trial of the action held at a Judicial Centre other than the one at which the Statement of Claim is issued. Every Defendant should consult his lawyer as to his rights.

3. This Statement of Claim is to be served within 6 months from the date on which it is issued.

4. This Statement of Claim is issued at the above-named Judicial Centre, the ____ day of _____, 2002.

Local Registrar

AMENDED STATEMENT OF CLAIM

Parties

1. The Plaintiff, Rick Alsager, a rancher resides near the town of Maidstone, in the Province of Saskatchewan and at all material times have been engaged in the commercial farming of elk.
2. The Plaintiffs Glen Heitts and Blaine Heitts at all material times operating as a partnership and being farmers residing near the Town of Unity, in the Province of Saskatchewan and at all material times being engaged in the commercial farming of cervids.
3. The Plaintiff, John Doe at all material times was engaged in the commercial farming of cervids and is a resident of the Province of Saskatchewan.

Saskatchewan Class

4. The Plaintiffs are representatives of a class of persons resident in Saskatchewan more particularly be described as follows:
 - a. Are or were engaged in the business of farming one or more of the following the breeds of animals: elk, deer or a hybrid thereof (collectively referred to as the "Cervids"); and
 - b. Have suffered damages as a result of the Defendants' negligence and or failure to fulfill their statutory and or common law duties to ensure both imported and domestic livestock namely Cervids were not carriers of serious diseases that could restrict trade, cause economic ruin to the Plaintiffs and or personal injury.

Non-Resident Class Members

5. The Plaintiffs also claim on their own behalf and on behalf of all members of a non-resident sub class of persons who are not resident in the Province of Saskatchewan, however, are residents of another Canadian Province or Territory and:
 - a. Are or were engaged in the business of farming one or more of the following the breeds of animals: elk, deer or a hybrid thereof (collectively referred to as the “Cervids”); and
 - b. Have suffered damages as a result of the Defendants’ negligence and or failure to fulfill their statutory and or common law duties to ensure both imported and domestic livestock namely Cervids were not carriers of serious diseases that could restrict trade, cause economic ruin to the Plaintiffs and or personal injury.

(hereinafter both residents of Saskatchewan and non-residents are collectively referred to as “Class Members” or the “Class”)

Defendants

6. The Defendants, Her Majesty the Queen in Right of Canada as represented by the Minister of Agriculture and Agri-Food, and the Attorney General of Canada (the “Defendants”) are and were at all material times under a public and statutory duty and assumed operational responsibilities for administering, controlling the transmission and spread of diseases in living animals and animal products within Canada including but not limited to, regulating, prohibiting and controlling the importation of animals and animal by-products, the destruction of affected or diseased animals, animal carcasses in Canada.

Procedural Relief Requested

7. The identities of all persons who may be necessary and proper parties are not yet available to the Plaintiffs.
8. The Plaintiffs seek leave to add these necessary and proper persons whose identities are not now known to them as Defendant in this action, upon discovery of their names and particulars of their acts and omissions relevant to issues in this action
9. The Plaintiffs request that an order in the nature of a case management order be made requiring that:

- a. Her Majesty the Queen in Right of Canada and the Attorney General of Canada deliver a Statement of Defence forthwith;
- b. The Defendants forthwith provide documents, records and information at their own expense, including full and detailed affidavits of documents, so as to facilitate the expeditious and efficient determination of this action on its merits.

Plaintiff's Individual Circumstances

10. The Plaintiff Glen Heitts and Blaine Heitts at all material times operated as a partnership and were engaged in the business of farming cervids.
11. The Plaintiff, Alsager at all material times was engaged in the business of farming elk and currently has approximately one hundred head.
12. The Plaintiff, John Doe at all material times was engaged in the business of farming cervids and is currently a resident of the Province of Saskatchewan.

Factual Background

13. This Action concerns the following issues:
 - a. The commercial farming of either one or more of the following the farming of elk, deer or a hybrid thereof (the "Cervids");
 - b. The Defendants' failure to protect the Plaintiffs, Class Members and the Canadian public from imported Cervids which were carriers of serious diseases including but not limited to BTB and CWD; and
 - c. The resulting restriction of trade and health risks and infection of domestic livestock, and wildlife.
14. Cervids at the Toronto Zoo originally from the state of Colorado, U.S.A. displayed symptoms comparable to those of CWD and succumbed to this syndrome in the 1970s.
15. The tuberculosis test used by the analysts, inspectors, veterinary inspectors and officers of the Canadian Food Inspection Agency in the 1980s was not effective.
16. During the 1980s the Canadian Food Inspection Agency and various other Canadian federal agencies were aware that the tuberculosis test used by analysts, inspectors, veterinary inspectors and officers of the equivalent American agencies were not reliable tests to test for tuberculosis in Cervids.

17. During the 1990s U.S. officials confirmed via testing that BTB infected domesticated Cervids had passed the disease from the game farms into the wild and subsequently infected different species of both wildlife and domesticated animals.
18. In May 1990 the Saskatchewan Agriculture and Food Publication Distribution Centre published a booklet entitled “Review of Wildlife Disease Status in Game Animals In North America” which included a section outlining the clinical signs, methods of diagnosis and other related issues regarding “Chronic Wasting Disease”.
19. CWD was diagnosed in January 1996 in Saskatchewan in a farmed elk, which had been imported from South Dakota, USA in 1989.
20. Up to seven thousand eight hundred (7,800) ranched elk in Saskatchewan have been destroyed by the *Canadian Food Inspection Agency* because of the possibility they are carriers of CWD. The owners of the elk ordered destroyed received compensation under the *Health of Animals Act*.
21. The Cervids owned by the Plaintiff and Class Members continue to succumb to the effects of both CWD and BTB and as a result both Cervid meat, by-products and products are extremely difficult to market.
22. CWD can only be confirmed by laboratory examination of brain tissue from the affected animal after its’ death. There is currently no laboratory test available to test for the disease in live animals. There is currently no treatment or vaccine available for the disease.
23. The provisions of the *Animal Disease and Protection Act* and the **subsequently enacted *Health of Animals Act 1990, c.21*** (the “Acts”) enable the Minister to make regulations prohibiting the importation of any animal into Canada either generally for the purpose of preventing a disease or toxic substance from being introduced into or spread within Canada.
24. Pursuant *to the Acts*, persons importing animals into Canada shall either before or at the time of importation, present the animal, to an inspector, officer or customs officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.
25. The President of the *Canadian Food Inspection Agency* may designate under section 13 of the *Canadian Food Inspection Agency Act 1997, c.6* analysts, inspectors, veterinary inspectors and officers for the purposes of the **Health of**

Animals Act, the Agriculture and Agri-Food Administrative Monetary Penalties Act, Canada Agricultural Products Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Meat Inspection Act, Plant Breeders' Rights Act, Plant Protection Act and Seeds Act.

26. *The National Animal Health Program* protects Canadian livestock from serious diseases that could restrict trade ~~or pose a risk to human health~~ by testing point-of-entry inspections for live animal imports.
27. The Plaintiffs state that the Cervids referred to in this claim:
- a. Are animals as defined in **The Animal Disease and Protection Act, R.S. cA-13, 1974** and in the successor act, the **Health of Animals Act 1990, c.21**, and were within that definition at all material times;
 - b. Are designated under **section 13** of the *Canadian Food Inspection Agency Act* by The President of the *Canadian Food Inspection Agency* as being subject to the analysts, inspectors, veterinary inspectors and officers for the purposes of the **Canadian Food Inspection Agency Act 1997, c.6** and were within that ambit at all material times;
 - c. Were animals governed by *The Animal Disease and Protection Regulations* and the successors thereto, the *Health of Animals Regulations C.R.C., c.296*, as amended;
 - d. Are within the regulatory responsibilities and duties of Her Majesty, and were within those responsibilities at all material times.
28. From the 1970's until the commencement of this action, Her Majesty knew or ought to have known the following:
- a. Disease infected Cervids were and are being brought into Canada and used for domestic consumption of the meat products, velvet and for various other purposes.
 - b. The diseased and /or infected Cervids were imported, marketed, sold and distributed in Canada with the knowledge of Her Majesty or with Her Majesty's consent.
 - c. The importation, marketing, sale and distribution of the imported Cervids, carriers of diseases including but not limited BTB and or CWD, would cause irreversible adverse biological and economic consequences, to domestic animals, and wildlife including but not limited the Plaintiffs and the Class Members which would result in economic loss to the Plaintiffs and Class Members, and the mandatory destruction of both captive herds and domestic livestock.

- d. The diseased condition of the imported Cervids would result in catastrophic economic consequences to the Plaintiffs and Class Members as they have suffered a severe and debilitating loss of income due to the inability to market both live Cervids and Cervid products.
29. The Defendants continued to permit the importation, distribution and use of diseased imported Cervids in Canada knowing they were a hazard to the health of both existing Canadian livestock, and Canadian wildlife. The result of which being both domestic animals, and wildlife were subjected to health hazards.

Breaches of Obligations of the Defendants

General Negligence

30. During the 1970s the Defendants knew or ought to have known that:
- a. Failure of the Defendants to adhere to the science of the day as it related to the importation of Cervids could and did cause catastrophic financial consequences to the Plaintiffs and members of the Class and required destruction of both captive and wild Cervids;
 - b. US officials conducted tests in the wild and confirmed wild Cervids had tuberculosis and that the disease had passed from Cervids on game farms into the wild and subsequently infected different species of both wildlife and domesticated animals;
 - c. The Defendants knew the tuberculosis test used by the analysts, inspectors, veterinary inspectors and officers of the *Canadian Food Inspection Agency* and the predecessor acts thereto were not effective;
 - d. The tuberculosis test used by equivalent American agencies were not reliable tests for tuberculosis in Cervids;
 - e. The Defendants endorsed the importation and continued to endorse the imports of the infected animals imported into Canada; and
 - f. Cervids at the Toronto Zoo originally from the state of Colorado, U.S.A. displayed symptoms comparable to those of CWD and succumbed to this syndrome in the 1970s.

31. The Plaintiffs plead that the Defendants owned each of them a duty of care to protect them from the importation of Cervids, which were either infected or were carriers of diseases and prevent them from being introduced into or spread within Canada.
32. The Defendants' negligent acts and omissions breached that duty of care and caused a contributed to the damages they have and from which they continue to suffer.
33. Additionally or in the alternative, the Plaintiffs plead that the Defendants' negligent acts and or omissions include but are not restricted to the following particulars:
 - a. Failure to prohibit the importation of diseased and or infected Cervids into Canada, which had been demonstrated to be contaminated, or which were diseased;
 - b. Failure to establish and administer an adequate system to identify, assess, test and regulate the diseased Cervids;
 - c. Failure to monitor or control the acquisition or dispensation of diseased Cervids;
 - d. Failure to contain the infected and or diseased Cervids once in Canada;
 - e. Failure to monitor and act upon academic research indicating the potential for the spread of various diseases in a timely manner, or at all;
 - f. Failure to respond to requests for information made by the Plaintiffs, Class Members, and or other members of the public concerning the health of the Cervids;
 - g. Continued breach of duty to properly regulate and inspect animals, in particular the Cervids and to warn those persons whom they know or ought to know have suffered grievous harm as a result of the failure to regulate; and
 - h. Failure to take any reasonable or any steps to ensure that importers, distributors and sellers of Cervids were required to ensure the health of the Cervids, which they were importing.

Failure to Warn

34. During the 1970s the Defendants knew or ought to have known the following:
 - a. The tuberculosis test used by the Defendants was not effective in testing for tuberculosis in Cervids which resulted in the endorsing the import and continued to endorse the imports of BTB infected Cervids into Canada;

- b. The equivalent American agencies were using a test to test for tuberculosis in Cervids which was an unreliable test which resulted in the endorsement of the importation and continued endorsement of the importation of BTB infected Cervids into Canada;
 - c. Cervids at the Toronto Zoo originally from the state of Colorado, U.S.A. displayed symptoms comparable to those of CWD and succumbed to this syndrome in the 1970s and the existing domesticated Cervids on Canadian Cervid farms had originated in the United States and might therefore also be carriers of the disease.
 - d. The diseased condition of the Cervids would result in catastrophic economic consequences to the Plaintiffs and Class Members as they have suffered a severe and debilitating loss of income due to the inability to market both live Cervids and Cervid products
35. In or before 1995 and in prior consultations the Defendants were informed via a *House of Commons of Canada 35th Parliament, 1st Session Standing Committee on Environment and Sustainable Development Chairman Charles Caccia Tuesday, April 27, 1995* of the following:
- a. In Alberta at that time there were a number of deer and 20 or more elk missing from tuberculosis-infected game farms. These animals have gone into the wild;
 - b. U.S. officials confirmed via testing that Cervids that domesticated Cervids infected with BTB had passed the disease from the game farms into the wild and subsequently infected both wildlife and domesticated animals;
 - c. Cervids on Canadian ranches were originally imported from the United States and as such could be infected with BTB and may have in turn transmitted the disease to both wildlife and domestic animals; and
36. When imported Cervids were found to have been potentially diseased or infected and potentially harmful to both domestic Cervids and wildlife, the Defendants were under a specific duty to warn the Plaintiffs, the Class Members, of the condition of the Cervids.
37. When a reasonable apprehension existed that the Cervids were diseased, the Defendants had a duty to warn the Plaintiffs, Class Members and general public.
38. The Defendants' breach of their duty to warn and they continue to breach this duty to this day.

39. The **Canadian Food Inspection Agency Act 1997, c.6**, particularly by its preamble and section 11, establishes a primary objective to enhance the effectiveness and efficiency of the federal inspection system and related services in relation to animal health by consolidation of existing offices in order to facilitate a more uniform and consistent approach to safety and quality standards and risk-based inspection systems in relation to animals and animal products.
40. The *Canadian Food Inspection Agency Act* 1997, c.6 has an obligation to designate analysts, inspectors, veterinary inspectors and officers for the purposes of the **Health of Animals Act, the Agriculture and Agri-Food Administrative Monetary Penalties Act, Canada Agricultural Products Act, Feeds Act, Fertilizers Act, Fish Inspection Act, Meat Inspection Act, Plant Breeders' Rights Act, Plant Protection Act and Seeds Act.**
41. Under the Statutes and Regulations pleaded above, Her Majesty and the Defendants had a duty to prohibit the entry of diseased animals into Canada, to segregate, confine, inspect, living animals, animal products, by-products and carcasses in Canada and ultimately to destroy diseased animals.
42. Her Majesty and the Defendants have failed to fulfill these duties and continue to fail to fulfill these duties in relation to Cervids.
43. The Defendants' breach of these duties caused or contributed to the damages that the Plaintiffs have and from which they continue to suffer.

Operational Administration

44. The Plaintiffs state the Defendants did not act and continue not to act in accordance with standards of reasonable operational regulatory oversight and remediation.
45. In any event, the Plaintiffs state that in taking the partial and inadequate measures pleaded herein, Her Majesty assumed an operational responsibility for ensuring that the diseased Cervids did not cause harm.
46. The Plaintiff states that the Defendants did not act in accordance with reasonable standards of regulatory rule-making and reasonable standards of regulatory administration and enforcement at the relevant times.

47. Additionally or in the alternative the Plaintiffs state that if the Defendants did act according to such standards at the relevant times, which is not admitted but is specifically denied, then:
 - a. The standards themselves were negligent;
 - b. Those standards were fraught with obvious risks;
 - c. The standards were such that anyone would be capable of finding them to be negligent or inadequate, without the necessity of adjudging matters requiring expertise;
 - d. The standards failed to include obvious and reasonable precautions necessary to ensure the diseased Cervids did not cause harm; and
 - e. The standards which were in effect were negligently or inadequately and or inconsistently enforced and or applied by the Defendants.
48. The Defendants omitted to act or acted inadequately in not establishing systems to detect diseased or infected Cervids.
49. As a result the Defendants failed to subject Cervids to the appropriate and necessary level of scrutiny required by Her Majesty's own policy.

Continuing Breach of Fiduciary Duty

50. In developing policies and legislation for the establishment of regulatory systems for the importation, assessment, testing and general regulation regarding the health of animals and in purporting to implement such policies by the partial or inadequate measures pleaded, the Defendants created a relationship of dependency by the Plaintiffs, Class Members and the members of the public to the Crown. In consenting to engage in commercial farming of Cervids, the Plaintiffs and members of the Class relied upon Her Majesty to implement its expressed policies.
51. The Plaintiffs, and all other members of the Class consented to engage in the business of commercial Cervid farming on the reasonable assumption that both imported and domestic Cervid stock were safe when in fact they were not.
52. The Plaintiffs and all other members of the Class continued to purchase Cervids in Canada and from the United States on the reasonable assumption that if the Defendants had any reasonable grounds to suspect that the animals were diseased, the Defendants would immediately so advise the Plaintiffs and other members of the Class.

53. The Minister had a duty to the Crown to take protective measures within the ambit of the authority of Canadian Food inspection Agency Act to ensure the health of both domestic and wild animals in Canada.
54. The Minister was under a fiduciary obligation to the general public and specifically to the Plaintiff and Class Members to carefully and diligently discharge his duties in the Office of the Minister of Agriculture and Agri-Food and to take reasonable care that the laws for which the Minister was responsible were observed, followed and enforced.
55. In breach of this fiduciary duty, the Minister did the following in breach of his or her obligations in relation to the Cervids:
 - a. Failed to enforce section 11 of the **Canadian Food Inspection Agency Act 1997**, c.6 and the equivalent previously enacted legislation;
 - b. Failed to establish standards under the **Canadian Food Inspection Agency Act 1997**;
 - c. Failed to ensure that the **Health of Animals Regulations C.R.C.,c. 296** was enforced;
 - d. Failed to ensure that the administrative resources were used efficiently to enforce the laws for which the Minister was responsible;
 - e. Failed to exercise the Minister's statutory duty to prevent diseased Cervids from entering Canada and from the Canadian marketplace in general once it was clear that these animals might be diseased; and
 - f. Neglected or refrained from enforcing the statues and regulations to protect the Plaintiffs and Class members when the Minister did not agree with those statues or regulations but did not seek an amendment of those statues or regulations from Parliament or the Governor in council, as the case may be.
56. For the grounds set forth in this Claim, the Minister failed in his or her duty to the Crown and to the public.
57. Additionally or in the alternative, the plaintiffs state that Her Majesty had a duty inherent in the general *parens patriae* public duty to provide for the peace order and good government of Canada, not to cause any diseased animals to be imported into Canada or to be marketed, sold or generally traded when Her Majesty knew or ought to have known that the existence of such diseased animals, Cervids in Canada were dangerous animal health and could restrict trade, and cause economic ruin to the Plaintiffs and Class members.

58. Further particulars of the wrongful acts and omissions of the Defendants cannot be given until complete records have been produced by the Defendants and until after the Plaintiffs are able to have these records reviewed by appropriate experts competent to opine as the standards of regulatory oversight and remedial measures in the circumstances of this case.

Causation

59. The breaches of legal obligations by the Defendants have caused or materially contributed to the Plaintiffs' injuries and damages.

Damages

60. By reason of the breaches of legal obligations by the Defendants, the Plaintiff and Class Members have suffered damages particulars of which include the following:
- a. Inability to sell, market or destroy the Cervids they respectively own and thereby suffered economic damages as a result of their diseased livestock;
 - b. Exposure to CWD and BTB;
 - c. Loss of business opportunities in an amount to be proven at the trial of this action;
 - d. Such further and other special damages as may be proven at the trial of the within action
61. The Plaintiff and Class Members have suffered real and substantial loss of income because of their economic situation arising out of the aforesaid wrongs of the Defendants. Full particulars of these special damages will be provided before the trial of this action.

General

62. The Plaintiffs plead and rely upon section 3(a) of the *Crown Liability and Proceedings Act, R.S.C. 1985, Chap. C.50*.
63. The Plaintiffs plead and rely upon the doctrine of *res ipsa loquitur*.
64. The Plaintiffs plead and rely upon the *Class Actions Act, R.S.S. 2001*.

65. The Plaintiffs, as representatives of a class of persons resident in the Province of Saskatchewan and a subclass of persons not resident in the Province of Saskatchewan, who have suffered damages as a result of the Defendants negligence, failure to fulfill their statutory and common law duties to the Plaintiffs and the Class Members. The Plaintiffs on behalf of themselves and all Class Members claim the following:
- a. General damages for each member of the class in the amount to be determined at the trial of this matter;
 - b. Special damages for each member of the class in the amount to be determined at the trial of this matter;
 - c. Punitive, aggravated and exemplary damages for each member of the class in the amount to be determined at the trial of this matter;
 - d. Pre-judgment interest on the foregoing sums pursuant to the *Pre-Judgment Interest Act R.S.S. c.P.22.2* as amended;
 - e. Costs of this action on a solicitor and client basis;
 - f. Such further and other relief s to this Honourable Court may seem just.

Dated at the City of Regina, in the Province of Saskatchewan, this ____ day of November, 2002.

Docken & Company

Per: _____
Solicitor for the Plaintiff

This Statement of Claim was delivered by:

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Lawyer in charge of file: Clint G. Docken Q.C.

Revised April 21, 2003