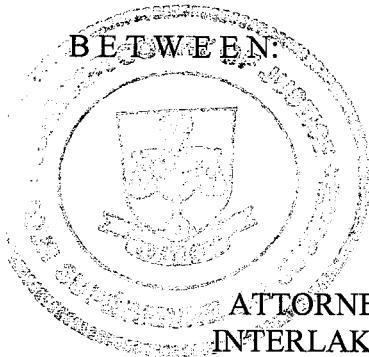


**ONTARIO
SUPERIOR COURT OF JUSTICE**



BETWEEN:

BLUEWATER FERRY LIMITED

Plaintiff

and

ATTORNEY GENERAL OF CANADA, SIGNE GOTFREDSEN, THE
INTERLAKE STEAMSHIP COMPANY, ANDRIE LLC, BETTER WAY
LOGISTICS LLC, and UPPER LAKES TOWING COMPANY

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

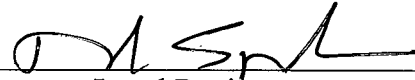
Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date April 17, 2019

Issued by



Local Registrar

Address of court office: 80 Dundas Street
London, Ontario

TO: Attorney General of Canada
C/O Department of Justice
284 Wellington Street
Ottawa, Ontario K1A 0H8
Attention: Mr. David Lametti

AND TO: Ms. Signe Gotfredsen
Canadian Coast Guard
C/O Department of Justice
284 Wellington Street
Ottawa, Ontario K1A 0H8
Attention: Mr. David Lametti

AND TO: The Interlake Steamship Company
7300 Engle Road
Middleburg Heights, Ohio 44130

AND TO: Andrie LLC
561 E. Western Avenue
Muskegon, MI 49442

AND TO: Better Way Logistics LLC
561 E. Western Avenue
Muskegon, MI 49442

AND TO: Upper Lakes Towing Company
1423 N 19th Street
Escanaba, MI 49829

CLAIM

1. The Plaintiff, Bluewater Ferry Limited (“**BWF**” or “**the Plaintiff**”) claims as against the Defendants the Attorney General of Canada (“**Canada**”), Captain Signe Gotfredsen (“**Captain Gotfredsen**”), The Interlake Steamship Company (“**Interlake**”), Andrie LLC (“**Andrie**”), Better Way Logistics LLC (“**Better Way**”), and Upper Lakes Towing Company (“**Upper Lakes**”) (together “**the Defendants**”):

- (a) general and special damages in the sum of \$6,000,000;
- (b) interest on the said sum pursuant to the *Courts of Justice Act*, RSO 1990, c 43;
- (c) costs of this action on a substantial indemnity basis;
- (d) if leave be required, an order granting leave for service of the originating process herein outside Ontario; and
- (e) such further and other relief as this Honourable Court may find just.

The Parties

2. BWF is a family-owned, federally incorporated company that has operated, for over sixty years, a vehicle and passenger ferry service between Sombra, Ontario and Marine City, Michigan on the St. Clair River.

3. Canada is the representative of Her Majesty the Queen in Right of Canada. Pursuant to the *Oceans Act*, SC 1996, c 31, Her Majesty the Queen in Right of Canada has granted authority to the Minister of Fisheries and Oceans over the Canadian Coast Guard, said authority extending, *inter alia*, to ice breaking and ice management services pursuant to section 41(1)(a)(iii) of the

same Act. At all material times, Her Majesty the Queen in Right of Canada was the owner of the Canadian Coast Guard Ship *Samuel Risley* ("***Samuel Risley***"), which is used extensively as an ice breaker by the Canadian Coast Guard.

4. Captain Gotfredsen is an officer with the Canadian Coast Guard with over twenty years of experience. At all material times she was employed by Canada as the captain of the *Samuel Risley*.

5. Interlake is a corporation duly incorporated under the laws of the State of Delaware and the registered owner of the *Herbert C. Jackson*, a bulk carrier sailing under the flag of the United States of America.

6. Andrie is a corporation duly incorporated under the laws of the State of Michigan and the registered owner of the *Barbara Andrie*, a tug sailing under the flag of the United States of America.

7. Better Way is a corporation duly incorporated under the laws of the State of Wisconsin and the registered owner of the *Michigan*, an articulated pusher tug sailing under the flag of the United States of America.

8. Upper Lakes is a corporation duly incorporated under the laws of the State of Delaware and the registered owner of the *Joseph H. Thomson Jr.*, an articulated pusher tug sailing under the flag of the United States of America.

Background of BWF's Operations and Facilities

9. BWF owns and, until the events described below, operated two ferries, the *Daldean*, with a capacity of twelve cars or two tractor trailers, and the *Ontamich*, with a slightly smaller capacity (collectively referred to as the “**Ferries**”). Both vessels operated from May to November, and the *Daldean* alone operated during the ice-breaking season between December to April.

10. When operating, the Ferries made approximately 10,000 round trips per year. Fees charged were \$7.00 per trip for cars, \$3.00 per trip for foot passengers, with trucks charged per weight.

11. Prior to the events described below, BWF employed a workforce of six full-time employees and five part-time employees during the peak operating season.

12. On the Canadian side of the St. Clair River, the Ferries docked at a platform constructed in the river commonly referred to as the Island. The Island was accessed by a paved double-lane causeway of approximately 260 feet in length (“**Causeway**”).

13. In 1997, BWF purchased, from Canada, the approximately four acres of water lots on which the Causeway and the Island had been constructed.

14. In 2015, BWF caused to be installed a series of pilings on the upstream (north) side of the Causeway for the purpose of protecting the Causeway from ice damage. These pilings consisted of heavy-walled twelve inch pipes sunk forty feet into the bottom of the river. At the same time, the Causeway was reinforced with new steel pipes and I-beams.

15. On the American side of the St. Clair River, BWF also owns facilities in which is located a duty-free store operated by a tenant, DA Wren Services Inc. (“Wren”), pursuant to a lease with BWF expiring December 31, 2019. Wren is duly incorporated under the laws of Michigan.

The Events of January 11, 2018

16. On the morning of January 11, 2018, the *Samuel Risley* was employed as an icebreaker on the St. Clair River, proceeding southward (downstream) in advance of a convoy of four ships: the *Herbert C. Jackson*, the *Barbara Andrie*, the *Michigan*, and the *Joseph H. Thompson Jr.*

17. This convoy of vessels reached the area of BWF’s facilities between 8:00 am and 8:30 am. Just north of BWF’s facilities, in the area of Lighted Buoy 42, the *Samuel Risley* and accompanying vessels turned to starboard. As the *Samuel Risley* was passing BWF’s facilities, its speed was approximately 10 to 13 knots. The accompanying vessels followed at close distances behind.

18. The passage of the *Samuel Risley* and the accompanying vessels shoved into the Causeway an icefield that had accumulated in the St. Clair River. Thick slabs of ice destroyed the protective pilings that had been installed in 2015, passed under and over the Causeway, and damaged the Causeway’s supporting structure.

19. As a result of this damage, the mid-section of the Causeway immediately collapsed, rendering the Causeway unusable.

20. The actions of the *Samuel Risley* and the accompanying vessels also caused extensive damage to small boat dockage and shoreline fixtures upstream from BWF’s facilities.

The Aftermath

21. The Causeway was destroyed. BWF's business operations were immediately shut down and ferry service ceased.

22. BWF has been unable to afford the costs of repairs to reopen the Causeway, with the result that it has been unable to operate its ferry business and has been deprived of the revenue it would otherwise have earned therefrom.

23. Additionally, and as a direct result of the loss of the ferry traffic, Wren has ceased to operate the duty-free shop in BWF's Michigan ferry facility, thereby depriving BWF of the further income it would otherwise have received from rents.

24. BWF has determined that the most economical method of restoring its ferry operations requires the removal of the existing Causeway and the installation of a new, three-span bridge to the Island. This project will require both in-water and dryland demolition and construction work, along with extensive mitigative measures.

25. An array of regulatory permits and approvals must be obtained before the work can begin. BWF retained a local firm, Pollutech EnviroQuatics Limited, to coordinate this process, but the work has not proceeded. Until compensated for its losses, BWF cannot provide the service from its Sombra facility.

Negligence

26. The Plaintiff pleads and relies upon the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 including especially, but not limited to, section 3(b)(i) thereof.

27. The Plaintiff pleads that Captain Gotfredsen and, vicariously, Canada owed the Plaintiff a duty of care to engage in ice-breaking activities in a safe, careful, and prudent manner, as it was, or ought to have been, within the reasonable contemplation of the Defendants that damage to the Plaintiff's facilities would result from unsafe, careless, and imprudent ice-breaking.

28. The Plaintiff pleads that Captain Gotfredsen and, vicariously, Canada breached the standard of care owed to the Plaintiff by, *inter alia*,

- (a) operating the *Samuel Risley* at speeds that were excessive for the ice conditions on the St. Clair River on January 11, 2018;
- (b) choosing to escort a number of accompanying vessels that was in excess of the number and mass that could safely be escorted given the ice conditions;
- (c) navigating in such a manner and in such a direction as to cause ice in the St. Clair River to be pushed into shoreline fixtures, such as BWF's Causeway;
- (d) operating the *Samuel Risley* without due care and attention and without regard to shoreline effects;
- (e) failing to take necessary and reasonable precautions to ensure that the ice flow broken by the *Samuel Risley* would not be pushed into shoreline fixtures, such as BWF's Causeway;
- (f) taking sudden manoeuvres which caused or exacerbated the shift of ice toward the east side of the river;

- (g) failing to take into account high-water conditions in the St. Clair River at the material time;
- (h) conducting ice-breaking operations in conditions which the Defendants knew or ought to have known were likely to cause property damage and losses for shoreline owners, including BWF;
- (i) failing to take reasonable, or any, precautions to avoid destruction and damage to shoreline installations, including the Causeway;
- (j) permitting the wider accompanying vessels to navigate at excessive speed, and too closely behind the *Samuel Risley*; and
- (k) failing to halt the passage of ship traffic downriver at a time when it was known or ought reasonably to have been known that such damage would likely occur.

29. The Plaintiff pleads that the Defendants, Interlake, Andrie, Better Way and Upper Lakes owed the Plaintiff a duty of care to navigate the waterway safely, carefully and prudently and in such a manner as to avoid causing damage that was reasonably foreseeable to shoreline installations, including the Plaintiff's facilities, in the ice conditions on January 11th, 2018.

30. The Plaintiff pleads that Interlake, Andrie, Better Way and Upper Lake breached the standard of care owed to the Plaintiff by, *inter alia*,

- (a) causing or permitting the operation of their respective vessels at speeds that were excessive for the ice conditions on the St. Clair River on January 11th, 2018;

- (b) causing or permitting the operation of such vessels while being escorted by an ice breaker under conditions that were known to pose undue risk to shoreline installations and businesses;
- (c) causing or permitting navigation of their respective vessels in such a manner and in such a direction as to cause ice to be pushed into shoreline fixtures, including BWF's Causeway;
- (d) utilizing the Samuel Risley's icebreaking services when it was known or ought to have been known that such damage would likely result;
- (e) failing to take necessary and reasonable precautions to ensure that the ice flow broken by their vessels would not be pushed into shoreline fixtures, such as BWF's Causeway;
- (f) taking sudden manoeuvres which caused or exacerbated the shift of ice toward the east side of the river;
- (g) failing to take into account high-water conditions in the St. Clair River at the material time;
- (h) failing to take reasonable, or any, precautions to avoid destruction and damage to shoreline installations, including the Causeway;
- (i) following too closely behind the preceding vessel in the convoy;
- (j) following too closely behind the Samuel Risley; and
- (k) failing to halt their passage of ship traffic downriver at a time when it was known or ought reasonably to have been known that such damage would likely occur.

31. BWF has determined that the costs to repair and replace the Causeway in order to provide vehicle and pedestrian access to the Sombra ferry facility will exceed \$3,100,000. BWF has incurred expenses to date amounting to \$30,000 for engineering and consulting services, but cannot proceed with further remedial work in the absence of compensation for the Defendants' negligence, aforesaid.

32. BWF has suffered and continues to suffer the loss of its entire income from ferry operations and the rental of its Marine City facility, in the amount of approximately \$750,000 annually. By reason of the Defendants' refusal to compensate BWF, operation of BWF's business during the 2019 ferry season will again be prevented and further losses will be incurred.

33. By reason of the closure of the Wren duty-free store in Marine City, BWF is at risk of losing its duty-free sales license, which will dramatically and adversely affect its ferry operations and business income.

34. The Plaintiff pleads that the Defendants' acts and omissions led directly to the damage to the Causeway, it being reasonably foreseeable that such damage would lead directly to the economic loss that the Plaintiff has suffered and continues to suffer.

35. The Plaintiff pleads and relies upon the provisions of *Rule 17* of the *Rules of Civil Procedure* in respect of service outside of Ontario.

36. The Plaintiff proposes that the trial of this action be held at Sarnia, Ontario.

April 17, 2019

MCKENZIE LAKE LAWYERS LLP
140 Fullarton Street, Suite 1800
London ON N6A 5P2

John H. McNair (23368S)
Victoria L. Yang (71851P)
Tel: 519-672-5666
Fax: 519-672-2674

Lawyers for the Plaintiff.

RCP-E 14A (June 9, 2014)

BLUEWATER FERRY LIMITED

Plaintiff

-and-

ATTORNEY GENERAL OF CANADA AND SIGNE

GOTFREIDSEN
Defendants

Court File No.

792/19

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
LONDON

STATEMENT OF CLAIM

MCKENZIE LAKE LAWYERS LLP
140 Fullarton Street, Suite 1800
London ON N6A 5P2

John H. McNair (23368S)
Victoria L. Yang (71851P)
Tel: 519-672-5666
Fax: 519-672-2674

Lawyers for the Plaintiff