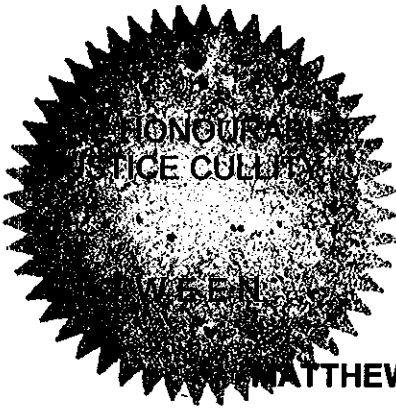


**ONTARIO  
SUPERIOR COURT OF JUSTICE**



) MONDAY, THE 16<sup>TH</sup> DAY OF  
) MAY, 2005  
)

**MATTHEW VEZINA, EILEEN MORRISON, KEN WILSON,  
LINDA SILMER and ATTILA NAGY**

Plaintiffs

- and -

**LOBLAW COMPANIES LIMITED and JOHN DOE  
and LOBLAWS SUPERMARKETS LIMITED**

Defendants

(Proceeding Under the *Class Proceedings Act, 1992*)

**ORDER**

**THIS MOTION** made by the Plaintiffs for an Order certifying this action as a class proceeding and providing for notice to the Class was heard on April 27, 2005 at 393 University Avenue, Toronto, Ontario, with Reasons for Decision released on this day,

**UPON READING** the Affidavit of Ian Roland, sworn July 12, 2004 and the exhibits attached thereto, the Affidavit of Linda Silmer, sworn July 16, 2004 and the exhibits attached thereto, and the Affidavit of Keith Warriner, sworn February 8, 2005 and the exhibits attached thereto, and on hearing the submissions of counsel for the Plaintiffs and the Defendants, and on being advised that the Defendants consent to the certification of this action as a class proceeding,

## Certification

1. **THIS COURT ORDERS** that this proceeding be certified as a class proceeding on behalf of the following class (herein referred to as the "Class"):

- (a) All persons who shopped at the defendants' grocery store located at 3671 Dundas Street West, Toronto, Ontario (the "Store") at any time between July 19, 2002 and August 16, and/or who handled fresh or prepared products from the produce section of the Store ("Produce") and who contracted Hepatitis A ("Infected Persons");
- (b) All persons who contracted Hepatitis A from one of the Infected Persons or from another Cross-Infected Person ("Cross-Infected Persons");
- (c) All persons who were exposed to the risk of infection with Hepatitis A as a result of:
  - (i) handling or consuming Produce;
  - (ii) from coming into contact with a person who handled or consumed Produce; or
  - (iii) from coming into contact with an Infected Person or a Cross-Infected Person,

and who:

- (i) were vaccinated against Hepatitis A ("Immunized Persons");
  - (ii) received immune globulin against Hepatitis A ("Immunized Persons");
  - (iii) attended at a physician's office to seek advice or treatment in relation to the exposure to the risk of infection with Hepatitis A from the Produce; and
- (d) All living parents, grandparents, children, grandchildren, siblings and spouses (within the meaning of section 61 of the *Family Law Act*, R.S.O. 1990, c.F-3, as amended) of Infected Persons, Cross-Infected Persons or Immunized Persons ("Family Law Claimants")

With respect to the following claims against the Defendants:

- (a) Compensatory damages in the sum of \$100,000,000.00, or such other amount as may be proven at trial;

- (b) Punitive, exemplary or aggravated damages of \$50,000,000.00;
- (c) a declaration that the Defendants were negligent in the manufacturing, processing, preparation, storage, handling, display, transportation and sale, or offering for sale of the Produce and may have exposed the Plaintiffs and Class members to the Hepatitis A virus for which the Plaintiffs and Class members were advised by the Toronto Public Health Authority to receive a vaccination;
- (d) a declaration that the Defendants are liable to the Plaintiffs and Class members for the damages suffered by the negligence of the Defendants and for breach of contract and warranties in relation to the sale of diseased food that was unfit for human consumption by reason of disease, adulteration, impurity or other causes, between July 19 and August 16, 2002, requiring the intervention of the Toronto Public Health Authority resulting from the health hazard posed to the Plaintiffs and Class members as a result of the Defendants' actions or omissions;
- (e) prejudgment and postjudgment interest on the above sums, or such other sums as may be awarded, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended;
- (f) costs of this action on a substantial indemnity basis; and
- (g) such further and other relief as this Honourable Court may deem just and appropriate.

2. **THIS COURT ORDERS** that, subject to further order of this court, Matthew Vezina, Eileen Morrison, Ken Wilson, Linda Silmer and Attila Nagy be and hereby are appointed as the Representative Plaintiffs on behalf of the Class and that Koskie Minsky LLP and Paliare Roland Rosenberg Rothstein LLP (collectively, "Class Counsel") be and hereby are appointed as solicitors for the Class.

### **Common Issues**

3. **THIS COURT ORDERS** that the common issues shall be as appended as Schedule "A" hereto.

**Notice and Opting Out**

4. **THIS COURT ORDERS** that the form and content of notice of certification, the means by which notice shall be given, and the manner and time limits for opting out are hereby adjourned to a case conference to be scheduled.

5. **THIS COURT ORDERS** that, neither the Defendants nor their counsel shall communicate directly with any Class Member regarding the subject matter of this proceeding prior to the court fixing an opt out deadline and the passing of such deadline, and any inquiries made by a Class Member to the Defendants or their counsel regarding this action shall be referred to Class Counsel.

**Costs**

6. **THIS COURT ORDERS** that the costs of this motion are fixed in the amount of \$30,000 plus G.S.T. and disbursements in the amount of \$2,638.29, G.S.T. included.




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## **SCHEDULE "A"**

The common issues proposed by the Plaintiffs, and accepted by Loblaws, are as follows:

- (a) Were the Defendants negligent in exposing the Class members to the Hepatitis A virus and, if so, when and how?
- (b) Did the Defendants owe a duty of care to the Class members?
- (c) Are the Defendants vicariously liable for acts and/or omissions of the infected employee and/or any other employees and/or agents?
- (d) Did the Defendants breach the standard of conduct/care expected of them, and if so, when and how?
- (e) Did the Defendants breach a statutory warranty to Class members who purchased its food products, pursuant to the *Sale of Goods Act* and/or the *Food and Drugs Act*, and/or the *Health Protection and Promotion Act*?
- (f) What were the implied terms of any contract that the Defendants may have had with their customers?
- (g) Did the Defendants breach a term of an implied contract they had with the Class members who purchased or handled Produce in the store and, if so, when and how?
- (h) Should the Defendants pay punitive and/or exemplary damages and if so, in what amount and to whom?

**MATTHEW VEZINA, et al**  
Plaintiffs

- and -

**LOBLAW COMPANIES LIMITED, et al**  
Defendants

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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**ORDER**

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Solicitors for the Plaintiffs