

Class Actions

OUR EXPERIENCE

Blaney McMurtry has been involved in key class actions throughout their history in Canada, acting for both the defendant and the plaintiff class. We have also acted as coverage counsel on some of the major class actions that have been brought in Canada and the U.S., giving our firm a well rounded view on all sides of a class action.

Even before the Class Proceedings Act ("CPA") was enacted, we were appointed by the Court as a member of the Plaintiffs' Committee in the Air India litigation and were instrumental in the development of procedures which were later addressed by the CPA. We also acted for the defendants in one of the first successful attempts to defeat certification and have continued to successfully oppose certification on a variety of grounds.

We were heavily involved in the breast implant litigation, which followed a voluntary recall of the implants in 1993. Class action lawsuits were commenced against the various manufacturers of breast implants at a time when class actions legislation was in its infancy in Canada. We acted for one of the defendants in connection with the litigation commenced directly against the manufacturers in Ontario, B.C., and Quebec. We successfully brought a preliminary motion to dismiss the Ontario action, and worked together with U.S. counsel to bring about a comprehensive Ontario/Quebec class action settlement of all silicone breast implant claims.

We have continued to act for defendants in numerous product liability class actions including actions commenced against the manufacturer of the Hepatitis B vaccine, actions commenced against the Federal Government in relation to temporomandibular joint implants, and actions commenced against the Federal Government in relation to silicone gel breast implants. We have also represented defendants in connection with class actions commenced following major disasters such as a propane explosion that forced 12,000 people from their homes, a train derailment, a major fire in an apartment complex, and the August 2003 Regional blackout.

Our experience in class actions includes claims involving product liability, environmental contamination, investment advice, medical treatment, aviation and other transportation disasters, property insurance, car insurance, and travel claims.

Members of the firm's Coverage Counsel Group are also retained from time to time and are intimately involved behind the scenes for primary, excess and reinsurer entities regarding

liabilities faced by some of Canada's best known commercial entities and their executives in class action litigation locally, nationally, and in cross-border litigation primarily in the United States. This includes advising on and providing monitoring counsel services for insurance interests in various Canadian and cross-border class actions which usually cannot be identified here owing to the highly sensitive and often very confidential nature of the client involvement.

Our class action lawyers have significant experience in the various provincial courts including not only Ontario, but also Saskatchewan, British Columbia, and Quebec (where, because of the language and the differences between civil law and common law, we assist local counsel rather than appearing directly in Quebec courts). As well we have expertise in Federal Court and the various provincial Courts of Appeal. We have also been involved in Leave applications to the Supreme Court of Canada in relation to some of the class actions in which we have been involved.

OUR APPROACH TO CLASS ACTIONS

A class action suit can be a challenge for both the defendants and the plaintiff class. For a defendant, a class action can be devastating in terms of both time and money. Blaney McMurtry's Class Action Group is skilled in guiding a case through all phases of the dispute. Our goal is not only to prevail, but also to minimize disruption, and to move the matter to resolution as quickly and efficiently as possible.

When acting for the defendant, often our first step is to try to limit the action or have it dismissed completely at the pre-certification stage. We have done so successfully in a variety of actions, with the result that our clients have been let out of actions without ever having to participate in a certification hearing or, in some cases following an unsuccessful attempt by the plaintiff to certify the action. We have always succeeded in resolving the litigation prior to a class action trial.

We have also been instrumental in negotiating favourable class action settlements for our defendant clients, giving them peace from future claims of unknown class members and giving them finality in terms of future litigation.

When acting for the plaintiff class, our first step is to properly limit the class and draft the claim in such a way as to ensure that the action is certified at an early stage. We are currently acting for the class in a large claim which seeks repayment of shipping charges. As well, we act in actions involving multiple claimants which do not proceed under CPA. These have included many of the best known transportation losses, particularly aviation including the Air Canada Cincinnati fire, Korean Air Lines 007 and Air India 182, major fire losses such as the Hagersville tire fire and the Alexis Nihon fire, and marine losses such as the sinking of the Ocean Ranger. Our experience with both class actions and large losses enables us to determine which proceeding is most suitable and to obtain the best results which ever way the claim proceeds.

When acting as coverage or monitoring counsel, we are often involved in the negotiation of class wide settlements following an analysis of the available coverage.

CASE LIST

Specific examples of class actions and mass tort claims we have handled, and/or for which we have acted as coverage counsel, include:

- class action brought in Ontario by investors in tax driven condominium developments as a result of alleged misrepresentations
- class actions brought in Ontario, British Columbia, and Quebec by breast implant recipients against the manufacturer of the implants
- claims brought in Ontario by family members of victims of the sinking of the Ocean Ranger oil rig
- class actions brought in Ontario, Alberta and British Columbia by car owners against their insurers in which the plaintiffs sought to recover their deductibles
- class action brought in Ontario by recipients of a Hepatitis B vaccine against the various manufacturers of the vaccine
- class action brought in Ontario by the families of Special Needs children against the Ontario Government
- class actions brought in Ontario by recipients of temporomandibular jaw implants against the Federal Government
- class action brought in Ontario by insureds against their insurers for losses suffered as a result of the August 2003 Regional Blackout
- class action brought in Ontario by clients of a lawyer against that lawyer for failing to protect their investments
- class actions brought in Ontario, Saskatchewan, and Quebec by breast implant recipients against the Federal Government
- actions brought in Ontario by families of victims of the Air India bombing, the shooting down of KAL 007 and the Air Canada Cincinnati fire
- class action brought in Ontario arising out of a train derailment
- class actions brought in Ontario, B.C., Saskatchewan, Alberta, and Quebec against the manufacturer of luncheon meats
- class action brought in Ontario against telephone service providers
- class actions brought in Ontario, Saskatchewan, and the U.S. against manufacturer of pet food
- class actions brought in Ontario, Quebec, and the U.S. against plumbing manufacturer
- class actions brought in Ontario, Alberta, and the U.S. against roofing manufacturer
- class actions brought in Ontario, B.C., Alberta, Saskatchewan, Quebec and the U.S. against Directors and Officers of a major newspaper conglomerate
- class action brought in Quebec by former students of a school in relation to alleged abuse
- class action brought in Ontario against the Ontario government arising out of the Plastimet fire

- class action brought in Ontario by Canada Post parcel post customers arising out of charges alleged to violate the Weights and Measures Act
- class actions brought in Ontario and Saskatchewan by travelers to Cuba against their Travel Agency for damages allegedly suffered as a result of a water shortage
- class actions brought in Ontario against travel wholesalers arising out of alleged misrepresentations in relation to travel packages
- class action brought in Ontario by residents of an apartment complex following an explosion
- class action brought in Ontario arising out of a major propane explosion in Toronto which forced 12,000 people from their homes
- class action brought in Ontario against a major Canadian bank arising out of alleged misrepresentations made by a third party promoter in connection with loan facilities established by the bank in favour of investors in the promoter's venture
- class actions brought in Ontario and British Columbia against the manufacturer and distributor of a porcine based collagen dermal filter used in the treatment and correction of facial wrinkles and laugh lines
- class action brought in British Columbia against the distributor of a cosmetic filler arising from alleged negligence and misrepresentation in relation to the injections
- class action brought in Ontario against a financial advisor arising from allegedly improper advice relating to leveraged investing
- historical institutional sexual abuse of teenage boys in Ontario (representing the local church entity)
- historical sexual abuse class action brought by an indigenous class in Ontario (representing religious personnel)

INSURANCE LITIGATION

- Class Actions
- Legal Risk Management Services
- Risk Management Counsel of Canada