

C A N A D A)
PROVINCE OF SASKATCHEWAN)

Q.B.G. No. 1173 of A.D. 2008

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

Between:

ESTATE OF NADIA BISHAY, JANINE BELLEGARD, and NAT DVERNICHUK
Plaintiffs,

- and -

MAPLE LEAFS FOODS INC.

Defendant.

AFFIDAVIT OF TIMOTHY CLARK

I, Timothy Clark, of Madoc, Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. In my capacity as co-executor with my sister, Karen Clark, of the Estate of my mother, Frances Patricia Clark, I am a class member of the within class action, and as such I have personal knowledge of the facts and matters hereinafter deposed, except where stated to be upon information and belief, and whereso stated, I have identified the source of my information, and, in each case, unless otherwise indicated, I do verily believe the information is true.
2. On July 27, 1948 I was born in Belleville, Ontario. I reside in Madoc, Ontario. For the last 27 years I have worked as a full time Paramedic in Sarnia, Ontario. I received the Emergency Medical Services Exemplary Service Award on September 25th, 2008, in London, Ontario.
3. As co-executor of the Estate of Frances Patricia Clark, my mother, I would like to be named Representative Plaintiff in this class action. My mother was one of the unfortunate people who were officially determined have to been affected by the listeria outbreak connected with Maple Leaf foods, which led to her dying on August 25th, 2008.

determined she had dislocated her arm at the shoulder. Her arm was put back in place and she was admitted to the hospital while she healed. During my mother's stay in the hospital, she decided to put her name in for a placement in a Nursing Home.

11. A letter addressed to me from Hastings & Prince Edward Counties Health Unit dated September 17th, 2008 (Health Unit's letter) [Exhibit "B"], states that my mother "was admitted to Belleville General Hospital on July 10th, 2008 due to a fall and remained as an inpatient from July 10 to August 7th, 2008. The Health Unit's letter states that:

it was later determined that during this time frame Maple Leaf Sure Slice black forest ham lot #21440 and Sure Slice turkey breast lot #21334 had been served at the facility as one of two menu options between August 7 and 15.

Mrs. Clark was discharged from Belleville General Hospital to Stirling Manor Nursing Home August 7 and remained there until August 22. It was later determined that recalled meat products Sure Slice roast beef lot #21334 had been served at the facility as one of two menu options between August 7 and 15.

12. My mother had been admitted to both the Belleville General Hospital and Stirling Manner Nursing Home during the period when infected Maple Leaf meat products had been served. It is my belief, based on the Health Unit's letter, that my mother had been fed Maple Leaf meats by both Belleville General Hospital and Stirling Manner Nursing Home, which lead to her diagnosis of listeriosis monocytogenes.

13. On August 7th, 2008, after an opening became available at the Stirling Manor Nursing Home ("Manor"), mother was discharged from the hospital and admitted to the Manor in Stirling. Visiting mother on several occasions after she had been transferred to the Manor, she always told me that she had been doing fine, meeting new friends, and really liked the staff, who treated her well.

14. On August 20th, 2008, a nurse called me from the nursing home and said that my mother had not wanted to eat all day. I went with other members of our family to see her right away and although she didn't quite seem herself, she was excited about her upcoming shopping trip to Belleville, on August 23rd, 2008.

15. On August 21st, 2008 a nurse called me from Stirling Manor, and told me that my mother was running a fever. The nurse told me that an employee of the Manor would give her Tylenol and if she got worse they would call me back.

16. The next day, August 22nd, 2008, Charlotte Templeton, a nurse at Stirling Manor, called and said that they were sending my mother to the hospital right away. Charlotte Templeton's exact words were "if we don't send her now she is not going to make it".

17. My mother had been taken by ambulance to Campbellford Memorial Hospital and was assessed in the Emergency Department and blood was drawn for testing. My family and I headed to the hospital immediately after being informed that my mother had been transported to the hospital. When I arrived, I saw mother semi-conscious with her eyes fixed to the left. Mother did not seem to be able to see or to focus. Her breathing was very rapid and laboured. She was unable to speak.

18. I returned to see my mother at the Campbellford Memorial Hospital on August 23rd, 2008, and saw no change in her condition. My mother's eyes were still fixed to the left and she seemed catatonic. She was still receiving bag after bag of anti-biotic. In the evening her attending physician, Dr. Jacob Huynh, informed me and family that indeed something was starting to show in the blood culture and they would know better by tomorrow. During the night mother had a couple of seizures and stopped breathing several times. Family members, including myself, would shake her and she would start breathing again. I took turns with members of the family spending time with mother throughout this whole ordeal.

19. Dr. Huynh came in to tell us that the blood culture was showing positive for *Listeria Monocytogenes*. The sample would be sent to Public Health Lab for confirmation. He ordered several types of anti-biotic to be given, Cipro, Flagyl, and Gentamicin. Throughout the entire day and all the following night there was no change in mothers condition. My mother kept hitting a fever as high as 40 degrees Celsius despite her receiving Tylenol suppositories. The anti-biotics were not turning things around.

20. On August 25th, 2008, at 5:15 in the morning, my mother stopped breathing and died.

21. To my belief, which I base on having read Barry Ellsworth "Madoc woman's death officially linked to outbreak", *The Intelligencer*, published on Thursday September 4th, 2008 [Exhibit "C"], a board meeting was held on Wednesday September 3rd, 2008 at the Hastings & Prince Edward Counties Health Unit where Dr. Richard Schabas, who is the Medical Officer of Health, stating that my mother's death had been officially linked to the *Listeria* outbreak connected to Maple Leaf Foods. Belleville officials had learned that some of the cold cuts served to patients, staff, and visitors did come from the Toronto processing plant, however no one from the Health Unit had informed me of the results prior to the Health Unit's letter, and I had to find out through the media. Earlier disclosure by Maple Leaf could and I think would have saved my mother's life. She might not have been served the Maple Leaf meat and earlier disclosure would have resulted in Stirling Manor staff, the medical staff at the hospital, and the family (I am a paramedic), being on heightened alert for listeriosis symptoms resulting in timely treatment. The death of our mother was horrible for her. It was shocking and horrible for me and others in the family.

22. I am very upset concerning the death of my mother. The Health Unit's letter dated September 17th, 2008 confirmed that the Health Unit received notification on August 25, 2008 of a lab confirming diagnosis of *Listeria Monocytogenes* for Frances Patricia Clark. The Health Unit offered it's condolences in their letter, however Maple Leaf should not have put this killing product into the marketplace, recalled their contaminated meat products much sooner than they did, and should have warned the public when they knew

of the probable dangers, rather than delaying as it did.

(b.2) basis for belief in common issues

23. On the basis of the Notice of Motion for Certification, I believe that all class members share these common issues:

(i) whether Maple Leaf meat products are defective, of unacceptable quality, or unfit for the purpose for which they were intended as fabricated, manufactured, sold, distributed, marketed, or otherwise placed into the stream of commerce in Canada for consumption by the defendant;

(ii) did the Defendant owe a duty of care to the class Plaintiffs to exercise all reasonable care, skill and diligence to ensure that Maple leaf products which the class Plaintiffs consumed were not contaminated with listeriosis?

(iii) if so, did the Defendant breach the duty of care owed or other statutory or common law duties to class members?

(iv) whether the Defendant committed unfair practices within the meaning of *The Consumer Protection Act*, S.S. 1996, c.C-30.1, s. 54?

(v) are the Plaintiffs entitled to an award of punitive damages against the Defendant? If so, in what amount? Should punitive damages be assessed in the aggregate? If so, in what amount and how should punitive damages be distributed?

24. I believe that these common issues in fact and in law would make a class action lawsuit the preferred procedure given that it will permit the class members, including myself, to seek justice for the wrongs committed by Maple Leaf.

(c.1) objective criteria

25. I am aware that the proposed Class definition includes those:

i) who have suffered illness or death as a result of eating or ingesting products manufactured and/or distributed by the Defendant, including but not limited to, meat products contaminated with listeria, which are now subject to a recall [“deceased and injury subclass”];

- ii) who have eaten or ingested products manufactured or distributed by the Defendant, including but not limited to, meat products which are now subject to a recall, and are concerned for their health and well-being due to a recall of products they have eaten or ingested ["ingestion subclass"];
- iii) who have purchased or otherwise acquired products manufactured or distributed by the Defendant, including but not limited to, meat products which are now subject to a recall, including corporations and other organizations that have purchased product or bulk product from the Defendant ["purchaser subclass"]

26. The members of the proposed Class definition set forth above are those that I seek to represent as Representative Plaintiff because we have all suffered the same irreparable harm by purchasing or consuming Maple Leaf meat products that contained listeriosis and we should all be able to recover as an indivisible Class.

(c.2) best information on class numbers

27. I am not sure of the number of potential class members, however I have been informed by class counsel that there have already been 4,054 submissions to join the class, including 22 claims by families like ours where the conduct of the Defendant has caused death, and including more than two prospective class members from Saskatchewan, and that the group claimants is growing. I believe as well that the defendants have their own internal list, as to those who have purchased the contaminated meat products, and even those who have suffered a harm from the said products.

28. I believe, based on information provided to me by Merchant Law Group, that class actions consist of a statement of claim, certification motion, notice of certification to class members, a right to opt out, and a trial of common issues.

29. Considering the significant number of class members that have an interest in this proceeding, a class action is the preferable method to advance the Class' interest. Individual actions would stall the administration of justice because of the significant

number of class members which need to have their interests advanced in this class proceeding to ensure similar results. Further, the cost of an individual proceeding would be prohibitive for many individuals such as myself, severely limiting access to justice. Equally important is the fact that many individual class members who suffered lesser injuries otherwise would not seek justice given the financial risk posed for what could be insubstantial compensation.

30. A class proceeding allows a person such as myself to set forth their interests and exercise their legal rights in court. More importantly, it allows a group of individuals to be represented together, and have access to justice with the right to opt out. This ensures individual rights and the rights of the Class.

(d.1) fair and adequate representation

31. Having lost my mother because of contaminated meat products from Maple Leaf,, I would like to seek compensation for those who have purchased, consumed, and suffered a harm due to Maple Leaf's conduct. This being said, pursuing this class action allows people, such as myself, to represent those who have been negatively affected, in an efficient and cost effective manner. It permits other class members who have suffered injuries from Maple Leaf's wrongs to obtain compensation.

32. I believe that I would be a fair and adequate Representative because I have the time required to participate in these proceedings. I believe that I will be able to manage, and coordinate the unwinding of this class proceeding, working closely with the Class.

33. I have retained Merchant Law Group LLP, reviewed the litigation plan, and directed the preparation of this affidavit. I believe that I will fairly and adequately represent the interests of the Class if I am selected to act as a Representative Plaintiff.

(d.2) awareness of responsibilities

34. I understand that the major steps in class proceedings are generally as follows:

- (a) commencement of the action by issuance of a statement of claim;
- (b) motion for certification;
- (c) notice to the Class of the certification and the right to opt-out;
- (d) production of documents (listing of relevant documents);
- (e) examination for discovery (lawyers asking me questions and my lawyers asking questions of the Defendants);
- (f) pretrial conference / mediation (where a judge may help the parties explore the possibilities of a settlement);
- (g) trial of the common issues;
- (h) notice to the Class of the judgment;
- (i) determination of individual issues, if required (I understand that the amount of individual damages may be decided at this stage);
- (j) distribution of proceeds of resolution by way of judgment or settlement;
- (k) appeals (at various stages); and
- (l) settlement (at any time)

35. I also understand that, in agreeing to seek and accept an appointment by the court as a Representative Plaintiff, it is my responsibility, among other things:

- (a) to become familiar with the issues to be decided by the court;
- (b) to review the statement of claim and any amendments;
- (c) to assist in the preparation and execution of an affidavit in support of the motion for certification;
- (d) to attend, if necessary, with counsel for cross-examination on my affidavit;
- (e) to attend, if necessary, with counsel for an examination for discovery where I will be asked questions;
- (f) to assist, if necessary, in the preparation and execution of an affidavit of documents listing documents that I have;
- (g) to attend if necessary, with counsel at trial and give evidence regarding the case;
- (h) to receive briefings from class counsel;
- (i) to express in some circumstances my opinions on strategy to class counsel;
- (j) to express my opinion to class counsel and to the court if settlement offers are made: and

(k) to assist, if necessary, in the preparation of and execution of an affidavit in support of a court approval of any settlement.

36. I am aware that as a Representative Plaintiff in this class action, I would be required to set aside the time necessary to participate throughout the class proceedings.

(e.1) workable method of advancing

37. Having spoken to class counsel, I believe that class proceedings seeking compensation from Maple Leaf Foods for contaminated meat products would be the most efficient procedural method to collectively represent individuals, provide the Class with access to justice, and to modify the behavior of the Defendant, which released meat products which were unfit for human consumption and harmful to Canadians.

38. I have discussed a litigation plan planned in conjunction with my counsel and believe it is a workable method of advancing this action on behalf of the Class and notifying class members of the action.

39. The workable method is a feasible way to advance the interest of the Class and I believe by working closely with class counsel, that we can adequately and successfully litigate the common issues of the Class.

(e.2) notifying class members

40. I believe that the method chosen for notifying class members would provide adequate and fair notice, so that class members are aware of this class action, and can access justice.

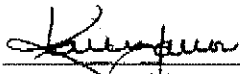
41. Merchant Law Group has a website which I consult to receive updates on the status of the class action. The website allows the Class to familiarize itself with the status of the class proceedings and provides a quick and effective way to communicate with class counsel.

42. This class proceeding will allow the Class to have their interests litigated and to be

notified on the national basis of the progress of this class proceeding. I look forward to working with class counsel and helping class counsel notify class members throughout the proceedings.

(f) no conflict on common issues

43. To my belief all class members raise common questions of facts and law which are more or less identical. The common issues represent the Class as a whole and there would be no conflict which should prevent this Honourable Court from certifying the class action which I seek to be appointed as Representative of the Class.

SWORN BEFORE ME at the)
v. 11/16/08 City of Madoc, in the)
Province of Ontario this 14th day)
of October, 2008)
)
A Notary Public in and)
for the Province of Ontario)


TIMOTHY CLARK

This document was delivered by:

MERCHANT LAW GROUP, LLP
Barristers and Solicitors
2401 Saskatchewan Drive
Regina, Saskatchewan, S4P 4H8,

E.F. Anthony Merchant, Q.C.
Telephone: (306) 359-7777
Fax: (306) 522-3299,

Counsel for the Representative Plaintiff.

RUN DATE: 25/08/08
RUN TIME: 0849

CAMPBELLFORD MEMORIAL HOSPITAL - LABORATORY SERVICES
146 OLIVER ROAD, CAMPBELLFORD, ON K0L 1L0
*** Stat Broadcast Report ***

PAGE 1

Name: CLARK, FRANCES PATRICIA
Acct#: MA0000412/08
Reg: 22/08/08

Age/Sex: 89/F Attend Dr: HUYNH, JACOB
Status: ADM IN Location: MSUR

08:0060395
N126A-1

Specimen: 08:BC0005447 Collected: 22/08/08-1710 Substituting DR: MACKLEM, DOUGLAS
Received: 22/08/08-1721 Copies to DR: WEBB, JANET

Source: BLOOD
Description: VENIPUNCTURE

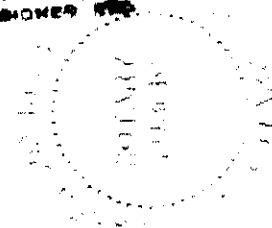
Ordered: BLOOD CULTURE
Comments: Campus: Campbellford Memorial
Is the Pt on or being Rx antibiotics? N

Procedure	Result	Verified
> BLOOD CULTURE (AEROBIC) WJMS LISTERIA MONOCYTOGENES SENT TO PHL FOR CONFIRMATION AND SUSCEPTIBILITY		25/08/08-0848
BLOOD CULTURE (ANAEROBIC) WJMS No growth. NO GROWTH WITHIN 48 HOURS OF INCUBATION. CULTURE BOTTLE BEING HELD FOR ADDITIONAL INCUBATION.		24/08/08-1721
GRAM SMEAR: AEROBIC BLOOD WJMS GRAM SMEAR RESULT: GRAM POSITIVE BACILLI CALLED RESULTS TO DR. HUYNH AT 10:50		24/08/08-1051
GRAM SMEAR: ANAEROBIC BLOOD WJMS Test not performed NO REPORTABLE RESULTS FOR THIS PROCEDURE		24/08/08-1721

This is Exhibit A referred to in the
affidavit of Timothy Clark
sworn before me on the 14th
day of October 2008

Kangjun
KANGJUN KIM

** END OF REPORT **





HASTINGS &
PRINCE EDWARD COUNTIES

HEALTH UNIT

179 NORTH PARK STREET, BELLEVILLE, ONTARIO K8P 4P1
Tel: (613) 966-5500 • Fax: (613) 966-9418 • www.hpechu.on.ca
Toll Free: 1-800-267-2803 • TTY: (613) 966-3036

BRANCH
OFFICES

2008 September 17

BELLEVILLE

Inspection Dept.
1 Millennium Plany,
Ste. 200
Belleville, Ontario
K8N 4Z5
Tel: (613) 966-5500
Fax: (613) 966-1461

Mr. Timothy Clark
30 Furnace Street, Box 733
Madoc, ON K0K 2K0

Dear Mr. Clark:

The Hastings and Prince Edward Counties Health Unit extends our deepest and most sincere condolences to both you and your family on the death of your mother, Frances Clark.

BANCROFT

1 Manor Lane
P.O. Box 99
Bancroft, Ontario
K0L 1C0
Tel: (613) 332-4565
Fax: (613) 332-5418

The Health Unit received notification on August 25, 2008 of a lab confirmed diagnosis of *Listeria monocytogenes* for Frances Patricia Clark.

Mrs. Clark was admitted from home to Belleville General Hospital on July 10, 2008 due to a fall and remained as an inpatient from July 10 to August 7. It was later determined that during this time frame Maple Leaf Sure Slice black forest ham lot #21440 was served to her on July 15, July 22 and August 5.

MADOC

108 Russell St. N
Unit 101
Madoc, Ontario
K0K 2K0
Tel: (613) 473-4247
Fax: (613) 473-2320

Mrs. Clark was discharged from Belleville General Hospital to Stirling Manor Nursing Home August 7 and remained there until August 22. It was later determined that recalled meat products Sure Slice roast beef lot#21333, Sure Slice black forest ham lot# 21440 and Sure Slice turkey breast lot# 21334 had been served at the facility as one of two menu options between August 7 and 15.

Both BGH and Stirling Manor removed recalled products promptly upon notification on August 13 and August 15, respectively.

PICTON

74A King Street
Picton, Ontario
K0K 2T0
Tel: (613) 476-7471
Fax: (613) 476-2919

On August 20, Mrs. Clark complained of mid-sternal pain, feeling cold, and loss of appetite. Her BP was 78/42 in AM and 80/50 during PM. On August 21, she had cyanosis of lips and hands. Oxygen was given. Her temperature was 38.8 and she was lethargic. On August 22 she had decreased urine output. Her temperature was 38.5 in early morning which increased to 38.7 (with Tylenol) by afternoon. Her BP was 176/72. She was pale, weak and unable to speak.

QUINTE WEST

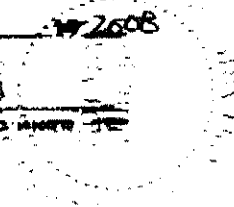
499 Dundas St. West
West End Plaza
Trenton, Ontario
K8V 6C4
Tel: (613) 394-4831
Fax: (613) 966-8636

Page 1

This is Exhibit B referred to in the
affidavit of Timothy Clark
sworn before me, this 14th
day of October 2008

Handwritten signature


Notary Public for Ontario



On August 22, she was taken via ambulance to Campbellford Memorial Hospital. Blood cultures were positive for *Listeria Monocytogenes*. Mrs. Clark deceased on August 25, 2008 at Campbellford Memorial Hospital, with cause of death listed as Sepsis/Listeriosis.

Further differentiation PFGE patterns were returned on September 1, 2008 showing LMACI.0040 and LMAAI.000, therefore linking this case to the provincial outbreak involving Maple Leaf products.

Sincerely,

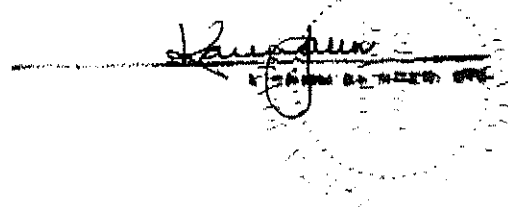


Richard Schabas, MD MHSc FRCPC
Medical Officer of Health

RS/tb

Page 2

Case # B referred to in the
report of Timothy Clark
signature TKC
day of October 27 2008



This is Barry Elsworth of Belleville, Ontario
 affidavit of Timothy Clark
 sworn before me, at Belleville, Ontario
 day of October, 14th 2008

Barry Elsworth
 COMMISSIONER ONCE FIVE

WEATHER
 High 25, Low 19
 Partly sunny

Three Canadians killed
Three soldiers killed, five injured in Afghanistan — CANADA, PAGE 5

THU
 Septem
 95c (

The Intelligencer

BELLEVILLE, ONTARIO

ESTABLISHED 1834

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Listeriosis scare

Madoc woman's death officially linked to outbreak

By Barry Elsworth
 THE INTELLIGENCER

The death of an elderly Madoc woman has been officially determined to be a part of the listeriosis outbreak connected with Maple Leaf Foods.
 As well, Belleville hospital has learned some of its meat served to patients and

others came from the Maple Leaf plant that is the source of the outbreak. However, it is not known yet if the meat is on the recall list, a hospital official said.

The Madoc woman, 89-year-old Frances Clark, was a resident of a Stirling nursing home when she died, Aug. 25.
 It was the second death from the deadly bacteria in

this area — an elderly Prince Edward County resident died in July but the exact date was not released by the local health unit. That victim's death was linked also to the outbreak at the Maple Leaf Food meat processing plant in Toronto.

"Both cases are now confirmed outbreak cases," medical officer of health, Dr. Richard Schabas, said

Wednesday.
 The link between the Clark death and the outbreak was made public at Wednesday's Hastings and Prince Edward Counties Health Unit board meeting.
 Schabas told the board that normally in this health unit coverage area, there would be one death every five years due to listeriosis.
 As of Wednesday, there

were 37 listeriosis cases associated with the outbreak in Canada, and 12 confirmed cases where the bacteria was the underlying or contributing cause of death.
 Schabas warned the numbers could grow.

"There's always the probability we will see additional cases," he said, adding that symptoms could be dormant — not 70 after — after meat was believed to have of the contaminated patients, and visit the Torr plant.
 • See M.

Madoc woman

• Story continued from page 1.

"We do know that the product that we had ... was from that manufacturing plant," Quinte Health Care spokeswoman Susan Rowe said Wednesday.

However, supplier Sysco Foods is still trying to find out if the product was on the recall list of tainted meats, she said.

It now appears that Baricroft hospital, which receives its deli food through the Centennial Manor old aged home run by Hastings County, also served Maple Leaf meats from the Toronto plant, Rowe said. But it has not been confirmed the meat was on the recall list, she said.

Schabas said local health inspectors had been in contact with nursing homes, grocery stores, hospitals and other establishments to make sure any of the cold cuts listed on the recall list — there are hundreds — had been removed from those facilities.

"Our staff have been very active," he said. "We are hopeful we have cut off the source of the problem."

Board member Craig Desjardins asked if Schabas thought the outbreak was handled properly by the government and public

health.

Schabas said there has been criticism that health officials waited too long to notify the public — a jump in listeria cases was reported by the end of July, but the public was not told of the danger until Aug. 13.

"It wasn't clear (in July) this was an outbreak ... but there certainly was a dramatic increase" in cases, he said.

Without laying blame on anyone, Schabas said a "case could be made (that) perhaps we should have informed the public (earlier)."

The doctor said once the current listeria threat is over, health officials would scrutinize the way the outbreak was handled with an eye to making changes, if necessary, in public health alerts.

Listeria is found in the soil and poses a "very low risk to the general population," Schabas noted. "Healthy people rarely become sick when exposed to the bacteria. The people most at risk are pregnant women, the very old, the very young and those with weakened immune systems."

Listeriosis is mainly caused by consuming food contaminated with the listeria monocytogenes bacteria. The main symptoms are fever and muscle aches (for example, a stiff neck). Additional symptoms include headache, diarrhea, vomiting and nausea.

bellsworth@intelligencer.ca

Page 2

This is Public C referred to in the affidavit of Timothy Clark sworn before me, this 14th day of October 2008

Kay

