



Court File No. **NAN-S-S-71358**

No.

Nanaimo Registry

*In the Supreme Court of British Columbia*

Between

**British Columbia Ferry Services Inc.**

Plaintiff

And

**SAM Electronics GmbH**

Defendant

**NOTICE OF CIVIL CLAIM**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

**This action has been started by the plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

## Claim of the Plaintiffs

### Part 1: STATEMENT OF FACTS

#### A. The Parties:

1. The plaintiff, British Columbia Ferry Services Inc. ("**BC Ferries**"), is a corporation formed under British Columbia's *Company Act*. It is one of the largest ferry operators in the world, providing year-round vehicle and passenger service on 25 routes to 47 terminals, with a fleet of 35 vessels.

2. The defendant, SAM Electronics GmbH ("**SAM**"), is a corporate entity that is incorporated and existing under the laws of Germany, and having its principal office at Behringstrasse 120, 22763 Hamburg. At all material times, SAM carried on business as a provider of shipping systems design, engineering, manufacture, management, logistics support, inspection, service, maintenance and repairs for ships owned by residents of British Columbia, and operated in British Columbia and elsewhere.

#### B. Background:

3. BC Ferries is the owner of a 160-meter long 370 AEQ (Automobile Equivalent Units) Double-Ended RO/RO Passenger Ferry, the *Coastal Installation* (the "**Ferry**"). BC Ferries acquired the Ferry pursuant to a turnkey construction contract with a German shipbuilder, Flensburger Schiffbau-Gesellschaft MBH & Co. KG. (the "**Flensburger**"), dated August 11, 2004.

4. Flensburger contracted SAM to design, engineer, HAZOP, manufacture, install, test, inspect, integrate, commission, and certify various of the Ferry's systems, including but not limited to the Ferry's navigational systems, propeller propulsion and pitch control systems, electrical systems, emergency systems, control systems and monitoring systems.

5. The Ferry was built at Flensburger's shipyard in Flensburg, Germany, and was launched on or around August 31, 2007. It departed Flensburg, Germany on February 9, 2008, and arrived in Nanaimo, BC. at Departure Bay on or around March 25, 2008. The Ferry began regular service on or around June 16th, 2008, having made unscheduled training runs during the week leading up to this date.

6. At all material times, the Ferry would transport passengers between the Tsawwassen Port and Duke Point terminal in British Columbia. Generally speaking, it would make four (4) round trips per day. Each round trip would take approximately five (5) hours.

### C. The Loss:

7. On December 20, 2011, at approximately 2:50 p.m., the Ferry's bow propulsion pitch control system (the "**Control System**") failed to respond while the Ferry was approaching the Duke Point Terminal in Nanaimo. As a result, the Ferry struck the berth at an approximate speed of 5.6 knots. The Ferry and Terminal suffered extensive damage, and a number of passengers and crew members sustained injuries.

8. The bow propulsion pitch control system failed to respond because of the failure of an Isolating Amplifier (the "**IA**") in the Control System. The IA failed because it was not properly shielded from electromagnetic interference, which had an adverse effect on its operation.

9. The Ferry's Control System is a crucial safety system.

10. The collision resulted from the fact that the Ferry's Control System, and other systems designed, engineered, HAZOP-ed, assessed, manufactured, installed, tested, inspected, integrated, commissioned, and certified by SAM, were dangerous, unsafe, unfit for their intended purpose, defective, not of merchantable quality, and prone to an unreasonably high risk of failure. Particulars of these defects include, but are not limited to the foregoing:

- a) The Control System lacked adequate redundancies, shielding, safeguards, sufficiently robust components, and safety features, having regard to its role as a crucial safety system;
- b) The Control System and its component parts were unfit for their intended purposes, not of merchantable quality and not sufficiently durable, having regard to all of the circumstances;
- c) The IA was not properly or adequately shielded from electromagnetic and other sources of interference;
- d) There was no clear warning or audible alarm to the Ferry bridge crew to indicate a fault of the Control System, notwithstanding its role as a critical safety system. Without an alarm specifically linked to the safety-critical equipment that signaled the IA's malfunction, the bridge crew was unaware of the IA failure, creating an increased risk to the Ferry, its passengers and the crew;
- e) The Ferry's Power Management System's "Power Limited" illumination light would frequently illuminate in routine operation. There was no system in place to draw the crew's attention to the fact that the light was on for an unusually long period of time;
- f) There was no feature that would safely and effectively draw the operator's attention to discrepancies between the ordered and acquired propeller pitch;
- g) Although pitch control could be acquired by activating the Control System's emergency override controls, it was not utilized owing to a disassociation of

the emergency mode switch from its intended design function. Among other things:

- i. Owing to the design of the Control System, it was necessary to turn on the pitch control emergency switch during docking procedures in order to prevent excessive vibration, noise, terminal erosion and propeller blade damage. The necessity for regular use of the emergency switch contributed to a dissociation of the emergency switch from its intended design function;
  - ii. The color scheme and design of the various buttons, switches and indicators on the pitch control panel were confusing and prone to cause operator error during emergency situations; and
- h) Such further and other particulars as may become known to the plaintiff during the course of litigation.

11. Commercially available methods of reducing, mitigating and avoiding the defects and risk of harm posed by the aforementioned systems, and that did not significantly increase the cost of the Ferry's construction, existed at all material times.

**D. Damages:**

12. As a result of the collision, BC Ferries sustained damages in an amount that have yet to be fully quantified, but that are anticipated to meet or exceed CAD\$4,000,000. Damages include, but are not limited to:

- a) emergency response and remediation costs;
- b) costs of repair and replacement of the Ferry, the terminal, contents and equipment;
- c) business interruption losses and loss of profits;
- d) costs associated with the investigation and loss adjustment of the incident;
- e) consultancy fees;
- f) extra expenses;
- g) costs arising from potential liability exposure to third parties, including contingent future liability; and
- h) costs pertaining to the investigation, defence, and settlement of third party claims in respect of alleged personal injuries, property damage and other heads of damage claims resulting from, arising out of, or relating to the collision.

13. Full particulars of BC Ferries' damages will be provided to the defendant during the course of litigation.

**E. Liability of SAM:**

14. The collision was caused by the negligence, misrepresentation, failure to warn and breach of duty of SAM, particulars of which include, but are not limited to the following:

- a) It failed to design, engineer, HAZOP, assess, manufacture, install, test, inspect, integrate, commission, and certify Ferry systems in a good, prudent, safe and workmanlike manner, and in accordance with applicable laws, regulations, codes, industry standards and reasonable standards;
- b) It supplied, designed, engineered, HAZOP-ed, assessed, manufactured, installed, tested, inspected, integrated, commissioned, and certified Ferry systems that were dangerous, unsafe, unfit for their intended purpose, defective, not of merchantable quality, and prone to an unreasonably high risk of failure, creating a dangerous situation;
- c) It failed to perform proper HAZOPs and risk assessments of the Ferry's Control System and other systems;
- d) It supplied Ferry systems that were dangerous, unsafe, unfit for their intended purpose, defective, not of merchantable quality, and prone to an unreasonably high risk of failure in all of the circumstances;
- e) It failed to adequately train and/or supervise their employees, servants, agents, contractors, subcontractors, consultants, suppliers, vendors and others who were involved in the supply of the Ferry systems;
- f) It failed to act in a reasonable and prudent manner in all of the circumstances;
- g) It failed to warn BC Ferries and others of the risks created by the foregoing;
- h) It failed to provide a promised service; and
- i) Such further and other particulars as are within the knowledge of the defendants and/or their agents, servants and employees which shall become known to the plaintiffs prior to the trial of this proceeding.

15. The defendant is vicariously liable for the acts, omissions, negligence, breach of contract, breach of duty of its employees, servants, agents, contractors, subcontractors, suppliers, consultants, vendors and others who were involved in the supply of the Ferry systems.

16. As a result of the foregoing, SAM is fully liable to the plaintiff for the full amount of damages and other relief as is claimed herein.

**Part 2: RELIEF SOUGHT**

- 1. Damages, contribution and indemnity from the defendant in an amount yet to be quantified but currently anticipated to meet or exceed \$4,000,000.00.
- 2. Costs of the legal proceedings;

3. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, Ch. 79; and
4. Such further and other relief as counsel may request and this honorable court deems just.

**Part 3: LEGAL BASIS**

1. The *Negligence Act*, R.S.B.C. 1996, c. 33;
2. The *Court Order Interest Act*, R.S.B.C. 1996, Ch. 79;
3. The *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28; and
4. Any and all causes of action supported by the facts as pleaded in this Claim, regardless of whether expressly pleaded herein.

**Plaintiff’s address for service:**

COZEN O’CONNOR  
 Attn: Pamela D. Pengelley  
 One Queen Street East, Suite 1920  
 Toronto, Ontario M5C 2W5  
 T: (888) 727-9948

**Fax number address for service (if any):**

(866) 867-7613

**E-mail address for service (if any):**

ppengelley@cozen.com

**Place of trial:** Nanaimo, British Columbia

**The address of the registry is:**

35 Front Street, Nanaimo, British Columbia V9R 5J1

Date: December 20, 2013 .....

Signature of

plaintiff  lawyer for plaintiff(s)

.....[Pamela D. Pengelley].....

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

The Plaintiffs claim the right to serve this pleading/petition on the Defendant outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts on which this proceeding is based that is sufficient to justify service of this Claim against the Defendant without leave for reasons that include, but are not limited to, the following:

- a) it pertains to contractual obligations that, to a substantial extent, were to be performed in British Columbia;
- b) it concerns businesses that are carried on in British Columbia;
- c) it concerns restitutionary obligations that, to a substantial extent, arose in British Columbia; and
- d) it concerns a tort committed in British Columbia.

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim for damages, contribution and indemnity arising from the hard landing of a Ferry at a terminal. The claim alleges, among other things, that defects in the Ferry systems caused the loss, and that these defects were the result of negligence on the part of the systems' designer.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

### **Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

1. The *Negligence Act*, R.S.B.C. 1996, c. 33;