

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

Nevada Truchan

Plaintiff

-and-

AMO CANADA COMPANY

Defendant

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992

STATEMENT OF CLAIM

TO THE DEFENDANT:

**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.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date: May 29, 2007

Issued By:

  
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Local Registrar

Address of  
court office:

393 University Avenue, 10<sup>th</sup> Floor  
Toronto, Ontario M5E 1G6

**TO: AMO CANADA COMPANY**  
80 Whitehall Drive, Unit #2  
Markham, Ontario  
L3R 0P3

**CLAIM**

1. The Plaintiff claims on its own behalf and on behalf of the Class:
  - a. damages in the amount of \$50,000,000.00 or such other sum as this Honourable Court finds appropriate, arising from Defendant wrongfully manufacturing and distributing contact lens solutions including the solution known as "Complete all in one solution Moisture Plus" (hereafter Product) that has been determined by the Center for Disease Control in Atlanta to possibly be the cause of severe eye infections including the infection commonly known as Keratitis.
  - b. a declaration that Defendant has breached its obligations to Plaintiff and to the Class by distributing the harmful product to the Canadian marketplace.
  - c. a declaration that the Defendant is liable to Plaintiff and the Class for the damages Plaintiff and the Class suffered as a result of purchasing and using the Product and the resultant losses they suffered in compliance with the recommendations of the Center for Disease Control (CDC) to discontinue use of the Product and discard all soft contact lenses and cases that have been in contact with the Product.
  - d. certification of this action as a class proceeding pursuant to the Class Proceedings Act, S.O. 1992 c.6, and an order appointing the Plaintiff

as representative plaintiff on behalf of the Class as defined herein;

- e. pre-judgment and post-judgment interest on the amount claimed in paragraph 1(a) at the interest rate pursuant to the Courts of Justice Act, R.S.O. 1990, c.43;
- f. costs of this action fixed on a substantial indemnity basis; and
- g. such further and other relief as this Honourable Court may deem just.

**The Parties**

1. The Plaintiff, Nevada Truchan resides in the City of Toronto, in the Province of Ontario.
  
2. The Defendant, AMO Canada Company is a corporation incorporated under the laws of the Province of Nova Scotia and has offices at 80 Whitehall Drive, Unit # 2, in the City of Markham in the Province of Ontario.

**The Proposed Class**

2. Plaintiff brings this action pursuant to the Class Proceedings Act, 1992 on behalf of the proposed class (the "Class"):

All persons resident in Canada that:

- i. Purchased the Product, and subsequently discarded same; or
  - ii. Used the Product to clean their contact lenses; and subsequently
  - iii. (a) Discarded their contact lenses; and/or  
(b) Discarded their contact lens cases,
- pursuant to the recommendations of the CDC.

**The CDC Finding and Recommendation/Recall of the Product**

3. On or about May 25<sup>th</sup>, 2007, the Center for Disease Control in Atlanta, Georgia, USA issued a Health Alert recommending that all users of the Product:
  - a. Discontinue using the product, and discard same; and
  - b. Discard and/or discontinue use of soft contact lenses that had come into contact with the Product; and
  - c. Discard and or discontinue use of contact lens cases that had come into contact with the Product.
  
4. The CDC disseminated such alert after identifying an outbreak of *Acanthamoeba keratitis* (AK), a severe eye infection that can cause visual impairment or blindness. On the basis of information available to the CDC, the CDC determined that of patients identified as having AK, 58% of such AK sufferers that were also contact lens wearers and that reported using a solution to clean their contacts reported using the Product in the month prior to symptom outbreak.
  
5. On the heels of the recommendation by the CDC that consumers discontinue use of the Product, on May 25<sup>th</sup>, 2007, Advanced Medical Optics Inc., announced that it was voluntarily recalling the Product.

6. On May 28<sup>th</sup>, 2007, Defendant announced on a special voice message recorded for such purpose that it was also voluntarily recalling the Product, based on the recommendations of the CDC.
7. On that same day, Canadian news outlets such as CTV also reported the findings of the CDC that the Product may be the cause of AK, and relayed the CDC's recommendation that users of the Product discard it, and also discard their contact lenses and cases that had come into contact with the Product.

#### **Plaintiff's Losses**

8. On or around May, 2007, Plaintiff purchased the Product in a Toronto area drug store.
9. On May 28<sup>th</sup>, 2007, Plaintiff discarded her contact lenses and contact lens case, in compliance with the recommendations of the CDC as disseminated by the CDC, and as reported by Canadian news outlets, and suffered losses associated therewith.

#### **Defendant's Strict Liability**

10. As a manufacturer and Distributor of the Product, one that according to the findings of the CDC may be the cause of a dangerous eye infection,

Defendant is liable to compensate Plaintiff and the Class for the direct losses they suffered in compliance with the recommendations of the CDC to discard their contact lenses and cases that had come into contact with the Product.

11. Defendant discarded the Product and her contact lenses and cases that had come into contact with the Product, and suffered losses associated therewith, in the amount of the cost of her contact lenses, the value of the case, and the value of the Product.

**Negligence**

11. In the alternative, Plaintiff pleads that Defendant was negligent in its manufacture of the Product, and that as a result of such negligence, Plaintiff and the Class suffered damages arising out of their compliance with the recommendations of the CDC and their appurtenant discard of their contact lenses and lens cases that came into contact with the Product.

**Breach of Warranty**

12. A manufacturer that produces a product for consumption or medical use by a consumer warrants that:
  - a. The product is fit for the purpose for which it was intended;

- b. The product is free of contaminants or potentially dangerous organisms; and
  - c. The product is fit for medical use by the consumers of the Product.
13. Being that the Product was found by the CDC to be unsafe and the CDC recommended discarding the Product and all lenses and cases that had come into contact therewith, Defendant has breached the warranty above and Plaintiff has suffered damages as a direct result of such breach.

**Waiver of Tort**

14. As a result of Defendant's conduct described herein Plaintiff reserves the right to elect at the Trial of the Common Issues to Waive the Tort of Negligence and to have damages assessed in the amount of the profits earned by Defendant from the Sale of the Product

**Conclusion**

15. Accordingly, for the reasons stated above, and on the basis of the facts alleged herein, Plaintiff requests that the court grant it and the Class Members the relief sought herein.

Respectfully Submitted,

May 29<sup>th</sup>, 2007

**Juroviesky and Ricci LLP**

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Toronto, On, M2N 6K1

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**Nevada Truchan v. AMO CANADA COMPANY**  
Plaintiff Defendant

Court File No: 07-CV-333780CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

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