



NO. S-134066
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NINA WATT and JAMES HENSMAN

PLAINTIFFS

AND:

HEALTH SCIENCES ASSOCIATION OF BRITISH
COLUMBIA

REID JOHNSON, VAL AVERY and BRUCE MACDONALD in
their capacity as the TRUSTEES OF THE HEALTH SCIENCES
ASSOCIATION OF B.C. TRUST FUND, and the said HEALTH
SCIENCES ASSOCIATION OF B.C. TRUST FUND,

REID JOHNSON, BRUCE MACDONALD and MARG BEDDIS
in their capacity as the TRUSTEES OF THE HSA LTD TRUST
NO. 2 and the said THE HSA LTD TRUST NO. 2,

REID JOHNSON, BRUCE MACDONALD, VALERIE AVERY
and MARG BEDDIS in their capacity as the TRUSTEES OF THE
HSA LTD. NO. 3 and the said THE HSA LTD TRUST NO. 3 and

REID JOHNSON, BRUCE MACDONALD, VALERIE AVERY
and MARG BEDDIS

DEFENDANTS

APPLICATION RESPONSE

Application Response of: the Defendant Health Sciences Association of British Columbia,
(the "Application Respondent")

THIS IS A RESPONSE TO the Notice of Application of the Trustees filed October 6, 2017.

Part 1: ORDERS CONSENTED TO

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms: 1-3

Part 2: ORDERS OPPOSED

The Application Respondent opposes the granting of the orders set out in paragraphs NIL of Part 1 of the Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Application Respondent takes no position on the granting of the orders set out in paragraph 4 of Part 1 of the Notice of Application.

Part 4: FACTUAL BASIS

1. HSA adopts the Factual Basis set out in Part 2 of the Trustees' Notice of Application, with the following additions.

Allegations and Issues regarding HSA in the Class Action

2. HSA and the Trustees' appeals of the Certification Order in the Class Action were heard on May 25-26, 2016. The Court of Appeal issued Reasons for Judgment on July 25, 2016. The Court allowed HSA's appeal to the extent of striking two of the three claims made against HSA; namely, the breach of fiduciary duty claim and the *trustee de son tort* claim. This leaves only the contract claim to be adjudicated.

3. The pleadings have been amended to reflect the Court of Appeal's order and the remaining common issues relating to HSA are:

1. Did HSA enter into a binding agreement with its members to provide various benefits, specifically through LTD Agreement #1 and LTD Agreement #2, as alleged in the Notice of Civil Claim?
2. If HSA did enter into LTD Agreement #1 and LTD Agreement #2, what were the terms thereof?

3. Did HSA breach LTD Agreement #1 through one or more of the following with respect to HSA members who became disabled between March 1, 1989 and February 28, 1999:
 - (a) The reduction in long term disability benefits;
 - (b) The imposition of early retirement and the concurrent discontinuance of long term disability benefits; and/or;
 - (c) The termination of group life insurance and AD&D insurance.

4. Did HSA breach LTD Agreement #2 through one or more of the following with respect to HSA members who became disabled between March 1, 1999 and August 3, 2006:
 - (a) The reduction in long term disability benefits payments under the Index Removal;
 - (b) The reduction in long term disability benefits; and/or
 - (c) The imposition of early retirement and the concurrent discontinuance of long term disability benefits.

5. If the steps identified in paragraph 3, above, did not constitute a breach of the LTD Agreement #1, on the basis that the terms thereof permitted HSA to undertake such actions:
 - (a) is LTD Agreement #1 “group insurance” within the meaning of the *Insurance Act*;
 - (b) is HSA an “insurer” within the meaning of the *Insurance Act*; and
 - (c) is HSA thus precluded from taking the steps identified in paragraph 3, above, by sections 58 and/or 116 of the *Insurance Act*?

6. If the steps identified in paragraph 4, above, did not constitute a breach of the LTD Agreement #2, on the basis that the terms thereof permitted HSA to undertake such actions:

- (a) is LTD Agreement #2 “group insurance” within the meaning of the *Insurance Act*;
- (b) is HSA an “insurer” within the meaning of the *Insurance Act*; and
- (c) is HSA thus precluded from taking the steps identified in paragraph 4, above, by sections 58 and/or 116 of the *Insurance Act*?

4. The plaintiffs have sent the Notice to potential class members and the deadline for residents of British Columbia to opt-out of the Class Action and non-residents of British Columbia to opt into the Class Action is November 24, 2017.

5. HSA has produced a List of Documents on December 8, 2015, an Amended List of Documents on December 30, 2015 and an Amended List of Documents on February 26, 2016. HSA expects to produce a further List of Documents in this action. The plaintiffs and the Trustees have also produced Lists of Documents in this action.

6. No examinations for discovery have been scheduled and this action has not been set down for trial.

Part 5: LEGAL BASIS

1. HSA adopts the Legal Basis set out in Part 3 of the Trustees’ Notice of Application and makes the following additional points.

Actions Heard at the Same Time

2. In paragraph 6 of Part 3 of the Trustees’ Notice of Application the Trustees’ submit that any potential inconvenience that may result from an order that the Class Action and the Hewitt Action be heard at the same time can be managed through careful case management.

3. The Class Action is already being case managed and in the plaintiffs' proposed Litigation Plan, they have specified that active case management, to the extent required, will be used to complete discovery process and to prepare the case for trial.

4. Any issues that may arise as a result of the orders sought by the Trustees in this application can be resolved with careful planning and through the active case management structure already in place that the plaintiffs already intend to utilize in the Class Action.

Two Questions Heard Ahead of the Others

5. The HSA agrees with the Trustees' proposal that the two remaining common issues regarding the Trustees should be tried before any other issues in this action are determined.

6. In their initial proposed Litigation Plan, the plaintiffs identified their intention that to the extent possible, they would attempt to determine if one or more of the common issues could be resolved by way of summary trial.

7. The Trustees' proposal that the two remaining common issues relating to them be resolved in advance of other issues in the Class Action is in accordance with the plaintiffs' proposal that some issues in the Class Action may be amenable to being resolved independently through a more efficient process.

8. Although the plaintiffs in the Class Action have tried to conflate the Trustees and HSA, they are separate entities and the remaining claims against them in the Class Action are fundamentally different claims. It would be efficient and save significant time and legal fees if the claims against the Trustees are heard before the claims against HSA in the Class Action.

Part 6: MATERIAL TO BE RELIED ON

1. The pleadings in this matter; and
2. Such further and other materials as counsel may advise and this Court permits.

The Application Respondent estimates that the application will take 2 days.

- The Application Respondent has filed in this proceeding a document that contains the Application Respondent's address for service.
- The Application Respondent has not filed in this proceeding a document that contains an address for service. The Application Respondent's ADDRESS FOR SERVICE is:

Dated at the City of Vancouver, in the Province of British Columbia, this 3rd day of November, 2017.

Lawson Lundell LLP AMN

Lawson Lundell LLP
Solicitors for the Application
Respondent, Health Sciences Association of
British Columbia

This Application Response is filed by Craig A.B. Ferris, Q.C. and Amy M. Nathanson, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

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BRITISH COLUMBIA, ET AL

DEFENDANTS

APPLICATION RESPONSE



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