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ARTICLE

Issue of Recovery for Pure Economic Loss Creates Barrier to Certification of Manitoba Class Action

In *Pisclevich et al. v Government of Manitoba*, the Manitoba Court of Appeal granted the defendant Government of Manitoba leave to appeal an order certifying the plaintiffs' action as a class proceeding, concluding that issues relating to recovery for pure economic loss must be addressed in order to move past the certification stage.

The *Pisclevich et al.* action arises from the flooding of Lake Manitoba in 2011 and its effects on individuals and businesses. The plaintiffs allege that the flooding was caused by the defendant's negligent operation of a designated water control work.

Interestingly, the consequences of the 2011 flooding were previously the subject of a certification motion in *Anderson v. Manitoba*, in which the Manitoba Court of Appeal upheld the certification of a class action on the same facts. *Anderson* involved four First Nations, while *Pisclevich et al.* involves individual land and business owners.

The Court's decision to grant leave to appeal hinged on the question of whether the pleadings disclosed a basis for a tenable claim for pure economic loss and whether that loss constituted a common issue. The Court concluded that the issue of recovery for pure economic loss raised a question of law with arguable substance, noting that it remained an unsettled area of law which was not addressed in *Anderson*. Accordingly, the Court concluded that questions relating to pure economic loss and whether it constituted a common issue must be addressed before *Pisclevich et al.* could be certified as a class action.

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