

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**ISAAC WAXMAN**

Plaintiff

and

**KENNETH HORNICK, MARC REYNOLDS,  
JAMES COUGHLIN, and JOHN WAGNER**

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). 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(s) do(es) not have a lawyer, serve it on the Plaintiff(s), 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.

Date: *July 28, 2009*

Issued by *Lee Burtis*  
Local registrar

Address of court office:

45 Main Street East  
Suite 110  
Hamilton, Ontario  
L8N 2B7

**TO:** KENNETH HORNICK  
3292 Forestdale Circle  
Mississauga, ON L5N 6V5

MARC REYNOLDS  
550 Patten Drive  
Hermon, Maine 04401

JAMES COUGHLIN  
213 Shea Road  
Lothian, Maryland 20711

JOHN WAGNER  
9902 Mosby Road  
Fairfax, Virginia 22032

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

**CLAIM**

1. The plaintiff claims:
  - a. damages jointly and severally from the defendants for negligence, negligent misrepresentation, breach of contract, and breach of warranty in the amount of \$50,000.00;
  - b. Pre and Post Judgment interest pursuant to Section 127 of the Courts of Justice Act, R.S.O. 1990, c.C. 43;
  - c. Costs on a substantial indemnity scale, and;  
Such other relief as counsel may request and this honourable court may seem fit to grant.

**PARTIES**

2. The plaintiff Isaac Waxman is a horse trainer and owner, and at all material times was the purchaser of a standardbred racing horse named Boss Outlaw. At all material times Isaac Waxman was represented by his father Warren Waxman and all negotiations for the purchase and sale of Boss Outlaw on behalf of Isaac Waxman was handled by Warren Waxman who is not a party to this suit.
3. The defendant James Coughlin resides in Lothian, Maryland in the United States of America, and was at all material times 50% owner of the standardbred racing horse Boss Outlaw sold to the plaintiff..
4. John Wagner resides in Fairfax, Virginia, in the United States of America was at all material times the 50% owner of the standardbred

racing horse Boss Outlaw. John Wagner was an undocumented owner of Boss Outlaw as to his 50% interest and was the trainer of Boss Outlaw in Maryland.

5. Kenneth Hornick resides in the City of Mississauga, Province of Ontario, and at all material times acted as the Canadian agent and sales representative for James Coughlin and John Wagner in the sale of Boss Outlaw to the plaintiff Isaac Waxman.
6. Marc Reynolds resides in Hermon, Maine, United States of America, and at all material times acted as the U.S. agent and sales representative for James Coughlin and John Wagner in the sale of Boss Outlaw to Isaac Waxman.

#### OVERVIEW

7. On May 1, 2009, the plaintiff purchased the standardbred racing horse Boss Outlaw from James Coughlin and John Wagner for \$60,000.00 U.S. On examining the horse May 9, or early a.m. May 10, 2009, swelling and tenderness was discovered in the left front foreleg and on May 12, 2009, a "core lesion" in the left front suspensory ligament was identified making Boss Outlaw unfit for training or racing, the purpose for which Boss Outlaw was purchased.

#### FACTS

8. The plaintiff Isaac Waxman hereinafter ("Isaac") by his representative Warren Waxman ("Warren") began negotiations for the purchase of a standardbred racing horse on or about April 28, 2009, with the

defendant Kenneth Hornick hereinafter ("Hornick") in Hornick's capacity as the Canadian agent for the defendant owners James Coughlin hereinafter ("Coughlin") and John Wagner hereinafter ("Wagner") and Marc Reynolds hereinafter ("Reynolds") as U.S. agent for the owners Coughlin and Wagner.

9. On April 30, 2009, Reynolds emailed Warren the racing statistics for the Boss Outlaw pursuant to Hornick's request that Reynolds do so.
10. Also, on April 30, 2009, Reynolds emailed Warren that Boss Outlaw was priced at \$65,000.00 U.S. and that owner Coughlin races horses in the Maryland Stakes Circuit.
11. Reynold's second April 30, 2009, email to Warren about Boss Outlaw states "horse is healthy and sound. Can get over any size track as well. You will see that he raced against some very top horses in 2008."
12. The plaintiff pleads that the defendant Reynolds spoke directly with Warren and Reynolds told Warren that Boss Outlaw was perfectly sound and had "vetted out".
13. The plaintiff pleads the phrase "Vetted out" means that Reynolds told Warren that Boss Outlaw had been examined by a veterinarian and found to be fit for racing.
14. The plaintiff pleads that a purchase prices of \$60,000.00 U.S. was agreed among Warren, Hornick and Reynolds on or about May 1, 2009.
15. On May 1, 2009, Hornick emailed Warren confirming the \$60,000.00 U.S. purchase price and provided Warren with Reynold's bank account

number in Bangor, Maine, and Hornick's U.S. dollar account number at the TD Canada Trust branch number 1594.

16. The plaintiff pleads that on May 1, 2009, Hornick spoke to the defendant's 50% owner Wagner and took instructions from Wagner to have the purchase monies for Boss Outlaw wired to Reynold's bank account. Hornick undertook the responsibility to arrange for shipping.

17. On May 1, 2009, \$60,000.00 U.S. was wired from the plaintiff's Canadian bank account to the Bangor Federal Credit Union at 339 Hogan Road, Bangor, Maine, to Reynold's account.

18. Hornick charged \$2,000.00 U.S. as his commission for the sale of Boss Outlaw.

19. Late Friday, May 9, 2009, or early Saturday May 10, 2009, Boss Outlaw was delivered to Isaac's barn in Carlisle Ontario. Isaac pleads he saw that Boss Outlaw had four wraps on his legs and when Isaac removed the left front wrap he saw swelling and called a veterinarian from Flamborough Equine Services who came and examined Boss Outlaw's left foreleg.

20. In an undated memo the veterinarian who physically examined Boss Outlaw late Friday night May 9, 2009, or early Saturday morning, May 10, 2009, reported clinical findings of "palpable thickening of LF suspensory in the mid to high area especially medially. Elicited pain response by palpation over thickened area. Recommendation: to have LF suspensory ultra sounded".

21. The plaintiff pleads that on May 12, 2009, Boss Outlaw, a three year old bay standardbred colt was examined by ultrasonography at the Halton Equine Veterinary Services Clinic and the examining veterinarian reported:

“The above horse was examined by ultrasonography in clinic on May 12, 2009. A core lesion in the left front suspensory ligament was identified. A moderate amount of swelling was also palpated in the same region. This lesion appears appears(sic) to be chronic due to the degree of echogenicity. A chronic lesion is typically one that is greater than three weeks duration.”.

22. The plaintiff pleads the injury described by the veterinarian in the May 12, 2009 report is well recognized in the racing industry and prevents Boss Outlaw from being trained for racing and racing.

23. The plaintiff pleads the defendants are liable to him for the purchase price plus interest plus expenses for the sale of a unsound horse which was not fit for the purpose of racing for which it was purchased.

24. The plaintiff pleads that all defendants are jointly and severally liable to him for the damages claimed herein for negligence, negligent misrepresentation, breach of contract and breach of warranty.

25. The plaintiff pleads that Hornick and Reynolds owed him a duty of care based on their relationship with him as agent for the owners of Boss Outlaw and that they made false and inaccurate and misleading representations to the plaintiff, negligently, and the plaintiff reasonably

relied on their representations to the plaintiff's financial detriment.

26. The plaintiff further pleads that Reynolds directly warranted to the plaintiff that Boss Outlaw was perfectly sound and vetted out which representation was false and which false representation was relied upon by the plaintiff to his detriment.
27. The plaintiff pleads Hornick and Reynolds were negligent in making the representations they did in that they were under a duty of care to satisfy themselves as to the soundness of Boss Outlaw.
28. The plaintiff pleads the owners Coughlin and Wagner are liable to him for the damages claimed because they knew or ought to have known of the injury to Boss Outlaw's left foreleg and failed to disclose the defect in Boss Outlaw to the plaintiff purchaser.
29. The plaintiff pleads and relies upon the provisions of the sales of goods act R.S.O. 1990 C.S.1.
30. The plaintiff pleads that a condition of his purchase of Boss Outlaw was that the standardbred colt was to be fit for the purpose for which it was purchased namely competitive racing and that Boss Outlaw was to be of merchantable quality and reasonably fit for that purpose.
31. The plaintiff pleads that the defendant owners are liable to him for damages for breach of contract which contract was made in Canada and was partially verbal and partially in writing for the delivery of a sound and healthy standardbred horse capable of racing competitively.



32. The plaintiff claim falls within the provisions of Rule 17.01 (f) (iv), (h), and (o).

Date: July 27, 2009.

**DON MORRIS**

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Hamilton ON L8N 2A1

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Lawyer for the plaintiff

ISAAC WAXMAN  
Plaintiff

and

KENNETH HORNICK et al  
Defendants

Court File No.

09-13450

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

**STATEMENT OF CLAIM**

**DON MORRIS**

Barrister

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