

Dr. James Infection Outbreak Class Action
c/o Harte Law PC
Lawyers
16 Sims Crescent, Unit 30
Richmond Hill, ON L4B 2P1
Email: JamesClassAction@hartelaw.com

CLASS ACTION NOTICE

Dr. Stephen James Infection Outbreak Class Action

THE DEADLINE TO MAKE A CLAIM IS FEBRUARY 4, 2025. If you wish to make a claim you must submit an Intention to Claim Form which must be received or postmarked NO LATER THAN FEBRUARY 4, 2025

Why Are you Receiving This Notice

This Class Action Notice provides important information for those class members who wish to make a claim for financial compensation for any injuries suffered.

You are receiving this Class Action Notice because you may be a class member in a certified class action, entitled to seek financial compensation related to epidural pain injections administered by Dr. Stephen James (“Dr. James”) between January 1, 2010 and November 30, 2012 (“Class Period”), at the Rothbart Centre for Pain Care Ltd. (the “Rothbart Clinic”); or you have expressed an interest in the class proceedings.

The class action followed an infectious disease outbreak at the Rothbart Clinic during the Class Period which was linked to pain injections performed by Dr. James. A court has determined that Dr. James breached his legal duties in performing epidural pain management injections at the Clinic during the Class Period. This decision was upheld by the Court of Appeal. The court must now determine the appropriate financial compensation for those class members whose injuries were caused by Dr. James’ breaches of his legal duties.

Whether any Class Member receives compensation and how much they receive will be determined as a part of the claims process which is set out in the claims protocol approved by the Court (the “Claims Protocol”). A copy of the entire Claims Protocol is available on the Internet at <https://hartelaw.com/JamesClaimsProtocol.html>. To the extent that anything in this Notice differs from the Claims Protocol, the provisions of the Claims Protocol prevail.

Class Members

Any of the following individuals, (“Class Members”), can make a claim for financial compensation:

All persons who received an epidural injection administered by Stephen Rose James (“Dr. James”) at the Rothbart Centre for Pain Care Ltd. (the “Clinic”) between January 1, 2010 through to November 30, 2012, and who subsequent to their treatment developed signs or symptoms clinically compatible with bacterial meningitis, epidural abscess or cellulitis of a bacterial origin and/or bacteremia (“Clinical Infection”), or where such a person is deceased, the personal representative of the estate of the deceased person who developed a Clinical Infection; (the “Infected Patients”), and

All living parents, grandparents, children, grandchildren, siblings, spouses and same sex partners (within the meaning of s. 61 of the *Family Law Act*) of Infected Patients, or where such a family member died after his or her related Infected Patient developed signs or symptoms of Clinical Infection, the personal representative of the deceased family member (“Family Law Claimants”).

What is the Status of the Class Action

A trial in this class action was heard on February 16-19, 22-26, March 1-5, 8-12, 15-19, and June 28, 2021, relating to those issues which were common to class members of Dr. James during the Class Period. The trial judge reached a decision on September 15, 2021, granting judgment on the common issues in favour of the class. A copy of the full judgment is available on the Internet at <https://canlii.ca/t/jj4qh>. The Court determined answers to the common issues as follows:

Question 1: All of the Defendants, including Dr. James as well as the Nurses, owed a duty of care to the Class to take reasonable precautions to prevent the transmission of health care associated infections.

Question 2: In order to conform with the standard of care expected of them, Dr. James and the Nurses were to use an aseptic technique for all epidural injections administered at the Rothbart Centre during the Class Period. They were also to advise the Medical Director within 24 hours of learning of any infection associated with an epidural injection performed at the Rothbart Centre. As a licensed physician, Dr. James was also expected to investigate any potential infections and appropriately remediate any deficiencies found in his IPAC [infection prevention and control practices], in his practice more generally, or in the Rothbart Centre’s practice.

Question 3: Dr. James breached the applicable standard of care in the first place by failing to consistently use an aseptic technique for epidural injections during the entire class period. He also breached the standard of care by failing to report Matthew Moralis' infection to the Medical Director of the Rothbart Centre on August 7, 2010 and subsequently failing to report all of his patients' infections that he learned about after that date, and he further breached the standard of care expected of him by failing to investigate and remediate the cause of the infections of which he was aware.

The evidence does not establish that the Nurses breached the applicable standard of care.

Question 4: Dr. James' breaches of the standard of care were sufficient to cause clinical infection in his patients that suffered such infections.

Question 5: An inference can and should be drawn that Dr. James' breaches of the standard of care in relation to his IPAC practices were the likely cause of the clinical infections suffered by class members, absent sufficient evidence to the contrary. In addition, an inference can and should be drawn that Dr. James' failure to report, investigate and remediate the infections that he learned about was the likely cause of any clinical infection suffered by Class Members after August 7, 2010, absent sufficient evidence to the contrary.

Question 6: The evidence establishes that Dr. James' breaches in the standard of care were the cause of clinical infection suffered by each of the members of the Genetically Linked Patients subclass. The Genetically Linked Patients subclass are entitled to a finding of liability.

Question 7: Dr. James owed a fiduciary duty to the class arising from the special relationship of trust and confidence between this doctor and the Class members – i.e. his patients.

Question 8: Dr. James' fiduciary duty to the Class required him to practice medicine in a manner that put his patients' interests ahead of his own, that kept the best interest of the Class in mind, and that maintained as his primary consideration the health and well-being of the Class members. This, in turn, required him to refrain from imposing on Class members unnecessary risk of harm.

Question 9: Dr. James breached his fiduciary duties of loyalty, good faith, disclosure and avoidance of conflict of duty and self-interest that he owed to his patients, the Class members.

Question 10: Dr. James' breaches of fiduciary duty were the likely cause of clinical infection suffered by the Class members, absent sufficient evidence to the contrary.

In addition, the evidence establishes that Dr. James' breaches of fiduciary duty were the cause of the clinical infections suffered by the members of the Genetically Linked Patients subclass.

Question 11: The claims of the Presumptively Untimely Claims subclass could not have been discovered within the meaning of section 5 of the *Limitations Act* more than two years prior to issuance of the Statement of Claim on September 9, 2014; no one in this subclass knew or ought reasonably to have known that Dr. James was aware of serious infections associated with his practice prior to November 2012, and such knowledge would have been necessary to discover a claim.

Question 12: Dr. James' failure to report, investigate, and remediate infections associated with his practice, and his continuing to perform epidural injections without having done so, and his failure to advise anyone – including the Medical Director of the Rothbart Centre and other patients – of an elevated infection rate among his patients and thereby misinforming them of the true risk of harm to which they were exposing themselves, attracts punitive damages in an amount to be determined.

Dr. James appealed the trial decision. His appeal was denied by the Court of Appeal for Ontario on February 2, 2023. A copy of the full appeal decision is available on the Internet at <https://canlii.ca/t/jv8jd>.

What is the Next Step?

The class action now proceeds to what is known as the individual issues stage. During this stage potential class members come forward to make a claim. If they can establish that Dr. James' failure to follow appropriate infection control practices during the Class Period caused them to become infected, they can make a claim for financial compensation.

How Much Compensation is Available?

If the amount of any compensation cannot be agreed upon with Dr. James, it will be determined by the Court in much the same way damages in any personal injury lawsuit are determined.

How Do I Make a Claim?

If you wish to make a claim you must complete and submit a copy of the enclosed Intention to Claim Form by email to JamesClassAction@hartelaw.com or by mail to the following address:

Stephen James Class Action
c/o Harte Law PC
16 Sims Crescent, Unit 30
Richmond Hill, ON L4B 2P1

The Intention to Claim Form must be received by email or postmarked if mailed, on or before **February 4, 2025**.

If you require assistance or advice regarding completion of the Intention to Claim Form, you may contact Class Counsel, Harte Law, free of charge, at 1- 855-663-3800 or retain legal counsel at your own expense.

Who Is Eligible for Compensation?

There are two groups or subclasses of patients.

Genetically Linked Patients

Any of the following individuals are part of the subclass known as Genetically Linked Patients and are automatically entitled to compensation for harm caused by infection:

All persons who received an epidural injection administered by Dr. James at the Clinic between January 1, 2010 through to November 30, 2012, and who subsequent to their treatment at the Clinic developed a Clinical Infection, and who were infected by a strain of methicillin-sensitive Staphylococcus aureus matching the strain of methicillin-sensitive Staphylococcus aureus colonized on Dr. James during the Class Period as determined by pulsed-field gel electrophoresis, or where such a person is deceased, the personal representative of the estate of that deceased person

The cause of infection in the Genetically Linked Patients has been established. Only the amount of compensation is left to be decided.

All Other Class Members

The remaining Infected Patients must establish that Dr. James' negligence caused their infection. However, these patients benefit from an assumption that their infection was caused by Dr. James' breaches of his legal duties, unless proven otherwise.

INTENTION TO CLAIM FORM

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During the claim process, claimants must advise Class Counsel in writing of any changes or corrections to their name, address, phone number, or legal representation.

Please keep copies of all documentation you send to Class Counsel supporting your claim. Please note that it could take several weeks or longer to obtain the required supporting medical documentation to support your claim.

If you are claiming on behalf of an Estate or a person with a legal disability, you must include a document that authorizes you to represent the claimant with the completed form.

All claim forms received will be acknowledged in writing. A lawyer will then be in touch to provide additional information on the claims process.

PRIVACY STATEMENT

Personal Information regarding claimants is collected, used and retained by Class Counsel pursuant to *the Personal Information Protection and Electronics Documents Act*, S.C. 2000, c.5 for the purpose of advancing a claim in the Dr. Stephen James Infection Outbreak Class Action. Information received by Class Counsel is strictly private and confidential and will not be disclosed without the express written consent of the claimant or their representative, except as required to advance a claim.

SECTION 1: Claimant Identification

I am applying on behalf of the following claimant (choose one):

<input type="checkbox"/> 1. Claimant
<input type="checkbox"/> 2. A Deceased Claimant <i>(attach a copy of the death certificate and your authority to act (e.g. will, court order, etc.))</i>
<input type="checkbox"/> 3. A Claimant Under a Legal Disability <i>(attach a copy of your authority to act (e.g. power of attorney, etc.))</i>

Please complete this Section with the claimant's information. If you are applying on behalf of a claimant under a legal disability or on behalf of a deceased claimant, please also complete Section 2. If you are a lawyer or agent who is completing this form on behalf of your client, please complete this Section and Section 3

	First Name	Last Name
Address		
	City	Province Postal Code
Email Address		
	Home Phone	Mobile Phone
Provincial Health Care Number		
Date of Birth (YY/MM/DD)		
For Estate Claim: Date of Death (YY/MM/DD)		

SECTION 2: Representative Identification

This section is to be completed only if you are **submitting a claim as the representative of a claimant under legal disability or a deceased claimant**. Please attach proof of your authority to act as the representative of the claimant.

Representative First Name	Representative Last Name
Address	
City	Province Postal Code
Email Address	
Office Phone	Mobile Phone

SECTION 3: Legal Representative Identification

This Section is to be completed only if a lawyer is representing the claimant, the Estate of a deceased claimant or a claimant who is under a legal disability. If this section is completed, all communication will be sent to this individual.

Representative First Name	Representative Last Name
Address	
City	Province Postal Code
Email Address	
Office Phone	Mobile Phone
Relationship to Claimant	

SECTION 4: Claim Details

This section must be completed for all claimants. Please provide as much detail as possible about the injection or injections which caused the claimants infection. Attach a second page if necessary.

Date(s) or Approximate Dates of Appointments with Dr. James
Type of Injections

