

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 7TH DAY
JUSTICE CONWAY) OF AUGUST, 2014



B E T W E E N:

JAMES DURLING, JAN ANTHONY THOMAS, JOHN SANTORO,
GIUSEPPINA SANTORO, ANNA MANCO, FRANCESCO MANCO
and CESARE MANCO

Plaintiffs

- and -

SUNRISE PROPANE ENERGY GROUP INC., 1367229 ONTARIO INC.,
1186728 ONTARIO LIMITED, 1369630 ONTARIO INC., 1452049 ONTARIO INC.,
VALERY BELAHOV, SHAY (SEAN) BEN-MOSHE, LEONID BELAHOV, ARIE
BELAHOV, 2094528 ONTARIO INC., HGT HOLDINGS LTD., TESKEY CONSTRUCTION
CO. LTD. and TESKEY CONCRETE CO. LTD., THE TECHNICAL STANDARDS AND
SAFETY AUTHORITY, FELIPE DE LEON, ONTARIO HOSE SPECIALTIES LIMITED,
PERAFLEX HOSE INC., PERAFLEX HOSE INDUSTRIES INC., BLACKMER, operating as a
division of Dover Energy Inc., WELDEX COMPANY LIMITED, KEDDCO MFG. LTD.,
ROBERT PARSONS EQUIPMENT TRADING INC. and
PRO-PAR (1978) INC:

Defendants

Proceeding under the Class Proceedings Act, 1992

JUDGMENT

THIS MOTION, made by the plaintiffs for an order approving the proposed settlement, and approving class counsel fees and disbursements, was heard on Thursday, August 7, 2014 at the Court House, 393 University Avenue, Toronto, Ontario.

ON READING the materials filed, including the following:

- (a) the affidavit of Sharon Strosberg;
- (b) the affidavit of Marietta Underwood;
- (c) the affidavits of Jennifer Lake;
- (d) the affidavit of Trevor Tombe;
- (e) the affidavit of James Durling;
- (f) the affidavit of Jan Anthony Thomas;
- (g) the affidavit of John Santoro;
- (h) the affidavit of Anna Manco;
- (i) the affidavit of Francesco Manco;
- (j) the affidavit of Cesare Manco;
- (k) the letters from The Children's Lawyer and the Public Guardian and Trustee;
- (l) the letter from Reva Devins agreeing to be appointed as Arbitrator;
- (m) the letter from Marsh agreeing to be appointed as Administrator;
- (n) the letter from Arie Odinocki agreeing to be appointed as Fund Counsel; and
- (o) the affidavit of Gerard Tillman.

AND ON HEARING the submissions of Class Counsel, counsel for the defendant, and being advised that the Children's Lawyer has no objection to this motion and that the Public Guardian and Trustee took no position on this motion,

AND ON BEING ADVISED that all objections delivered to Jennifer Lake have been delivered to the Court by affidavit and hearing oral objections in court,

1. THIS COURT ORDERS that, for the purposes of this judgment, the following definitions apply:

- (a) “**Action**” means the action *James Durling et al. v. Sunrise Propane Energy Group Inc. et al*, court file no. CV-08-363271-00CP including all crossclaims and third party claims;
- (b) “**Administrator**” means **Marsh** or its successor appointed from time to time by the **Court**;
- (c) “**Arbitrator**” means Reva Devins or her successor appointed from time to time by the **Court**;
- (d) “**Claim Form**” or “**Claim Forms**” means claim forms which are substantially in accordance with the forms attached hereto as Schedule “B”;
- (e) “**Claims Bar Date**” means December 19, 2014;
- (f) “**Class Area**” means the area located within the City of Toronto bounded by Keele Street, Highway 401, Sheppard Avenue and Dufferin Street;
- (g) “**Class**” or “**Class Member(s)**” means those persons (who did not validly opt out of this **Action**) who were present or owned or leased or rented or occupied properties located within the area in the City of Toronto bounded by Keele Street, Highway 401, Sheppard Avenue and Dufferin Street (“**Class Area**”) when a series of explosions occurred on August 10, 2008 at the propane facility located at 48/54/62 Murray Road in the City of Toronto (“**Facility**”) excluding the defendants and third parties, and excluding the defendants’ and third parties’ officers, directors, servants or agents”;
- (h) “**Class Counsel**” means Sutts, Strosberg LLP, Charney Lawyers, and Stevensons LLP;
- (i) “**Class Counsel Fees**” means the award for fees, disbursements, interest, GST, and HST to Class Counsel awarded in the **Judgment** in this **Action**;
- (j) “**Costs of Administration**” means all of the costs for the **Administrator**, **Arbitrator** and **Fund Counsel**;
- (k) “**CJA**” means the *Courts of Justice Act*;
- (l) “**CPA**” means *Class Proceedings Act, 1992*;
- (m) “**Court**” means the Ontario Superior Court of Justice;

- (n) **“Distribution Amount”** is the amount to be distributed after paying Class Counsel Fees and the Costs of Administration;
- (o) **“Distribution Plan”** means the Distribution Plan attached as Schedule “A” to the Judgment and the procedures set out for distribution to the Class Members calculated as the **Settlement Amount** less **Class Counsel Fees** and less the **Cost of Administration**;
- (p) **“Facility”** means the propane facility located at 48/54/62 Murray Road in the City of Toronto;
- (q) **“Fund Counsel”** means Arie Odinocki;
- (r) **“Insurer”** or **“Insurers”** means any insurance company of any of the **Class Member(s)** who did not validly opt out in accordance with the certification order made on July 23, 2012;
- (s) **“Judgment”** means the judgment of Justice Conway approving the settlement of this **Action** and the **Distribution Plan**;
- (t) **“Marsh”** means Marsh Risk Consulting Canada;
- (u) **“Ministry of Health”** means the Ministry of Health and Long-Term Care;
- (v) **“Minor”** or **“Minors”** means a person, who as of the date of this judgment, has not attained the age of 18 years;
- (w) **“Notice”** means a notice of the settlement of this **Action** substantially in the form of the **Notice** in English and in Italian attached to the **Judgment** as Schedule “C”;
- (x) **“Notice Program”** means the method of giving **Notice** to the **Class Members** particularized in paragraph 5 of this **Judgment**;
- (y) **“Released Claims”** means any and all claims, injuries, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, contracts, liabilities, agreements, costs and expenses, of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising in the future from the facts asserted in this **Action** or which could have been asserted in this **Action** concerning the explosion and fire on August 10, 2008 at the **Facility**;
- (z) **“Released Crossclaims and Third Party Claims”** means any and all claims, injuries, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, contracts, liabilities, agreements, costs and expenses of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising in the future from the facts asserted in this **Action**, or which could have

been asserted concerning the explosion and fire on August 10, 2008 at the **Facility**;

- (aa) **“Released Parties”** means the defendants, the third parties and Alteng Inc., and their heirs, executors, administrators, estate trustees, employees, parent corporations, related and affiliated corporations, officers, directors, shareholders, partners, servants, agents, successors, assigns and insurers;
- (bb) **“Settlement Amount”** means \$23,345,000 plus interest; and
- (cc) **“SS”** means Sutts, Strosberg LLP.

2. THIS COURT ORDERS AND DECLARES that the Settlement Amount and the Distribution Plan, annexed hereto as Schedule A, which is incorporated by reference into this Judgment, are fair, reasonable and in the best interests of the Class and are hereby approved and the defendants, third parties and their Insurer or Insurers will not be liable to any Class Members for any amount in excess of the Settlement Amount.

3. THIS COURT DECLARES that:

- (a) the defendants, third parties and their Insurers have delivered the Settlement Amount to McCague Borlack LLP, in trust;
- (b) McCague Borlack LLP will hold the Settlement Amount in an interest bearing trust account or GIC; and
- (c) the Settlement Amount and the accrued interest will be delivered to SS in trust within 35 days after the date of this Judgment, or within 35 days of the final disposition of any appeal arising from the Judgment, whichever is later, after which postjudgment interest will be payable at the rate provided for by the *CJA*, or as otherwise agreed between SS and McCague Borlack LLP having regard to the maturity of the term deposits.

4. THIS COURT ORDERS that the Administrator, Arbitrator and Fund Counsel are appointed, each with the duties and responsibilities set out in the Distribution Plan and in this Judgment.

5. THIS COURT ORDERS AND DECLARES that, on or before September 18, 2014, the Administrator must implement the Notice Program, giving Notice of this Judgment and the Distribution Plan, by:

- (a) delivering the Notice by mail drop to all addresses located within the Class Area;
- (b) posting the Notice on the website www.sunrisepropaneclassaction.com;
- (c) emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
- (d) publishing the Notice once in *Corriere Canadese*, a local Italian newspaper in Italian only;
- (e) sending the Notice by email to the Public Trustee and the Children's Lawyer; and
- (f) providing the Notice in English or Italian to any other person who requests it.

6. THIS COURT DECLARES that the Notice Program provided for in paragraph 5 satisfies the requirements of s. 17 of the *CPA*.

7. THIS COURT ORDERS AND APPROVES the Claim Forms which are attached hereto as Schedule "B".

8. THIS COURT ORDERS that each Class Member who qualifies to participate in the Distribution Plan must submit a Claim Form and supporting documentation to the Administrator on or before the Claims Bar Date in accordance with the Distribution Plan.

9. THIS COURT ORDERS that the Administrator shall pay any award to a Class Member who is a Minor to the Accountant of the Superior Court of Justice to the credit of the

Minor, until the Minor attains the age of 18 years, at which time the Accountant shall pay the amount to the Class Member without any further order of the Superior Court of Justice.

10. THIS COURT ORDERS AND DECLARES that, if a Class Member does not submit a Claim Form to the Administrator on or before the Claims Bar Date, the Class Member, and each of their respective heirs, executors and assigns shall be forever barred from participating in the Distribution Plan but shall, in all other respects, be bound by the terms of this Judgment.

11. THIS COURT ORDERS AND DECLARES that each Class Member who did not opt out of this Action and each of their respective heirs, executors, administrators, estate trustees, successors, assigns and insurers:

- (a) fully and finally release the Released Parties from the Released Claims;
- (b) shall not commence or continue against any Released Party any action or take any proceeding relating in any way to or arising from the Released Claims; and
- (c) shall not commence or continue against any person, any action or take any proceeding relating in any way to or arising from the Released Claims, who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief, against any Released Party.

12A. THIS COURT ORDERS AND DECLARES that each of the Released Parties:

- (a) fully and finally release each other from the Released Crossclaims and Third Party Claims;
- (b) shall not commence or continue against any of the Released Parties any action or take any proceeding relating in any way to or arising from the Released Crossclaims and Third Party Claims; and
- (c) shall not commence or continue against any person, any action or take any proceedings relating in any way to or arising from the Released Crossclaims and

Third Party Claims, who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief, against any of the Released Parties.

12B. THIS COURT ORDERS AND DECLARES that the foregoing releases shall not release nor be deemed to affect the claims and rights that the parties to the coverage action, *Intact Insurance Company v. 1367229 Ontario Inc., SSY Marathon Insurance Brokers Inc., Teskey Construction Company Limited and The Dominion of Canada General Insurance Company*, Court File No. CV-09-380884 have or may have against Intact Insurance Company, and SSY Marathon Brokers Inc. and John Moulatziotis (collectively the “Broker”) and ultimately, the Broker’s insurer, Swiss Re.

13. THIS COURT ORDERS AND DECLARES that each Class Member has released its Insurer or Insurers from the obligation to collect the insurance deductible(s) from the defendants and distribute the deductible(s) to each of the Class Members.

14. THIS COURT ORDERS AND DECLARES that, unless a Class Member validly opted out of the Action in accordance with the certification order of Justice Horkins made on July 23, 2012, this Judgment and the Distribution Plan are binding upon each and all of the Class Members and each of their respective heirs, executors, administrators, assigns and Insurers, including those who are Minors or persons under a disability and the requirements of rule 7.08(4) of the *Rules of Civil Procedure* with respect to this Judgment and the Distribution Plan are dispensed with.

15. THIS COURT ORDERS AND DECLARES THAT:

- (a) the Class Counsel Fees are fixed in the amount of \$6,961,000;
- (b) SS is authorized and directed to transfer to the credit of Class Counsel the Class Counsel Fees; and
- (c) the Costs of Administration is fixed in the amount of \$565,000 inclusive of disbursements and HST.

16. THIS COURT ORDERS AND DECLARES that SS will pay the Costs of Administration as follows:

- (a) each month to the Arbitrator her usual fees, disbursements and HST, commencing when she receives her first appeal, to a maximum of \$30,000 inclusive of disbursements and HST;
- (b) each month to Fund Counsel his reasonable fees, disbursements and HST, to a maximum of \$10,000; and
- (c) to the Administrator the amount of \$75,000 immediately before it implements the Notice Program; and \$50,000 per month including disbursements and HST; and the balance, if any, when it is discharged by order of the Court, to a maximum of \$565,000.

17. THIS COURT ORDERS AND DECLARES that:

- (a) the Distribution Amount is \$15,819,000 plus interest; and
- (b) by further order(s), SS will pay to each of the Class Members, the Ministry of Health, the City of Toronto and the Insurers the amounts specified in the Distribution Plan.

18. THIS COURT ORDERS that, if any Class Member retains Class Counsel, or any other lawyer, to appeal from the Administrator's decision, Class Counsel, or any other lawyer, will be limited to charge any Class Member a fee calculated as 7% of the increased amount awarded by the Arbitrator, plus reasonable disbursements and HST, and SS is authorized and directed to pay these amounts.

19. THIS COURT ORDERS AND DECLARES that the Class Counsel Fees awarded in paragraph 15(a) is a first charge on the Settlement Amount in favour of Class Counsel.

20. THIS COURT ORDERS that Class Counsel, the Administrator, Arbitrator or Fund Counsel may make a motion to the Court for directions.

21. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceeding against the Arbitrator, Fund Counsel or the Administrator or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Judgment or the administration of the Settlement Agreement, except with leave of the Court.

22. THIS COURT ORDERS that the subrogated claims of the Ministry of Health and the Ontario Health Insurance Plan for the Class Members are dismissed with prejudice and without further costs and SS will pay the sum of \$24,900 to the Ministry of Health out of the Class Members' share of the Distribution Amount.

23. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Action be and is hereby dismissed, with prejudice and without further costs.

24. THIS COURT ORDERS that a copy of this judgment and Distribution Plan shall be served upon The Children's Lawyer and the Public Guardian and Trustee by email.



JUSTICE CONWAY

1185251v11

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 02 2014

PER / PAR:

A handwritten signature in black ink, appearing to be the initials 'PC'.