

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

DOUGLAS CHARMLEY, NAZALINE INSANALLY,  
FREDERIC NZEYIMANA AND MAUREEN MOLINNUS

Plaintiffs

and

DELTERA CONSTRUCTION LIMITED

Defendant

*Proceeding under the Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

The parties, by their counsel, consent and agree to the settlement of this action, subject to court approval, as follows:

1. An order, generally in the form of the draft order annexed as Appendix 1, shall issue.
2. A judgment, generally in the form of the draft judgment annexed as Appendix 2, shall issue.

3. A distribution shall occur generally in accordance with the Distribution Plan, which is Schedule A to the draft judgment, annexed hereto as Appendix 2.
4. This agreement may be signed in counterparts or by facsimile signature.

Signed as of June 26, 2013

Counsel for the representative plaintiffs:

[Redacted]

Sutts, Strosberg LLP

[Redacted]

Falconer Charney LLP

Counsel for the defendant:

[Redacted]

Stieber Berlach LLP

We hereby also agree:

Witness

Witness

Witness

Witness

#1092608

[Redacted]

Douglas Charmley

[Redacted]

Nazaline Insanally

[Redacted]

Frederic Nzeyimana

[Redacted]

Maureen Molinnus

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )            DAY, THE  
  )              
EDWARD BELOBABA                    )            DAY OF JUNE, 2013

B E T W E E N :

DOUGLAS CHARMLEY, NAZALINE INSANALLY,  
FREDERIC NZEYIMANA AND MAUREEN MOLINNUS

Plaintiffs

and

DELTERA CONSTRUCTION LIMITED

Defendant

*Proceeding under the Class Proceedings Act, 1992*

**ORDER**

THIS MOTION FOR DIRECTIONS, made by the plaintiffs, was heard by Justice Belobaba.

ON BEING ADVISED that the parties have entered into a settlement, subject to court approval,

AND ON READING the materials filed, including the Settlement Agreement and the proposed Distribution Plan,

1. THIS COURT ORDERS that it will conduct a hearing to consider whether or not to approve the proposed settlement and to fix the fees, disbursements and applicable taxes for Class Counsel at a hearing to be held on Friday, July 26, 2013, beginning at 10:00 a.m. (the “Approval Hearing”).

2. THIS COURT ORDERS that on or before June 28, 2013, the Class Members shall be given notice of the Approval Hearing, substantially in the form attached as Schedule “A” to this order (“Notice”), by Class Counsel:

- (a) delivering the Notice by regular mail to every Unit at 3650/3640 Kingston Road;
- (b) emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
- (c) delivering the notice by regular mail to every person who has not provided an email address to Class Counsel and has an address that is not 3650/3640 Kingston Road;
- (d) publishing the Notice once, in a one-quarter page advertisement, in *The Toronto Sun* newspaper;
- (e) posting the Notice at [www.kingstonroadclassaction.com](http://www.kingstonroadclassaction.com);
- (f) sending the Notice by email to the Public Trustee and the Children’s Lawyer; and
- (g) providing the Notice to any other person who requests it.

3. THIS COURT ORDERS that, on or before the Approval Hearing, Class Counsel shall serve and file an affidavit with the Court confirming delivery of the Notices in accordance with paragraph 2.

4. THIS COURT ORDERS that Sarkis Isaac of Howie & Partners, Chartered Accountants be and is hereby appointed to receive any written objections from the Class Members and shall, on or before the Approval Hearing, serve and file a report with the court which compiles all of the written objections received by him.

5. THIS COURT ORDERS that Class Members must submit their objections, in writing to Sarkis Isaac by mail, fax or email, by no later than 5:00 pm eastern time on July 24, 2013:

by mail to: Kingston Road Class Action  
Attention: Sarkis Isaac  
Howie & Partners, Chartered Accountants  
3063 Walker Road  
Windsor ON N8W 3R4

or by fax to: 519.250.1929

or by email to: [classaction@howieandpartners.com](mailto:classaction@howieandpartners.com)

6. THIS COURT ORDERS that any written objections to the proposed settlement should include the following:

- (a) the Class Member's name, address, telephone number, fax number (if applicable) and email address (if applicable);
- (b) if the Class Member is deceased or otherwise incapable of making his or her own objection, the contact information of the person acting on behalf of the Class Member, together with a copy of the power of attorney, or court order, or other authorization to permit such person to represent the Class Member;

- (c) a brief statement of the nature of and reason for the objection; and
- (d) whether the Class Member intends to appear at the Approval Hearing in person, or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.

Schedule "A"

**NOTICE OF PROPOSED SETTLEMENT OF THE  
3650/3640 KINGSTON ROAD EXPLOSION CLASS ACTION**

This Notice may affect your rights. Please read carefully.

**PURPOSE OF THIS NOTICE**

This class action concerns the explosion and fire at 3650/3640 Kingston Road, in Toronto, Ontario ("3650 Kingston Road") on March 19, 2009.

This notice is directed to Class Members who are those persons, excluding Deltera Construction Limited ("defendant") and its officers, directors, servants or agents, who on March 19, 2009:

- (i) rented a condominium, apartment, townhouse or other utilizable space at 3650 Kingston Road (a "Unit"); or
- (ii) ordinarily resided in a Unit; or
- (iii) was present in a Unit but was not ordinarily resident in that Unit; or
- (iv) owned or had an interest in property located in or on a Unit; or
- (v) owned some or all of the Units.

The parties in the class action have reached a proposed settlement subject to the approval of the court. The defendant will pay \$5,550,000 (which may be topped up to \$6,000,000 by the defendant under certain conditions) ("Settlement Amount") in full and final settlement of all claims, including Class Counsel fees, disbursements, taxes, and administration costs, in return for a release and a dismissal of the class action. The defendant does not admit wrongdoing or liability. This settlement is a compromise of disputed claims.

**SUMMARY OF THE SETTLEMENT TERMS**

The following compensation funds will be available to Class Members:

\$1,600,000 fund for INCONVENIENCE and LOST USE: each Class Member who ordinarily resided in a Unit and was displaced can claim \$1,500 per month of displacement up to a maximum of \$4,500 per Class Member;

\$300,000 fund for UNINSURED LIVING EXPENSES: each Class Member can claim for uninsured living expenses incurred when they were displaced from living in their Units;

\$300,000 fund for REDUCTION IN VALUE OF UNITS: each Class Member who owned a Unit can claim from between \$400 to \$1,600, depending on their Unit size;

\$200,000 fund for LOST INCOME and LOST RENTAL INCOME: each Class Member may claim for lost income, and each Class Member who owned a Unit may claim for lost rental income;

\$50,000 fund for INSURANCE DEDUCTIBLES: each Class Member can claim to be reimbursed for their insurance deductibles;

\$550,000 fund for INSURANCE COMPANIES: each subrogated insurer will be partially compensated for the money they spent fixing damage to the Units and other expenses associated with the explosion;

\$50,000 fund for the MINISTRY of HEALTH & LONG-TERM CARE to be partially compensated for the health care services provided to Class Members as a result of the explosion;

\$450,000 PERSONAL INJURY FUND which may be topped up to a maximum \$950,000 by the defendant: each Class Member who sustained physical or psychiatric injuries as a result of the explosion can make a claim under the following categories:

AMOUNT	TYPE OF PHYSICAL INJURY	LEVEL OF PROOF
\$500	Minor physical injuries such as sprains, cuts bruises	No medical records required.
\$2,500 + medical expenses & costs of medical records not covered by insurance	Musculo-skeletal (soft tissue) injuries	Injuries must be documented with contemporaneous medical records.
\$25,000 + medical expenses & costs of medical records not covered by insurance	Orthopedic injuries such as broken bones, sprains, fractures which are healed with no ongoing impairment	Injuries must be documented with contemporaneous medical records.
\$50,000 + all pecuniary damages not covered by insurance or such amount assessed by the Arbitrator	Permanent serious impairment of an important bodily function	Injuries must be documented with contemporaneous medical records with a letter from a specialist

AMOUNT	TYPE OF PSYCHIATRIC INJURY	LEVEL OF PROOF
\$500	Anxiety, fearfulness, nightmares, emotional distress or temporary exacerbation of another physical or emotional issue	No medical records required.
\$2,500 + medical expenses & costs of medical records not covered by insurance	Psychiatric disorder with resolution of symptoms within 90 days	Letter from doctor, psychologist or psychiatrist required.
\$10,000 + medical expenses & costs of medical records not covered by insurance	Psychiatric disorder with resolution of symptoms between 91 days and 1 year	Contemporaneous medical records and a letter from psychiatrist or psychologist required.
\$15,000 + medical expenses & costs of medical records not covered by insurance	Psychiatric disorder with symptoms that exceed 1 year and resolution of symptoms by December 31, 2012	Contemporaneous medical records and a letter from psychiatrist or psychologist required.
\$25,000 + medical expenses & costs of medical records not covered by insurance	Psychiatric disorder with no resolution of symptoms	Contemporaneous medical records and a letter from psychiatrist or psychologist required.
\$50,000 + all pecuniary damages not covered by insurance or such amount assessed by the Arbitrator	Chronic psychiatric disorder with a level of impairment that impedes useful functioning	Contemporaneous medical records, letter from a psychologist or psychiatrist & medical records evidencing medical treatment since explosion consistent with this diagnosis.

The charts above are a summary of the disorders and proof is required. The Class Members will bear their own costs of medical records and doctors' notes, if required.

All claims for compensation must be accompanied by supporting documentation and must be approved by the Administrator. In some cases, disputes about compensation will be settled by the Arbitrator.

In the event that there are excess funds available after all claims are paid in full, the excess funds will be paid to Toronto Standard Condominium Corporation No. 1806. In the event that there are insufficient funds to pay the claims, the awards will be reduced *pro rata*.

### ADMINISTRATION COSTS & CLASS COUNSEL FEES

The costs of the Administrator and Arbitrator will be paid from the Settlement amount, and will not exceed \$425,000. The court must approve all payments to the Administrator and Arbitrator.

Class Counsel will be paid \$1,575,000 from the Settlement Amount for their fees, disbursements and taxes thereon. The court must approve all payments to Class Counsel.

### THE APPROVAL HEARING

At the Approval Hearing, the court will be asked to approve the proposed settlement. The Approval Hearing will be held on Friday July 26, 2013 at 10:00 am ET at Osgoode Hall, 130 Queen St. W., Toronto, courtroom 5. Class Members who do not oppose the proposed settlement do not need to appear at the Approval Hearing or take any other action at this time to indicate their intention to participate in the proposed settlement.

If the court approves the settlement, there will be a further detailed notice to the Class Members which will provide instructions about making a claim for compensation.

### OBJECTIONS TO THE PROPOSED SETTLEMENT

Class Members' objections to the proposed settlement must be submitted no later than 5:00 pm ET on July 24, 2013. At the Approval Hearing, the judge will consider Class Members' objections to the proposed settlement. Class Members who object, may, but are not required to attend the Approval Hearing. Written objections may be sent to by mail, fax or email to:

mail: Kingston Road Class Action  
Attention: Sarkis Isaac, Howie & Partners  
3063 Walker Road  
Windsor ON N8W 3R4  
fax: 519.250.1929  
email: classaction@howieandpartners.com

Written objections must include the following information:

- the Class Member's name, address, telephone number and email address; and
- a brief statement of the nature and reasons for the objection; and
- confirmation that the objector is a Class Member or their relationship to a Class Member; and
- whether the objector intends to appear at the Approval Hearing in person or whether they will be represented by counsel.



## **TOWN HALL MEETING TO ANSWER QUESTIONS**

Lawyers from Sutts, Strosberg LLP and Falconer Charney LLP will be at a town hall meeting to explain the settlement to you and to answer your questions. This is your chance to speak to Class Counsel and to better understand the proposed settlement:

WHEN: Wednesday, July 3, 2013 at 7:00 pm  
WHERE: Scarborough Village Community Centre  
3600 Kingston Road

Any questions regarding this notice or the proposed settlement should be directed to:

Sharon Strosberg  
SUTTS, STROSBURG LLP  
600-251 Goyeau Street  
Windsor ON N9A 6V4  
Tel: 519.561.6296  
Fax: 519.561.6203  
Email: [sharon@strosbergco.com](mailto:sharon@strosbergco.com)

Ted Charney  
FALCONER CHARNEY LLP  
8 Prince Arthur Avenue  
Toronto ON M5R 1A9  
Tel: 416.964.3408 x221  
Fax: 416.929.8179  
Email: [tedc@charneylawyers.com](mailto:tedc@charneylawyers.com)

## **INTERPRETATION**

This Notice has been approved by the court and is a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the terms of the settlement agreement, the settlement agreement prevails. The complete settlement agreement can be found at [www.kingstonroadclassaction.com](http://www.kingstonroadclassaction.com)

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE            )   FRIDAY, THE 26<sup>TH</sup>  
  )     
EDWARD BELOBABA                    )   DAY OF JULY, 2013

B E T W E E N :

DOUGLAS CHARMLEY, NAZALINE INSANALLY,  
FREDERIC NZEYIMANA AND MAUREEN MOLINNUS

Plaintiffs

and

DELTERA CONSTRUCTION LIMITED

Defendant

*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 Friday, July 26, 2013 at the Court House, **insert address**, Toronto, Ontario.

ON READING the materials filed, including the following:

- (a) the affidavits of (**insert list of affidavits: to be determined**)

- (b) the letters from The Children’s Lawyer and the Public Guardian and Trustee; and
- (c) the Distribution Plan attached as Schedule “A”

AND ON HEARING the submissions of Class Counsel, counsel for the defendant, and being advised that The Children’s Lawyer and the Public Guardian and Trustee **(insert positions)**,

AND ON BEING ADVISED that all objections **(insert particulars prior to the approval hearing)**.

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

- (a) **“3650 Kingston Road”** means the **Units** located at 3640-3650 Kingston Road, in Toronto, Ontario which include, but is not limited to, the following:
  - (i) studio apartments;
  - (ii) one bedroom apartments;
  - (iii) one bedroom plus den apartments;
  - (iv) two bedroom apartments;
  - (v) two bedroom plus den apartments;
  - (vi) three bedroom townhouses; and
  - (vii) four bedroom townhouses

**TOTAL: APPROXIMATELY 264 UNITS**
- (b) **“Action”** means the action *Charmley et al. v. Deltera Construction Limited*, court file no. 09-375391-00CP;
- (c) **“Administrator”** means **insert** or its successor appointed from time to time by the **Court**;
- (d) **“Arbitrator”** means Reva Devins or her successor appointed from time to time by the **Court**;
- (e) **“Claim Form”** or **“Claim Forms”** means claim forms which are substantially in accordance with the forms attached hereto as Schedule “C”;

- (f) **“Claims Bar Date”** means **insert date**;
- (g) **“Class” or “Class Member(s)”** means those persons, excluding **Deltera** and its officers, directors, servants or agents, who, on Thursday, March 19, 2009:
  - (i) rented a **Unit**; or
  - (ii) ordinarily resided in a **Unit**; or
  - (iii) was present in a **Unit** but was not ordinarily resident in that **Unit**; or
  - (iv) owned or had an interest in property located in or on a **Unit**; or
  - (v) owned some or all of the **Units**;
- (h) **“Class Counsel”** means Sutts, Strosberg LLP and Falconer Charney LLP;
- (i) **“CPA”** means *Class Proceedings Act, 1992*;
- (j) **“Court”** means the Ontario Superior Court of Justice;
- (k) **“Distribution Plan”** means the plan for distributing the **Settlement Amount** less the disbursements, fees and taxes thereon payable to **Class Counsel**;
- (l) **“Deltera”** means Deltera Construction Limited and its employees, officers, directors, servants, related and/or affiliated companies and agents;
- (m) **“Insurer”** means any insurance company of any of the Class Member(s);
- (n) **“Notice”** means a notice of the **Settlement** of this **Action** substantially in the form of the **Notice** attached as Schedule “D”;
- (o) **“Notice Program”** means the method of giving **Notice** to the **Class Members** particularized in paragraph 5;
- (p) **“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 March 19, 2009 at **3650 Kingston Road**;
- (q) **“Released Parties”** means **Deltera** and **Deltera’s** employees, officers, directors, servants, agents and **Deltera’s** insurers;
- (r) **“Settlement Amount”** means maximum of \$6,000,000, or the minimum of \$5,500,000; and

- (s) **“Unit”** means the apartments, townhouses, lockers or other utilizable space particularized in paragraph 1(a).

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. The defendant nor its insurer, or insurers, will be liable to any Class Members for any amount in excess of the maximum settlement about set out in the Distribution Plan annexed hereto as Schedule A.

3. THIS COURT DECLARES that the defendant and/or its insurer have delivered the Settlement Amount to Sutts, Strosberg LLP, in trust.

4. THIS COURT ORDERS that the Administrator and the Arbitrator 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 **insert date**, the Notice Program, giving Notice of this judgment and the Distribution Plan, must be implemented as follows by the Administrator:

- (a) delivering the Notice by regular mail to every Unit at 3650 Kingston Road;
- (b) emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
- (c) delivering the Notice by regular mail to every person who has not provided an email address to Class Counsel and has an address that is not 3650 Kingston Road;

- (d) publishing the Notice once, in a one-quarter page advertisement, in *The Toronto Sun* newspaper;
- (e) posting the Notice at [www.kingstonroadclassaction.com](http://www.kingstonroadclassaction.com);
- (f) sending the Notice by email to the Public Trustee and the Children's Lawyer; and
- (g) providing the Notice 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 "C".

8. THIS COURT ORDERS that each Class Member who qualifies to participate in the Distribution Plan must submit to the Administrator a Claim Form and the required supporting documentation 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 minor 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, that 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, Insurers and each of their respective heirs, executors, administrators, estate trustees and assigns:

- (a) fully and finally releases 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.

12. THIS COURT ORDERS AND DECLARES that, unless a Class Member successfully opted out of the Action, in accordance with the certification order of Justice Strathy made on December 10, 2010, this judgment and the Distribution Plan are binding upon all of the Class Members and each of their respective heirs, executors, administrators and assigns including those who are minors, unborn persons 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.

13. THIS COURT ORDERS that Sutts, Strosberg LLP:

- (a) is authorized and directed to pay to Class Counsel the sum of \$1,575,000 for Class Counsel fees, including disbursements and taxes; and

- (b) by further order, will pay to each of the Class Members the amounts specified in the Distribution Plan.

14. 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 or any Family Class Member, 7% of the increased amount awarded by the Arbitrator, plus reasonable disbursements and taxes and Sutts, Strosberg LLP is authorized and directed to pay these amounts.

15. THIS COURT ORDERS AND DECLARES that the Class Counsel fees, disbursements and taxes awarded in paragraphs 13 and 14 constitute a first charge against the Settlement Amount in favour of Class Counsel.

16. THIS COURT ORDERS that the total amount payable for the administration of this settlement to the Arbitrator and the Administrator, collectively, for their fees, disbursements and HST for the performance of their duties pursuant to this judgment and the Distribution Plan is fixed at \$425,000 for fees, disbursements and HST.

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

18. THIS COURT ORDERS that the subrogated claims of the Ministry of Health and Long Term Care and the Ontario Health Insurance Plan for the Class Members are dismissed



with prejudice and without further costs and Sutts, Strosberg LLP may pay the sum of \$50,000 to the Ministry of Health and Long Term Care.

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

20. 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.

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JUSTICE

SCHEDULE "A"

**DISTRIBUTION PLAN**

**INTERPRETATION**

1. The following definitions apply for the purposes of this Distribution Plan:
  - (a) **"3650 Kingston Road"** means the **Units** located at 3640-3650 Kingston Road, in Toronto, Ontario which include, but is not limited to, the following:
    - (i) studio apartments;
    - (ii) one bedroom apartments;
    - (iii) one bedroom plus den apartments;
    - (iv) two bedroom apartments;
    - (v) two bedroom plus den apartments;
    - (vi) three bedroom townhouses; and
    - (vii) four bedroom townhouses;Total approximately 264 Units
  - (b) **"Action"** means the action *Charmley et al. v. Deltera Construction Limited*, court file no. 09-375391-00CP;
  - (c) **"Administrator"** means • or its successor appointed from time to time by the **Court**;
  - (d) **"Arbitrator"** means Reva Devins or her successor appointed, from time to time, by the **Court**;
  - (e) **"Claim Form"** means the claim form approved by the Court for use under this **Distribution Plan**;
  - (f) **"Claims Bar Date"** means November 1, 2013;
  - (g) **"Class" or "Class Members"** means those persons, excluding **Deltera** who, on Thursday, March 19, 2009:
    - (i) rented a **Unit**; or
    - (ii) ordinarily resided in a **Unit**; or
    - (iii) was present in a **Unit** but was not ordinarily resident in that **Unit**; or

- (iv) owned or had an interest in property located in or on a **Unit**; or
- (v) owned some or all of the **Units**;
- (h) **“Class Counsel”** means Sutts, Strosberg LLP and Charney Lawyers;
- (i) **“Class Counsel’s Fees”** means the award for fees, disbursements and taxes to Class Counsel awarded in the judgment in this **Action**;
- (j) **“Condo Corporation”** means Toronto Standards Condominium Corporation No. 1806;
- (k) **“Cost of Administration”** means a fixed fee of \$425,000 for notice, fees, disbursements and taxes for the **Administrator** and **Arbitrator**;
- (l) **“CPA”** means *Class Proceedings Act, 1992*;
- (m) **“Court”** means the Ontario Superior Court of Justice;
- (n) **“Distribution Plan”** means this plan and the procedures set out herein for distributing the Settlement Amount less **Class Counsel’s Fees** and the **Costs of Administration**;
- (o) **“Deltera”** means Deltera Construction Limited and its employees, officers, directors, servants and agents;
- (p) **“DSM-5”** means American Psychiatric Association Diagnostic and Statistical Manual, 5<sup>th</sup> edition;
- (q) **“Insurer”** means any insurance company of any of the Class Member(s)
- (r) **“Judgment”** means the judgment of Justice Belobaba approving the settlement of this **Action** and the **Distribution Plan**;
- (s) **“Ministry of Health”** means the Ministry of Health and Long-Term Care;
- (t) **“Notice”** means a notice of the **Settlement** of this **Action** substantially in the form of the **Notice** attached as Schedule “D”;
- (u) **“Notice Program”** means the method of giving **Notice** to the **Class Members** particularized in paragraph 5 of the **Judgment**;
- (v) **“Settlement Amount”** means maximum of \$6,000,000, or the minimum of \$5,500,000; and
- (w) **“Unit”** means the apartments, townhouses, lockers or other utilizable space particularized in paragraph 1(a).

**RECEIPT OF THE MINIMUM OF THE SETTLEMENT AMOUNT AND DISTRIBUTION OF THE SETTLEMENT AMOUNT**

2. The insurer of Deltera will pay to Sutts, Strosberg LLP, before the approval hearing, the amount of \$5,500,000, subject to a top-up described in paragraphs 81 to 84 with respect to personal injury claims. Sutts, Strosberg LLP will pay and reserve the following amounts:

Minimum Settlement Amount	\$5,500,000
Reserve and pay the fixed fee for Notice, Administration & Arbitration other than the Personal Injury Arbitrations	(425,000)
Reserve and pay for Class Counsel fees, disbursements and taxes	(1,575,000)
Balance	3,500,000
Reserve and pay to the Ministry of Health up to	50,000
Reserve for Class Members who were Ordinarily Resident and Lost the Use of a Unit and Guests	1,600,000
Reserve for Subrogated Losses	550,000
Reserve for Deductibles	50,000
Reserve for Reduction in Value of the Units	300,000
Reserve for Additional Living Expenses that Were Incurred and Were Not Paid by an Insurance Company	300,000
Reserve for Loss of Income and Loss of Rental Income	200,000
Physical Injuries and Psychiatric Injuries: minimum \$450,000 to a maximum of \$950,000	450,000

**PAYMENT TO THE MINISTRY OF HEALTH**

3. Sutts, Strosberg LLP will pay the Ministry of Health the sum of \$50,000 in full settlement of Class Members' claim for medical and hospital services in the Action.

**POWERS AND RESPONSIBILITIES OF THE ADMINISTRATOR**

4. The Administrator is appointed to fulfill the duties and responsibilities set out in the Judgment and this Distribution Plan including but not limited to the following:
- (a) give notice of the settlement of this action in accordance with paragraph 5 of the Judgment;
  - (b) establish an electronic, secure, private system for communicating with the Administrator, Arbitrator, Class Counsel, counsel for the defendant, the Public Trustee, the Children's Lawyer and Class Members;
  - (c) forward all documents electronically to all authorized persons.
  - (d) receive all notices of appeal;
  - (e) distribute all decisions for the Arbitrator;
  - (f) establish a toll-free (or local 416 or 647 phone number) which will be designated as a help line for Class Members with questions about the Claim Forms and the claims process;
  - (g) draft the Claim Forms with the input of Class Counsel;
  - (h) receive and process Claim Forms and other documentation as provided in the Judgment and this Distribution Plan;
  - (i) decide whether persons are eligible Class Members and communicate those decisions;
  - (j) determine what level of compensation Class Members are entitled to receive and communicate those decisions;
  - (k) maintain all necessary records;
  - (l) make any calculations;
  - (m) perform all necessary accounting functions;
  - (n) make any decisions necessary for the orderly administration of this settlement;  
and
  - (o) report to the Court when required.

**POWERS AND RESPONSIBILITY OF THE ARBITRATOR**

5. The Arbitrator is appointed to fulfill the duties and responsibilities set out in the Judgment and this Distribution Plan including but not limited to the following:

- (a) deal with all disputes requiring a determination including, without limitation, question of fact, law or mixed fact and law;
- (b) establish a summary procedure to determine each dispute;
- (c) enter into mediation and/or arbitration proceedings as she establishes; and
- (d) deliver all decisions in writing to the Administrator for distribution within 30 days of completion of the hearing or process.

6. The decisions of the Arbitrator shall be final and conclusive and there shall be no appeal from her decisions whatsoever.

**INFORMATION ABOUT THE CLASS MEMBERS**

7. Class Counsel have information for about 332 Class Members who resided in 201 Units.

The Distribution Plan is based on the following formula:

$$\frac{332 \text{ persons}}{201 \text{ Units}} = 1.65 \text{ persons/Unit} \times 264 \text{ Units} = 436 \text{ Class Members} - 3 \text{ opt outs} = 433 \text{ Class Members}$$

8. Class Counsel will deliver this information about Class Members to the Administrator.

**THE CLAIMS PROCESS**

9. Each Class Member, who did not opt out of the Action, must submit a Claim Form electronically by the internet, unless the Administrator agrees in advance to receive the Claim Form, by fax or mail, on or before the Claims Bar Date, to claim compensation under this Distribution Plan.
10. If a Class Member is:
- (a) deceased, the Claim Form must be submitted electronically by the estate trustee or by the spouse or by any other of his or her Family Class Members; or
  - (b) a mentally incapable person, the Claim Form must be submitted electronically by the Guardian of Property or the Attorney for Property or by the Public Trustee or by the spouse or by any other of his or her Family Class Members.
11. If a Class Member is:
- (a) under the age of 18, he or she must be represented by her/his parent(s) or person(s) with custody or the Children's Lawyer and 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 minor without any further order of the Superior Court of Justice; or
  - (b) a mentally incapable person, she/he must be represented by her/his Guardian of Property or the Attorney for Property or by the Public Trustee or by a spouse.
12. The Claimant must establish, on the balance of probabilities to the Administrator, that he or she or it was a Class Member and he or she or it is entitled to receive payment(s) under the Distribution Plan.
13. The Administrator must make its decision within 30 days of receipt of all claims.

14. The Claimant or the Class Member has the right within 30 days of receiving the Administrator's decision to appeal to the Arbitrator by delivering an appeal to the Administrator electronically.

15. The Arbitrator will establish a summary procedure given the nature of the heads of damage.

16. The Arbitrator, within 30 days, will communicate each of her decisions in writing, electronically, or by mail if requested, to all authorized persons, including the Administrator.

17. The decisions of the Arbitrator are final.

**CATEGORY 1: CLASS MEMBERS WHO WERE ORDINARILY RESIDENT AND LOST THE USE OF A UNIT AND GUESTS**

18. Under this category, the amount of \$1,600,000 is reserved.

19. The Administrator will award \$1,500 per month, to a maximum of \$4,500, to each Class Member who was ordinarily resident in a Unit on March 19, 2009 and lost the use of a Unit.

20. If a Class Member was present, but not ordinarily resident in the Unit (a Guest) on March 19, 2009, he or she will receive \$200.

21. Paragraphs 13 to 17 will apply to the Class Member's claim in this category.



22. If the Class Members' total claims in this Category exceeds \$1,600,000, the Class Members will be paid pro rata subject to paragraph 87.

**CATEGORY 2: SUBROGATED LOSSES**

23. Under this category, the amount of \$550,000 is reserved.

24. Each Insurer of a Class Member must submit a Claim Form and supporting documents, including the Class Members' proofs of loss, particulars of replacement cost items and their actual cash value, and particulars of the deductible(s) for each Class Member.

25. Each Insurer of a Class Member and the insured Class Member must submit separate Claim Forms.

26. Paragraphs 13 to 17 will apply to Subrogated Losses.

27. If the Insurers' total claims in this Category exceeds \$550,000, the insurers will be paid pro rata subject to paragraph 87.

**CATEGORY 3: DEDUCTIBLES**

28. Under this Category, the amount of \$50,000 is reserved. Each Deductible is in the amount that each insurer deducted from each Class Member's insurance claim which was paid.

29. If the insurer does not submit appropriate documentation to the satisfaction of the Administrator, the Class Member must demonstrate that she or he was charged a Deductible.
30. Paragraphs 13 to 17 will apply to the Class Members claim in this category.
31. If the Class Members' total claims in this Category exceeds \$50,000, the Class Member will be paid pro rata subject to paragraph 87.

**CATEGORY 4: REDUCTION IN VALUE OF THE UNIT**

32. Under this category, the amount of \$300,000 is reserved.
33. The "grid" for the devaluation of the Units follows:

<b>Description of Units</b>	<b>Per Unit</b>
studio apartments	\$400
one bedroom apartments	\$600
one bedroom plus den apartments	\$800
two bedroom apartments	\$1,000
two bedroom plus den apartment	\$1,200
three bedroom townhouses	\$1,400
four bedroom townhouses	\$1,600
<b>Total approximately 264 Units</b>	

34. The Class Member must prove that he, she and/or it was the owner of a Unit on March 19, 2009.
35. Paragraphs 13 to 17 apply to Devaluation of the Units.

36. If the Class Members' total claims in this Category exceed \$300,000, the Class Members will be paid pro rata subject to paragraph 87.

**CATEGORY 5: ADDITIONAL LIVING EXPENSES THAT WERE INCURRED AND WERE NOT PAID BY AN INSURANCE COMPANY**

37. Under this category, the amount of \$300,000 is reserved. Receipts are required for this Category.

38. Class members will not be compensated for manual work that he and/or she did personally to repair and/or clean the Unit and/or repair or clean chattels.

39. Paragraphs 13 to 17 will apply to the Class Member's claim in this category.

40. If the Class Members' total claims in this Category exceed \$300,000, the Class Members will be paid pro rata subject to paragraph 87.

**CATEGORY 6: LOSS OF INCOME AND LOSS OF RENTAL INCOME**

41. Under this Category, the amount of \$200,000 is reserved. The Category does not apply to Class Members who advance a Level 4 Physical Injury claim or a Level 6 Psychiatric Injury claim.

42. Class Members must submit reliable documentation as proof of loss of income and loss of rental income.

43. Paragraphs 13 to 17 will apply to Loss of Income.

44. If the Class Members' total in this Category exceeds \$200,000, the Class Members will be paid pro rata subject to paragraph 87.

**CATEGORY 7: PHYSICAL INJURIES**

**LEVEL 1: \$500**

45. Symptoms: Minor injuries sustained during explosion/evacuation which are completely healed. Sprains, cuts, bruises. No contemporaneous visit to a doctor or medical records required.

46. Sworn statement from the Class Member describing their injuries and their duration.

**LEVEL 2: \$2,500 plus medical expenses and costs of records not covered by insurance**

47. Symptoms: Musculo-skeletal (soft tissue) injuries sustained during explosion/evacuation which lasted up to 6 months.

48. Sworn statement from the Class Member with contemporaneous medical records.

**LEVEL 3: \$25,000 plus medical expenses and costs of records not covered by insurance**

49. Orthopedic injuries such as broken bones, fracture, muscle tears, ligament damage sustained during explosion/evacuation which healed with no serious, ongoing impairments.

50. Injuries must be documented by contemporaneous medical records and any imaging which was done. Claims for medical expenses not covered by insurance must be supported by a letter from a doctor or health practitioner qualified to recommend the medical expenses for which payment is sought.

**LEVEL 4: \$50,000 plus all pecuniary damages, not covered by insurance or such amount assessed by an Arbitrator**

51. Permanent, serious impairment of an important bodily function caused by physical injuries sustained during the explosion/evacuation.

52. Injuries must be documented by the Class Member's contemporaneous medical records and any imaging which was done, plus a letter from a specialist identifying the nature of the injury and expressing an opinion on how the Class Member's injury meets the grid criteria.

53. Level 4 Class Members may elect to have their claim assessed by an arbitrator. Class Members making this request must submit a report from a doctor which provides an opinion that the injuries meet the level four criteria. The arbitrator can award disbursements associated with the Class Member's Level 4 claim.

**CATEGORY 8: PSYCHIATRIC INJURIES**

**LEVEL 1: \$500.00**

54. Anxiety, fearfulness, nightmares, sleeplessness, irritability, emotional distress or the temporary exacerbation of other physical or emotional issues or problems of a person including

such diverse conditions as heart condition, asthma, depressions, substance abuse, paranoia or other psychiatric conditions as a result of the explosion/evacuation/displacement.

55. Sworn statement describing the psychiatric injury and its duration.

56. Contemporaneous medical records are not required.

**LEVEL 2: \$2500.00 plus medical expenses and costs of records not covered by insurance**

57. Psychiatric disorder as defined in DSM-5 with resolution of symptoms within 90 days.

58. Letter from a psychiatrist or psychologist or physician identifying a psychiatric disorder and expressing the opinion the disorder was sustained as a result of the explosion / evacuation / displacement, with resolution of symptoms within 90 days.

59. Contemporaneous records are not required.

**LEVEL 3: \$10,000 plus medical expenses and costs of records not covered by insurance**

60. Psychiatric disorder as defined in DSM-5 where the duration of the symptoms was more than 90 days with resolution of the symptoms within one year.

61. Letter from a psychiatrist or psychologist identifying a psychiatric disorder sustained and expressing the opinion the disorder was sustained as a result of the explosion / evacuation / displacement where the duration of the symptoms was more than 90 days with resolution within

one year. If a claim for medical expenses not covered by insurance is made, the letter from the psychiatrist or psychologist must support the need for the medical expenses not covered by insurance.

62. Contemporaneous records are required.

**LEVEL 4: \$15,000 plus medical expenses and cost of records not covered by insurance**

63. Psychiatric disorder as defined in DSM-5 where the duration of the symptoms exceeded one year with resolution of the symptoms by December 31, 2012.

64. Letter from a psychiatrist or psychologist identifying a psychiatric disorder sustained and expressing the opinion the disorder was sustained as a result of the explosion / evacuation / displacement with symptoms exceeding one year and resolution by December 31, 2012. If a claim for medical expenses not covered by insurance is made, the letter from the psychiatrist or psychologist must support the need for the medical expenses not covered by insurance.

65. Contemporaneous records are required.

**LEVEL 5: \$25,000 plus medical expenses and cost of records not covered by insurance.**

66. Psychiatric disorder as defined in DSM-5 with no resolution of symptoms.

67. Letter from a psychiatrist or psychologist identifying a psychiatric disorder and expressing the opinion the disorder was sustained as a result of the explosion / evacuation /

displacement with ongoing symptoms. If a claim for medical expenses not covered by insurance is made, the letter from the psychiatrist or psychologist must support the need for the medical expenses not covered by insurance.

68. Contemporaneous medical records are required.

**LEVEL 6: \$50,000 plus all pecuniary damages not covered by insurance or such amount to be assessed by an Arbitrator.**

69. A chronic psychiatric disorder as defined in DSM-5 causing a level of impairment that significantly impedes useful functioning in at least one of four aspects: limitations in activities of daily living; social functioning; concentration, persistence, and pace; and deterioration or decompensation in work or work-like settings as described in chapter 14 of the American Medical Association Guides to the Evaluation of Permanent Impairment fourth edition.

70. Letter from a psychiatrist identifying a chronic psychiatric disorder and explaining why there exists a marked impairment caused by the disorder and expressing the opinion that the marked impairment and disorder was caused by the explosion.

71. The Class Member must submit medical records evidencing that he or she underwent some medical treatment since the explosion consistent with this type of diagnosis.

72. Level 6 Class Members may ask the Claims Administrator to have their claim assessed by an arbitrator. Claimants making this request must submit a report from a psychiatrist which



provides an opinion that the alleged psychiatric disorder meets the level six criteria. The arbitrator can award disbursements associated with the Class Member's Level 6 claim.

**MISCELLANEOUS PROVISIONS APPLICABLE TO PHYSICAL INJURIES AND PSYCHIATRIC INJURIES**

73. The Class Member must describe his or her physical injuries in his or her Claim Form.
74. The Administrator must make its decision in writing in 30 days and deliver the decision to the Class Member, Deltera and Class Counsel.
75. The Class Member, or Deltera, or the Class Counsel may deliver a notice of appeal to the Arbitrator within 30 days.
76. The Arbitrator will establish a summary procedure consistent with the nature of physical and/or psychiatric injuries being alleged in the claims.
77. The Arbitrator will make her decision within 30 days of the hearing.
78. There is no right of appeal from the Arbitrator's decision.
79. Sworn statements in paragraphs 46 and 48 means that the Claim Form contains the following words: "I swear the contents of this application is true".

80. Deltera does not have the right to participate in the Distribution Plan except as in Category 7: Physical Injuries and Category 8: Psychiatric Injuries, but not in paragraphs 45, 47, 54 and 57.

**TOP-UP OF THE SETTLEMENT AMOUNT**

81. The Administrator must calculate the total amount of accepted Claims in Category 7: Physical Injury and Category 8: Psychiatric Injury and the cost of the Arbitrator to arbitrate the costs of these claims (“Total Cost of Claims”).

82. If the Total Cost of Claims is less than \$450,000, Deltera will not pay any further amounts to increase the minimum Settlement Amount.

83. If the Total Cost of Claims is more than \$450,000, Deltera must increase the minimum Settlement Amount by the difference between the Total Cost of Claims and \$450,000, to a maximum of \$950,000, an additional \$500,000.

84. Within 15 days of receiving this accounting from the Administrator, Deltera must pay the top-up amount, if any, to Sutts, Strosberg LLP or move to the Court for direction about the top-up of the Settlement Amount.

**EXCESS FUNDS OR INSUFFICIENT FUNDS**

85. After all the eligibility challenges, awards and appeals are final, the Administrator must total all awards in each Category separately.

86. If the total amount awarded to each Class Member, in each Category, is more than the allocated money in each Category, the payment to each Class Member shall be reduced pro rata in each Category, and the amount of insufficiency in each Category must be calculated.

87. If the total amount awarded to each Class Member in some Categories are paid in full and a surplus calculated, then the surplus must be used pro rata from any insufficiently funded Categories.

88. If after these reallocations are calculated and each Class Member receives all of the awards, and if any surplus is calculated, the surplus will be paid to the Condo Corporation.

**REPORTING TO THE COURT AND DISTRIBUTION OF SETTLEMENT FUNDS**

89. After all eligibility challenges, awards and appeals are final, the Administrator shall report to the Court, Class Counsel, counsel for the Deltera, the Children's Lawyer and the Public Trustee, listing each Class Member and the amount that he or she will receive under this plan.

90. If the Court is satisfied with the Administrator's report, the Court shall approve the distribution and/or make any other order that the Court deems appropriate.

91. The Administrator shall deliver the report Class Counsel, Deltera's counsel, the Children's Lawyer, the Public Trustee and any other person that the Court orders. The Court will decide whether or not this report will be sealed in whole or in part.

92. After distributing the cheques to the Class Members, inevitably there will be some cheques that will not be cashed. After 3 months, the residue will be paid to the Condo Corporation.

DOUGLAS CHARMLEY et al. vs. DELTERA CONSTRUCTION LIMITED  
Plaintiffs

Defendant

Court File No. 09-375391-OOCP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
  
PROCEEDINGS COMMENCED AT  
TORONTO

**SETTLEMENT AGREEMENT**

SUTTS, STROSBURG LLP

Lawyers

600 Westcourt Place

251 Goyeau Street

Windsor ON N9A 6V4

HARVEY T. STROSBURG Q.C.

LSUC#: 126400

SHARON STROSBURG

LSUC#: 44233W

Tel: 519.561.6228 / 519.561.6244

Fax: 519.561.6203

FALCONER CHARNEY LLP

Barristers-at-Law

8 Prince Arthur Avenue

Toronto, Ontario M5R 1A9

Theodore P. Charney (LSUC #26853E)

Ryan Lake

Tel: 416-964-3408

Fax: 416-929-8179

Lawyers for the plaintiffs