

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LEE KENNEDY and BEKALLA YUSUF

Plaintiffs

-and-

TORONTO HYDRO-ELECTRIC SYSTEM LTD. and CITY OF TORONTO

Defendants

-and-

GONTE CONSTRUCTION LIMITED and CITY OF TORONTO

Third Parties

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 *May 8*, 2014.

Counsel for the plaintiffs

[Redacted]

Sutts, Strosberg LLP

[Redacted]

Charney Lawyers LLP

Counsel for the defendant,
Toronto Hydro-Electric System Ltd.

Blaney, McMurtry LLP

Counsel for the defendant and
third party, City of Toronto

City Solicitor's Office

Counsel for the third party,
Gonte Construction Limited

Stieber Berlach LLP

We hereby also agree

[Redacted]

Witness

[Redacted]

Witness

[Redacted]

Lee Kennedy

[Redacted]

Bekalla Yusuf

4. This agreement may be signed in counterparts or by facsimile signature.

Signed as of _____, 2014.

Counsel for the plaintiffs

Counsel for the defendant,
Toronto Hydro-Electric System Ltd.

Sutts, Strosberg LLP

Blaney, McMurtry LLP

Charney Lawyers LLP

Counsel for the defendant and
third party, City of Toronto

Counsel for the third party,
Gonte Construction Limited

City Solicitor's Office

Stieber Berlach LLP

We hereby also agree

Witness

Lee Kennedy

Witness

Bekalla Yusuf

4. This agreement may be signed in counterparts or by facsimile signature.

Signed as of *May 6*, 2014.

Counsel for the plaintiffs

Counsel for the defendant,
Toronto Hydro-Electric System Ltd.

Sutts, Strosberg LLP

Blaney, McMurtry LLP

Charney Lawyers LLP

Counsel for the defendant and
third party, City of Toronto

Counsel for the third party,
Gonte Construction Limited



✓ City Solicitor's Office *Leslie Mendelson*

Stieber Berlach LLP

We hereby also agree

Witness

Lee Kennedy

Witness

Bekalla Yusuf

4. This agreement may be signed in counterparts or by facsimile signature.

Signed as of *May 6*, 2014.

Counsel for the plaintiffs

Counsel for the defendant,
Toronto Hydro-Electric System Ltd.

Sutts, Strosberg LLP


Blaney, McMurtry LLP

Charney Lawyers LLP

Counsel for the defendant and
third party, City of Toronto

Counsel for the third party,
Gonte Construction Limited

City Solicitor's Office



Stieber Berlach LLP

We hereby also agree

Witness

Lee Kennedy

Witness

Bekalla Yusuf

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE)
)
EDWARD BELOBABA) DAY, THE
)
) DAY OF MAY, 2014

B E T W E E N :

LEE KENNEDY and BEKALLA YUSUF

Plaintiffs

-and-

TORONTO HYDRO-ELECTRIC SYSTEM LTD. and CITY OF TORONTO

Defendants

-and-

GONTE CONSTRUCTION LIMITED and CITY OF TORONTO

Third Parties

Proceeding under the Class Proceedings Act, 1992

ORDER

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

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

AND ON READING the materials filed, including the draft 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 Monday, June 16, 2014, beginning at 10:00 a.m. (the “Approval Hearing”).

2. THIS COURT ORDERS that on or before May 12, 2014, 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) posting the Notice in the laundry room at 2 Secord, subject to the consent of the property manager;
 - (b) placing the Notice under the door of every unit at 2 Secord;
 - (c) emailing the Notice to the 2 Secord Tenants’ Association;
 - (d) emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
 - (e) 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 located at 2 Secord;
 - (f) posting the Notice at www.secordclassaction.com;
 - (g) sending the Notice by email to the Public Trustee and the Children’s Lawyer; and
 - (h) 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 Notice in accordance with paragraph 2.

4. THIS COURT ORDERS that Kirsten Franz 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 an affidavit with the court which compiles all of the written objections received.

5. THIS COURT ORDERS that Class Members must submit their objections, in writing to Kirsten Franz by mail, fax or email, by no later than 5:00 pm eastern time on June 12, 2014:

by mail to: Kirsten Franz, Legal Services,
23rd Floor, Metro Hall, 55 John St.,
Toronto ON M5V 3C6

or by fax to: (416) 397.5624

or by email to: kfranz@toronto.ca

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
2 SECORD AVENUE 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 2 Secord Avenue, in Toronto, Ontario ("2 Secord") on July 20, 2008.

This notice is directed to Class Members who are those persons who on July 20, 2008:

- (a) rented an apartment and/or townhouse or other utilizable space at 2 Secord (a "Unit") or
- (b) ordinarily resided in a Unit; or
- (c) were present in a Unit but were not ordinarily resident in that Unit; or
- (d) owned or had an interest in property located in or on a Unit; or
- (e) owned one or more of the Units.

excluding Toronto Hydro and Gonte Construction Limited, and their officers, directors, servants or agents and also excluding employees of the City of Toronto who in the course of their employment with the fire department attended at 2 Secord on July 20, 2008.

The parties in the class action have reached a proposed settlement subject to the approval of the court. The defendants will pay \$6,526,679.01 ("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 defendants do 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:

INSERT fund for INCONVENIENCE and LOST USE: each Class Member who ordinarily resided in a Unit and was displaced can claim \$**INSERT** per month of displacement and \$**INSERT** for each Class Member for the inconvenience and loss of use of amenities experienced post-return to their premises.

INSERT fund for UNINSURED LIVING EXPENSES and PROPERTY DAMAGE CLAIMS: each Class Member can claim for uninsured living expenses and property damage incurred as a result of the explosion and fire;

INSERT fund for LOST INCOME: each Class Member may claim for lost income if they were unable to work as a result of the explosion;

INSERT fund for INSURANCE DEDUCTIBLES: each Class Member can claim to be reimbursed for their insurance deductibles;

INSERT 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;

INSERT fund for the MINISTRY OF HEALTH AND LONG-TERM CARE to be partially compensated for the health care services provided to Class Members as a result of the explosion;

INSERT PERSONAL INJURY FUND: each Class Member who sustained physical or psychiatric injuries as a result of the explosion can make a claim for compensation. Categories of compensation range from \$**INSERT** to \$**INSERT** depending upon the severity of the injury.

All claims for compensation must be accompanied by supporting documentation and must be approved by the Administrator. The Class Members will bear their own costs of medical records and doctors' notes, if required. 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 \$**INSERT**. 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 \$**INSERT**.

The court must approve all payments to the Administrator and Arbitrator.

Class Counsel will be paid \$INSERT 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 Monday June 16, 2014 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 June 12, 2014. 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 by mail, fax or email to:

mail: Kirsten Franz, Legal Services,
23rd Floor, Metro Hall, 55 John St.,
Toronto, ON M5V 3C6
fax: 416.397.5624
email: kfranz@toronto.ca

Written objections must include the following information:

- (a) the Class Member's name, address, telephone number and email address; and
- (b) a brief statement of the nature and reasons for the objection; and
- (c) confirmation that the objector is a Class Member or their relationship to a Class Member; and
- (d) 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 Charney Lawyers 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: Thursday, May 22, 2014 at 7:30 pm
WHERE: Secord Elementary School
101 Barrington Ave
East York, ON
M4C 4Y9

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

Sharon Strosberg SUTTS, STROSBERG LLP Tel: 519.561.6296 Fax: 519.561.6203 Email: sharon@strosbergco.com	Ted Charney CHARNEY LAWYERS Tel: 416.964.7950 x221 Fax: 416.964.7416 Email: tedc@charneylawyers.com
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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.secordclassaction.com

#1166742

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE)
)
EDWARD BELOBABA) DAY, THE
) DAY OF JUNE, 2014

B E T W E E N :

LEE KENNEDY and BEKALLA YUSUF

Plaintiffs

-and-

TORONTO HYDRO-ELECTRIC SYSTEM LTD. and CITY OF TORONTO

Defendants

-and-

GONTE CONSTRUCTION LIMITED and CITY OF TORONTO

Third Parties

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 this day at the Court House, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the following:

- (a) the affidavits of (insert)
- (b) [ntd: if received: the letters from The Children’s Lawyer and the Public Guardian and Trustee];
- (c) the Distribution Plan attached as Schedule “A”; and
- (d) the order of Justice Lax dated April 23, 2009 certifying this action as a class proceeding,

AND ON HEARING the submissions of Class Counsel, counsel for the defendants and third party, and being advised that The Children’s Lawyer and the Public Guardian and Trustee **[have no objections to the form of this Judgment and Distribution Plan]**,

AND ON BEING ADVISED that all objections delivered to Kirsten Franz have been delivered to the Court and duly considered,

AND ON BEING FURTHER ADVISED that:

- (a) the parties consent to this order;
- (b) Marsh Risk Consulting Canada consents to being appointed as Administrator; and
- (c) Reva Devins consents to being appointed as Arbitrator,

1. THIS COURT ORDERS that, for the purposes of this Judgment and Distribution Plan, the following definitions apply:

- (a) **“2 Secord Avenue”** means the **Units** located at 2 Secord Avenue, in Toronto, Ontario which include, but is not limited to, the following:

Description of Units	Number of Units
bachelor apartment	1
junior one bedroom apartment	85
one bedroom apartment	130
two bedroom apartment	88
three bedroom townhouse	23
TOTAL	327 Units

- (b) **“Action”** means the action *Kennedy et al. v. Toronto Hydro-Electric System Ltd*, court file no. CV-08-361906, but not including crossclaims and third party claims;
- (c) **“Administrator”** means Marsh Risk Consulting Canada 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** attached to the **Judgment** as Schedule “B”;
- (f) **“Claims Bar Date”** means **insert date which is three months following the date that the judgment is issued and entered**;
- (g) **“Class” or “Class Members”** means those persons (who did not opt out of this action) who on July 20, 2008:
- (a) rented a Unit; or
 - (b) ordinarily resided in a Unit; or
 - (c) was present in a Unit but was not ordinarily resident in that Unit; or
 - (d) owned or had an interest in property located in or on a Unit; or
 - (e) owned one or more of the Units.
- excluding Toronto Hydro and Gonte Construction Limited, and their officers, directors, servants or agents and also excluding employees of the City of Toronto who in the course of their employment with the fire department attended at 2 Secord Avenue on July 20, 2008;
- (h) **“Class Counsel”** means Sutts, Strosberg LLP , Charney Lawyers and Hotz Lawyers;
- (i) **“Class Counsel’s Fees”** means the award for fees, disbursements, costs, GST, HST and other applicable charges to Class Counsel awarded in the **Judgment** in this **Action**;
- (j) **“Cost of Administration”** means a fixed fee of \$**insert** for notice, fees, disbursements and taxes for the **Administrator** and **Arbitrator**;

- (k) “*CJA*” means the *Court of Justice Act*;
- (l) “*CPA*” means the *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) “**DSM-5**” means American Psychiatric Association Diagnostic and Statistical Manual, 5th edition;
- (p) “**Insurer**” means any insurance company of any of the Class Member(s) who did not opt out of the Action.
- (q) “**Judgment**” means the judgment of Justice Belobaba approving the settlement of this **Action** and the **Distribution Plan**;
- (r) “**Ministry of Health**” means the Ministry of Health and Long-Term Care;
- (s) “**Notice**” means a notice of the **Settlement** of this **Action** substantially in the form of the **Notice** attached to the **Judgment** as Schedule “C”;
- (t) “**Notice Program**” means the method of giving **Notice** to the **Class Members** particularized in paragraph 5 of this **Judgment**;
- (u) “**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 July 20, 2008 at **2 Secord Avenue**, but excluding crossclaims and third party claims and also excluding any claims against individuals or entities with whom Toronto Hydro, the City of Toronto and/or Gonte Construction Limited have entered into tolling agreements;
- (v) “**Released Parties**” means Toronto Hydro, the City of Toronto, Gonte Construction Limited and their employees, officers, directors, servants, agents and insurers but does not include any individual or entities with whom any of Toronto Hydro, the City of Toronto and/or Gonte Construction Limited have entered into tolling agreements;
- (w) “**Settlement Amount**” means \$6,526,679.01;

- (x) **“Toronto Hydro”** means Toronto Hydro-Electric System Ltd., and its employees, officers, directors, servants and agents; and
- (y) **“Unit”** means an apartment or townhouse or other utilizable space located at **2 Secord Avenue**, as 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 defendants, third party, nor 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 the defendants and/or its insurers will deliver the Settlement Amount to Sutts, Strosberg LLP, in trust within ten days of the approval of this settlement, after which postjudgment interest will be payable at the rate provided for by the *CJA*.

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 which is 30 days after the date of the Judgment**, the Notice Program, giving Notice of this Judgment and the Distribution Plan, must be implemented as follows by the Administrator:

- (a) posting the Notice in the laundry room at 2 Secord, subject to the consent of the property manager;
- (b) placing the Notice under the door of every Unit at 2 Secord;
- (c) emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
- (d) emailing the Notice to the 2 Secord Tenants’ Association;

- (e) 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 located at 2 Secord;
- (f) posting the Notice at www.secordclassaction.com;
- (g) sending the Notice by email to the Public Trustee and the Children's Lawyer; and
- (h) 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 generally in the form of the attachments hereto at Schedule "B".

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 Lax made on April 23, 2009, 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 **\$insert** 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 \$**insert** for fees, disbursements and HST payable by Sutts, Strosberg LLP to:

- (a) the Arbitrator, as time is incurred per month, to a maximum of \$**insert**, inclusive of taxes and disbursements; and
- (b) the Administrator in the amount of \$**insert** per month for four months, inclusive of taxes and disbursements, and the balance when the Administrator is discharged by order of the Court.

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 AND DECLARES that no person may bring any action or take any proceeding against the Arbitrator or 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.

19. 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 **\$INSERT** to the Ministry of Health and Long Term Care.

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

21. 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

SCHEDULE "A"

DISTRIBUTION PLAN

INTERPRETATION

1. The following definitions apply for the purposes of this Distribution Plan:

(a) **"2 Second Avenue"** means the **Units** located at 2 Second Avenue, in Toronto, Ontario which include, but is not limited to, the following:

Description of Units	Number of Units
bachelor apartment	1
junior one bedroom apartment	85
one bedroom apartment	130
two bedroom apartment	88
three bedroom townhouse	23
TOTAL	327 Units

(b) **"Action"** means the action *Kennedy et al. v. Toronto Hydro-Electric System Ltd.*, court file no. CV-08-361906;

(c) **"Administrator"** means Marsh Risk Consulting Canada 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** attached to the **Judgment** as Schedule "B";

(f) **"Claims Bar Date"** means **insert date which is three months following Judgment**;

(g) **"Class" or "Class Members"** means those persons (who did not opt out of this action) who on July 20, 2008:

- (a) rented a Unit; or
- (b) ordinarily resided in a Unit; or
- (c) was present in a Unit but was not ordinarily resident in that Unit; or
- (d) owned or had an interest in property located in or on a Unit; or
- (e) owned one or more of the Units.

excluding Toronto Hydro and Gonte Construction Limited, and their officers, directors, servants or agents and also excluding employees of the City of Toronto

who in the course of their employment with the fire department attended at 2 Secord on July 20, 2008;

- (h) **“Class Counsel”** means Sutts, Strosberg LLP, Charney Lawyers and Hotz 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) **“Cost of Administration”** means a fixed fee of \$insert for notice, fees, disbursements and taxes for the **Administrator** and **Arbitrator**;
- (k) **“CPA”** means *Class Proceedings Act, 1992*;
- (l) **“Court”** means the Ontario Superior Court of Justice;
- (m) **“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**;
- (n) **“Toronto Hydro”** means Toronto Hydro-Electric System Ltd., and its employees, officers, directors, servants and agents;
- (o) **“DSM-5”** means American Psychiatric Association Diagnostic and Statistical Manual, 5th edition;
- (p) **“Insurer”** means any insurance company of any of the Class Member(s) who did not opt out of the Action.
- (q) **“Judgment”** means the judgment of Justice Belobaba approving the settlement of this **Action** and the **Distribution Plan**;
- (r) **“Ministry of Health”** means the Ministry of Health and Long-Term Care;
- (s) **“Notice”** means a notice of the **Settlement** of this **Action** substantially in the form of the **Notice** attached to the **Judgment** as Schedule “C”;
- (t) **“Notice Program”** means the method of giving **Notice** to the **Class Members** particularized in paragraph 5 of the **Judgment**;
- (u) **“Settlement Amount”** means \$6,526,679.01; and
- (v) **“Unit”** means an apartment or townhouse or other utilizable space located at 2 Secord, particularized in paragraph 1(a).

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

2. The insurer of Toronto Hydro will pay the amount of \$6,526,679.01 to Sutts, Strosberg LLP, before the approval hearing. Sutts, Strosberg LLP will pay and reserve the following amounts:

Settlement Amount	\$6,526,679.01
Reserve and pay the fixed fee for Notice, Administration & Arbitration other than the Personal Injury Arbitrations	()
Reserve and pay for Class Counsel fees, disbursements and taxes	()
Balance	
Reserve and pay to the Ministry of Health up to	
Reserve for Class Members who were Ordinarily Resident and Lost the Use of a Unit and Guests	
Reserve for Subrogated Losses	
Reserve for Deductibles	
Reserve for Additional Living Expenses that Were Incurred and Were Not Paid by an Insurance Company	
Reserve for Loss of Income	
Physical Injuries and Psychiatric Injuries	

PAYMENT TO THE MINISTRY OF HEALTH

3. Sutts, Strosberg LLP will pay the Ministry of Health the sum of **\$INSERT** 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 defendants, 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 **INSERT** Class Members who resided in **INSERT** Units. The Distribution Plan is based on the following formula:

$$\frac{700 \text{ persons}}{327 \text{ Units}} = 2.14 \text{ persons/Unit} \times 327 \text{ Units} = 700 \text{ Class Members} - 2 \text{ opt outs} = 698 \text{ Class Members}$$

8. Class Counsel will turn over its secure electronic registration system which contains all of its information about Class Members to the Administrator. Class Counsel will also provide information the following information to the Administrator:

- (a) the list of tenants at 2 Secord on the date of the explosion, as obtained from Gonte;
- (b) the names of individual(s) who opted out of the Action; and
- (c) the names and contact information for individuals who contacted Class Counsel but who did not create a profile in the secure registration system.

THE CLAIMS PROCESS

9. Each Class Member who created a profile in the secure registration system will be required to update and certify the information contained in the profile and provide any additional information required in order to submit a claim for compensation on or before the Claims Bar Date.

10. Every other Class Member who did not already create a profile in the secure registration system must submit a Claim Form electronically, 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.

11. 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.

12. 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 and any award to a Class Member who is a minor shall be

paid 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.

13. 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.

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/WERE INCONVENIENCED UPON RETURN AND GUESTS

18. Under this category, the amount of **\$INSERT** is reserved.

19. The Administrator will award **\$INSERT** per Class Member to each Class Member who was ordinarily resident in a Unit on July 20, 2008 and lost the use of a Unit for 42 days. For any claims of lost use which are in excess of 42 days, the Administrator will award (**INSERT**).

20. If a Class Member was present, but not ordinarily resident in the Unit (a Guest) on July 20, 2008, he or she will receive **\$INSERT**.

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 **\$INSERT**, the Class Members will be paid pro rata subject to paragraph **INSERT**.

CATEGORY 2: SUBROGATED LOSSES

23. Under this category, the amount of **\$INSERT** 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 **\$INSERT**, the insurers will be paid pro rata subject to paragraph **INSERT**.

CATEGORY 3: DEDUCTIBLES

28. Under this Category, the amount of **\$INSERT** 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 Member's total claims in this Category exceed **\$INSERT**, the Class Member will be paid pro rata subject to paragraph **INSERT**.

CATEGORY 4: ADDITIONAL LIVING EXPENSES THAT WERE INCURRED AND WERE NOT PAID BY AN INSURANCE COMPANY

32. Under this category, the amount of **\$INSERT** is reserved. Receipts are required for this Category.

33. 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.

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

35. If the Class Members' total claims in this Category exceed \$INSERT, the Class Members will be paid pro rata subject to paragraph **INSERT**.

CATEGORY 5: LOSS OF INCOME

36. Under this Category, the amount of \$INSERT 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.)**

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

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

39. If the Class Members' total in this Category exceeds \$INSERT the Class Members will be paid pro rata subject to paragraph **INSERT**.

CATEGORY 6: MINOR INJURIES**CATEGORY 6A****MINOR INJURIES: PHYSICAL AND PSYCHIATRIC
\$ INSERT**

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

41. 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.

42. Formal declaration from the Class Member describing their injuries and their duration.

43. Contemporaneous medical records are not required.

CATEGORY 6B: PHYSICAL INJURIES**LEVEL 6B1****\$ PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE**

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

45. Formal declaration from the Class Member with contemporaneous medical records.

LEVEL 6B2

\$INSERT PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE

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

47. 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 6B3

\$INSERT PLUS ALL PECUNIARY DAMAGES, NOT COVERED BY INSURANCE OR SUCH AMOUNT ASSESSED BY AN ARBITRATOR

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

49. 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.

50. Level 6B3 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 three criteria. The arbitrator can award disbursements associated with the Class Member's Level 6B3 claim.

CATEGORY 6C: PSYCHIATRIC INJURIES**LEVEL 6C1****\$INSERT PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE**

51. Psychiatric disorder as defined in DSM-5 with resolution of symptoms within 90 days.
52. 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.
53. Contemporaneous records are not required.

LEVEL 6C2**\$ PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE**

54. 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.
55. 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.

56. Contemporaneous records are required.

LEVEL 6C3

\$INSERT PLUS MEDICAL EXPENSES AND COST OF RECORDS NOT COVERED BY INSURANCE

57. Psychiatric disorder as defined in DSM-5 where the duration of the symptoms exceeded one year with resolution of the symptoms within 18 months following the explosion.

58. 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.

59. Contemporaneous records are required.

LEVEL 6C4

\$INSERT PLUS ALL PECUNIARY DAMAGES NOT COVERED BY INSURANCE OR SUCH AMOUNT TO BE ASSESSED BY AN ARBITRATOR.

60. 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.

61. 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.

62. 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.

MISCELLANEOUS PROVISIONS APPLICABLE TO PHYSICAL INJURIES AND PSYCHIATRIC INJURIES

63. The Class Member must describe his or her physical injuries in his or her Claim Form.

64. The Administrator must make its decision in and deliver the decision to the Class Member, counsel for Toronto Hydro and Class Counsel.

65. The Class Member, or Toronto Hydro, or the Class Counsel may deliver a notice of appeal to the Arbitrator within 30 days, subject to paragraph 69.

66. The Arbitrator will establish a summary procedure consistent with the nature of physical and/or psychiatric injuries being alleged in the claims.

67. The Arbitrator will make her decision within 30 days of concluding the summary procedure referred to in the paragraph above.

68. There is no right of appeal from the Arbitrator's decision.

69. Toronto Hydro, City of Toronto and Gonte do not have the right to participate in the Distribution Plan, except as in Categories 6C3 and 6C4, but not in Categories 1, 2, 3, 4, 5 and 6A, 6B1, 6B2, 6C1 and 6C2.

EXCESS FUNDS OR INSUFFICIENT FUNDS

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

71. 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.

72. 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.

73. 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 **INSERT**.

REPORTING TO THE COURT AND DISTRIBUTION OF SETTLEMENT FUNDS

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

75. 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.

76. The Administrator shall deliver the report to Class Counsel, Toronto Hydro, City of Toronto and Gonte'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.

77. 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 **INSERT**

LEE KENNEDY ET AL.

vs. TORONTO HYDRO-ELECTRIC SYSTEM LTD. et al.

Plaintiffs

Defendants

Court File No. CV-08-361906

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT TORONTO

SETTLEMENT AGREEMENT

SUTTS, STROSBERG LLP
Lawyers
600 Westcourt Place
251 Goyeau Street
Windsor ON N9A 6V4

HARVEY T. STROSBERG Q.C.
LSUC#: 126400
SHARON STROSBERG
LSUC#: 44233W
Tel: 519.561.6228 / 519.561.6244
Fax: 519.561.6203

CHARNEY LAWYERS
#890-151 Bloor St. W.
Toronto, Ontario M5S 1S4

THEODORE P. CHARNEY (LSUC #26853E)
ANDREW ECKART
Tel: 416-964-7950
Fax: 416-964-7416

Lawyers for the plaintiffs

FILE: 85-130-000
REF: HTS/mu