



No. S155993  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JAMES ANDREW ROSS,

PLAINTIFF

AND:

EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and  
THE MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,  
DANNY LaSANTE and TRANSWEST HELICOPTERS LTD.

DEFENDANTS

*Brought Under the Class Proceedings Act, R.S.B.C. 1996, c.50*

**ORDER MADE AFTER  
APPLICATION  
*Re: APPROVAL OF  
SETTLEMENT***

	)		)
BEFORE	}	The Honourable Mr. Justice D.M. Masuhara	}
	)		)

March 14, 2025

**ON THE APPLICATION** of the plaintiff, coming on for a hearing on January 15, 2025, before Justice Masuhara, at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, **AND ON HEARING** David M. Rosenberg, K.C., David Aaron and Dulcie Jones, counsel for the Plaintiff, Kelsey Sherriff and Michael Percival, counsel for the Defendant and Third Party, Executive Flight Centre Fuel Services Ltd., and Alexander C. Bjornson, Tamara Saunders and Lee Mauro counsel for the Defendant and Third Party, His Majesty the King in right of the Province of British Columbia, and Brian Poston, counsel for the Defendant and Third Party, Transwest Helicopters Ltd., and Rick Williams and Roark Lewis, counsel for the Defendant and Third Party, Danny LaSante on January 15, 2025. **AND ON HEARING** David M. Rosenberg, K.C. and David M. Aaron on February 18, 2025. **AND** on judgment being reserved to this date. **AND** upon reviewing additional submissions from Plaintiff's counsel in writing.

**THIS COURT ORDERS THAT:**

1. The Settlement Agreement attached to this Order as Schedule "A", including all of the Schedules thereto, is incorporated by reference into and forms part of this Order and unless otherwise indicated herein, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. Without limiting the foregoing:
  - a. All references in the Settlement Agreement to "40% of the balance of the Settlement Amount" shall, in accordance with the Court's order dated March 14, 2025, be read as "33% of the Settlement amount";
  - b. Section 4.10 of the Settlement Agreement is amended by consent to read as follows: "Any determination by the Claims Administrator pursuant to the Notices and Claims Administration Procedures shall be final and only subject to judicial review by the Court" and
  - c. All references to "Action No. S-155933" in the Settlement Agreement shall be, by consent, read as being references to "Action No. S-155993".
3. The Settlement Agreement, including all of the Schedules thereto, is fair, reasonable and in the best interests of the Class Members as defined in the Settlement Agreement.

Schedules thereto, is hereby approved and is binding on the Ross Proposed Class Members and the Defendants pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.

5. This Order is contingent upon a parallel order being made in *Kirk v. Executive et al.*, Supreme Court of British Columbia Action No. S135927 (Vancouver Registry) (the “Kirk Action”) and the terms of this Order shall not be effective unless and until such order is made in the Kirk Action.
6. The steps taken by Class Counsel to notify Ross Proposed Class Members of the Settlement Approval Hearing are deemed reasonable and appropriate.
7. The Notice Plan for Notice of Settlement Approval attached to this Order as Schedule “B”; and the form of Notice of Settlement Approval attached to this Order as Schedule “C” (or a form substantially similar to), is approved.
8. The Defendants shall collectively pay the Settlement Amount of \$4,525,061.67 to David M. Rosenberg, K.C., Class Counsel, “in trust” within thirty (30) days of the Court Approval Date in full and final settlement of both the within Action and the Ross Action.
9. Class Counsel will pay to the Health Care Compensation Fund a gross total amount of \$15,000.
10. The balance will be paid to the Class Action Compensation Fund to be distributed in the following order and priority:
  - a. First, Class Counsel Disbursements in the amount of \$239,551.81 and applicable taxes in the amount of \$11,920.03 on Class Counsel Disbursements;
  - b. Second, 33% of the balance of the Settlement Amount following the deduction of Class Counsel Disbursements and applicable taxes in the amount of \$1,405,334.64 plus applicable taxes in the amount of \$168,640.15 on Class Counsel Fees;

- c. Third, a gross total of \$11,000 towards Honoraria in the following manner:
- i. An Honorarium of \$4,000 to the Representative Plaintiff Robert George Kirk, for distinguished service to the Class, is hereby approved. Payment of this amount to Mr. Kirk is authorized as a disbursement to be paid from the settlement funds;
  - ii. An Honorarium of \$1,000 to the proposed Representative Plaintiff James Ross in the Ross Action, for distinguished service to the Class, is hereby approved. Payment of this amount to Mr. Ross is authorized as a disbursement to be paid from the settlement funds;
  - iii. An Honoraria to each of the class member or nominees who were examined for discovery in the amount of \$500 each, for a total of \$6,000:
    - a. \$500 to Nicholas Brayman;
    - b. \$500 to Timothy Fenton;
    - c. \$500 to Jane Flotron;
    - d. \$500 to Diana Gorgichuk;
    - e. \$500 to Russell Hulbert;
    - f. \$500 to Gord Ihlen;
    - g. \$500 to David S. Mason;
    - h. \$500 to Nelle Maxey;
    - i. \$500 to Darren McElhanney;
    - j. \$500 to Margaret Teiner;
    - k. \$500 to Ryan Wilson; and
    - l. \$500 to John Wittmayer.
- d. Fourth, the remainder will be forwarded to the Claims Administrator and from that amount will be paid costs related to the Claims Administration Expenses and Notice Expenses and payments to the Eligible Claimants based on the Distribution Protocol.

11. The appointment of RicePoint Administration Inc., dba Verita Global as the Claims Administrator (“Verita Global” or the “Claims Administrator”) by Class Counsel whose responsibilities shall include but may not be limited to: (a) administering the Distribution Protocol; (b) administering the Class Action Compensation Fund; (c) accepting and maintaining documents sent from Kirk Class Members, including Claims Forms and other documents relating to Claims Administration; (d) determining the validity of Eligible Claims in accordance with the terms of the Settlement Agreement and Distribution Protocol; and (e) all other responsibilities designated to the Claims Administrator in the Settlement Agreement is approved. The Claims Administrator will provide Class Counsel with any information or documents that Class Counsel requests concerning the administration of the settlement including details of distribution.
12. The Claims Deadline shall be 180 days from the first publication of the Notice of Settlement Approval. Class Counsel will be at liberty to apply to the Court to extend the Claims Deadline for any particular Class Member so long as such application is made within three months following the end of the Claims Period under the Settlement Agreement.
13. The determination of the validity and amount of Eligible Claims submitted by the Class Members shall be made by the Claims Administrator. The decision shall be final and binding and shall not be subject to any further appeal.
14. Without affecting the finality of this Order, this Court shall retain exclusive continuing jurisdiction over the settlement process and the parties thereto, including the Plaintiffs, the Defendants, Ross Proposed Class Members, and the Claims Administrator, for all matters relating to supervising, administering, implementing, enforcing and interpreting the Settlement Agreement and the Claims and Distribution Protocol thereunder, the enforcement of this Order, and all proceedings related to the Settlement Agreement, both before and after the approval of the Settlement Agreement and the settlement referred to therein becomes final and is no longer subject to appeal. The parties to the Settlement Agreement may apply to this Court for further direction, if necessary, in respect to the implementation and administration of the Settlement Agreement and the Distribution

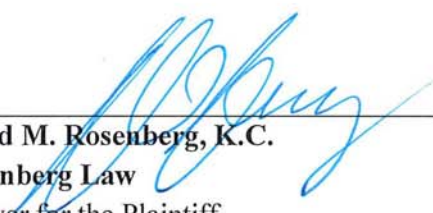
Protocol. The Action is otherwise dismissed with prejudice and all the claims of the Ross Proposed Class Members as against the Defendants relating to the Allegations are extinguished upon payment of the settlement funds to David M. Rosenberg, K.C., Class Counsel, "in trust".

15. This Order may be signed in counterparts.

Digitally signed by  
Masuhara, J


BY THE COURT

REGISTRAR




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**David M. Rosenberg, K.C.**  
**Rosenberg Law**  
Lawyer for the Plaintiff



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**Kelsey K. Sherriff**  
**Miller Thomson LLP**  
Lawyer for the Defendant and Third Party,  
Executive Flight Centre Fuel Services Ltd.



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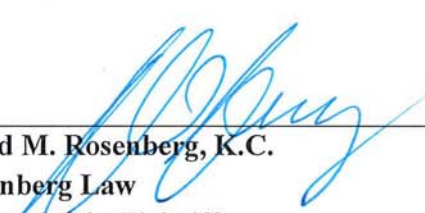
**Brian C. Poston**  
**DLA Piper (Canada) LLP**  
Lawyer for the Defendant and Third Party,  
Transwest Helicopters Ltd.

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**Alexander Bjornson**  
**Ministry of Attorney General**  
Lawyer for the Defendant and Third Party,  
His Majesty the King in right of the Province of British  
Columbia as represented by the Minister of Transportation  
and Infrastructure and the Minister of Forests, Lands and  
Natural Resource Operations

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15. This Order may be signed in counterparts.



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**David M. Rosenberg, K.C.**  
**Rosenberg Law**  
Lawyer for the Plaintiff

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**Kelsey K. Sherriff**  
**Miller Thomson LLP**  
Lawyer for the Defendant and Third Party,  
Executive Flight Centre Fuel Services Ltd.

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**Brian C. Poston**  
**DLA Piper (Canada) LLP**  
Lawyer for the Defendant and Third Party,  
Transwest Helicopters Ltd.



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**Alexander Bjornson**  
**Ministry of Attorney General**  
Lawyer for the Defendant and Third Party,  
His Majesty the King in right of the Province of British  
Columbia as represented by the Minister of Transportation  
and Infrastructure and the Minister of Forests, Lands and  
Natural Resource Operations



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**Rick Williams**

**Borden Ladner Gervais LLP**

Lawyer for the Defendant and Third Party,  
Daniel LaSante



No. S135927 & S155933  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ROBERT GEORGE KIRK, as Representative Plaintiff of SCBC Action No. S135927 and  
JAMES ANDREW ROSS, as proposed Representative Plaintiff of SCBC Action No. S155933

PLAINTIFFS

AND:

EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and  
THE MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,  
DANNY LaSANTE and TRANSWEST HELICOPTERS LTD.

DEFENDANTS

AND:

DANNY LaSANTE, EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD.,  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and the  
MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS and  
TRANSWEST HELICOPTERS LTD.

THIRD PARTIES

*Brought Under the Class Proceedings Act, R.S.B.C. 1996, c.50*

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**SETTLEMENT AGREEMENT**

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## PREAMBLE

The Plaintiffs and the Defendants, enter into this agreement (the “**Agreement**” or “**Settlement Agreement**”), on behalf of persons with claims as described herein arising from the Lemon Creek fuel spill on July 26, 2013 (the “**Spill**”), pursuant to the terms and conditions set out herein and subject to the approval of the Supreme Court of British Columbia.

## RECITALS

**WHEREAS** on August 7, 2013, the Plaintiff Robert Kirk brought Action No. S135927 in the Supreme Court of British Columbia (Vancouver Registry) pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, relating to nuisance and other claims arising from the Spill.

**AND WHEREAS** Action No. S135927 in the Supreme Court of British Columbia (Vancouver Registry) was certified as a class proceeding by Justice Masuhara of the Supreme Court of British Columbia on the basis of the specific common issues set out in the certification order dated April 26, 2023 (the “**Class Action**” or “**Kirk Action**”).

**AND WHEREAS** the Class Action asserts claims on behalf of a certified class consisting of “*All persons who owned, leased, rented, or occupied real property on July 26, 2013 within the Evacuation Zone (as defined in the Amended Notice of Civil Claim) except for the defendants and third parties.*” (the “**Kirk Class Members**”)

**AND WHEREAS** on July 22, 2015, the Plaintiff, James Ross, commenced a separate but parallel proposed class action relating to personal injuries allegedly resulting from the Spill by way of Action No. S155933 in the Supreme Court of British Columbia (Vancouver Registry) (the “**Ross Action**”).

**AND WHEREAS** the Ross Action asserts claims on behalf of a proposed class, consisting of “*All persons who were present in the Evacuation Area at or after the time of the Spill and suffered personal injury where those personal injuries are claimed to have been associated with the Spill*” (the “**Ross Proposed Class Members**”).

**AND WHEREAS** the Parties intend, by this Settlement Agreement, to resolve all past, present, and future claims of the Kirk Class Members and the Ross Proposed Class Members in any way arising from or relating to the Class Action and/or the Ross Action.

**AND WHEREAS** for the purpose of settlement only and contingent on approval by the Court as provided for in this Settlement Agreement, the Parties have consented to the Ross Action

being certified as a class proceeding with a single common issue in the Ross Action solely for the purpose of implementing this Settlement Agreement.

**AND WHEREAS** the Plaintiff James Andrew Ross asserts that he is an adequate class representative for the Ross Proposed Class Members and will seek to be appointed as representative plaintiff in the Ross Action.

**AND WHEREAS** the Defendants deny the Allegations made in the Kirk Action and the Ross Action, have not conceded or admitted any liability, deny that any damages are payable, and assert defences to all of the claims in the Kirk Action and the Ross Action (the “**Actions**”).

**AND WHEREAS** the Parties have engaged in extensive arm’s length negotiations, two mediations, and 12 years of active litigation including two certification hearings, two full appeals before the British Columbia Court of Appeal, and a leave application to the Supreme Court of Canada.

**AND WHEREAS** a common issues trial for the Kirk Action is set to commence in the Supreme Court of British Columbia on January 6, 2025, and run for a period of thirty-nine (39) days.

**AND WHEREAS** despite the availability of defences to the Actions, the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all current and potential claims asserted against them by the Plaintiffs on behalf of the Kirk Class Members and Ross Proposed Class Members.

**AND WHEREAS** counsel for the Parties has conducted a thorough analysis of the merits of the Actions and have also taken into account the extensive burden and expense of litigation, including the risks of trial and further potential appeals. In consideration of all of the circumstances and after extensive arm’s length negotiations, both directly and with the assistance of a mediator, the Parties wish to settle any and all issues amongst themselves arising out of the Actions, and whereas it is acknowledged that the Defendants would not have entered into this Settlement Agreement were it not for the foregoing.

**AND WHEREAS** the Parties therefore wish to, and hereby do, fully and finally resolve the Actions without admission of liability on the part of the Defendants.

**AND WHEREAS** the Defendants, in entering into the Settlement Agreement, intend to resolve and release all claims, counterclaims, complaints, disputes, demands, actions, suits, causes of action, liabilities, obligations, of any nature or kind between and amongst themselves and also asserted against Third Parties, arising from or relating to the events that are the subject of the Actions, including all claims for contribution and indemnity.

**AND WHEREAS** after their investigation, the Plaintiffs and Class Counsel have come to the opinion that this Settlement Agreement is reasonable and in the best interests of the Kirk Class Members and Ross Proposed Class Members.

**NOW THEREFORE**, in consideration of the covenants, agreements, and releases set forth herein, it is agreed by the Parties that the Actions be settled and dismissed on the following terms and conditions.

## **SECTION 1 - DEFINITIONS**

1.1 In addition to those terms defined in the recitals and body of this Settlement Agreement, the following definitions apply:

- a) “Account” means an interest-bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank, for which accrued interest will be added to the Class Action Compensation Fund.
- b) “Administration Costs” or “Administration Expenses” means all costs and expenses to administer and distribute the Settlement Amount including the costs and professional fees of the Claims Administrator and the costs of implementing the Notice of Certification and Settlement Approval.
- c) “Allegations” means the assertions of fact and law, causes of action, injuries and damages that were pleaded in the Notice of Civil Claim in the Kirk Action, and the amendments thereto, and referred to in the common issues certified by Justice Masuhara on April 26, 2023, and the assertions of fact and law, causes of action, injuries and damages that were pleaded in the Notice of Civil Claim filed in the Ross Action.
- d) “Approval Orders” means the Orders of the Court approving the dismissal of the Kirk Action and the Ross Action, the settlement and the terms of this Settlement Agreement, which shall be substantially in the forms attached as Schedule “E”.
- e) “Claimant” means a Kirk Class Member or a Ross Proposed Class Member who does not opt out in accordance with the Ross Certification Order, or their estate or legal representative, who submits a Claim Form.
- f) “Claims Administrator” means the person or entity proposed by Class Counsel and approved by the Court to administer the claims process and distribution of settlement funds in accordance with the Distribution Protocol.

- g) “Claim Form” means the form generated by the Claims Administrator that Claimants may complete for the Claims Administrator to determine their eligibility for compensation.
- h) “Claims Period” or “Claims Deadline” means the time period within which a Claimant may submit their Claim Form in accordance with the Distribution Protocol.
- i) “Class Counsel” means David M. Rosenberg, K.C., Rosenberg Law, 671D Market Hill, Vancouver, BC V5Z 4S8.
- j) “Class Counsel Disbursement” means the amounts incurred by Class Counsel in the Ross Action and the Kirk Action,
- k) “Class Counsel Fee” means 40% of the balance of the Settlement Amount after the Disbursements (and applicable taxes on disbursements) have been deducted, plus applicable taxes.
- l) “Class Member” means a person who falls within the definition of the Kirk Class Members and/or Ross Proposed Class Members.
- m) “Class Action Compensation Fund” means the portion of the Settlement Amount other than the Health Care Compensation Fund, after deduction of the amounts paid for Disbursements, Class Counsel Fees, applicable taxes, Honoraria, Claims Administration Expenses, and Notice Expenses.
- n) “Common Issue” means the following proposed common issue for settlement purposes for the Ross Action: *“Did any of the Defendants, through their acts or omissions, and to what degree, cause or contribute to the Spill?”*
- o) “Court” means the Supreme Court of British Columbia.
- p) “Court Approval Date” means the later of:
- i. 31 days after the date on which the Court issues the Approval Orders if there is no appeal from the Approval Orders; and
  - ii. 31 days after the date on which any appeals from the Approval Orders have been finally disposed of if there is an appeal from the Approval Orders.
- q) “Damages” means compensation for all claims relating to loss of use and enjoyment of land, diminution of property value, mental distress, personal injury, income loss,

business loss, out of pocket expenses and any other damages or other relief arising from or related to the Spill that were or could have been raised in the Actions.

r) “Defendants” means collectively Executive Flight Centre Fuel Services Ltd., His Majesty the King in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure and the Minister of Forests, Lands and Natural Resource Operations, Danny LaSante, and Transwest Helicopters Ltd.

s) “Distribution Protocol” means the plan setting out a Class Member’s entitlement to compensation under this Settlement Agreement and how the compensation to Class Members shall be determined and distributed as prepared by Class Counsel and approved by the Court as part of the Settlement Approval Hearing, a draft of which is attached hereto as Schedule “F”.

t) “Disruption Payment” means compensation paid to an Eligible Claimant for the interference with property rights pursuant to the Distribution Protocol.

u) “Eligible Claim” means a claim made by an Eligible Claimant in accordance with the procedure in the Distribution Protocol, which is attached hereto as Schedule “F”.

v) “Eligible Claimant” means a Claimant who has been determined by the Claims Administrator to have submitted an Eligible Claim in a Claim Form.

w) “Health Care Compensation Fund” means the amount of \$15,000 of the Settlement Amount that is placed in a separate fund to be made payable to His Majesty the King in Right of the Province of British Columbia, as represented by his Minister of Health.

x) “Health Insurer” means His Majesty the King in Right of the Province of British Columbia, as represented by his Minister of Health.

y) “Health Insurer Claims” means the entitlement of the Health Insurers to any subrogated or direct claims arising from the provision of health care services to Class Members in relation to the Allegations.

z) “Honoraria” means the amount of \$11,000, which, subject to Court approval, shall be paid in the following amounts, out of the Class Action Compensation Fund:

- i. \$4,000 to the Plaintiff Robert George Kirk in the Class Action as compensation for his services as Representative Plaintiff;
- ii. \$500 to each of the class members or nominees who attended for examination for discovery and who were examined on behalf of the Class in the Kirk Action; and

iii. \$1,000 to the Plaintiff James Ross in the Ross Action, as compensation for his services as Proposed Representative Plaintiff.

aa) “Notice of Certification and Settlement Approval” means the form of notice, agreed to by the Parties and approved by the Court, that informs the Ross Proposed Class Members of the certification for settlement approval of the Ross Action; and opt-out procedures set out in the Ross Certification Order. as Further, it informs the Kirk Class Members and Ross Proposed Class Members in both Actions of the court appearance where Class Counsel will seek approval by the Court of this Agreement, a draft of which is attached hereto as Schedule “C”.

bb) “Notice Plan for Notice of Certification and Settlement Approval” means the method used for publishing the Notice of Certification and Settlement Approval, a draft of which is attached hereto as Schedule “D”.

cc) “Parties” means the Plaintiffs, Class Members and the Defendants in the Kirk Action and/or the Ross Action.

dd) “Personal Injury Payments” means the compensation paid to an Eligible Claimant for personal injuries pursuant to the Distribution Protocol.

ee) “Payments” means the Disruption Payments, Personal Injury Payments, and the Special Circumstances Payments.

ff) “Plaintiffs” means collectively the Plaintiff Robert George Kirk in the Kirk Action and the Plaintiff James Andrew Ross in the Ross Action.

gg) “Points Assessment Process” means the points awarded to each Eligible Claimant by the Claims Administrator for the purposes of calculating the Payments from the Class Action Compensation Fund in accordance with the Distribution Protocol.

hh) “Points System” means the pro-rata distribution scheme for Payments from the Class Action Compensation Fund to Eligible Claimants under this Settlement Agreement in accordance with the procedure described in the Distribution Protocol.

ii) “Proposed Representative Plaintiff” means James Andrew Ross.

jj) “Released Claims” means any and all claims, counterclaims, complaints, disputes, demands, actions, suits, causes of action, liabilities, obligations, of any nature or kind, whether class, aggregate, individual or otherwise in nature, whether personal or subrogated, whenever incurred for liabilities of any nature whatsoever, including without limitation claims, demands, actions, suits or causes of action in negligence, nuisance, the rule in



*Rylands v. Fletcher*, or otherwise, for environmental/ecological monitoring and remediation, capacity funding, loss of use and enjoyment of property, diminution in property value, personal injuries, general damages, special damages, loss of capacity and loss of opportunity to earn income, loss of employment income, costs of past and future health care services under the *Health Care Costs Recovery Act*, exemplary and/or punitive damages, interest, costs, expenses, penalties, disbursements and lawyers' fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, whether in law, under statute or in equity, that the Releasors or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating to, arising out of, or connected with, directly, indirectly, or in any manner concerning the Allegations and any conduct alleged or which could have been alleged in the Actions..

kk) "Releasees" means, jointly and severally, the Defendants, and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.

ll) "Releasors" means, jointly and severally, individually and collectively, the Plaintiffs, Class Members, ~~Health Insurer~~, and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns, whether past, present or future. *OMR Oct. 11, 2024*

mm) "Representative Plaintiff" means Robert George Kirk.

nn) "Ross Certification Order" means the order of the Court certifying the Ross Action for settlement purposes by consent which shall be substantially in the form attached as Schedule "A".

oo) "Settlement Agreement" means this Agreement, as executed by Class Counsel and Counsel for the Defendants.

pp) "Settlement Amount" means the sum of an all-inclusive amount of CAD \$4,525,061.67, that the Defendants have agreed to pay into two funds: \$15,000 to the Health Care Compensation Fund to settle any claims of the Health Insurer for health care cost recovery; and the balance to be paid into the Class Action Compensation Fund to settle the Class Action and the Ross Action.

qq) "Settlement Approval Hearing" means the hearing before the Court to approve the dismissal of the Kirk Action and the Ross Action and to approve this Agreement including its schedules.

*Rylands v. Fletcher*, or otherwise, for environmental/ecological monitoring and remediation, capacity funding, loss of use and enjoyment of property, diminution in property value, personal injuries, general damages, special damages, loss of capacity and loss of opportunity to earn income, loss of employment income, costs of past and future health care services under the *Health Care Costs Recovery Act*, exemplary and/or punitive damages, interest, costs, expenses, penalties, disbursements and lawyers' fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, whether in law, under statute or in equity, that the Releasors or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating to, arising out of, or connected with, directly, indirectly, or in any manner concerning the Allegations and any conduct alleged or which could have been alleged in the Actions..

kk) "Releasees" means, jointly and severally, the Defendants, and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.

Oct. 21, 2024

DMR Oct. 11, 2024

ll) "Releasors" means, jointly and severally, individually and collectively, the Plaintiffs, Class Members, ~~Health Insurer~~, and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns, whether past, present or future.

mm) "Representative Plaintiff" means Robert George Kirk.

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qq) "Settlement Approval Hearing" means the hearing before the Court to approve the dismissal of the Kirk Action and the Ross Action and to approve this Agreement including its schedules.



*Rylands v. Fletcher*, or otherwise, for environmental/ecological monitoring and remediation, capacity funding, loss of use and enjoyment of property, diminution in property value, personal injuries, general damages, special damages, loss of capacity and loss of opportunity to earn income, loss of employment income, costs of past and future health care services under the *Health Care Costs Recovery Act*, exemplary and/or punitive damages, interest, costs, expenses, penalties, disbursements and lawyers' fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, whether in law, under statute or in equity, that the Releasors or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating to, arising out of, or connected with, directly, indirectly, or in any manner concerning the Allegations and any conduct alleged or which could have been alleged in the Actions..

kk) "Releasees" means, jointly and severally, the Defendants, and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.

ll) "Releasors" means, jointly and severally, individually and collectively, the Plaintiffs, Class Members, ~~Health Insurer~~, and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns, whether past, present or future.

*OKR Oct. 11, 2024, KS Oct 21, 2024*

mm) "Representative Plaintiff" means Robert George Kirk.

nn) "Ross Certification Order" means the order of the Court certifying the Ross Action for settlement purposes by consent which shall be substantially in the form attached as Schedule "A".

oo) "Settlement Agreement" means this Agreement, as executed by Class Counsel and Counsel for the Defendants.

pp) "Settlement Amount" means the sum of an all-inclusive amount of CAD \$4,525,061.67, that the Defendants have agreed to pay into two funds: \$15,000 to the Health Care Compensation Fund to settle any claims of the Health Insurer for health care cost recovery; and the balance to be paid into the Class Action Compensation Fund to settle the Class Action and the Ross Action.

qq) "Settlement Approval Hearing" means the hearing before the Court to approve the dismissal of the Kirk Action and the Ross Action and to approve this Agreement including its schedules.

*Rylands v. Fletcher*, or otherwise, for environmental/ecological monitoring and remediation, capacity funding, loss of use and enjoyment of property, diminution in property value, personal injuries, general damages, special damages, loss of capacity and loss of opportunity to earn income, loss of employment income, costs of past and future health care services under the *Health Care Costs Recovery Act*, exemplary and/or punitive damages, interest, costs, expenses, penalties, disbursements and lawyers' fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, whether in law, under statute or in equity, that the Releasers or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating to, arising out of, or connected with, directly, indirectly, or in any manner concerning the Allegations and any conduct alleged or which could have been alleged in the Actions..

kk) "Releasees" means, jointly and severally, the Defendants, and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.

Oct. 21, 2024

OAR Oct. 11, 2024 MR OCT 21/24

ll) "Releasers" means, jointly and severally, individually and collectively, the Plaintiffs, Class Members, ~~Health Insurer~~, and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns, whether past, present or future.

mm) "Representative Plaintiff" means Robert George Kirk.

nn) "Ross Certification Order" means the order of the Court certifying the Ross Action for settlement purposes by consent which shall be substantially in the form attached as Schedule "A".

oo) "Settlement Agreement" means this Agreement, as executed by Class Counsel and Counsel for the Defendants.

pp) "Settlement Amount" means the sum of an all-inclusive amount of CAD \$4,525,061.67, that the Defendants have agreed to pay into two funds: \$15,000 to the Health Care Compensation Fund to settle any claims of the Health Insurer for health care cost recovery; and the balance to be paid into the Class Action Compensation Fund to settle the Class Action and the Ross Action.

qq) "Settlement Approval Hearing" means the hearing before the Court to approve the dismissal of the Kirk Action and the Ross Action and to approve this Agreement including its schedules.



*Rylands v. Fletcher*, or otherwise, for environmental/ecological monitoring and remediation, capacity funding, loss of use and enjoyment of property, diminution in property value, personal injuries, general damages, special damages, loss of capacity and loss of opportunity to earn income, loss of employment income, costs of past and future health care services under the *Health Care Costs Recovery Act*, exemplary and/or punitive damages, interest, costs, expenses, penalties, disbursements and lawyers' fees, whether such claims, demands, actions, suits or causes of action are known or unknown, suspected or unsuspected, whether in law, under statute or in equity, that the Releasers or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have relating to, arising out of, or connected with, directly, indirectly, or in any manner concerning the Allegations and any conduct alleged or which could have been alleged in the Actions..

kk) "Releasees" means, jointly and severally, the Defendants, and their respective present and former parents, subsidiaries, affiliates, officers, directors, employees, insurers, agents, attorneys, servants, representatives, and the successors, predecessors, heirs, executors, administrators, trustees, and assigns of each of the foregoing.

ll) "Releasers" means, jointly and severally, individually and collectively, the Plaintiffs, Class Members, ~~Health Insurer~~, and their respective successors, heirs, executors, insurers, benefits providers, administrators, trustees, and assigns, whether past, present or future.

*DMR Oct. 11, 2024* *Re Oct 21, 2024*

mm) "Representative Plaintiff" means Robert George Kirk.

nn) "Ross Certification Order" means the order of the Court certifying the Ross Action for settlement purposes by consent which shall be substantially in the form attached as Schedule "A".

oo) "Settlement Agreement" means this Agreement, as executed by Class Counsel and Counsel for the Defendants.

pp) "Settlement Amount" means the sum of an all-inclusive amount of CAD \$4,525,061.67, that the Defendants have agreed to pay into two funds: \$15,000 to the Health Care Compensation Fund to settle any claims of the Health Insurer for health care cost recovery; and the balance to be paid into the Class Action Compensation Fund to settle the Class Action and the Ross Action.

qq) "Settlement Approval Hearing" means the hearing before the Court to approve the dismissal of the Kirk Action and the Ross Action and to approve this Agreement including its schedules.

rr) “Special Circumstances Payment” means compensation in respect of personal property loss or damage, evacuation costs, income loss, business income loss, health care costs and diminution of property costs, pursuant to the Distribution Protocol.

## **SECTION 2 – CONDITION PRECEDENT - COURT APPROVAL**

2.1 This Settlement Agreement is subject to and conditional upon Court approval pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be null and void and of no force or effect unless the Approval Orders have been granted.

2.2 The Parties shall use their best efforts to give effect to this Settlement Agreement and secure the prompt, complete and final dismissal with prejudice of the Actions. The Representative Plaintiff shall bring an application before the Court seeking approval of the terms of this Settlement Agreement, the appointment of a Claims Administrator, and approval of the Distribution Protocol.

2.3 In the event that: (1) the Court declines to approve this Settlement Agreement or any part hereof; or (2) the order approving this Settlement Agreement made by the Court does not become a final order; then this Settlement Agreement shall be terminated and, except as provided for herein, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or further disclosed to anyone other than as may be required by law or agreed upon by the Parties.

## **SECTION 3 – CONSENT CERTIFICATION OF THE ROSS ACTION**

3.1 The Parties Agree to the consent certification of the Ross Action for settlement purposes only.

3.2 The Parties will appear before Justice Masuhara at a judicial management conference, to be scheduled in advance of the Settlement Approval Hearing, to provide an update on the status of the litigation concerning the Actions. An executed copy of this Agreement will be provided to Justice Masuhara for discussion and Class Counsel will seek court approval of the Ross Certification Order for settlement purposes which shall be substantially in the form attached as Schedule “A”.

3.3 At the judicial management conference in which the Ross Certification Order will be sought by consent, Class Counsel will also seek court approval of the form of notice, and an opt-out period of 30 days from the date that the last notice is published, or by November 30, 2024, whichever is later, and seek approval of the plan for Notice of Certification and Settlement Approval outlined in section 6 herein.

3.4 Certification of the Ross Action sought pursuant to this section is without prejudice. In the event this Settlement Agreement is not approved, or the Approval Orders are not granted in the form attached hereto or is terminated in accordance with its terms, the Parties agree that the certification of the Ross Action as a class proceeding against the Defendants for settlement purposes, including the definition of the Proposed Settlement Class and the statement of the

Common Issue, shall be without prejudice to any position that any Party may later take on any issue in the Action or any other litigation.

#### SECTION 4 – SETTLEMENT FUNDS AND DISTRIBUTION

4.1 Within 30 days of the Court Approval Date, the Defendants shall collectively pay to David M. Rosenberg, K.C., Class Counsel, "in trust", the Settlement Amount of \$4,525,061.67.

4.2 Other than as set out in Article 4.1 above, the Defendants shall have no responsibility or liability, under any circumstances, for any additional or further payments under this Settlement Agreement or in relation to the settlement and Actions.

4.3 The Claims Administrator will have the authority to pay any necessary additional disbursements, which may be incurred after the date of signing this Agreement, in order to distribute the fund and implement this Settlement Agreement, up to a maximum of \$5,000 collectively. If further disbursements are required which total more than \$5,000 collectively, then approval from Class Counsel will be required.

4.4 Contingent on the dismissal of both Actions as against the Defendants and third parties and on the court approval of the Settlement Agreement, the Defendants agree to collectively pay the Settlement Amount of \$4,525,061.67, from which Class Counsel will pay to the Health Care Compensation Fund a gross total amount of \$15,000 and then the balance to the Class Action Compensation Fund to be distributed in the following order and priority:

1. First, Class Counsel Disbursements and ~~\$28,875.02~~ and applicable taxes on Class Counsel Disbursements; *KS. DMR*
2. Second, 40% of the balance of the Settlement Amount following the deduction of Class Counsel Disbursements and applicable taxes, plus applicable taxes on Class Counsel Fees;
3. Third, a gross total of \$11,000 towards Honoraria;
4. Fourth, costs related to Claims Administration Expenses and Notice Expenses; and
5. Fifth, Payments to the Eligible Claimants based on the Distribution Protocol.

4.5 Class Counsel will seek Court approval that a Claims Administrator will be appointed for the purpose of administering the Class Action Compensation Fund.

4.6 The Claims Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, any provision of this Settlement Agreement deemed by the Claims Administrator to be reasonably necessary for the efficient and timely administration of this Settlement Agreement, including obtaining such financial,

accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreement.

4.7 The Claims Administrator shall preserve, in hard copy or electronic form as the Claims Administrator deems appropriate, the submissions relating to all Claims until one year after the last payment is made to an Eligible Claimant under this Settlement Agreement and at such time shall dispose of such submissions by shredding or other such means as will render the materials permanently illegible.

4.8 In order to receive any payment under this Settlement Agreement, a Class Member must deliver to the Claims Administrator, not later than the end of the Claims Period, in a single submission: (1) a Claim Form produced by the Claims Administrator that is properly and fully executed as specified in the Claim Form, including the following requirement:

- i. All records or documents specified in the relevant Claim Form will be attached thereto or otherwise submitted.

4.9 If a Class Member fails to submit a Claim Form by the end of the Claims Period, such Class Member shall immediately cease to have any right to receive any payment under this Settlement Agreement. Without limitation of the preceding sentence, the Claims Administrator shall not review any Claim Form delivered to it after the expiry of the Claims Period.

4.10 Any determination by the Claims Administrator pursuant to the Notices and Claims Administration Procedures shall be final and not subject to appeal or review by the Court.

4.11 Nothing in the Notice and Distribution Protocol absolves the Class Member or their respective representative and/or lawyer from their responsibility to effect timely compliance with the submission of their respective Claims in accordance with the requirements of this Settlement Agreement.

4.12 Neither the Claims Administrator nor the Parties shall have any responsibility or liability for (i) any failure of a Class Member to qualify as an Eligible Claimant or (ii) any failure of an Eligible Claimant to receive any particular benefit under this Settlement Agreement as a result of any deficiency in such Eligible Claimant's submission.

4.13 All submissions by Class Members to the Claims Administrator of or relating to a Claim Form shall be made (i) electronically through the claims portal; or (ii) in paper form delivered by regular Canada Post mail, by same-day or overnight courier or in person. All submissions by mail shall be conclusively deemed to have been submitted to the Claims Administrator on the postmark date of such mail. All submissions delivered to the Claims Administrator by same-day or overnight courier shall be conclusively deemed to have been



submitted to the Claims Administrator on the date the submissions were received by the Claims Administrator.

#### *Eligible Claimants*

4.14 The Points Assessment Process shall apply only to those Class Members who are determined to be an Eligible Claimant by the Claims Administrator.

4.15 Only those Class Members who are determined to be Eligible Claimants by the Claims Administrator shall receive Payments under this Settlement Agreement.

#### *Points Assessment Process*

4.16 The Claims Administrator shall determine the points awards to each Eligible Claimant based solely on the Points System. The points award to Eligible Claimants shall be determined in accordance with the Distribution Protocol as set out in Schedule “F” to this Agreement.

#### *Disruption Payments*

4.17 Disruption Payments shall be paid to Eligible Claimants on a pro rata basis in accordance with the Distribution Protocol as set out in Schedule “F” to this Agreement.

#### *Personal Injury Payments*

4.18 Personal Injury Payments shall be paid to Eligible Claimants on a pro rata basis in accordance with the Distribution Protocol as set out in Schedule “F” to this Agreement.

#### *Special Circumstances Payments*

4.19 Special Circumstances Payments shall be paid to Eligible Claimants on a pro rata basis in accordance with the Distribution Protocol as set out in Schedule “F” to this Agreement.

#### *Honoraria*

4.20 Honoraria will be paid to the following persons with respect to the Actions:

- a. \$4,000 to the Plaintiff Robert George Kirk;
- b. \$500 to each of the class members or nominees who attended to be examined for discovery on behalf of the Kirk Class for a total of \$6,000; and

- c. In the Ross Action, \$1,000 to the Plaintiff James Andrew Ross.

*Payment Calculation Report*

4.21 Within 15 days after the expiry of the Claims Deadline, the Claims Administrator shall prepare a report for Class Counsel setting forth the following information:

- a) a list of Eligible Claimants;
- b) the points awarded to each Eligible Claimant;
- c) the Payments due to each Eligible Claimant; and
- d) a list of claimants determined as ineligible including grounds for that determination.

4.22 The Claims Administrator shall send an electronic copy of the report to Class Counsel only. The Defendants are not entitled to receive the report.

*Final Payments to Eligible Claimants.*

4.23 The Class Action Compensation Fund will be distributed to Eligible Claimants in accordance with the Distribution Protocol.

4.24 Subject to the operation of applicable provincial law relating to provincial income assistance programs, it is intended that there be no deduction or claw back from the Payments on account of social or income assistance programs. The Payments will be deemed not to be a form of income replacement, or compensation for loss of income. The Payments will not affect the eligibility for or duration of social assistance or other benefits available to individuals.

4.25 Residual Distribution of Surplus Settlement Monies. If within twelve (12) months of the Payments being issued to Eligible Claimants from the Claims Administrator, a balance exists in the Account as a result of returned or un-cashed cheques, interest earned on the Settlement Amount, or any other surplus monies, the balance in the Account shall be distributed as follows:

- 1. If over \$50,000, pro-rata to all Eligible Claimants; and
- 2. If under \$50,000, to Slocan River Streamkeepers Society [a non-profit society that promotes awareness of threatened fish and wildlife, with an address of Box 47, Winlaw

BC V0G 2J0, for the ongoing monitoring of Lemon Creek and surrounding waterways for a period of time to be determined by Class Counsel and Stream Keepers upon notice from the Claims Administrator of the residual balance left in the Account].

#### *Taxes and Interest*

4.26 All interest earned on the Settlement Amount and/or the Account will become and remain part of the Class Action Compensation Fund.

4.27 All funds held by the Claims Administrator shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Court.

4.28 All taxes payable on any interest which accrues on the Settlement Amount in the Claims Program Account or otherwise in relation to the Settlement Amount shall be the sole responsibility of the Claims Administrator. The Claims Administrator in consultation with Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Claims Program Account, including any obligations to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Claims Program Account.

4.29 The Defendants shall have no responsibility to make any tax filings relating to the Claims Program Account and shall have no responsibility to pay tax on any income earned by the Settlement Amount or pay tax on the monies in the Claims Program Account.

#### **SECTION 5 – CLAIMS ADMINISTRATOR**

5.1 The selection of the Claims Administrator shall be subject to the approval of the Court.

5.2 The Claims Administrator shall administer the Class Action Compensation Fund for the benefit of Eligible Claimants in accordance with the Distribution Protocol and shall be responsible for any tax filings, taxes or other charges relating to the Account and/or the Class Action Compensation Fund.

5.3 The Defendants will not have any responsibility, financial obligations or liability whatsoever with respect to the administration or distribution of the Settlement Amount or the claims process and its administration, including, but not limited to, any fees and expenses associated with the Claims Administrator or administering the distribution of funds generally, and the costs and expenses associated with the publication and distribution of the Notices, and any such costs will be paid out of the Settlement Amount.

## **SECTION 6 – OBJECTIONS AND NOTICE OF SETTLEMENT APPROVAL HEARING**

6.1 Concurrently with the application to certify the Ross Action for settlement purposes set out in section 3 herein, Class Counsel will seek an order for approval of the Notice Plan for Notice of Certification and Settlement Approval Hearing attached as Schedule “B”, including:

1. In advance of the Settlement Approval Hearing, Class Counsel will make reasonable efforts to contact Class Members who have contacted Class Counsel, whether by mail or email, to provide them with the Notice of Certification and Settlement Approval Hearing in order to notify them of the date of the Settlement Approval Hearing, the nature of this Agreement, and of their right to object to the Settlement Agreement.
2. Class Counsel will also publish the Notice of Certification and Settlement Approval Hearing as per the Notice Plan for Notice of Certification and Settlement Approval Hearing attached as Schedule “D”.
3. Class Counsel shall also post the date of the Settlement Approval Hearing, a copy of the Settlement Agreement, and information about the right of Class Members to object to the Settlement Agreement on Class Counsel’s website in advance of the Settlement Approval Hearing.

6.2 A Class Member may object to the approval of this Settlement Agreement by sending a written objection by mail, courier, fax or email to Class Counsel, including the following information: the Class Member’s name and contact information, information to corroborate the Class Member’s status as a member of the Class, and a brief statement of the nature and reasons for the objection.

6.3 Class Counsel shall report to the Court, providing copies of any such objection received prior to the Settlement Approval Hearing.

## **SECTION 7 – RELEASES AND DISMISSALS**

### *Release by Class Members and Releasors*

7.1 Upon approval by the Court of this Settlement Agreement, and in consideration of the payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasors are deemed and agree to forever and absolutely release the Releasees from the Released Claims and the Health Insurer Claims.

7.2 The above release applies to each Class Member and/or Ross Proposed Class Member whether or not the Kirk Class Member or Ross Proposed Class Member receives compensation under this Settlement Agreement.

7.3 The Releasors further agree not to make any claim or take, participate in, or continue any proceedings (including a crossclaim, third party or other claim), on their own behalf or on behalf of any class or any other persons, arising out of or relating to the subject matter of the Released Claims against the Releasees and/or any other person, corporation, or entity (including, without limitation, any pharmacists, pharmacies, health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or other comparable legislation and any amendments thereto, including relief of a monetary, declaratory, or injunctive nature, from one or more the Releasees.

#### *Dismissal of the Actions*

7.4 The Actions and the Third Party Notices filed in the Kirk Action shall be dismissed by consent, with prejudice as if each Action and Third Party Notice had been tried on its merits and dismissed, but without costs, as of the date of the Approval Orders being granted.

### **SECTION 8 – CLASS COUNSEL FEE**

8.1 Class Counsel may bring an application at the Settlement Approval Hearing or on another date for Court approval of the Class Counsel Fee.

8.2 Class Counsel Fees are to be paid out of the Settlement Amount. The Defendants are not liable for any fees, disbursements or taxes, including but not limited to the Class Counsel Fees or the fees, disbursements or taxes of the Plaintiffs or any Class Member's respective lawyers, experts, advisors, agents, or representatives.

### **SECTION 9 - NO ADMISSION OF LIABILITY**

9.1 The Parties agree that whether or not the Settlement Agreement is approved by the Court, the Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with the Settlement Agreement, and any action taken to carry out the Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Actions or in any other pleading filed by the Plaintiffs.

9.2 The Parties further agree that whether or not the Settlement Agreement is approved by the Court, neither the Settlement Agreement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek court approval of the Settlement Agreement or to give effect to and enforce the provisions of the Settlement Agreement, or, in the event the Settlement Agreement is approved by the Court, to allow the Defendants to support insurance coverage claims or seek compensation under applicable insurance policies.

## **SECTION 10 – GENERAL PROVISIONS**

10.1 Class Counsel shall publish:

- (a) the Notice of Certification and Settlement Approval Hearing, prior to the Settlement Approval Hearing as per the terms of the Notice Plan for Notice of Certification and Settlement Hearing; and
- (b) the Notice of Certification and Settlement Approval Hearing as attached hereto as Schedule “C”, or in a substantially similar form approved by Class Counsel and counsel to the Defendants and the Court, within 60 days of the Court Approval Date as per the terms of the Notice Plan of Certification and Settlement Approval which is attached at Schedule “D”, or a substantially similar notice plan as may be agreed to by Class Counsel and the Defendants’ counsel or approved by the Court.

10.2 This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of British Columbia.

10.3 The Court shall retain exclusive jurisdiction in the implementation and administration of the Settlement Agreement.

10.4 Class Counsel, the Defendants, or the Claims Administrator may apply to the British Columbia Supreme Court for directions, if necessary, in respect to the implementation and administration of this Settlement Agreement and the Distribution Protocol.

10.5 Other than the payment contemplated by s.4.1 of this Settlement Agreement, the Releasees shall have no responsibility for and no liability with respect to the administration of this Settlement Agreement and the Health Care Compensation Fund and the Class Action Compensation Fund.

10.6 This Settlement Agreement, including its schedules, constitutes the entire agreement between the Plaintiffs (on their behalf and as class representatives) and the Defendants, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and settlement terms in connection herewith. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

10.7 This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Court.

10.8 The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

10.9 This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an email or facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.

10.10 This Settlement Agreement has been the subject of negotiations and discussion among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect.

10.11 The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

10.12 The Parties confirm that all negotiations direct or indirect leading up to this Settlement Agreement are confidential and shall not be disclosed to the public by Class Counsel or Class Members.

10.13 The Schedules to this Settlement Agreement are as follows:

- (a) Schedule “A”: Ross Certification Order;
- (b) Schedule “B”: Order Approving of the Certification and Settlement Approval Notice Plan;
- (c) Schedule “C”: Proposed form of Notice of Certification and Settlement Approval Hearing;
- (d) Schedule “D”: Notice Plan for Notice of Certification and Settlement Approval Hearing;
- (e) Schedule “E”: Settlement Approval Orders; and
- (f) Schedule “F”: Distribution Protocol.

10.14 Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

10.15 Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

10.16 Any order, ruling, or determination made by the Court with respect to legal fees, time periods and deadlines, opt out processes, or notification of actual or potential class members shall not be deemed to be a material modification of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.


10.17 If any material part of this Settlement Agreement is not approved by the Court:

a. No motion to certify the Ross Action as a class proceeding based on this Settlement Agreement or to approve this Settlement Agreement shall proceed.

b. The Parties agree to apply by consent for an order setting aside and declaring of no force and effect any order certifying the Ross Action as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement.

**IN WITNESS WHEREOF**, each of the signatories, whether personally or by counsel, has caused this Settlement Agreement to be executed on their behalf as follows, agreed and dated for reference this 9<sup>th</sup> day of October 2024:

**FOR THE PLAINTIFF:**

  
\_\_\_\_\_  
David M. Rosenberg, K.C.  
Rosenberg Law  
Lawyer for the Plaintiff

**FOR THE DEFENCE:**

\_\_\_\_\_





**Kelsey K. Sherriff**

**Miller Thomson LLP**

Lawyer for the Defendant and Third Party,  
Executive Flight Centre Fuel Services Ltd.



**Brian C. Poston**

**Clark Wilson LLP**

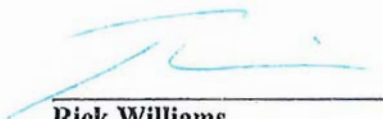
Lawyer for the Defendant and Third Party,  
Transwest Helicopters Ltd.



**Alexander Bjornson**

**Ministry of Attorney General**

Lawyer for the Defendant and Third Party,  
His Majesty the King in right of the Province of  
British Columbia as represented by the Minister  
of Transportation and Infrastructure and the  
Minister of Forests, Lands and Natural Resource  
Operations



**Rick Williams**

**Borden Ladner Gervais LLP**

Lawyer for the Defendant and Third Party,  
Danny LaSante

**SCHEDULE A – ROSS CERTIFICATION ORDER**

No. S155933  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JAMES ANDREW ROSS, as Representative Plaintiff

PLAINTIFF

AND:

EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and  
THE MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,  
DANNY LaSANTE and TRANSWEST HELICOPTERS LTD.

DEFENDANTS

*Brought Under the Class Proceedings Act, R.S.B.C. 1996, c.50*

**ORDER MADE AFTER  
APPLICATION  
*Re: CERTIFICATION, OPT-OUT  
AND NOTICE APPROVAL***

	)		)
BEFORE	}	The Honourable Mr. Justice D.M. Masuhara	}
	)		)

October 9, 2024

**ON THE APPLICATION** of the plaintiff, coming on for a hearing on the October 9, 2024, before Justice Masuhara, at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, **AND ON HEARING** David M. Rosenberg, K.C., David Aaron and Dulcie Jones, counsel for the Plaintiff, Kelsey Sherriff and Michael Percival, counsel for the Defendant, Executive Flight Centre Fuel Services Ltd., and Alexander C. Bjornson, and Lee Mauro, counsel for the Defendant, His Majesty the King in right of the Province of British Columbia, and Brian Poston, counsel for the Defendant, Transwest Helicopters Ltd., and Rick Williams and Roark Lewis, counsel for the Defendant, Danny LaSante.

**THIS COURT ORDERS THAT:**

1. This proceeding is conditionally certified as a class proceeding for settlement purposes only against the Defendants Executive Flight Centre Fuel Services Ltd, His Majesty the King in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure and the Minister of Forest, Lands and Natural Resource Operations, Danny LaSante and Transwest Helicopters Ltd. and is subject to the final approval of the Settlement Agreement. Should the Settlement Agreement not be approved or the Settlement Agreement be terminated, all materials filed, submissions made or positions taken by any party are without prejudice to future positions taken by any party on a certification application.
2. The certification of this action shall not bind the class unless and until the Settlement Agreement is approved.
3. The Class is defined as:

*All persons who were present in the Evacuation Area at or after the time of the Spill and suffered personal injury where those personal injuries are claimed to have been associated with the Spill.*

4. James Andrew Ross is appointed as the Representative Plaintiff for the Class Proceeding.
5. David M. Rosenberg, K.C. is appointed as counsel to the Class (“Class Counsel”).
6. The certified common issue pertaining to the Class is as follows:

*“Did any of the Defendants, through their acts or omissions, and to what degree, cause or contribute to the Spill?”*

7. A person may opt-out of the class proceeding by sending written election to Class Counsel to opt-out within 30 days from the date that the last publication of Notice being issued, or by November 30, 2024, whichever is later
8. The form of Notice of Certification and Settlement Approval proposed by the Plaintiff and appended to this Order as Schedule “C” is approved.
9. The steps proposed to be taken by Class Counsel to notify Class members of the Certification and of the Settlement Approval Hearing are reasonable and appropriate.
10. The action is hereby certified and dismissed effective from the date of Court approval of the settlement.
11. The Court, without in any way affecting the finality of this Order, reserves jurisdiction for the limited purposes of implementation, enforcement and administration of the Settlement Agreement and this Order.

**BY THE COURT  
DEPUTY DISTRICT**

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**David M. Rosenberg, K.C.**  
**Rosenberg Law**  
Lawyer for the Plaintiff

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**Kelsey K. Sherriff**  
**Miller Thomson LLP**  
Lawyer for the Defendant and Third Party,  
Executive Flight Centre Fuel Services Ltd.

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**Brian C. Poston**

**Clark Wilson LLP**

Lawyer for the Defendant and Third Party,  
Transwest Helicopters Ltd.

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**Alexander Bjornson**

**Ministry of Attorney General**

Lawyer for the Defendant and Third Party,  
His Majesty the King in right of the Province of British  
Columbia as represented by the Minister of Transportation  
and Infrastructure and the Minister of Forests, Lands and  
Natural Resource Operations

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**Rick Williams**

**Borden Ladner Gervais LLP**

Lawyer for the Defendant and Third Party,  
Danny LaSante

**SCHEDULE B –ORDER APPROVING OF THE SETTLEMENT APPROVAL NOTICE  
PLAN**

No. S135927  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ROBERT GEORGE KIRK, as Representative Plaintiff

PLAINTIFF

AND:

EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and  
THE MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,  
DANNY LaSANTE and TRANSWEST HELICOPTERS LTD.

DEFENDANTS

AND:

DANNY LaSANTE, EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD.,  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and the  
MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS and  
TRANSWEST HELICOPTERS LTD.

THIRD PARTIES

*Brought Under the Class Proceedings Act, R.S.B.C. 1996, c.50*

**ORDER MADE AFTER  
APPLICATION  
*Re: APPROVAL OF NOTICE  
PLAN OF SETTLEMENT  
APPROVAL HEARING***

BEFORE } The Honourable Mr. Justice D.M. Masuhara } October 9, 2024  
 ) )

**ON THE APPLICATION** of the plaintiff coming on for a hearing on the October 9, 2024, before Justice Masuhara, at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, **AND ON HEARING** David M. Rosenberg, K.C., David Aaron and Dulcie Jones, counsel for the Plaintiff, Kelsey Sherriff and Michael Percival, counsel for the Defendant and Third Party, Executive Flight Centre Fuel Services Ltd., and Alexander C. Bjornson, and Lee Mauro, counsel for the Defendant and Third Party, His Majesty the King in right of the Province of British Columbia, and Brian Poston, counsel for the Defendant and Third Party, Transwest Helicopters Ltd., and Rick Williams and Roark Lewis, counsel for the Defendant and Third Party, Danny LaSante.

**THIS COURT ORDERS THAT:**

1. The form of Notice of Certification and Settlement Approval appended to this Order as Appendix “A”, is approved.
2. The steps proposed to be taken by Class Counsel to notify Class Members of the Settlement Approval Hearing are reasonable and appropriate.

**BY THE COURT  
DEPUTY DISTRICT**

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**David M. Rosenberg, K.C.**  
**Rosenberg Law**  
Lawyer for the Plaintiff

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**Kelsey K. Sherriff**  
**Miller Thomson LLP**  
Lawyer for the Defendant and Third Party,  
Executive Flight Centre Fuel Services Ltd.

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**Brian C. Poston**

**Clark Wilson LLP**

Lawyer for the Defendant and Third Party,  
Transwest Helicopters Ltd.

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**Alexander Bjornson**

**Ministry of Attorney General**

Lawyer for the Defendant and Third Party,  
His Majesty the King in right of the Province of British  
Columbia as represented by the Minister of Transportation  
and Infrastructure and the Minister of Forests, Lands and  
Natural Resource Operations

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**Rick Williams**

**Borden Ladner Gervais LLP**

Lawyer for the Defendant and Third Party,  
Danny LaSante



**SCHEDULE C – NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL  
HEARING**

**NOTICE TO SLOCAN VALLEY  
CERTIFICATION OF BRITISH COLUMBIA CLASS ACTION  
REGARDING THE LEMON CREEK FUEL SPILL ON JULY 26, 2013.**

*Read this notice carefully as it may affect your rights.*

**INTRODUCTION**

On July 26, 2013, a large fuel tanker hauling jet fuel overturned while driving adjacent to Lemon Creek in the Slocan Valley. As a result of that accident, over 30,000 litres of jet fuel was discharged directly into Lemon Creek and, via Lemon Creek, into the Slocan River (“the Spill”).

On April 26, 2023, the Supreme Court of British Columbia certified a class proceeding: *Robert George Kirk, v. Executive Flight Centre Fuel Services Ltd. et al.*, Action No. S135927 (Vancouver Registry) in relation to the claims arising from the Spill (the “Property Class Action”) on behalf of a class defined as:

*“All persons who owned, leased, rented, or occupied real property on July 26, 2013 within the Evacuation Zone (as defined in the Amended Notice of Civil Claim) except for the defendants and third parties.”*

(the “Property Class”)

This notice is directed to all persons, including companies, who fall within the definition of the Class.

A map of the Evacuation Zone is attached to this notice as Appendix “A”. If you owned, leased, rented, or occupied real property on July 26, 2013 within the Evacuation Zone as delineated on this map, then you fall within the definition of the Class and you are bound by the Property Class Action and the settlement of the Property Class Action described herein.

By Court order, the Property Class is represented by David M. Rosenberg, K.C. (“Class Counsel”).

The Defendants to the Class Action are:

1. Executive Flight Centre Fuel Services Ltd. (“Executive Ltd.”);
2. His Majesty the King in right of The Province of British Columbia as represented by the Minister of Transportation and Infrastructure and the Minister of Forests, Lands and Natural Resource Operations (“HMTK”);
3. Danny LaSante (“LaSante”); and
4. Transwest Helicopters Ltd. (“Transwest”).

(the “Defendants”)

On July 22, 2015, James A. Ross, under the representation of Class Counsel, commenced a proposed class action for personal injury resulting from exposure to the Spill (the “Ross Action”).

The Property Class Action and the Ross Action are herein referred to collectively as the “Actions”.

### **CERTIFICATION OF THE ROSS ACTION**

On October 9, 2024 the Supreme Court of British Columbia certified the Ross Action on behalf of a Class defined as:

*All persons who were present in the Evacuation Area at or after the time of the Spill and suffered personal injury where those personal injuries are claimed to have been associated with the Spill.*

(the “Bodily Injury Class”)

The Defendants in the Ross Action are the same as in the Property Class Action and by Order of the Court, the Bodily Injury Class are represented by Class Counsel.

If you are a BC resident and you are a Bodily Injury Class member you are automatically included in the class action. If you do not want to be part of the Ross Action you must submit an Opt-Out Form to Class Counsel no later than November 30, 2024. If you do not exclude yourself by that date you will be included in the Ross Action you will be included in this lawsuit and will be bound by the Settlement Agreement.

Bodily Injury Class members will be entitled to the benefit of the settlement outlined herein. Bodily Injury Class members who submit an Opt-Out Form will not be entitled to make a claim under the Settlement Agreement described herein.

The representative plaintiff has entered in a contingency fee agreement with Class Counsel such that no class member will be responsible for legal fees or costs.

For more information about the Actions or to obtain an Opt-Out Form for the Ross Action, please contact Class Counsel at: <https://rosenberglaw.ca/class-actions/lemon-creek-jet-fuel-spill-class-action/>.

### **SETTLEMENT**

On October 8, 2024, the Parties reached a Settlement Agreement subject to approval by the Court (the “Proposed Settlement”).

The Proposed Settlement resolves the Actions and establishes a compensation scheme for eligible claimants relating to damages that arise from the Actions.

You can obtain a copy of the Settlement Agreement on Class Counsel's website where it will be posted or by clicking this <https://rosenberglaw.ca/class-actions/lemon-creek-jet-fuel-spill-class-action/>.

### **SETTLEMENT APPROVAL HEARING**

On January 15, 2025 at 10:00am at 800 Smithe Street, Vancouver, British Columbia, Class Counsel will appear before the Justice Masuhara of the Supreme Court of British Columbia to seek approval of the Settlement Agreement. A copy of the Settlement Agreement can be found at <https://rosenberglaw.ca/class-actions/lemon-creek-jet-fuel-spill-class-action/>.

### **OBJECTIONS TO THE SETTLEMENT AGREEMENT**

A Class Member may object to the approval of this Settlement Agreement by sending Class Counsel a written objection by mail, courier, fax or email to Class Counsel, including information concerning his/her/their/its name, address and contact information, and a brief statement of the nature and reasons for the objection.

Class Counsel shall report to the Court, providing copies of any such objection received prior to the Settlement Approval Hearing.

### **HOW TO MAKE A CLAIM FOR COMPENSATION**

Once the Settlement Agreement is approved by the Court, further notice will be issued concerning the Approved Settlement including information pertaining to the process and deadlines for advancing a claim for compensation.

### **FEES**

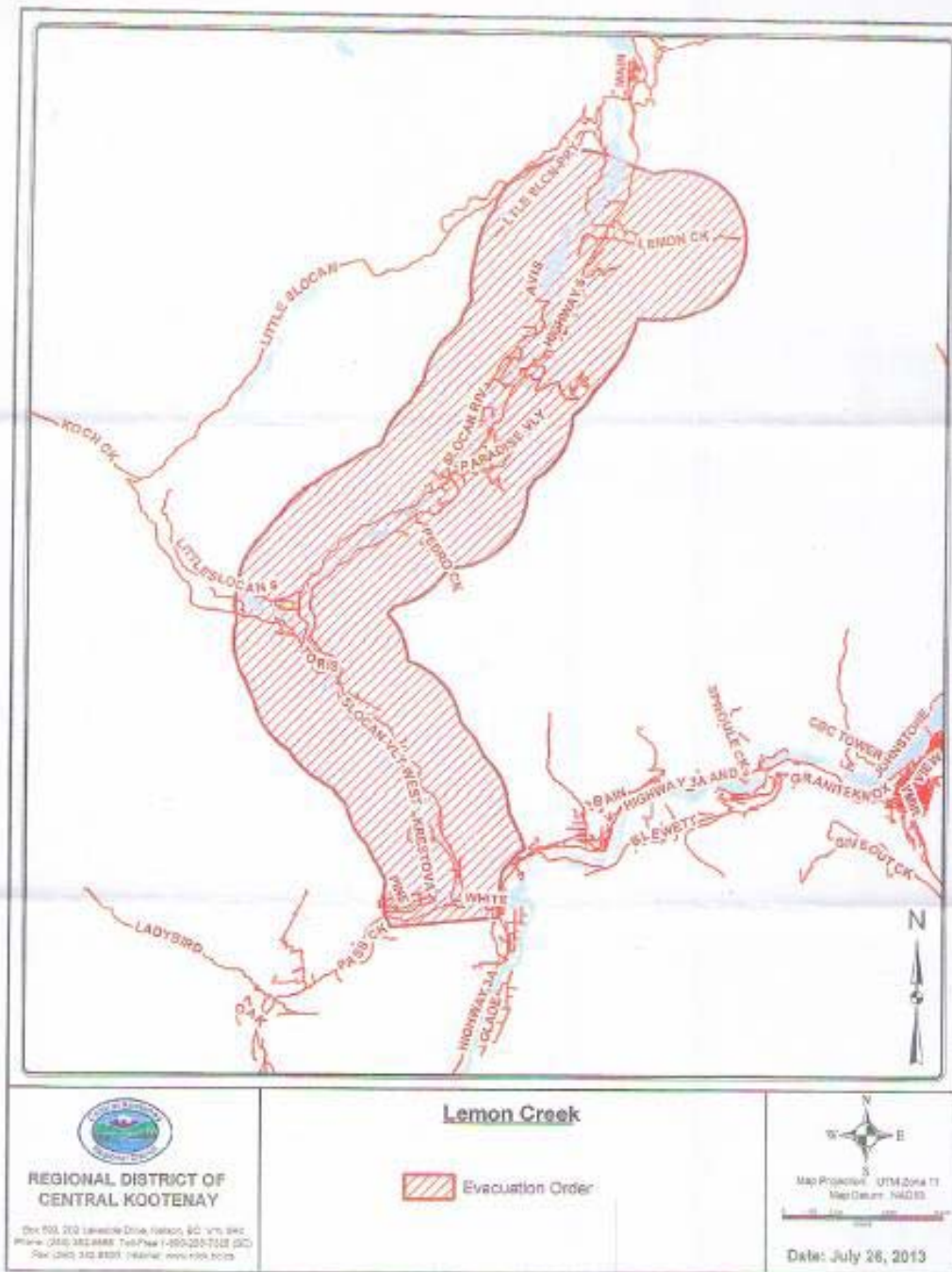
You do not need to pay any legal fees out of your own pocket.

Class Counsel has entered into agreements with Robert George Kirk and James Andrew Ross, the Representative Plaintiffs in the Actions, with respect to legal fees and disbursements. Court approved fees are deducted from Settlement Amount.

Members of the Class will not be personally liable to pay Class Counsel any legal fees or disbursements.

## **APPENDIX “A”**

### **EVACUATION ZONE**



## **SCHEDULE D – NOTICE PLAN FOR NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING**

The Notice of Certification and Settlement Approval shall be published by the following means:

1. Class Counsel shall send a copy of the Notice of Certification and Settlement Approval Hearing by mail or email to all Class Members who contacted Class Counsel about these proceedings.
2. Class Counsel and/or the Claims Administrator will post a copy of the Notice of Certification and Settlement Approval Hearing on their respective websites.
3. Class Counsel will publish the Notice of Certification and Settlement Approval Hearing in two local news papers: Pennywise and Valley Voice for two consecutive issues respectively. All applicable timelines will commence from the date of the last publication.

**SCHEDULE E – APPROVAL ORDERS**

No. S135927  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

ROBERT GEORGE KIRK, as Representative Plaintiff

PLAINTIFF

AND:

EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and  
THE MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,  
DANNY LaSANTE and TRANSWEST HELICOPTERS LTD.

DEFENDANTS

AND:

DANNY LaSANTE, EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD.,  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and the  
MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS and  
TRANSWEST HELICOPTERS LTD.

THIRD PARTIES

*Brought Under the Class Proceedings Act, R.S.B.C. 1996, c.50*

**ORDER MADE AFTER  
APPLICATION  
*Re: APPROVAL OF  
SETTLEMENT***

BEFORE } The Honourable Mr. Justice D.M. Masuhara } January 15, 2025

**ON THE APPLICATION** of the plaintiff, coming on for a hearing on the January 15, 2025, before Justice Masuhara, at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, **AND ON HEARING** David M. Rosenberg, K.C., David Aaron and Dulcie Jones, counsel for the Plaintiff, Kelsey Sherriff, counsel for the Defendant and Third Party, Executive Flight Centre Fuel Services Ltd., and Alexander C. Bjornson, and Lee Mauro counsel for the Defendant and Third Party, His Majesty the King in right of the Province of British Columbia, and Brian Poston, counsel for the Defendant and Third Party, Transwest Helicopters Ltd., and Rick Williams, counsel for the Defendant and Third Party, Danny LaSante.

**THIS COURT ORDERS THAT:**

1. The Settlement Agreement attached to this Order as Schedule “A”, including all of the Schedules thereto, is incorporated by reference into and forms part of this Order and unless otherwise indicated herein, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The Settlement Agreement, including all of the Schedules thereto, is fair, reasonable and in the best interests of the Kirk Class Members as defined in the Settlement Agreement.
3. The settlement and terms outlined in the Settlement Agreement, including all of the Schedules thereto, is hereby approved and is binding on the Kirk Class Members and the Defendants pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.
4. This Order is contingent upon a parallel order being made in Ross v. Executive et al., Supreme Court of British Columbia Action No. S155933 (Vancouver Registry) (the “Ross Action”) and the terms of this Order shall not be effective unless and until such order is made in the Ross Action.
5. The steps taken by Class Counsel to notify Kirk Class Members of the Settlement Approval Hearing are deemed reasonable and appropriate.
6. The Notice of Approved Settlement and Claims Process, in a substantially similar form to that attached as Schedule “C” to the Settlement Agreement, shall be distributed pursuant

to the Notice Plan for Notice of Settlement Approval, attached as Schedule “D” to the Settlement Agreement, and such distribution is approved by this Court as being reasonable notice of the settlement and the terms of the Settlement Agreement in accordance with the requirements of the *Class Proceedings Act*.

7. The Defendants shall collectively pay the sum of \$4,525,061.67 to David M. Rosenberg, K.C., Class Counsel, “in trust” within thirty (30) days of the Court Approval Date in full and final settlement of both the within Action and the Ross Action.
8. Class Counsel on behalf of the Defendants, will pay a gross total amount of \$15,000 payable to the British Columbia Ministry of Finance for health care costs recovery in the Ross Action.
9. An Honorarium of \$4,000 to the Representative Plaintiff Robert George Kirk, for distinguished service to the Class, is hereby approved. Payment of this amount to Mr. Kirk is authorized as a disbursement to be paid from the settlement funds.
10. An Honorarium of \$1,000 to the proposed Representative Plaintiff James Ross in the Ross Action, for distinguished service to the Class, is hereby approved. Payment of this amount to Mr. Ross is authorized as a disbursement to be paid from the settlement funds.
11. An Honoraria to each of the class member or nominees who were examined for discovery in the amount of \$500 each, for a total of \$6,000:
  - a. \$500 to Nicholas Brayman;
  - b. \$500 to Timothy Fenton;
  - c. \$500 to Jane Flotron;
  - d. \$500 to Diana Gorgichuk;
  - e. \$500 to Russell Hulbert;
  - f. \$500 to Gord Ihlen;
  - g. \$500 to David S. Mason;



- h. \$500 to Nelle Maxey;
- i. \$500 to Darren McElhanney;
- j. \$500 to Margaret Teiner;
- k. \$500 to Ryan Wilson; and
- l. \$500 to John Wittmayer.

12. A Class Counsel Fee, which is 40% of the balance of the Settlement Amount following the deduction of Disbursements, and applicable taxes, is approved.
13. The appointment of a Claims Administrator by Class Counsel whose responsibilities shall include but may not be limited to: (a) administering the Distribution Protocol; (b) administering the Class Action Compensation Fund; (c) accepting and maintaining documents sent from Kirk Class Members, including Claims Forms and other documents relating to Claims Administration; (d) determining the validity of Eligible Claims in accordance with the terms of the Settlement Agreement and Distribution Protocol; and (e) all other responsibilities designated to the Claims Administrator in the Settlement Agreement is approved. The Claims Administrator will provide Class Counsel with any information or documents that Class Counsel requests concerning the administration of the settlement including details of distribution.
14. The Claims Deadline shall be 180 days from the first publication of the Notice of Settlement Approval. Class Counsel will be at liberty to apply to the Court to extend the Claims Deadline for any particular Class Member so long as such application is made within three months following the end of the Claims Period under the Settlement Agreement.
15. The determination of the validity and amount of Eligible Claims submitted by Kirk Class Members shall be made by the Claims Administrator. The decision shall be final and binding and shall not be subject to any further appeal.
16. The action is dismissed effective from the date of Court approval of the settlement

17. Without affecting the finality of this Order, this Court shall retain exclusive continuing jurisdiction for the limited purposes of implementation of the settlement process and the parties thereto, including the Plaintiffs, the Defendants, Kirk Class Members, and the Claims Administrator, for all matters relating to supervising, administering, implementing, enforcing and interpreting the Settlement Agreement and the Claims and Distribution Protocol thereunder, the enforcement of this Order, and all proceedings related to the Settlement Agreement, both before and after the approval of the Settlement Agreement and the settlement referred to therein becomes final and is no longer subject to appeal. The parties to the Settlement Agreement may apply to this Court for further direction, if necessary, in respect to the implementation and administration of the Settlement Agreement and the Distribution Protocol. The Kirk Action is otherwise dismissed with prejudice and all the claims of the Kirk Class Members as against the Defendants relating to the Allegations are extinguished upon payment of the settlement funds to David M. Rosenberg, K.C., Class Counsel, “in trust”.

**BY THE COURT**

**DEPUTY DISTRICT**

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**David M. Rosenberg, K.C.**

**Rosenberg Law**

Lawyer for the Plaintiff

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**Kelsey K. Sherriff**

**Miller Thomson LLP**

Lawyer for the Defendant and Third Party,  
Executive Flight Centre Fuel Services Ltd.

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**Brian C. Poston**

**Clark Wilson LLP**

Lawyer for the Defendant and Third Party,  
Transwest Helicopters Ltd.

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**Alexander Bjornson**

**Ministry of Attorney General**

Lawyer for the Defendant and Third Party,  
His Majesty the King in right of the Province of British  
Columbia as represented by the Minister of Transportation  
and Infrastructure and the Minister of Forests, Lands and  
Natural Resource Operations

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**Rick Williams**

**Borden Ladner Gervais LLP**

Lawyer for the Defendant and Third Party,  
Danny LaSante

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JAMES ANDREW ROSS, as Representative Plaintiff

PLAINTIFF

AND:

EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and  
THE MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,  
DANNY LaSANTE and TRANSWEST HELICOPTERS LTD.

DEFENDANTS

*Brought Under the Class Proceedings Act, R.S.B.C. 1996, c.50*

**ORDER MADE AFTER  
APPLICATION  
*Re: APPROVAL OF  
SETTLEMENT***

	)		)
BEFORE	}	The Honourable Mr. Justice D.M. Masuhara	}
	)		)

January 15, 2025

ON THE APPLICATION of the plaintiff, coming on for a hearing on the January 15, 2025, before Justice Masuhara, at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, AND ON HEARING David M. Rosenberg, K.C., David Aaron and Dulcie Jones, counsel for the Plaintiff, Kelsey Sherriff, counsel for the Defendant, Executive Flight Centre Fuel Services Ltd., and Alexander C. Bjornson, and Lee Mauro, counsel for the Defendant, His Majesty the King in right of the Province of British Columbia, and Brian Poston, counsel for the Defendant, Transwest Helicopters Ltd., and Rick Williams, counsel for the Defendant, Danny LaSante.

**THIS COURT ORDERS THAT:**

1. The Settlement Agreement attached to this Order as Schedule "A", including all of the Schedules thereto, is incorporated by reference into and forms part of this Order and unless otherwise indicated herein, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. The Settlement Agreement, including all of the Schedules thereto, is fair, reasonable and in the best interests of the Class Members as defined in the Settlement Agreement.
3. The settlement and terms outlined in the Settlement Agreement, including all of the Schedules thereto, is hereby approved and is binding on the Ross Proposed Class Members and the Defendants pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.
4. This Order is contingent upon a parallel order being made in *Kirk v. Executive et al.*, Supreme Court of British Columbia Action No. S135927 (Vancouver Registry) (the "Kirk Action") and the terms of this Order shall not be effective unless and until such order is made in the Kirk Action.
5. The steps taken by Class Counsel to notify Ross Proposed Class Members of the Settlement Approval Hearing are deemed reasonable and appropriate.
6. The Notice of Approved Settlement and Claims Process, in a substantially similar form to that attached as Schedule "C" to the Settlement Agreement, shall be distributed pursuant to the Notice Plan for Notice of Settlement Approval, attached as Schedule "D" to the

Settlement Agreement, and such distribution is approved by this Court as being reasonable notice of the settlement and the terms of the Settlement Agreement in accordance with the requirements of the *Class Proceedings Act*.

7. The Defendants shall pay the sum of \$4,525,061.67 to David M. Rosenberg, K.C., Class Counsel, "in trust" within thirty (30) days of the Court Approval Date in full and final settlement of both the within Ross Action and the Kirk Action.
8. Class Counsel on behalf of the Defendants, will pay a gross total amount of \$15,000 payable to the British Columbia Ministry of Finance for health care costs recovery in the Ross Action.
9. An Honorarium of \$4,000 to the Representative Plaintiff Robert George Kirk, for distinguished service to the Class, in the Kirk Action is hereby approved. Payment of this amount to Mr. Kirk is authorized as a disbursement to be paid from the settlement funds.
10. An Honorarium of \$1,000 to the proposed Representative Plaintiff James Ross, for distinguished service to the Class, is hereby approved. Payment of this amount to Mr. Ross is authorized as a disbursement to be paid from the settlement funds.
11. An Honoraria to each of the representatives of the Plaintiff who were examined for discovery in the Kirk Action in the amount of \$500 each, for a total of \$6,000:
  - a. \$500 to Nicholas Brayman;
  - b. \$500 to Timothy Fenton;
  - c. \$500 to Jane Flotron;
  - d. \$500 to Diana Gorgichuk;
  - e. \$500 to Russell Hulbert;
  - f. \$500 to Gord Ihlen;
  - g. \$500 to David S. Mason;

- h. \$500 to Nelle Maxey;
  - i. \$500 to Darren McElhanney;
  - j. \$500 to Margaret Teiner;
  - k. \$500 to Ryan Wilson; and
  - l. \$500 to John Wittmayer.
12. A Class Counsel Fee, which is 40% of the balance of the Settlement Amount following the deduction of Disbursements, and applicable taxes, is approved.
13. The appointment a Claims Administrator by Class Counsel whose responsibilities shall include but may not be limited to: (a) administering the Distribution Protocol; (b) administering the Class Action Compensation Fund; (c) accepting and maintaining documents sent from Class Members, including Claims Forms and other documents relating to Claims Administration; (d) determining the validity of Claims in accordance with the terms of the Settlement Agreement and Distribution Protocol; and (e) all other responsibilities designated to the Claims Administrator in the Settlement Agreement is approved. The Claims Administrator will provide Class Counsel with any information or documents that Class Counsel requests concerning the administration of the settlement including details of distribution.
14. The Claims Deadline shall be 180 days from the first publication of the Notice of Settlement Approval. Class Counsel will be at liberty to apply to the Court to extend the Claims Deadline for any particular Class Member so long as such application is made within three months following the end of the Claims Period under the Settlement Agreement.
15. The determination of the validity and amount of Eligible Claims submitted by the Class Members shall be made by the Claims Administrator. The decision shall be final and binding and shall not be subject to any further appeal.
16. Without affecting the finality of this Order, this Court shall retain exclusive continuing

jurisdiction over the settlement process and the parties thereto, including the Plaintiffs, the Defendants, Ross Proposed Class Members, and the Claims Administrator, for all matters relating to supervising, administering, implementing, enforcing and interpreting the Settlement Agreement and the Claims and Distribution Protocol thereunder, the enforcement of this Order, and all proceedings related to the Settlement Agreement, both before and after the approval of the Settlement Agreement and the settlement referred to therein becomes final and is no longer subject to appeal. The parties to the Settlement Agreement may apply to this Court for further direction, if necessary, in respect to the implementation and administration of the Settlement Agreement and the Distribution Protocol. The Action is otherwise dismissed with prejudice and all the claims of the Ross Proposed Class Members as against the Defendants relating to the Allegations are extinguished upon payment of the settlement funds to David M. Rosenberg, K.C., Class Counsel, "in trust".

**BY THE COURT**

**DEPUTY DISTRICT**

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**David M. Rosenberg, K.C.**

**Rosenberg Law**

Lawyer for the Plaintiff

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**Kelsey K. Sherriff**

**Miller Thomson LLP**

Lawyer for the Defendant and Third Party,  
Executive Flight Centre Fuel Services Ltd.

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**Brian C. Poston**

**Clark Wilson LLP**

Lawyer for the Defendant and Third Party,  
Transwest Helicopters Ltd.

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**Alexander Bjornson**

**Ministry of Attorney General**

Lawyer for the Defendant and Third Party,  
His Majesty the King in right of the Province of British  
Columbia as represented by the Minister of Transportation  
and Infrastructure and the Minister of Forests, Lands and  
Natural Resource Operations

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**Rick Williams**

**Borden Ladner Gervais LLP**

Lawyer for the Defendant and Third Party,  
Daniel LaSante

**SCHEDULE F – DISTRIBUTION PROTOCOL**

No. S135927 & S155933  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

ROBERT GEORGE KIRK, as Representative Plaintiff of SCBC Action No. S135927 and  
JAMES ANDREW ROSS, as proposed Representative Plaintiff of SCBC Action No. S155933

**PLAINTIFFS**

**AND:**

EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and  
THE MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS,  
DANNY LaSANTE and TRANSWEST HELICOPTERS LTD.

**DEFENDANTS**

**AND:**

DANNY LaSANTE, EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD.,  
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as  
represented by THE MINISTER OF TRANSPORTATION AND INFRASTRUCTURE and the  
MINISTER OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS and  
TRANSWEST HELICOPTERS LTD.

**THIRD PARTIES**

*Brought Under the Class Proceedings Act, R.S.B.C. 1996, c.50*

**DISTRIBUTION PROTOCOL**

**Definitions**

1. All capitalized terms used in this schedule have the same meaning as defined in the Settlement Agreement.

### **Process to Advance a Claim**

2. In order to receive benefits pursuant to the settlement of these Class Actions, a Class Member must provide the Claims Administrator with a completed Claim Form before the Claims Deadline.

### **Eligibility Criteria**

3. To be eligible for compensation, a Claimant must satisfy the Claims Administrator that they are an Eligible Claimant.
4. The decision of the Claims Administrator concerning eligibility is final.

### **Damages - Category Assessments**

5. A Class Member's entitlement to payment, and the amount of such payment, under this Distribution Protocol shall be determined by the Claims Administrator as outlined herein.

6. Damages will be assessed by the Claims Administrator through a review of the available information and documents and by applying the following grid:

CATEGORY	POINT
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<b>(1) DISRUPTION PAYMENTS (Kirk Action)</b>	
<b>(a) Inconvenience</b> Each person who falls within the Class Definition in the Kirk Action, is to be compensated for the loss of the right to use and enjoy their property.	1
<b>(b) Evacuation (1 day)</b> Each Class Member who physically evacuated for one day.	1
<b>(c) Evacuation (&gt;1 day)</b> Each Class Member who physically evacuated for more than one day.  Class Members will be awarded a point for each for (b) and (c) respectively, if they evacuated for more than one day.	1

<b>(2) PERSONAL INJURY PAYMENTS (Ross Action)</b>	
<b>(a) Minor Personal Injury Damage:</b> Each person who falls within the proposed Class Definition of the Ross Action, and experienced minor personal injury, which includes any injury described below, where the symptoms did not last for more than one week, did not result in hospitalization for more than one day, and did not cause long-term health complications: <ul style="list-style-type: none"> <li>i. Burning eyes, nose, and/or throat;</li> <li>ii. Rashes, allergic reactions and/or Itchy skin;</li> <li>iii. Digestive issues;</li> <li>iv. Mental Distress; and</li> <li>v. Brain fog and headaches.</li> </ul>	1

<p>The Minor Personal Injury must be supported by affidavit evidence or medical records satisfactory to the Claims Administrator, which must reflect that the injury was, or likely was, caused by the Spill. The Claims Administrator will make this assessment on a balance of probabilities and will consider common law principles such as proximity and remoteness.</p> <p><b>NOTE:</b> In accordance with this Distribution Protocol, Claimants are not eligible to receive the point under 2 (a) Minor Personal Injury Damage if they are eligible to receive a point under 1 (a) Disruption Payments. The two points are mutually exclusive. This is so that all members that fall within the Class Definition of both of the Actions receive only one point for the "base level of damage" experienced. All other points are for damages over and above the base level of damage experienced by the Class Members as a result of the Spill.</p>	
<p><b>(b) Major Personal Injury Damage:</b></p> <p>Each person who falls within the proposed Class Definition of the Ross Action and experienced major personal injury, including mental distress and physical injury, which caused long-term health complications which significantly impacted the Class Members quality of life.</p> <p>The Major Personal Injury must be supported by affidavit evidence or medical records satisfactory to the Claims Administrator, which must reflect that the injury was, or likely was, caused by the Spill. The Claims Administrator will make this assessment on a balance of probabilities and will consider common law principles such as proximity and remoteness.</p> <p><b>NOTE:</b> It is possible to receive a point for category 2 (a) Minor Personal Injury Damage and category 2 (b) Major Personal Injury Damage.</p>	2

<b>(3) SPECIAL CIRCUMSTANCES PAYMENTS</b>	
<p><b>(a) Out of pocket expenses (Above \$100 for each category):</b></p> <p><b>i. Personal Property Loss/Repair (Above \$100):</b></p> <p>Eligible claimants under the Kirk Action with repair costs of chattels, crops/gardens damaged or destroyed as a result of the Spill, that have not otherwise been reimbursed by other means, for actual expenditure that exceeded \$100.</p>	1

<p><b>ii. Evacuation costs (Above \$100):</b></p> <p>Eligible claimants under the Kirk Action with evacuation costs (incurred while the Evacuation Order was in effect) such as hotel or alternative accommodation receipts, gas receipts, travel receipts and food, that have not otherwise been reimbursed by other means, for actual expenditure that exceeded \$100.</p>	1
<p><b>iii. Health Care Costs (Above \$100):</b></p> <p>Eligible claimants in the Actions, with receipts from therapy, counselling, doctors, specialists and health care providers (where such health care has been engaged for injury consequential to the Spill), that have not otherwise been reimbursed by other means, for actual expenditure that exceeded \$100.</p>	1
<p><b>(b) Personal Income Loss (Above \$100):</b></p> <p>Eligible Claimants in the Actions whose employment income was impacted by the Spill in a direct way, and not otherwise compensated, such as by social assistance, unemployment insurance or other income replacement programs, are entitled to make a claim for payment of lost wages and benefits, upon proof of employment, income and employment interruption or other such evidence satisfactory to the Claims Administrator, for actual loss that exceeded \$100.</p>	1
<p><b>(c) Business Income Loss (Above \$100):</b></p> <p>Eligible Claimants in the Actions whose business income was impacted by the Spill in a direct way, and that income was not protected by any other insurance or reimbursed by any other means, for actual loss that exceeded \$100.</p>	1
<p><b>(d) Diminution of property value:</b></p> <p>Eligible Claimants in the Kirk Action who sold their property within the Evacuation Zone within the 5 years following the Spill, (i.e. between July 26, 2013 and July 25, 2018).</p>	1

## General

- The Claims Administrator may at any time request further information from a Claimant if the Claims Administrator believes such information is necessary to perform its duties.

8. The Claims Administrator will seek to follow the processes outlined herein, but the Claims Administrator may also establish further processes for the management or the determination of the Claims so as to ensure a fair, just and timely hearing of the Claims on the merits, and consistency in the application of this Settlement Agreement, and may implement such revisions upon approval by the Court, after providing 15 days-notice to the Parties.
9. The Claims Administrator may consider the materials provided to him or her whether or not such materials would be admissible in a court of law. The Claims Administrator may grant extensions of the time to provide materials on the application of a Party.
10. Assessment of eligibility and entitlement shall be determined on a balance of probabilities and common law principles such as remoteness and proximity.
11. There shall be no appeal from the decisions of the Claims Administrator.

#### **Distribution of Class Action Compensation Fund**

12. Distribution to Class Members shall be made from the Class Action Compensation Fund on a pro-rata basis. All Class Members' Claims will be adjudicated and finally determined, before any amounts for Damages are paid pursuant to the Settlement Agreement.
13. The Claims Administrator shall ensure that any claims or liens in favour of British Columbia Health Insurer relating to each Eligible Claimant are fully and finally satisfied and a release in favour of the Releasees is obtained from the Health Insurer prior to any payment being made.
14. Distribution of payments to Class Members, other than the Honoraria, will not commence until after all Claims have been determined.

## SCHEDULE B – NOTICE PLAN FOR NOTIFICATION TO CLASS OF SETTLEMENT APPROVAL

The Notice of Settlement Approval shall be published by the following means:

1. Class Counsel or the Claims Administrator shall send a copy of the Notice of Settlement Approval by mail or email to all Class Members who contacted Class Counsel about these proceedings.
2. Class Counsel and the Claims Administrator will post a copy of the Notice of Settlement Approval on their respective websites.
3. Class Counsel or the Claims Administrator will publish the Notice of Settlement Approval in two local news papers: for two consecutive issues respectively. The Claims Deadline shall be 180 days from the first publication of the Notice of Settlement Approval.



SCHEDULE C – NOTICE OF SETTLEMENT APPROVAL  
NOTICE TO SLOCAN VALLEY  
SETTLEMENT OF BRITISH COLUMBIA CLASS ACTIONS  
REGARDING THE LEMON CREEK FUEL SPILL ON JULY 26, 2013.

*Read this notice carefully as it may affect your rights.*

## INTRODUCTION

On [Date of entered Order], Justice Masuhara of the Supreme Court of British Columbia approved the settlement of the class actions arising from the Lemon Creek Fuel Spill on July 26, 2013 (the “Spill”). Specifically, the Property Class Action and Bodily Injury Class Action. Further, Justice Masuhara has appointed Verita Global as the Claims Administrator to distribute the settlement funds to class members.

## ELIGIBILITY TO PARTICIPATE IN SETTLEMENT

If you fall within the definition of either the Property Class or the Bodily Injury Class you are entitled to make a claim.

The Property Class is defined as:

*“All persons who owned, leased, rented, or occupied real property on July 26, 2013 within the Evacuation Zone (as defined in the Amended Notice of Civil Claim) except for the defendants and third parties.”*

(For ease of reference, a diagram of the Evacuation Zone is appended to this form of Notice as Appendix “A”.)

The Bodily Injury Class is defined as:

*“All persons who were present in the Evacuation Area at or after the time of the Spill and suffered personal injury where those personal injuries are claimed to have been associated with the Spill.”*

## SETTLEMENT

You can obtain a copy of the Settlement Agreement and the Claims Administrator’s details on Class Counsel’s website or by clicking this link: <https://rosenberglaw.ca/class-actions/lemon-creek-jet-fuel-spill-class-action/>.

## HOW TO MAKE A CLAIM FOR COMPENSATION

If you believe you are a Class member, please complete the Claim Form online at LemonCreekClassAction.ca on or before [Date (calculate 180 days from date of entered first publication)]. Alternatively, the Claim Form can be completed and submitted by post or email to

the Claims Administrator on or before [Date]. Claim Forms can be downloaded from [LemonCreekClassAction.ca](http://LemonCreekClassAction.ca) or you can contact the Claims Administrator to send you the Claim Form at the details below:

Address:  
Verita Global  
(RicePoint Administration Inc., dba Verita Global)  
Lemon Creek Claims Administrator  
PO Box 3355  
London, ON N6A 4K3

Attention: Lemon Creek Class Action Administrator

Email: [info@LemonCreekClassAction.ca](mailto:info@LemonCreekClassAction.ca)  
RE: Lemon Creek Class Action Settlement

Telephone number: 1-833-419-5200

Website: [LemonCreekClassAction.ca](http://LemonCreekClassAction.ca)

#### FURTHER INFORMATION

You may telephone the Claims Administrator, Verita Global, at 1-833-419-5200 or visit the Claims Administrator's website in relation to the settlement at [LemonCreekClassAction.ca](http://LemonCreekClassAction.ca). They will answer any questions that you have and will steer you through the process.

# APPENDIX "A" EVACUATION ZONE

