

Amended pursuant to Rule 6-1(1)(a)
Original filed August 7, 2013

No. S135927
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROBERT GEORGE KIRK, AS REPRESENTATIVE PLAINTIFF

PLAINTIFF

AND:

EXECUTIVE FLIGHT CENTRE DEVELOPMENTS LTD., EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD. and HER MAJESTY THE QUEEN 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

DANNY LaSANTE, EXECUTIVE FLIGHT CENTRE FUEL SERVICES LTD., HER MAJESTY THE QUEEN 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

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

The Parties

i. The Representative Plaintiff & the Class

1. The Representative Plaintiff, Robert George Kirk, is an individual residing at 7065 Bentley Road in Winlaw, British Columbia.
2. The Representative Plaintiff brings this action pursuant to the *Class Proceedings Act*, RSBC 1996, c 50. He claims on his own behalf and on behalf of a class of persons (“the Class”) who owned real property on July 26, 2013, within “the Evacuation Zone” as described herein.

ii. The Corporate Defendants

3. The defendant Executive Flight Centre Developments Ltd. is a company incorporated under the laws of Alberta with a registered office at 4500, 855 2nd Street Southwest in Calgary, Alberta.
4. The defendant Executive Flight Centre Fuel Services Ltd. is a company incorporated under the laws of Alberta with a registered office at 4500, 855 2nd Street Southwest in Calgary, Alberta. The defendant Executive Flight Centre Fuel Services Ltd. is registered in British Columbia as an extra-provincial company with its registered and records office at P.O. Box 1231, #402 - 707 Fort Street, Victoria, V8W 2T6.
5. The defendant Executive Flight Centre Fuel Services Ltd. is the sole voting shareholder of the defendant Executive Flight Centre Developments Ltd. ~~They are herein referred to jointly as “the Corporate Defendants”.~~
 - 5.1. The defendant Transwest Helicopters Ltd. is a named third party in these proceedings and is a company registered in British Columbia, with its registered and records office at 110 - 5769 201A Street, Langley, B.C. V3A 8H9 (“the Defendant Transwest”).
 - 5.2. The defendant Danny LaSante is a named third party in these proceedings and has an address at 1115 Montana Place, Revelstoke, British Columbia (“the Defendant LaSante” or “the Driver”).
 - 5.3. The defendant Executive Flight Centre Developments Ltd., the defendant Executive Flight Centre Fuel Services Ltd. and the defendant Transwest Helicopters Ltd. are herein referred to jointly as “the Corporate Defendants”.

ii. The Provincial Defendant

6. The Defendant, Her Majesty the Queen in right of the Province of British Columbia (“the Provincial Defendant”), is the sovereign body under whose authority and responsibility the Province acts *inter alia* through the representation of:
 - a) The Minister of Forests, Lands and Natural Resource Operations, who is responsible for the operations of the provincial Wildfire Management Branch; and
 - b) the Minister of Transportation and Infrastructure, who asserts ownership of and is responsible, under the *Transportation Act*, S.B.C. 2004, c.44, for the construction and maintenance of the public roadways material to the issues in this proceeding.

The Forest Fire

7. At some time, a wildfire started burning on Perry Ridge approximately 4.5 km west of Winlaw, British Columbia (“the Fire”).
8. The Provincial Defendant became aware of the Fire on or about July 17, 2013.
9. On or about July 24, 2013, the Provincial Defendant commenced an operation to extinguish the Fire (“the Extinguishment Operation”).
 - 9.1. From July 17, 2013, to July 24, 2013, the Provincial Defendant failed to commence the Extinguishment Operation (“the Delay”).
 - 9.2. As a result of the Delay, the Provincial Defendant conducted the Extinguishment Operation with a degree of haste that was avoidable in the circumstance (“the Avoidable Haste”).
 - 9.3. The Avoidable Haste *inter alia* caused and/or contributed to the failure by the Provincial Defendant to take some or all of the Avoidance Actions and/or Further Avoidance Actions as defined herein at paragraphs 53 and 54.

The South Winlaw Staging Area

10. The Provincial Defendant initially conducted the Extinguishment Operation from a staging area on Slocan River Road 2.5 kilometers south of the Winlaw Bridge (“the South Winlaw Staging Area”).
11. The South Winlaw Staging Area consisted of two large fields occupied by a multitude of service vehicles, 30 trailers and showers.
12. The South Winlaw Staging Area included a helicopter launch pad from which the Provincial Defendant had been launching helicopter refueling and take-off operations in the course of the Extinguishment Operation.
13. The South Winlaw Staging Area was at all material times safely accessible by way of paved road.
14. At all material times, the Provincial Defendant had available to it the option of using the South Winlaw Staging Area for its Extinguishment Operation.

The Lemon Creek Staging Area

15. At some point, the Provincial Defendant began to conduct its Extinguishment Operation from an additional staging area consisting of a gravel pit clearing one kilometer north of Lemon Creek (“the Gravel Pit”).
16. Vehicles can access the Gravel Pit by traveling on Highway 6 and turning onto a dirt road running eastward from Highway 6 (“the Gravel Pit Road”) for a duration of 300 meters to the Gravel Pit.
17. Also running eastward from Highway 6 is another dirt road (“the Lemon Creek Forest Service Road”), which intersects with Highway 6 approximately 600 meters south of the point at which the Gravel Pit Road meets Highway 6.
18. Lemon Creek is a waterway which flows immediately adjacent to the north edge of the Lemon Creek Forest Service Road in such close proximity so as to cause erosion and narrowing of the roadway.
19. The Provincial Defendant’s staging of its fire fighting operation from the Gravel Pit included helicopter launch and refueling operations.

The Spill

20. On the afternoon of July 26, 2013, a forty-foot commercial transport vehicle (“the Fuel Tanker”), operated by the Corporate Defendants, was driven in a manner such that it overturned or was overturned into Lemon Creek, spilling 35,000 liters of its jet fuel cargo into Lemon Creek (“the Spill”).
21. Lemon Creek flows into the Slocan River which flows into the Kootenay River.
22. Prior to July 26, 2013, Lemon Creek and the Slocan River were pristine bodies of water.

The Working Relationship

23. At all material times, the Fuel Tanker was under the control and possession of the Corporate Defendants or one of their subsidiaries or subcontractors.
24. At all material times, the Fuel Tanker was driven by ~~an individual~~ the Defendant LaSante (“the Driver”) who was working in the course and scope of his employment by the Corporate Defendants or one of their subsidiaries or subcontractors under a contract for service or contract of service.

The Wrong Turn

25. At the time of the Spill, the Fuel Tanker had been traveling on Lemon Creek Forest Service Road because the Driver had wrongfully, unlawfully and negligently driven the Fuel Tanker onto that road instead of onto the Gravel Pit Road (“the Wrong Turn”).
26. In making the Wrong Turn, the Driver drove the Fuel Tanker under his control wrongfully, unlawfully and negligently in one or more or all of the following respects:
 - a) he failed to pay proper attention to the choice of roads before him;
 - b) he failed to keep a proper look-out; and/or
 - c) he drove at a speed excessive in the circumstances.
27. At all material times, it was or ought to have been the intention of the Driver to navigate the Fuel Tanker to the Gravel Pit via the Gravel Pit Road.
28. Once the Driver had erroneously turned onto the Lemon Creek Forest Service Road, he drove the Fuel Tanker approximately a kilometer up that road before attempting to turn the Fuel Tanker around and return to Highway 6.
29. It was in the course of the Driver’s turn-around attempt or on his way back to Highway 6 that the Fuel Tanker rolled into Lemon Creek when Driver drove off the road and/or the shoulder of the road collapsed.

Knowledge of Fuel Delivery

30. At all material times, the Provincial Defendant knew or ought to have known of the proximity between the Gravel Pit Road and Lemon Creek Forest Service Road and Lemon Creek itself.
31. At all material times, it was reasonably foreseeable by the Provincial Defendant that any driver en route to the Gravel Pit staging area might turn up the Lemon Creek Forest Service Road in the course of the Extinguishment Operation.
32. At all material times, each of the Provincial Defendants knew or ought to have known that one or more deliveries of helicopter fuel would be made to the Gravel Pit by motor vehicle via Highway 6 and the Gravel Pit Road.
33. At all material times, the Provincial Defendant knew or ought to have known that the Lemon Creek Forest Service Road was too narrow and unstable to be safely driven on by a vehicle such as the Fuel Tanker.

34. At all material times, the Provincial Defendant knew or ought to have known that the Lemon Creek Forest Service Road, once accessed, is void of a safe turn-around opportunity for a vehicle such as the Fuel Tanker.
35. At all material times, the Lemon Creek Forest Service Road was closed beyond a certain point due to washouts and slides.
36. At all material times, the Provincial Defendant knew or ought to have known that Lemon Creek drains into the Slocan River which drains into the Kootenay River.

Road Maintenance

37. At the material time, the Provincial Defendant had omitted to maintain the Lemon Creek Forest Service Road such that a vehicle as large and hazardous as the Fuel Tanker could safely drive on it.
38. At the material time, the Provincial Defendant had omitted to take sufficient measures to effectively communicate to the Driver and all persons that the Lemon Creek Forest Service Road was not in a sufficient state of maintenance such that a vehicle as large and hazardous as the Fuel Tanker could safely drive on it.
39. At the material time, the Provincial Defendant had omitted to take sufficient measures to effectively deactivate, obstruct and/or deter access to the Lemon Creek Forest Service Road by vehicles as large and hazardous as the Fuel Tanker.
40. At the material time, the Provincial Defendant had omitted to take sufficient measures to effectively warn against access to the Lemon Creek Forest Service Road without an effective radio communication device.

Circumstances of the Driver

41. At the material time, the Corporate Defendants knew or ought to have known that the Driver was an individual of twenty-two years of age and limited work experience.
42. At the material time, the Corporate Defendants knew or ought to have known that the Driver was not local to British Columbia and was not familiar with the geography and roadways within the vicinity of the Gravel Pit and Lemon Creek.

No pilot vehicle

43. At all material times, each and all of the Defendants omitted to arrange for the Fuel Tanker to be met and ushered by a pilot vehicle to the proper turn-off onto the Gravel Pit Road.

No flag person

44. At all material times, each and all of the Defendants omitted to arrange for the Fuel Tanker to be met and ushered by a flag person at the proper turn-off onto the Gravel Pit Road.

Inadequate map and/or directions

45. At all material times, each and all of the Defendants omitted to equip the Driver with an adequate map and/or directions:

- a) distinguishing the Gravel Pit Road from Lemon Creek Forest Service Road; and
- b) facilitating the safe navigation of the Fuel Tanker to the Gravel Pit.

Inadequate signage

46. At all material times, each and all of the Defendants omitted to execute conspicuous signage that was sufficiently effective in distinguishing the Gravel Pit Road from Lemon Creek Forest Service Road.

47. At all material times, each and all of the Defendants omitted to execute conspicuous signage that was sufficiently effective in deterring or obstructing the Driver from navigating up the Lemon Creek Forest Service Road.

No Communication Device

48. At all material times, each and all of the Defendants omitted to equip the Driver with an effective communication device, such as a high-powered, long-range VHF forestry radio, during the course of his operation of the Fuel Tanker in the vicinity of the Gravel Pit.

Conduct of the Driver

49. Once he realized that he might have made a wrong turn onto the Lemon Creek Forest Service Road, the Driver could have parked the Fuel Tanker, walked back to Highway 6, and sought the following forms of help:

- a) a spotter to guide the return of the Fuel Tanker to Highway 6;
- b) a series of smaller, more maneuverable tankers, all of which were locally available, to drain his cargo prior to any attempt at a turn-around or return of the Fuel Tanker to Highway 6; and/or

- c) tactical support and guidance from the Corporate Defendants or the Provincial Defendant.

(“the Help”)

50. At the material time, the Driver engaged in highly dangerous conduct by:

- a) commencing to drive up the Lemon Creek Forest Service Road;
- b) omitting to park the Fuel Tanker and seek the Help once he realized that he might have made a wrong turn;
- c) attempting to make a turn-around and return trip along the Lemon Creek Forest Service Road without having sought the Help.

51. After the Spill, the Driver was able to walk down the Lemon Creek Forest Service Road to seek help.

52. In engaging in the conduct leading up to the Spill, the Driver was, at all material times, acting within the scope of his employment duties or duties under contract with the Corporate Defendants, their subsidiary or subcontractor.

Ease of avoidance

53. The Spill could have been easily avoided had any of the following actions (“the Avoidance Actions”) been taken by the Driver or any of the Defendants:

- a) An arrangement for the Fuel Tanker to have been met and ushered by a pilot vehicle to the proper turn-off onto the Gravel Pit Road;
- b) An arrangement for the Fuel Tanker to have been met and ushered by a flag person at the proper turn-off onto the Gravel Pit Road;
- c) The equipping of the Driver with an adequate map and/or directions distinguishing the Gravel Pit Road from Lemon Creek Forest Service Road;
- d) The execution of conspicuous signage, sufficiently effective in distinguishing the Gravel Pit Road from Lemon Creek Forest Service Road;
- e) The execution of conspicuous signage, sufficiently effective in deterring or obstructing the Driver from navigating up the Lemon Creek Forest Service Road;
- f) The equipping of the Driver with an effective communication device, such as a high-powered, long-range VHF forestry radio, during the course of his operation of the Fuel Tanker in the vicinity of the Gravel Pit;

- g) The arrangement of a spotter to guide the return of the Fuel Tanker from the Lemon Creek Forest Service Road to Highway 6;
- h) The arrangement of a series of smaller, more maneuverable tankers, all of which were locally available, to drain the Fuel Tanker's cargo prior to any attempt at a turn-around or return of the Fuel Tanker to Highway 6; or
- i) A call from the Driver to any of the Defendants for tactical support or guidance after having made a wrong turn onto the Lemon Creek Forest Service Road.

54. Furthermore, the Spill could have been easily avoided had any of the following actions ("the Further Avoidance Actions") been taken by the Provincial Defendant:

- a) The maintenance of the Lemon Creek Forest Service Road such that a vehicle as large and hazardous as the Fuel Tanker could safely drive on it;
- b) The execution of sufficient measures to effectively communicate to the Driver and all persons that the Lemon Creek Forest Service Road was not in a sufficient state of maintenance such that a vehicle as large and hazardous as the Fuel Tanker could safely drive on it;
- c) The execution of sufficient measures to effectively deactivate, obstruct and/or deter access to the Lemon Creek Forest Service Road by vehicles as large and hazardous as the Fuel Tanker; or
- d) The execution of sufficient measures to effectively warn against access to the Lemon Creek Forest Service Road without an effective radio communication device.

The Evacuation

- 55. An evacuation of local residents was ordered by the provincial health medical officer and the Regional District of Central Kootenay on the evening of July 26, 2013 ("the Evacuation").
- 56. The Evacuation was ordered pursuant to section 12 of the *Emergency Program Act* [RSBC 1996] ch. 111 due to immediate danger to life and safety.
- 57. ~~The Evacuation covered an area of three kilometers on either side of Lemon Creek and the Slocan River from the junction of highways 3A and 6 at South Slocan to three kilometers north of Lemon Creek ("the Evacuation Zone").~~

57.1. The Evacuation included the area depicted on the map attached hereto as Appendix A (“the Evacuation Zone”).

57.2. The Evacuation Zone included the following areas:

- a) An area within a three (3) kilometer radius of the Spill site; and
- b) An area of (3) kilometers on either side of the affected waterways, from an upstream point of the Spill site to a downstream point of the confluence of the Slokan and Kootenay Rivers.

57.3. At the material time, there were 2776 properties included within the Evacuation Zone with a total assessed value for land and improvements of \$708,840,787.00 as of March 2013.

Drinking Water

58. Shortly after the Spill, the Interior Health Authority issued a 'do not use' water order for residents who draw water from Lemon Creek, Slokan River and Kootenay River - downstream from the Spill to the Brilliant Dam above Castlegar.

59. At the time of filing, the 'do not use' water order remains in effect for Lemon Creek and Slokan River.

60. At the time of filing of the Notice of Civil Claim, the Interior Health Authority had lifted the 'do not use' water order for the Kootenay River with the caveat that recreational users are advised to avoid the area.

The Fuel

61. The Spill introduced into Lemon Creek 35,000 liters of fuel known as Jet A1 (“the Fuel”).

62. Upon spilling into Lemon Creek and floating down the Slokan and Kootenay Rivers, the thin, higher esters and aromatics within the Fuel evaporated into an airborne vapour (“the Vapour”).

63. The Vapour contains benzene, which is a human carcinogen.

64. With the evaporation of the Vapour from the Fuel, what remains in Lemon Creek, the Slokan River and the Kootenay River is a thicker, oily, jelly-like substance (“the Sludge”).

65. The Sludge contains various heavy metal fuel additives and stabilizers that are some of the most toxic substances known.

66. While the petroleum products in the Fuel will break down over several decades, the additives and stabilizers will not break down or dissipate as the very purpose for their use is to prevent the breakdown of the Fuel.
67. Various refineries produce fuel roughly classified as Jet A1, however each refinery has its own formula with variations in additives and stabilizers from batch to batch.

The Distribution and Contamination

68. Following the Spill, a gas plume of airborne Vapour particles disseminated throughout the vicinity of Lemon Creek, the Slocan Valley and the Kootenay River, coming into contact with individuals, wildlife, livestock, and domestic and agricultural premises (“the Exposure”) and causing physical symptoms in local residents, workers and tourists including burning eyes, sore throats, headaches, respiratory distress and other symptoms of ill health.
69. Following the Spill, the Sludge floated on the waterways of Lemon Creek, the Slocan River and the Kootenay River, adhering to sediment, penetrating stream and river banks and contaminating wetlands, gardens, livestock feeding grounds, agricultural grounds, wells, surface water sources, irrigation systems, laundry machines, plumbing systems and septic fields (“the Contamination”).
70. The downstream distribution of the Fuel was halted by the closure of floodgates at the Brilliant Dam before Castlegar, leaving a two-to-three kilometer plume, 30 to 50 meters wide, of stagnant Fuel visible in the Kootenay River above the Brilliant Dam.

Property damage

71. The Spill and Contamination have affected property along no less than 80 km of shoreline and 10 km² of swampland.
72. In order to remediate the Contamination, every blade of grass will have to be washed by hand with absorbent material which itself will have to be safely removed from the environment. It will take at least six years to remediate the Contamination.
73. In some cases, the Contamination has eliminated the sole source of potable water on a property and effectively rendered that property practically incapable of being sold or remortgaged.
74. The Spill and the Contamination have caused the real properties within the Evacuation Zone (“the Properties”) to diminish in market value.

Interference with quiet enjoyment

- 75. The Spill, Exposure and Contamination have caused the Class members to suffer a loss of use of their Properties and a continuing interference with the quiet enjoyment of their Properties, particulars of which include loss of use of wetlands, gardens, livestock feeding grounds, agricultural grounds, wells, surface water sources, irrigation systems, laundry machines, plumbing systems and septic fields.
- 76. The Properties include residences that, at the time of filing, remain inhabitable.
- 77. The Properties include farms that, at the time of filing, remain unusable.
- 78. The Properties include bed & breakfast establishments, motels, camping grounds and recreational facilities, some of which have been shut down indefinitely.
- 79. The Spill caused a distribution of jet fuel into the Slocan Drainage so as to constantly and continuously expose the Class members and their Properties and their inhabitants to toxins for an indefinite duration.

Causation

- 80. The acts and omissions of each of the Defendants described herein jointly and/or severally constituted negligence and/or nuisance and jointly and/or severally caused and/or contributed to the Spill.
- 81. Within the vicinity of the Evacuation Zone, the Spill caused a distribution of Vapour and Sludge resulting in widespread and continued Exposure and Contamination throughout the Evacuation Zone.
- 82. The Spill and the Contamination have caused the Class members to suffer a diminution of the market value of their Properties.
- 83. The Exposure and Contamination caused the Class members to suffer a loss of use of their Properties.
- 84. The Contamination caused the Class members to suffer a continuing interference with the quiet enjoyment of their Properties.

Exacerbation of Harm

- 85. Subsequent to the Spill, from July 28, 2013, to July 31, 2013, the Provincial Defendant used aircraft water bombers to irrigate the Fire with Fuel-contaminated water from the Slocan

River, thereby further disseminating the Exposure and Contamination throughout the Slocan Valley watershed and exacerbating the aforementioned harm.

The Representative Plaintiff

86. The Representative Plaintiff, Robert George Kirk, owns and resides on a 51-acre property on the east riparian bank of the Slocan River, approximately 6 km south of Lemon Creek.
87. Approximately 45 acres of the Kirk property consists of wetlands within the flood plane of the Slocan River.
88. Kirk worked for 37.5 years as a machinist with Tek Cominco in Trail, BC, before an injury left him incapacitated with a broken neck without paralysis.
89. In his retirement, Kirk has made a daily habit of walking his property, enjoying the beavers, ducks, frogs, turtles, muskrats, blue herons, osprey and various other birds (“the Wildlife”) that have made a nesting ground and habitat out of his marshland.
90. Kirk’s dwelling is 15 meters from the Slocan River. At 5:00am on July 27, 2013, he awoke with a headache and sore throat to the sound of his horse coughing. A pool of fuel had accumulated in a Slocan River back-eddy just south of his barn. It remains there at the time of filing, with the addition of an orange flag placed by authorities.
91. Since the Spill, Kirk has observed the complete absence of Wildlife from his property, except for a duck and blue heron that have turned up dead. Fuel is adhering to grass on the riparian bank of his property, rendering it a lethal habitat for Wildlife.
92. Kirk has arranged for the Perry Ridge Water Users Association to assist him with the administration and prosecution of this action on behalf of the Class, including the development of a plan to disseminate information and effect communication with members of the Class.
93. The Perry Ridge Water Users Association is a society incorporated under the laws of British Columbia with its offices in the Slocan Valley. It has represented local water users on environmental matters, including litigation, for 30 years and is experienced in arranging meetings, effecting communication and disseminating information to Slocan Valley residents.

Adopted pleadings against the Provincial Defendant

- 93.1. Further or in the alternative, the Plaintiff adopts the allegations against the Provincial Defendant as pleaded at:

- a) the Third Party Notice from Executive Flight Centre Fuel Services Ltd. to the Provincial Defendant and Transwest Helicopters Ltd. at Part 1, paragraphs 8, 9, 14, 15, 16 - 25, 29 and 30;
- b) the Response to Third Party Notice of the Province filed by Executive Flight Centre Fuel Service Ltd. at Part 1, Division 2, paragraph 2;
- c) the Third Party Notice from Executive Flight Centre Developments Ltd. to the Defendant Transwest at Part 1, paragraph 6;
- d) the Response to Third Party Notice of the Province filed by Transwest Helicopters Ltd. at Part 1, Division 2, paragraph 3, and Division 3, paragraphs 3 -9, 12, 14, 15 and 16; and
- e) the Response to Third Party Notice of Executive Flight Centre Fuel Services Ltd. at Part 1, Division 3, paragraphs 2 and 11 - 15.

Adopted pleadings against Executive Flight Centre Fuel Services Ltd.

93.2. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Executive Flight Centre Fuel Services Ltd. as pleaded at:

- a) the Third Party Notice from the Provincial Defendant to Executive Flight Centre Fuel Services Ltd. and Danny LaSante at Part 1, paragraphs 14, 15, 31 and 35;
- b) the Response to Third Party Notice of the Province filed by Transwest Helicopters Ltd. at Part 1, Division 3, paragraphs 1 and 4 - 9; and
- c) the Response to Third Party Notice of Executive Flight Centre Fuel Services Ltd. at Part 1, Division 3, paragraphs 7, 8, 12 and 15.

Adopted pleadings against Transwest Helicopters Ltd.

93.3. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Transwest Helicopters Ltd. as pleaded at:

- a) the Third Party Notice from the Provincial Defendant to Executive Flight Centre Fuel Services Ltd. and Danny LaSante at Part 1, paragraphs 11 - 15;
- b) the Third Party Notice from the Provincial Defendant to Transwest Helicopters Ltd. at Part 1, paragraphs 3, 11, 12, 14, 15, and 16;

- c) the Third Party Notice from Executive Flight Centre Fuel Services Ltd. to the Provincial Defendant and Transwest Helicopters Ltd. at Part 1, paragraphs 13 - 18, 21 - 25, 29, and 31; and
- d) the Third Party Notice from Executive Flight Centre Developments Ltd. to the Defendant Transwest at Part 1, paragraphs 6 - 20.

Adopted pleadings against the Defendant LaSante

93.4. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant LaSante as pleaded at the Third Party Notice from the Provincial Defendant to Executive Flight Centre Fuel Services Ltd. and Danny LaSante at Part 1, paragraphs 18 - 26, 28 and 29.

Part 2: RELIEF SOUGHT

94. On his own behalf and on behalf of the members of the Class, the Representative Plaintiff seeks the following relief:

- a) Certification of this action pursuant to the *Class Proceedings Act*, RSBC 1996, chapter 50;
- b) An *interim* order requiring the Defendants to meaningfully consult the Plaintiff's appointed representative, as approved by the Court, with respect to environmental / ecological monitoring and remediation within the Evacuation Zone;
- c) An *interim* order requiring the Defendants, jointly and severally, to provide the Plaintiff with capacity funding so as to finance the Plaintiff's meaningful participation in the said consultation process through the appointment of a representative, that being an independent environmental scientist, as approved by the Court;
- d) Joint and several damages, in the aggregate, against each and all of the Defendants for loss of use and enjoyment of property in an amount to be determined by the Court;
- e) Joint and several damages, in the aggregate, against each and all of the Defendants for diminution in property value in an amount to be determined by the Court;
- f) Exemplary and/or punitive damages, in the aggregate, relating to the Defendants' negligent acts and omissions leading up to the Spill and the exacerbation of harm;

f.1) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.C.B. 1996, c. 79 as may be allowed;

- g) Costs of this action; and
- h) Such further and other relief as counsel may request and this Honourable Court may deem just and equitable in the circumstances.

Part 3: LEGAL BASIS

Responsibility for Road Maintenance

- 95. The Provincial Defendant, through the representation of the Minister of Transportation and Infrastructure, was at all material times responsible for the maintenance and upkeep of the Lemon Creek Forest Service Road as well as the control of safe use of and access to that road via the implementation of appropriate signage and barricades (“the Road Maintenance Responsibility”).
- 96. The Provincial Defendant owed the Class members a duty of care in carrying out its Road Maintenance Responsibility.
- 97. With respect to its Road Maintenance Responsibility, the Provincial Defendant breached its duty of care and failed to discharge the requisite standard of care by failing to take any of the Further Avoidance Actions enumerated at paragraph 54 above.

Responsibility for the Extinguishment Operation

- 98. The Provincial Defendant, through the representation of the Minister of Forests, Lands and Natural Resource Operations, was at all material times responsible for the Extinguishment Operation including but not limited to the procurement of helicopter services, ordering of fuel, estimation of fuel supplies, coordination of fuel delivery and development and establishment of staging logistics and all transportation strategies incidental to the Extinguishment Operation (“the Operational Responsibility”).
- 99. The Provincial Defendant owed the Class members a duty of care in carrying out its Operational Responsibility.
- 100. With respect to its Operational Responsibility, the Provincial Defendant breached its duty of care and failed to discharge the requisite standard of care by failing to take any of the Avoidance Actions enumerated at paragraph 53 above and by failing to restrict the Extinguishment Operation to the South Winlaw Staging Area and by carrying out the Extinguishment Operation with the Delay and the Avoidable Haste.

Responsibility for the Fuel Tanker

101. The Corporate Defendants and the Driver were at all material times responsible for the safe operation of the Fuel Tanker and the safe handling of its hazardous cargo, and the Corporate Defendants are vicariously responsible and liable for the conduct of the Driver within the scope of his employment / contractual duties (“the Hazardous Cargo Responsibility”).
102. The Corporate Defendants and the Driver owed the Class members a duty of care in carrying out their Hazardous Cargo Responsibility.
103. With respect to their Hazardous Cargo Responsibility, the Corporate Defendants and the Driver breached their duty of care and failed to discharge the requisite standard of care by failing to take any of the Avoidance Actions enumerated at paragraph 53 above.
104. The Plaintiff pleads the application of the *Transport of Dangerous Goods Act* [RSBC 1996] ch. 458 and the Regulations thereunder.

Negligence

105. By breaching their respective duties of care owed to the Class Members and by failing to discharge the requisite standard of care, each and all of the Defendants wrongfully and unlawfully engaged in negligence which jointly and/or severally caused and/or contributed to the Spill and the resulting harm.
106. The Plaintiff pleads the application of the *Negligence Act*, R.S.B.C. 1996, c. 333.

Nuisance

107. Each and all of the Defendants, through their acts and/or omissions described herein, have committed the tort of nuisance by jointly and/or severally causing and/or contributing to the Spill and distribution of Vapour and Sludge throughout the Evacuation Zone so as to impose a continuing interference with the Class members’ quiet enjoyment of their Properties.
108. Alternatively and in any event, the Plaintiff pleads, as against the Defendants, the application of the rule in *Rylands v. Fletcher* (1866) LR 1 Ex 265 at 279, 280 (H.L.).

Adopted pleadings against the Provincial Defendant

- 108.1. Further or in the alternative, the Plaintiff adopts the allegations against the Provincial Defendant as pleaded at:

- a) the Third Party Notice from Executive Flight Centre Fuel Services Ltd. To the Provincial Defendant and Transwest Helicopters Ltd. at Part 1, paragraph 19, except that the duty of care pleaded therein was also owed to the Plaintiff and the Class members;
- b) the Response to Third Party Notice of the Province filed by Transwest Helicopters Ltd. at Part 3, paragraph 9; and
- c) the Response to Third Party Notice of Executive Flight Centre Fuel Services Ltd. at Part 3, paragraph 7.

Adopted pleadings against Executive Flight Centre Fuel Services Ltd.

108.2. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Executive Flight Centre Fuel Services Ltd. as pleaded at:

- a) the Third Party Notice from the Provincial Defendant to Executive Flight Centre Fuel Services Ltd. and Danny LaSante at Part 3, paragraphs 7, 8, 9, 10 and 12;
- b) the Response to Third Party Notice of the Province filed by Transwest Helicopters Ltd. at Part 3, paragraph 10; and
- c) the Response to Third Party Notice of Executive Flight Centre Fuel Services Ltd. at Part 3, paragraph 6.

Adopted pleadings against Transwest Helicopters Ltd.

108.3. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Transwest Helicopters Ltd. as pleaded at:

- a) the Third Party Notice from the Provincial Defendant to Transwest Helicopters Ltd. at Part 3, paragraphs 5, 6, 7, 11, 13 and 14; and
- b) the Third Party Notice from Executive Flight Centre Developments Ltd. to the Defendant Transwest at Part 3, paragraphs 1, 2, 3, 4 and 6.

Adopted pleadings against LaSante

108.4. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant LaSante as pleaded at:

- a) the Third Party Notice from the Provincial Defendant to Executive Flight Centre Fuel Services Ltd. and Danny LaSante at Part 3, paragraphs 3 - 6, 8, 9, 10 and 12; and
- b) the Response to Third Party Notice of Executive Flight Centre Fuel Services Ltd. at Part 3, paragraph 9.

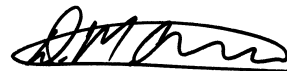
Plaintiff's address for service:

c/o David M. Aaron, Barrister & Solicitor, 208 - 507 Baker Street Nelson, BC
V1L 4J2 Tel: 250.551.6840 Fax: 866.685.7376 Email: david@legalmind.ca

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: ~~August 7, 2013~~ March 5, 2014



David M. Aaron
Counsel for the Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A representative claim in tort for negligence and nuisance in relation to a spill of jet fuel into a waterway causing contamination to downstream properties.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

☒ a dispute concerning contaminated sites

Part 3: THIS CLAIM INVOLVES:

☒ a class action

Part 4: ENACTMENTS RELIED UPON:

Transportation Act, S.B.C. 2004, c.44

Emergency Program Act [RSBC 1996] ch. 111

Negligence Act, R.S.B.C. 1996, c. 333

Transport of Dangerous Goods Act [RSBC 1996] ch. 458

Class Proceedings Act, RSBC 1996, c 50.

Appendix A - "Evacuation Zone"

