



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JAMES ANDREW ROSS

PLAINTIFF

AND:

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

Brought under the *CLASS PROCEEDINGS ACT [RSBC 1996] Chapter 50*

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 PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff, James Andrew Ross ("the Plaintiff"), is an individual who is residing at 2960 Upper Slocan Park Road, Slocan Park BC, V0G 2E0, British Columbia.
2. 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. It 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, B.C. V8W 2T6 ("the Defendant Executive").
3. The defendant Transwest Helicopters Ltd. 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").
4. The defendant Executive Flight Centre Fuel Services Ltd. and the defendant Transwest Helicopters Ltd. are herein referred to jointly as "the Corporate Defendants".
5. The defendant Danny LaSante has an address at 1115 Montana Place, Revelstoke, British Columbia ("the Defendant LaSante" or "the Driver").

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”).
10. From July 17, 2013, to July 24, 2013, the Provincial Defendant failed to commence the Extinguishment Operation (“the Delay”).
11. As a result of the Delay, the Provincial Defendant conducted the Extinguishment Operation with a degree of haste that was avoidable in the circumstances (“the Avoidable Haste”).
12. 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.

The South Winlaw Staging Area

13. 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”).
14. The South Winlaw Staging Area consisted of two large fields occupied by a multitude of service vehicles, 30 trailers and showers.

15. 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.
16. The South Winlaw Staging Area was at all material times safely accessible by way of paved road.
17. 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

18. 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").
19. 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 distance of 300 meters to the Gravel Pit.
20. 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.
21. 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.
22. The Provincial Defendant's staging of its fire fighting operation from the Gravel Pit included helicopter launch and refueling operations.

The Spill

23. On the afternoon of July 26, 2013, a forty-foot commercial transport vehicle ("the Fuel Tanker"), operated by the Defendant Executive, 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").
24. Lemon Creek flows into the Slocan River, which flows into the Kootenay River.
25. Prior to July 26, 2013, Lemon Creek and the Slocan River were pristine bodies of water.

The Working Relationship

26. At all material times, the Fuel Tanker was under the control and possession of the Defendant Executive or one of its subsidiaries or subcontractors.
27. At all material times, the Fuel Tanker was driven by the Defendant LaSante ("the Driver") who was working in the course and scope of his employment by the Defendant Executive (or one of its subsidiaries or subcontractors) under a contract for service or contract of service.

The Wrong Turn

28. 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").
29. 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.
30. 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.
31. Once the Driver had erroneously turned onto the Lemon Creek Forest Service Road, he drove the Fuel Tanker approximately one kilometer up that road before attempting to turn the Fuel Tanker around and return to Highway 6.
32. 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 the Driver drove off the road and/or the shoulder of the road collapsed.

Knowledge of Fuel Delivery

33. 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.

34. 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.
35. At all material times, the Provincial Defendant 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.
36. 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.
37. 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.
38. At all material times, the Lemon Creek Forest Service Road was closed beyond a certain point due to washouts and slides.
39. 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.

Knowledge of Risk of Wrong Turn

40. Prior to the Spill, the Defendant Executive operated another fuel tanker other than that which was involved in the Spill ("the Previous Tanker").
41. The Previous Tanker was operated by a driver other than Danny LaSante ("the Previous Driver") for the purpose of supplying fuel to the Gravel Pit in the context of the Extinguishment Operation.
42. Prior to the Spill, the Previous Driver mistakenly drove the Previous Tanker up the Lemon Creek Forest Service Road instead of up the Gravel Pit Road. Before going too far up the Lemon Creek Forest Service Road, the Previous Driver observed and spoke to a maintenance worker who happened to be working on the Lemon Creek Forest Service Road at the time. The maintenance worker told the Previous Driver that the Lemon Creek Forest Service Road was not the road to use to access the Gravel Pit and gave the Previous Driver directions to the Gravel Pit.
43. When the Previous Driver reached the Gravel Pit staging area, he informed the Provincial Defendant of his having travelled along the Lemon Creek Forest Service Road in a mistaken attempt to access the Gravel Pit staging area.

44. Despite having been informed of the Previous Driver's detour onto the Lemon Creek Forest Service Road in a mistaken attempt to access the Gravel Pit staging area, neither the Provincial Defendant nor the Defendant Executive did anything to ensure that subsequent drivers did not turn onto the Lemon Creek Forest Service Road.
45. At the time of the Spill, both the Provincial Defendant and the Defendant Executive were aware that the Previous Driver had travelled along the Lemon Creek Forest Service Road in a mistaken attempt to access the Gravel Pit staging area.

Road Maintenance

46. 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.
47. 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.
48. 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.
49. At the material time, the Provincial Defendant had omitted to take sufficient measures to effectively warn against any attempt to access to the Lemon Creek Forest Service Road without an effective radio communication device.

Circumstances of the Driver

50. At the material time, the Defendant Executive knew or ought to have known that the Driver was an individual of twenty-two years of age and limited work experience.
51. At the material time, the Defendant Executive 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

52. 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

53. 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

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

Inadequate signage

55. 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 the Lemon Creek Forest Service Road.

56. 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

57. 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

58. 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")

59. 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.

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

61. 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 Defendant Executive, its subsidiary or subcontractor.

Ease of avoidance

62. 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 the Lemon Creek Forest Service Road;
- d) The execution of conspicuous signage, sufficiently effective in distinguishing the Gravel Pit Road from the 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.

63. 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 any attempt to access the Lemon Creek Forest Service Road without an effective radio communication device.

The Evacuation

64. An evacuation of local residents, including the Plaintiff, was ordered by the provincial health medical officer and the Regional District of Central Kootenay on the evening of July 26, 2013 (“the Evacuation”).
65. 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.
66. The Evacuation included the area depicted on the map attached hereto as Appendix A (“the Evacuation Zone”).
67. 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 three (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 Slocan and Kootenay Rivers.

The Fuel

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

Fluid Contamination

69. Following the Spill, the Fuel migrated along the surface and subsurface 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, irrigation systems, laundry machines, plumbing systems, septic fields and drinking, domestic and irrigation water sources (“the Fluid Contamination”).
70. The downstream distribution of the Fuel was partially 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.

Vapour Contamination

71. Upon spilling into Lemon Creek and migrating down the Slocan and Kootenay Rivers, the thin, higher esters and aromatics within the Fuel evaporated into an airborne vapour (“the Vapour”).
72. 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 the Plaintiff, other individuals, wildlife, livestock, soil, surface water streams, wetlands, gardens, crops, livestock feeding grounds, agricultural grounds, wells, septic fields and domestic and agricultural premises (“the Vapour Contamination”).

Exacerbation

73. 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 Fuel throughout the Slocan Valley watershed and exacerbating the aforementioned Fluid Contamination and Vapour Contamination.

Exposure

74. By way of the Fluid Contamination and/or the Vapour Contamination, the Plaintiff experienced bodily exposure to the Fuel, its constituents and/or its derivatives (“the Exposure”).

Bodily Harm

75. As a result of the Exposure, the Plaintiff suffered prolonged and adverse physical symptoms including burning and raw eyes, throat and nasal passages, difficulty breathing, headache, brain fog and other symptoms of ill health (“the Bodily Harm”).
76. As a result of the Exposure, the Plaintiff has suffered marked disability and loss of enjoyment of life and his capacity to enjoy life has been and will be severely lessened.
77. As a result of the Exposure, the Plaintiff has incurred and will continue to incur special damages, loss and expense to date and into the future, particulars of which will be delivered upon request as available.

78. As a result of the Exposure, the Plaintiff continues now and will continue in the future to suffer from the Bodily Harm and will require medical and rehabilitation care for the treatment of the Bodily Harm.
79. As a result of the Exposure, the Plaintiff has suffered a loss of employment income, a loss of opportunity to earn income and a reduced earning capacity.
80. As a direct result of the Exposure, the Plaintiff has received health care services in the past and will require further health care services in the future.

Causation

81. The acts and omissions of each of the Defendants described herein jointly and/or severally constituted negligence and jointly and/or severally caused and/or contributed to the Spill, the Fluid Contamination, the Vapour Contamination, the Exposure and the Bodily Harm.

Adopted pleadings against the Provincial Defendant

82. Further or in the alternative, the Plaintiff adopts the allegations against the Provincial Defendant as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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.

83. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Executive Flight Centre Fuel Services Ltd. as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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.

84. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Transwest Helicopters Ltd. as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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

85. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant LaSante as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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

86. The Plaintiff seeks the following relief:

- (a) General damages;
- (b) Special damages;
- (c) Loss of capacity and loss of opportunity to earn income;
- (d) Loss of employment income;
- (e) Court Order Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79 and Amendments;
- (f) Costs of past and future health care services under the *Health Care Costs Recovery Act*;
- (g) Certification of this action on behalf of all British Columbia residents 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;
- (h) Costs; and
- (i) Such further and other relief as to this Honourable Court may seem just and meet.

87. The relief claimed by the Plaintiff herein excludes any relief claimed in British Columbia Supreme Court Action S135927 (Vancouver).

Part 3: LEGAL BASIS

Responsibility for Road Maintenance

88. 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”).

89. The Provincial Defendant owed the Plaintiff a duty of care in carrying out its Road Maintenance Responsibility.

90. 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 above.

Responsibility for the Extinguishment Operation

91. 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”).
92. The Provincial Defendant owed the Plaintiff a duty of care in carrying out its Operational Responsibility.
93. 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 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

94. 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”).
95. The Corporate Defendants and the Driver owed the Plaintiff a duty of care in carrying out their Hazardous Cargo Responsibility.
96. 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 above.
97. The Plaintiff pleads the application of the Transport of Dangerous Goods Act [RSBC 1996] ch. 458 and the Regulations thereunder.

Negligence

98. By breaching their respective duties of care owed to the Plaintiff 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, the Fluid Contamination, the Vapour Contamination, the Exposure and the Bodily Harm.
99. The Plaintiff pleads the application of the *Negligence Act*, R.S.B.C. 1996, c. 333.

Adopted pleadings against the Provincial Defendant

100. Further or in the alternative, the Plaintiff adopts the allegations against the Provincial Defendant as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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.

101. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Executive Flight Centre Fuel Services Ltd. as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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.

102. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant Transwest Helicopters Ltd. as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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

103. Further or in the alternative, the Plaintiff adopts the allegations against the Defendant LaSante as pleaded in British Columbia Supreme Court Action S135927 (Vancouver) 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.

Heath Care Costs Recovery Act

104. The Plaintiff is a resident of British Columbia and enrolled as a beneficiary pursuant to the *Medicare Protection Act* R.S.B.C. 1996, c. 286. As a result of the described negligence of the Defendants, the Plaintiff has and will receive health care services as defined by the *Health Care Costs Recovery Act* R.S.B.C. 2008, c 27. The Plaintiff is claiming the costs of those past and future health care services under the *Health Care Costs Recovery Act* R.S.B.C. 2008, c. 27, s.2.

Plaintiff's address for service: 671D Market Hill Road, Vancouver, BC V5Z 4B5

Fax number address for service (if any): 604 879 4935

E-mail address for service (if any): none

Place of trial: Vancouver, British Columbia

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

Dated: July 22, 2015


David M. Rosenberg, Q.C.
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 in relation to a spill of jet fuel into a waterway, causing toxic exposure and bodily harm.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

☒ n/a

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"

