

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TIMOTHY GORDON, ANGELA THOMSON, JOHN NG-LUN,
JOHN SITTER and FADIYA SHAMASHA

Plaintiffs

and

837690 ONTARIO LIMITED

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

BACKGROUND

WHEREAS a Fire occurred on November 12, 2019 at Westcourt Place municipally located at 99 Chatham Street East and 251 Goyeau Street in Windsor, Ontario;

AND WHEREAS the Plaintiffs brought this action to recover various damages alleged by them, and by all tenants of Westcourt Place, arising from the Fire as set out in the Fresh As Amended Statement of Claim;

AND WHEREAS the Ontario Superior Court of Justice has certified this action to proceed as a class action on February 14, 2022;

AND WHEREAS the Fire at Westcourt Place caused significant damage to the entire building and the City of Windsor has issued various orders prohibiting occupancy of all units at Westcourt Place until repairs are completed;

AND WHEREAS the Defendant is continuing with the repairs to Westcourt Place;

AND WHEREAS the Defendant asserts the position that as a result of the Fire, all residential and commercial lease agreements with tenants of Westcourt Place are frustrated, in law, and therefore terminated;

AND WHEREAS the Plaintiffs assert the position that the residential leases are not frustrated by the Fire;

AND WHEREAS certain Class Members have terminated commercial lease agreements and residential lease agreements with the Defendant.

AGREED TERMS

Definitions

1. The following definitions apply:

- (a) **Administrator** means Trilogy Class Action Services;
- (b) **Administrative Expenses** means the cost of the Administrator, the Referee, the Protector of the Funds and any other costs approved by the Court;
- (c) **Apartment** means a residential unit and sometimes, in addition, a parking space and/or storage locker located at Westcourt Place;
- (d) **Approval Date** and **Approval Hearing** mean the date that the Court will deal with a motion to approve the Settlement Agreement, fixing the amount of Legal Fees and deal with other issues;
- (e) **Approval Order** means the Order of Justice Nicholson approving the Settlement Agreement and dealing with other issues, substantially in the form attached hereto as Schedule 1;
- (f) **Claimant** means a Class Member, a Family Class Member, or a Subrogated Claimant who submits a properly completed Claim Form and all required supporting document(s) to the Administrator on or before the Claims Bar Deadline;
- (g) **Claim Form** is a form authorized by the Administrator, and approved by the Court, which will be available at the Administrator's website;
- (h) **Claims Bar Deadline** means a date that is set in the Approval Order;
- (i) **Class and Class Member** means all persons, excluding the Defendant, its employees, officers or directors, who on November 12, 2019:
 - i. rented an Apartment and/or Unit at Westcourt Place; or
 - ii. was ordinarily resident in an Apartment at Westcourt Place; or
 - iii. was present in an Apartment and/or a Unit at Westcourt Place on November 12, 2019 when the Fire occurred; or
 - iv. owned property in an Apartment and/or in a Unit and/or on the roof at Westcourt Place; or

- v. had an interest in property located in an Apartment and/or a Unit and/or on the roof at Westcourt Place; or
 - vi. was a Commercial Tenant or an employee of a Commercial Tenant located in or attached to Westcourt Place.
- (j) **Class Counsel** means Strosberg Wingfield Sasso LLP;
 - (k) **Database** includes the web-based database in which the Administrator stores information provided by the Representative Plaintiffs, Class Counsel and the Defendant and received from the Claimants and/or acquired through the claims process and the decisions made by the Administrator and Referee;
 - (l) **Distribution** means the payment(s) to an Eligible Claimant in accordance with this Distribution Plan, this Settlement Agreement and any order of the Court;
 - (m) **Distribution Plan** means the plan attached as a Schedule to the Approval Order;
 - (n) **Distribution List** means a list containing the name, and distribution amount of each Eligible Claimant;
 - (o) **Dolden** means Dolden Wallace Folick LLP, counsel for the Defendant;
 - (p) **Eligible Claimant** means a Claimant that the Administrator and/or Referee determines is eligible to participate in the Distribution Plan;
 - (q) **Family Class** and **Family Class Member** means the living partner, spouse, child, grandchild, parent, grandparent, or sibling of a Class Member who suffered personal injuries;
 - (r) **Fire** means the fire which started at Westcourt Place on November 12, 2019;
 - (s) **Lease Records** means the records of residential leases maintained by the Defendant and produced to Class Counsel and to the Administrator for the sole purpose of administering this Distribution Plan;
 - (t) **Legal Fees** means Class Counsel's request for fees, disbursements and taxes;
 - (u) **Notice Order** means the Order of Justice Nicholson fixing the date for a hearing by Zoom to decide whether the Court will approve the Settlement Agreement and the Distribution Plan and decide on Class Counsel's request for Legal Fees;
 - (v) **Objection Date** means the deadline date set out in the Notice Order for objections to the Distribution Plan and/or the Settlement Agreement and/or a Residential Tenant to elect to maintain a residential tenancy agreement;
 - (w) **Protector of the Funds** means B. Clint Cadden;
 - (x) **Referee** means retired Justice Richard Gates;

- (y) **Reference** means a procedure before the Referee described in the Distribution Plan;
- (z) **Residential Tenant** means a Class Member who rented an Apartment at Westcourt Place;
- (aa) **Settlement Agreement** means this written Settlement Agreement between Class Counsel on behalf of the Representative Plaintiffs and Dolden on behalf of the Defendant;
- (bb) **Settlement Amount** means \$7,300,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to this action or this settlement;
- (cc) **Subrogated Claimant** means an insurer who holds a Class Member's legally subrogated claim;
- (dd) **Trust Amount** means the amounts deposited into the trust account held by Class Counsel and Dolden authorized by the Notice Order and/or Approval Order;
- (ee) **Unit** means a commercial office or other utilizable commercial space, including the roof, at Westcourt Place;
- (ff) **Website** means the Administrator's address on the internet; and
- (gg) **Westcourt Place** means the residential and commercial rental building municipally known as 99 Chatham Street East and 251 Goyeau Street, Windsor, Ontario.

Settlement Consideration

2. The Defendant's insurer shall, within 10 days of the signing of this Agreement, deposit \$25,000 into Class Counsel's Trust account for the purposes of giving Notice of the Approval Hearing and for the election process described herein. Class Counsel will, in due course, seek Court approval for these expenditures. For greater certainty, in the event the Court does not finally approve this Agreement, the actual expenditures will be non-refundable to the Defendant.

3. Class Counsel will ask the Court to appoint B. Clint Cadden to receive any forms authorized by the Notice Order.

4. Class Counsel will advertise the Settlement Agreement and the Distribution Plan as authorized by the Notice Order.

5. The Defendant's insurer shall, within 10 days of the signing of this Settlement Agreement, deposit \$7,275,000, the balance of the Settlement Amount, into Dolden's interest bearing trust account. Dolden will hold the Settlement Amount in an interest bearing trust account or Guaranteed Investment Certificate(s);

6. The Settlement Amount shall be the sole source of monetary funds under this Settlement Agreement.

7. Dolden shall not transfer the balance of the Settlement Amount to Class Counsel, the Administrator, or any other party, unless authorized by the Court.

8. All funds held in Class Counsel's trust account and in Dolden's trust account shall be deemed to be in the custody of the Court until such time as the funds are distributed pursuant to the Approval Order after it becomes final.

Settlement Consideration

9. The Settlement Amount shall be paid in full and final settlement of all claims that were made, or that could have been made by the Class Members, the Family Class Members, Subrogated Claimants and insurers in this action, including, but not necessarily limited to, the claims arising, directly or indirectly, from the Fire.

10. The Parties will request that the Court appoint B. Clint Cadden to receive any election form and any objections to the Settlement Agreement before the Objection Date. Class Counsel shall pay up to \$25,000 for advertising the Settlement Agreement and paying the fee of B. Clint Cadden, which must be approved by the Court.

11. The Court will appoint an Administrator. The Administrator is subject to the supervision and direction of the Court and shall administer and oversee the distribution of the Settlement Amount pursuant to this Settlement Agreement, the Distribution Plan and the Approval Order.

12. Each Class Member, Family Class Member, Subrogated Claimant and insurer shall be solely responsible for the tax consequences, if any, to him, her, or it of the receipt of funds from the Approval Order.

13. The Defendant and its counsel shall not have responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Administrator, the Referee, or the Protector of the Funds, or any of their respective designees or agents, in connection with the administration of the Settlement Agreement or otherwise; (ii) the management, investment, or distribution of the Settlement Amount; (iii) the formulation, design or terms of the disbursement of the Settlement Amount; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount; (v) any losses suffered by, or fluctuations in the value of the Settlement Amount; or (vi) the payment or withholding of any taxes and tax-related expenses incurred in connection with the taxation of the Settlement Amount or the filing of any returns. The Defendant also shall have no obligation to communicate with Class Members and others regarding amounts paid under this Settlement Agreement subject to the Court's direction.

14. The Plaintiffs and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Agreement or otherwise; and (ii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount.

15. No action shall lie against the Administrator, Class Counsel, the Referee, or the Protector of the Funds for any decision made in the administration of this Settlement Agreement without an order from the Court authorizing such an action.

16. A declaration will issue that each commercial lease entered into by a Class Member has terminated with no right to re-occupy the leased space.

17. A declaration in the Approval Order will state that each Class Member, except those who have delivered a valid election and are listed in a schedule to the Approval Order, has terminated his, her or its residential tenancy agreement in writing and has received back their rent deposit from the Defendant. If any rent deposit has not been returned, it will be returned by the Defendant.

18. After the execution of this Settlement Agreement, Class Counsel will ask the Court to issue the Notice Order fixing the date for the hearing of the motion to approve the Settlement Agreement.

19. The Approval Date will be at least 38 days after the advertisement of the Approval Date was published in the Windsor Star newspaper.

Notice of Approval Hearing, Method of Objections and Elections

20. Class Members will be given notice of the terms of the Settlement Agreement, Class Counsel's request for Legal Fees and the date, time and method to access the Approval Hearing by:

- (a) Notification in the Windsor Star;
- (b) Class Counsel posting this information on Class Counsel's website <https://class-action.swslitigation.com/class-actions/westcourt/>; and
- (c) Class Counsel sending the Court approved Notice to each person who registered with Class Counsel and provided a valid e-mail address.

21. In the Approval Order, a declaration will state that the Class Members, whose names appear on a schedule, have NOT terminated his or her or its residential tenancy agreement which is deemed to be in full force and effect because he, she, or it have elected to reoccupy the same apartment at Westcourt Place, on the terms described in paragraph 23, after the City of Windsor and all contractors, engineers and other professionals working on the repair and remediation work at Westcourt Place have each confirmed that Westcourt Place is fit for occupancy. These Class Members will be required to, on or before the Objection Date, deliver in writing to B. Clint Cadden, a declaration that he, she, or it elects to reoccupy the same apartment in Westcourt Place (the "**Election**"). Particulars of the form and process for delivering an Election will be established in the Notice Order.

22. A Class Member who has signed and delivered an Election on or before the Objection Date to B. Clint Cadden may revoke that Election provided that the Class Member delivers a revocation of the Election in writing to B. Clint Cadden at least 7 days prior to the Approval Date.

23. If a Class Member makes an Election, he, she, or it is electing to reoccupy the same Apartment under the same terms of their residential tenancy agreement, except that his, her, or its rent will be deemed to have increased annually by the guideline percentage prescribed pursuant to the *Residential Tenancies Act, 2006*. The first such increase will be deemed to have taken effect on the date that is 12 months after the last increase in rent for which the Defendant gave notice prior to the Fire, and the subsequent increases will be deemed to have taken effect in each year on the anniversary date of the aforementioned first such increase. For greater certainty, if one Class Member signed an Election, he, she, they or it binds the other(s) who were parties to the original residential tenancy agreement.

24. A declaration shall issue that if an Election is not delivered to B. Clint Cadden on or before the Objection Date, the Class Member is deemed to have terminated his, her or its residential tenancy agreement in accordance with the *Residential Tenancies Act, 2006*, and no further notice will be given to the Class Member(s), and no further documentation will be required by the Defendant.

25. On or before the Approval Date, if Class Members representing 31 or more Apartments elect to reoccupy their apartments, the Defendant shall have the absolute right, but not the obligation, at its sole discretion, to terminate this Settlement Agreement. The Defendant must give written notice of its election to terminate the Settlement Agreement five (5) days before the Approval Date.

26. If the Defendant elects to terminate, as set out above, any settlement funds held in escrow by Class Counsel shall be returned to the Defendant within 10 days, less the actual and incurred costs of advertisement and the election process.

27. If a Class Member does not send an Election to B. Clint Cadden on or before the Objection Date, if the Settlement Agreement is approved by the Court and if the Approval Order becomes final:

- (a) a declaration shall issue that the Class Member's residential tenancy agreement at Westcourt Place shall be immediately deemed to be terminated forthwith upon the settlement approval Order becoming final;
- (b) a declaration shall issue that the Defendant must refund any rent deposit to the Class Member(s) that has not been already refunded; and
- (c) a declaration shall issue that the Defendant arranged for an off-site storage facility ("Off-site Storage Facility") and may have taken possession of the chattels of some of the Class Members. Each Class Member whose residential tenancy agreement has terminated must take possession of his, her, or its chattels within 15 days of the settlement approval Order becoming final. If the Class Member has not retrieved his, her or its chattels within 15 days of the settlement approval Order becoming final, the Defendant may discard these chattels without liability.

28. If the Settlement Agreement is approved by the Court, the Approval Order becomes final, and the Class Member's residential tenancy agreement continues, the Defendant must continue to store the Class Member's chattels until 30 days after the Defendant notifies the Class Member that

the City of Windsor and all contractors, engineers and other professionals working on the repair and remediation work at Westcourt Place have each confirmed that Westcourt Place is fit for occupancy. If such a Class Member fails to make arrangements with the Defendant for the return of the Class Member's chattels to their unit in Westcourt Place within 30 days of receiving the aforementioned, the Defendant may discard the Class Member's chattels without liability.

29. The Defendant shall pay for all storage fees incurred to store the Class Members' chattels until the Class Members' chattels have been picked up or otherwise discarded in accordance with the paragraphs above.

30. In the Approval Order, the Court will issue a declaration that the Class Members, Family Class Members and Subrogated Claimants have fully and finally released the Defendant and the Third Parties and their officers, directors, agents, assigns, employees and insurers from all claims that were made, or that could have been made, in these proceedings, including, but not necessarily limited to, the claims arising directly or indirectly from the Fire at Westcourt Place.

Date: January 9, 2025



Witness

Strosberg Wingfield Sasso LLP

Per: 

Harvey T. Strosberg KC
Lawyers for the Plaintiffs

Date: January 9, 2024

Matthew Miller 

Witness

Dolden Wallace Follick LLP

Per: 

Christopher Stribopoulos
Lawyers for the Defendant

SCHEDULE 1

Court File No. CV-19-00028402-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) DAY THE OF
JUSTICE NICHOLSON) , 2025

B E T W E E N :

TIMOTHY GORDON, ANGELA THOMSON, JOHN NG-LUN,
JOHN SITTER and FADIYA SHAMASHA

Plaintiffs

- and -

837690 ONTARIO LIMITED

Defendant

- and –

TYCO INTEGRATED FIRE & SECURITY CANADA, INC.
o/a JOHNSON CONTROLS /
TYCO FEU ET SECURITE INTEGRES CANADA, INC. connu comme JOHNSON
CONTROLS, TROY LIFE & FIRE SAFETY LTD. and MK ELECTRIC LTD.
and A.P.I ALARM INC.

Third Parties

Proceeding under the Class Proceedings Act, 1992

**ORDER
(Settlement Approval)**

THIS MOTION, made by:

- (a) The Representative Plaintiffs, Timothy Gordon, Angela Thomson, and John Sitter, for an Order approving the settlement of the Action; and
- (b) Strosberg Wingfield Sasso LLP for the approval of the agreement respecting fees and disbursements between Strosberg Wingfield Sasso LLP, Timothy Gordon, Angela Thomson, and John Sitter pursuant to subsection 32(2) of the *CPA*

was heard on March 6, 2025 at 10:00AM EST at the Court House and by Zoom.

ON READING the materials filed, including the following:

- (a) the notice of motion;
- (b) the Settlement Agreement;
- (c) the affidavit of ●;
- (d) the affidavit of Timothy Gordon, sworn ●;
- (e) the affidavit of Angela Thomson, sworn ●;
- (f) the affidavit of John Sitter, sworn ●; and
- (g) the consents of Justice Richard Gates, B. Clint Cadden and Trilogy Class Action Services, dated ●.

AND ON HEARING the submissions of Class Counsel, counsel for the Defendant and counsel for the Third Parties and the Children's Lawyer and the Public Guardian and Trustee take no position on this motion,

AND ON BEING ADVISED that:

- (a) the Defendant, and the Third Parties consent to this Order;
- (b) Trilogy Class Action Services consents to being appointed the Administrator;
- (c) Justice Richard Gates consents to be being appointed Referee;
- (d) B. Clint Cadden consents to being appointed Protector of the Funds; and
- (e) as of **[insert date]**, there have been no objections to the Settlement Agreement and to the Distribution Plan.

AND without any admission of liability on the part of the Defendant, who has denied all liability;

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

- (a) “**Action**” means the action *Timothy Gordon et al. v. 837690 Ontario Limited et al*, court file no. CV-19-00028402-CP/A1CP including all crossclaims and third party claims;
- (b) “**Administrator**” means [insert name] or its successor appointed from time to time by the **Court**;
- (c) “**Apartment**” means a residential unit and sometimes, in addition, a parking space and/or storage locker located at **Westcourt Place**;
- (d) “**Claim Form**” or “**Claim Forms**” means claim form(s) which are substantially in accordance with the form(s) attached hereto as Schedule “C”;
- (e) “**Claims Bar Date**” means a date to be set by this Order;
- (f) “**Class**” and “**Class Members**” means all persons, excluding the Defendant, its senior employees, officers or directors, who on November 12, 2019:
 - i. rented an **Apartment** and/or **Unit** at **Westcourt Place**; or
 - ii. was ordinarily resident in an **Apartment** at **Westcourt Place**; or
 - iii. was present in an **Apartment** and/or a **Unit** at **Westcourt Place** on November 12, 2019 when the **Fire** occurred; or
 - iv. owned property in an **Apartment** and/or in a **Unit** and/or on the roof at **Westcourt Place**; or
 - v. had an interest in property located in an **Apartment** and/or a **Unit** and/or on the roof at **Westcourt Place**; or
 - vi. was a Commercial Tenant or an employee of a Commercial Tenant located in or attached to **Westcourt Place**; or
 - vii. all parties that did not opt out of the Class;
- (g) “**Class Counsel**” means **SWS**;
- (h) “**Class Counsel Fees**” means the award for fees, disbursements, interest, and HST to Class Counsel awarded in this **Order**;
- (i) “**Costs of Administration**” means all of the costs for the **Administrator**, **Referee** and **Fund Counsel**;
- (j) “**CJA**” means the *Courts of Justice Act*;
- (k) “**CPA**” means the *Class Proceedings Act, 1992* as amended;
- (l) “**Court**” means the Ontario Superior Court of Justice;

- (m) **“Defendant”** means 837690 Ontario Limited and its heirs, executors, administrators, estate trustees, employees, parent corporations, related and affiliated corporations, officers, directors, shareholders, partners, servants, agents, successors, assigns and insurers;
- (n) **“Dolden”** means Dolden Wallace Folick LLP;
- (o) **“Distribution Amount”** is the amount to be distributed after paying Class Counsel Fees and the Costs of Administration;
- (p) **“Distribution Plan”** means the Distribution Plan attached as Schedule “B” to this Order and the procedures set out for distribution to the Class Members and the Family Class Members calculated as the **Settlement Amount** less **Class Counsel Fees** and less the **Cost of Administration**;
- (q) **“Election Date”** means a date to be set by this Order;
- (r) **“Family Class”** and **“Family Class Member”** means the living partner, spouse, child, grandchild, parent, grandparent or sibling of a **Class Member** who suffered personal injuries;
- (s) **“Insurer”** or **“Insurers”** means any insurance company of any of the **Class Member(s)** and the **Family Class Member(s)** who did not validly opt out in accordance with the certification order made on February 14, 2022;
- (t) **“Order”** means this order of Justice Nicholson approving the settlement of this **Action** and the **Distribution Plan**;
- (u) **“Ministry of Health”** means the Ministry of Health and Long-Term Care;
- (v) **“Minor”** or **“Minors”** means a person, who as of the date of this Order, has not attained the age of 18 years;
- (w) **“Notice”** means a notice of the settlement of this **Action** substantially in the form of the **Notice** attached to the **Order** as Schedule “D”;
- (x) **“Notice Program”** means the method of giving **Notice** to the **Class Members, Family Class Members and Subrogated Claimants** particularized in paragraphs 8 and 9 of this **Order**;
- (y) **“Protector of the Funds”** means B. Clint Cadden;
- (z) **“Referee”** means Justice Richard Gates;
- (aa) **“Released Claims”** means any and all claims, injuries, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, contracts, liabilities, agreements, costs and expenses, of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising in the future from

the facts asserted in this **Action** or which could have been asserted in this **Action** concerning the fire on November 12, 2019 at **Westcourt**;

- (bb) **“Released Crossclaims and Third Party Claims”** means any and all claims, injuries, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, contracts, liabilities, agreements, costs and expenses of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising in the future from the facts asserted in this **Action**, or which could have been asserted concerning the fire on November 12, 2019 at **Westcourt**;
- (cc) **“Released Parties”** means the Defendant and the Third Parties, Tyco Integrated Fire & Security Canada, Inc. o/a Johnson Controls/Tyco Feu Securite Integres Canada, Inc. connu comme Johnson Controls, Troy Life & Fire Safety LTD., MK Electric LTD. and A.P.I Alarm Inc, and their heirs, executors, administrators, estate trustees, employees, parent corporations, related and affiliated corporations, officers, directors, shareholders, partners, servants, agents, successors, assigns and insurers;
- (dd) **“Settlement Amount”** means \$7,300,000.00 plus the interest defined in paragraph 5(d) below;
- (ee) **“Settlement Agreement”** means the settlement agreement dated DATE (without schedules) attached to the **Order** as Schedule “A”; and
- (ff) **“Subrogated Claimant”** means an Insurer who holds a Class Member’s legally subrogated claim;
- (gg) **“SWS”** means Strosberg Wingfield Sasso LLP;
- (hh) **“Third Parties”** means Tyco Integrated Fire & Security Canada, Inc. o/a Johnson Controls/Tyco Feu Securite Integres Canada, Inc. connu comme Johnson Controls, Troy Life & Fire Safety LTD., MK Electric LTD. and A.P.I Alarm Inc.;
- (ii) **“Trilogy”** means Trilogy Class Action Services;
- (jj) **“Unit”** means a commercial office or other utilizable commercial space, including the roof, at Westcourt Place; and
- (kk) **“Westcourt Place”** means the residential and commercial rental building municipally owned known as 99 Chatham Street E. and 251 Goyeau Street, including three underground parking levels (B1, B2 and B3), in Windsor.

2. THIS COURT ORDERS AND ADJUDGES that the Settlement Agreement is fair, reasonable and in the best interests of the Class, the Family Class and the Subrogated Claimants and is approved.

3. THIS COURT ORDERS AND DECLARES that no person or corporation validly opted out of this Action in accordance with the Certification Order made on February 14, 2022 and therefore this Order and the Distribution Plan are binding upon each and all Class Members, Family Class Members, Subrogated Claimants and any minors.

4. THIS COURT ORDERS that:

- (a) the Settlement Agreement, without schedules, attached as Schedule A, is approved and shall be implemented in accordance with its terms;
- (b) the Distribution Plan attached as Schedule B, is approved;
- (c) the Claim Form generally in the form attached as Schedule C, is approved; and
- (d) the Notice generally in the form attached as Schedule D, is approved.

5. THIS COURT DECLARES that:

- (a) each commercial lease for each of the Units at Westcourt Place shall be deemed to have been terminated, with no right to re-occupy the leased space, as of the date of the expiry of the commercial lease which was before the date of this Order;
- (b) except for the residential leases for the Apartments listed in Schedule E, the residential leases for all other Apartments shall be deemed to have been terminated in accordance with the *Residential Tenancies Act* as of the date the respective Class Member provided notice of termination to the Defendant in writing or the date of this Order, whichever is earlier, and each residential Class Member has the right to receive back their rent deposit from the Defendant;
- (c) each Class Member whose residential lease has terminated in accordance with the above provision must take possession of his, her, or its chattels from the off-site storage facility arranged and paid for by the Defendant within 15 days of the date of this Order. If the Class Member has not retrieved his, her or its chattels within 15 days of the date of this Order, the Defendant may discard these chattels without liability;
- (d) the Defendant and its insurer Intact have delivered to Class Counsel the sum of \$25,000 in trust and delivered the sum of \$7,275,000 to Dolden, in trust;
- (e) Dolden will hold this \$7,275,000 in an interest bearing trust account or Guaranteed Investment Certificate(s);

- (f) Dolden will deliver the \$7,275,000 and the accrued interest to SWS in trust within 35 days after the date of this Order, or within 35 days of the final disposition of any appeal arising from this Order, whichever is later, after which postjudgment interest will be payable at the rate provided for by the *CJA*, or as otherwise agreed between SWS and Dolden having regard to the maturity of the term deposits; and
- (g) Class Counsel may pay the cost of advertising this Order and the Settlement Agreement and must report to the Court these expenditures.

6. THIS COURT ORDERS that:

- (a) Trilogy is appointed as the Administrator at a cost of \$315 per Claim with a limit not to exceed \$100,000, plus HST;
- (b) Justice Richard Gates is appointed the Referee at a cost of \$600 per hour with a limit not to exceed \$60,000 plus disbursements and taxes; and
- (c) B. Clint Cadden is appointed:
 - (i) to receive any objections and report to the Court for a fee of \$5,000 plus HST; and
 - (ii) Protector of the Funds at a hourly rate of \$250 with a limit not to exceed \$25,000 plus disbursements plus HST

each with the duties and responsibilities set out in the Distribution Plan and in this Order.

7. THIS COURT ORDERS AND DECLARES that:

- (a) the Claims Bar Date is ●, 2025 at 4:30PM EST; and
- (b) the Election Date is ●, 2025 at 4:30PM EST.

8. THIS COURT ORDERS AND DECLARES that, on or before ●, the Administrator must implement the Notice Program, giving Notice of this Order and the Distribution Plan, by:

- (a) posting the Notice on its website ●;
- (b) sending the Notice by email to the Public Trustee and the Children's Lawyer; and
- (c) providing the Notice to any other person who requests it.

9. THIS COURT ORDERS AND DECLARES that on or before ●, 2025, Class Counsel will:

- (a) publish the Notice attached as Schedule D in the Windsor Star as an advertisement with a maximum size of a ¼ page;
- (b) post the Notice on its website;
- (c) email the Notice to every person who registered with Class Counsel and provided a valid email address; and
- (d) provide the Notice to any other person who requests it.

10. THIS COURT DECLARES that the Notice Program provided for in paragraphs 7 and 8 satisfies the requirements of s. 17 of the *CPA*.

11. THIS COURT ORDERS that each Class Member, Family Class Member, Subrogated Claimant and Insurer who seeks to participate in the Distribution Plan must submit a Claim Form and supporting documentation to the Administrator on or before the Claims Bar Date in accordance with the Distribution Plan.

12. THIS COURT ORDERS that the Administrator shall pay any award to a Class Member or Family Class Member who is a Minor to the Accountant of the Superior Court of Justice to the credit of the Minor, until the Minor attains the age of 18 years, at which time the Accountant shall pay the amount to the Class Member without any further order of the Superior Court of Justice.

13. THIS COURT ORDERS AND DECLARES that, if a Class Member or Family Class Member or Subrogated Claimant or Insurer does not submit a Claim Form to the Administrator on or before the Claims Bar Date, the Class Member, the Family Class Member, Subrogated Claimant and Insurer and each of their respective heirs, executors and assigns shall

be forever barred from participating in the Distribution Plan but shall, in all other respects, be bound by the terms of this Order.

14. THIS COURT ORDERS AND DECLARES that each Class Member, Family Class Member, Subrogated Claimant, Insurer and each of their respective heirs, executors, administrators, estate trustees, successors, assigns, officers, directors and insurers:

- (a) fully and finally release the Released Parties from the Released Claims;
- (b) shall not commence or continue against any Released Party any action or take any proceeding relating in any way to or arising from the Released Claims; and
- (c) shall not commence or continue against any person, any action or take any proceeding relating in any way to or arising from the Released Claims, who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief, against any Released Party.

15. THIS COURT ORDERS AND DECLARES that each of the Released Parties:

- (a) fully and finally release each other from the Released Crossclaims and Third Party Claims;
- (b) shall not commence or continue against any of the Released Parties any action or take any proceeding relating in any way to or arising from the Released Crossclaims and Third Party Claims; and
- (c) shall not commence or continue against any person, any action or take any proceedings relating in any way to or arising from the Released Crossclaims and Third Party Claims, who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief, against any of the Released Parties.

16. THIS COURT ORDERS AND DECLARES that this Order and the Distribution Plan are binding upon each and all of the Class Members, Family Class Members, Subrogated Claimants, Insurers and is binding on each of their respective heirs, executors, administrators, assigns, officers, directors and Insurers, including those who are Minors or persons under a

disability and the requirements of rule 7.08(4) of the *Rules of Civil Procedure* with respect to this Order and the Distribution Plan are dispensed with.

17. THIS COURT ORDERS AND DECLARES THAT:

- (a) the Class Counsel Fees are fixed in the amount of ●; and
- (b) Class Counsel is authorized and directed to transfer to the credit of Class Counsel the Class Counsel Fees.

18. THIS COURT ORDERS AND DECLARES that the Class Counsel Fees awarded in paragraph 16 is a first charge on the Settlement Amount in favour of Class Counsel.

19. THIS COURT ORDERS AND DECLARES that the Representative Plaintiffs, Timothy Gordon, Angela Thomson and John Sitter will each receive \$5,000 as a honorarium.

20. THIS COURT ORDERS that Class Counsel, the Administrator, the Referee or the Protector of the Funds may make a motion to the Court for directions.

21. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceeding against the Administrator, the Referee, the Protector of the Funds or Class Counsel, Dolden, Fund Counsel or the Administrator or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Order or the administration of the Settlement Agreement, except with leave of the Court.

22. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, this Action be and is hereby dismissed, with prejudice.

23. THIS COURT ORDERS AND ADJUGES that no further costs are payable as between the Plaintiffs and the Defendant.

24. THIS COURT ORDERS AND ADJUDGES that no costs are payable as between the Plaintiffs and the Third Parties.

25. THIS COURT ORDERS AND DECLARES that the costs payable, if any, as between the Defendant and the Third Parties shall be dealt with by separate Order on a further motion.

26. THIS COURT ORDERS that a copy of this Order shall be served upon The Children's Lawyer and the Public Guardian and Trustee by email.

JUSTICE

SCHEDULE A

Court File No.: CV-19-00028402

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TIMOTHY GORDON, ANGELA THOMSON, JOHN NG-LUN,
JOHN SITTER and FADIYA SHAMASHA

Plaintiffs

and

837690 ONTARIO LIMITED

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

BACKGROUND

WHEREAS a Fire occurred on November 12, 2019 at Westcourt Place municipally located at 99 Chatham Street East and 251 Goyeau Street in Windsor, Ontario;

AND WHEREAS the Plaintiffs brought this action to recover various damages alleged by them, and by all tenants of Westcourt Place, arising from the Fire as set out in the Fresh As Amended Statement of Claim;

AND WHEREAS the Ontario Superior Court of Justice has certified this action to proceed as a class action on February 14, 2022;

AND WHEREAS the Fire at Westcourt Place caused significant damage to the entire building and the City of Windsor has issued various orders prohibiting occupancy of all units at Westcourt Place until repairs are completed;

AND WHEREAS the Defendant is continuing with the repairs to Westcourt Place;

AND WHEREAS the Defendant asserts the position that as a result of the Fire, all residential and commercial lease agreements with tenants of Westcourt Place are frustrated, in law, and therefore terminated;

AND WHEREAS the Plaintiffs assert the position that the residential leases are not frustrated by the Fire;

AND WHEREAS certain Class Members have terminated commercial lease agreements and residential lease agreements with the Defendant.

AGREED TERMS

Definitions

1. The following definitions apply:

- (a) **Administrator** means Trilogy Class Action Services;
- (b) **Administrative Expenses** means the cost of the Administrator, the Referee, the Protector of the Funds and any other costs approved by the Court;
- (c) **Apartment** means a residential unit and sometimes, in addition, a parking space and/or storage locker located at Westcourt Place;
- (d) **Approval Date** and **Approval Hearing** mean the date that the Court will deal with a motion to approve the Settlement Agreement, fixing the amount of Legal Fees and deal with other issues;
- (e) **Approval Order** means the Order of Justice Nicholson approving the Settlement Agreement and dealing with other issues, substantially in the form attached hereto as Schedule 1;
- (f) **Claimant** means a Class Member, a Family Class Member, or a Subrogated Claimant who submits a properly completed Claim Form and all required supporting document(s) to the Administrator on or before the Claims Bar Deadline;
- (g) **Claim Form** is a form authorized by the Administrator, and approved by the Court, which will be available at the Administrator's website;
- (h) **Claims Bar Deadline** means a date that is set in the Approval Order;
- (i) **Class and Class Member** means all persons, excluding the Defendant, its employees, officers or directors, who on November 12, 2019:
 - i. rented an Apartment and/or Unit at Westcourt Place; or
 - ii. was ordinarily resident in an Apartment at Westcourt Place; or
 - iii. was present in an Apartment and/or a Unit at Westcourt Place on November 12, 2019 when the Fire occurred; or
 - iv. owned property in an Apartment and/or in a Unit and/or on the roof at Westcourt Place; or

- v. had an interest in property located in an Apartment and/or a Unit and/or on the roof at Westcourt Place; or
 - vi. was a Commercial Tenant or an employee of a Commercial Tenant located in or attached to Westcourt Place.
- (j) **Class Counsel** means Strosberg Wingfield Sasso LLP;
 - (k) **Database** includes the web-based database in which the Administrator stores information provided by the Representative Plaintiffs, Class Counsel and the Defendant and received from the Claimants and/or acquired through the claims process and the decisions made by the Administrator and Referee;
 - (l) **Distribution** means the payment(s) to an Eligible Claimant in accordance with this Distribution Plan, this Settlement Agreement and any order of the Court;
 - (m) **Distribution Plan** means the plan attached as a Schedule to the Approval Order;
 - (n) **Distribution List** means a list containing the name, and distribution amount of each Eligible Claimant;
 - (o) **Dolden** means Dolden Wallace Folick LLP, counsel for the Defendant;
 - (p) **Eligible Claimant** means a Claimant that the Administrator and/or Referee determines is eligible to participate in the Distribution Plan;
 - (q) **Family Class** and **Family Class Member** means the living partner, spouse, child, grandchild, parent, grandparent, or sibling of a Class Member who suffered personal injuries;
 - (r) **Fire** means the fire which started at Westcourt Place on November 12, 2019;
 - (s) **Lease Records** means the records of residential leases maintained by the Defendant and produced to Class Counsel and to the Administrator for the sole purpose of administering this Distribution Plan;
 - (t) **Legal Fees** means Class Counsel's request for fees, disbursements and taxes;
 - (u) **Notice Order** means the Order of Justice Nicholson fixing the date for a hearing by Zoom to decide whether the Court will approve the Settlement Agreement and the Distribution Plan and decide on Class Counsel's request for Legal Fees;
 - (v) **Objection Date** means the deadline date set out in the Notice Order for objections to the Distribution Plan and/or the Settlement Agreement and/or a Residential Tenant to elect to maintain a residential tenancy agreement;
 - (w) **Protector of the Funds** means B. Clint Cadden;
 - (x) **Referee** means retired Justice Richard Gates;

- (y) **Reference** means a procedure before the Referee described in the Distribution Plan;
- (z) **Residential Tenant** means a Class Member who rented an Apartment at Westcourt Place;
- (aa) **Settlement Agreement** means this written Settlement Agreement between Class Counsel on behalf of the Representative Plaintiffs and Dolden on behalf of the Defendant;
- (bb) **Settlement Amount** means \$7,300,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to this action or this settlement;
- (cc) **Subrogated Claimant** means an insurer who holds a Class Member's legally subrogated claim;
- (dd) **Trust Amount** means the amounts deposited into the trust account held by Class Counsel and Dolden authorized by the Notice Order and/or Approval Order;
- (ee) **Unit** means a commercial office or other utilizable commercial space, including the roof, at Westcourt Place;
- (ff) **Website** means the Administrator's address on the internet; and
- (gg) **Westcourt Place** means the residential and commercial rental building municipally known as 99 Chatham Street East and 251 Goyeau Street, Windsor, Ontario.

Settlement Consideration

2. The Defendant's insurer shall, within 10 days of the signing of this Agreement, deposit \$25,000 into Class Counsel's Trust account for the purposes of giving Notice of the Approval Hearing and for the election process described herein. Class Counsel will, in due course, seek Court approval for these expenditures. For greater certainty, in the event the Court does not finally approve this Agreement, the actual expenditures will be non-refundable to the Defendant.

3. Class Counsel will ask the Court to appoint B. Clint Cadden to receive any forms authorized by the Notice Order.

4. Class Counsel will advertise the Settlement Agreement and the Distribution Plan as authorized by the Notice Order.

5. The Defendant's insurer shall, within 10 days of the signing of this Settlement Agreement, deposit \$7,275,000, the balance of the Settlement Amount, into Dolden's interest bearing trust account. Dolden will hold the Settlement Amount in an interest bearing trust account or Guaranteed Investment Certificate(s);

6. The Settlement Amount shall be the sole source of monetary funds under this Settlement Agreement.

7. Dolden shall not transfer the balance of the Settlement Amount to Class Counsel, the Administrator, or any other party, unless authorized by the Court.

8. All funds held in Class Counsel's trust account and in Dolden's trust account shall be deemed to be in the custody of the Court until such time as the funds are distributed pursuant to the Approval Order after it becomes final.

Settlement Consideration

9. The Settlement Amount shall be paid in full and final settlement of all claims that were made, or that could have been made by the Class Members, the Family Class Members, Subrogated Claimants and insurers in this action, including, but not necessarily limited to, the claims arising, directly or indirectly, from the Fire.

10. The Parties will request that the Court appoint B. Clint Cadden to receive any election form and any objections to the Settlement Agreement before the Objection Date. Class Counsel shall pay up to \$25,000 for advertising the Settlement Agreement and paying the fee of B. Clint Cadden, which must be approved by the Court.

11. The Court will appoint an Administrator. The Administrator is subject to the supervision and direction of the Court and shall administer and oversee the distribution of the Settlement Amount pursuant to this Settlement Agreement, the Distribution Plan and the Approval Order.

12. Each Class Member, Family Class Member, Subrogated Claimant and insurer shall be solely responsible for the tax consequences, if any, to him, her, or it of the receipt of funds from the Approval Order.

13. The Defendant and its counsel shall not have responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Administrator, the Referee, or the Protector of the Funds, or any of their respective designees or agents, in connection with the administration of the Settlement Agreement or otherwise; (ii) the management, investment, or distribution of the Settlement Amount; (iii) the formulation, design or terms of the disbursement of the Settlement Amount; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount; (v) any losses suffered by, or fluctuations in the value of the Settlement Amount; or (vi) the payment or withholding of any taxes and tax-related expenses incurred in connection with the taxation of the Settlement Amount or the filing of any returns. The Defendant also shall have no obligation to communicate with Class Members and others regarding amounts paid under this Settlement Agreement subject to the Court's direction.

14. The Plaintiffs and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Agreement or otherwise; and (ii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount.

15. No action shall lie against the Administrator, Class Counsel, the Referee, or the Protector of the Funds for any decision made in the administration of this Settlement Agreement without an order from the Court authorizing such an action.

16. A declaration will issue that each commercial lease entered into by a Class Member has terminated with no right to re-occupy the leased space.

17. A declaration in the Approval Order will state that each Class Member, except those who have delivered a valid election and are listed in a schedule to the Approval Order, has terminated his, her or its residential tenancy agreement in writing and has received back their rent deposit from the Defendant. If any rent deposit has not been returned, it will be returned by the Defendant.

18. After the execution of this Settlement Agreement, Class Counsel will ask the Court to issue the Notice Order fixing the date for the hearing of the motion to approve the Settlement Agreement.

19. The Approval Date will be at least 38 days after the advertisement of the Approval Date was published in the Windsor Star newspaper.

Notice of Approval Hearing, Method of Objections and Elections

20. Class Members will be given notice of the terms of the Settlement Agreement, Class Counsel's request for Legal Fees and the date, time and method to access the Approval Hearing by:

- (a) Notification in the Windsor Star;
- (b) Class Counsel posting this information on Class Counsel's website <https://class-action.swslitigation.com/class-actions/westcourt/>; and
- (c) Class Counsel sending the Court approved Notice to each person who registered with Class Counsel and provided a valid e-mail address.

21. In the Approval Order, a declaration will state that the Class Members, whose names appear on a schedule, have NOT terminated his or her or its residential tenancy agreement which is deemed to be in full force and effect because he, she, or it have elected to reoccupy the same apartment at Westcourt Place, on the terms described in paragraph 23, after the City of Windsor and all contractors, engineers and other professionals working on the repair and remediation work at Westcourt Place have each confirmed that Westcourt Place is fit for occupancy. These Class Members will be required to, on or before the Objection Date, deliver in writing to B. Clint Cadden, a declaration that he, she, or it elects to reoccupy the same apartment in Westcourt Place (the "**Election**"). Particulars of the form and process for delivering an Election will be established in the Notice Order.

22. A Class Member who has signed and delivered an Election on or before the Objection Date to B. Clint Cadden may revoke that Election provided that the Class Member delivers a revocation of the Election in writing to B. Clint Cadden at least 7 days prior to the Approval Date.

23. If a Class Member makes an Election, he, she, or it is electing to reoccupy the same Apartment under the same terms of their residential tenancy agreement, except that his, her, or its rent will be deemed to have increased annually by the guideline percentage prescribed pursuant to the *Residential Tenancies Act, 2006*. The first such increase will be deemed to have taken effect on the date that is 12 months after the last increase in rent for which the Defendant gave notice prior to the Fire, and the subsequent increases will be deemed to have taken effect in each year on the anniversary date of the aforementioned first such increase. For greater certainty, if one Class Member signed an Election, he, she, they or it binds the other(s) who were parties to the original residential tenancy agreement.

24. A declaration shall issue that if an Election is not delivered to B. Clint Cadden on or before the Objection Date, the Class Member is deemed to have terminated his, her or its residential tenancy agreement in accordance with the *Residential Tenancies Act, 2006*, and no further notice will be given to the Class Member(s), and no further documentation will be required by the Defendant.

25. On or before the Approval Date, if Class Members representing 31 or more Apartments elect to reoccupy their apartments, the Defendant shall have the absolute right, but not the obligation, at its sole discretion, to terminate this Settlement Agreement. The Defendant must give written notice of its election to terminate the Settlement Agreement five (5) days before the Approval Date.

26. If the Defendant elects to terminate, as set out above, any settlement funds held in escrow by Class Counsel shall be returned to the Defendant within 10 days, less the actual and incurred costs of advertisement and the election process.

27. If a Class Member does not send an Election to B. Clint Cadden on or before the Objection Date, if the Settlement Agreement is approved by the Court and if the Approval Order becomes final:

- (a) a declaration shall issue that the Class Member's residential tenancy agreement at Westcourt Place shall be immediately deemed to be terminated forthwith upon the settlement approval Order becoming final;
- (b) a declaration shall issue that the Defendant must refund any rent deposit to the Class Member(s) that has not been already refunded; and
- (c) a declaration shall issue that the Defendant arranged for an off-site storage facility ("Off-site Storage Facility") and may have taken possession of the chattels of some of the Class Members. Each Class Member whose residential tenancy agreement has terminated must take possession of his, her, or its chattels within 15 days of the settlement approval Order becoming final. If the Class Member has not retrieved his, her or its chattels within 15 days of the settlement approval Order becoming final, the Defendant may discard these chattels without liability.

28. If the Settlement Agreement is approved by the Court, the Approval Order becomes final, and the Class Member's residential tenancy agreement continues, the Defendant must continue to store the Class Member's chattels until 30 days after the Defendant notifies the Class Member that

the City of Windsor and all contractors, engineers and other professionals working on the repair and remediation work at Westcourt Place have each confirmed that Westcourt Place is fit for occupancy. If such a Class Member fails to make arrangements with the Defendant for the return of the Class Member's chattels to their unit in Westcourt Place within 30 days of receiving the aforementioned, the Defendant may discard the Class Member's chattels without liability.

29. The Defendant shall pay for all storage fees incurred to store the Class Members' chattels until the Class Members' chattels have been picked up or otherwise discarded in accordance with the paragraphs above.


30. In the Approval Order, the Court will issue a declaration that the Class Members, Family Class Members and Subrogated Claimants have fully and finally released the Defendant and the Third Parties and their officers, directors, agents, assigns, employees and insurers from all claims that were made, or that could have been made, in these proceedings, including, but not necessarily limited to, the claims arising directly or indirectly from the Fire at Westcourt Place.

Date: January 9, 2025



 Witness

Strosberg Wingfield Sasso LLP

Per: 


 Harvey T. Strosberg KC
 Lawyers for the Plaintiffs

Date: January 9, 2024

Matthew Miller 

 Witness

Dolden Wallace Follick LLP

Per: 

 Christopher Stribopoulos
 Lawyers for the Defendant

SCHEDULE B — DISTRIBUTION PLAN

THE DEFINED TERMS

1. The definitions set out in the Settlement Agreement reached between the Representative Plaintiffs and Defendant (“**Agreement**”), except as modified or defined herein, apply to and are incorporated into this Distribution Plan:
 - (a) **Administrator** means [insert];
 - (b) **Administrative Expenses** means the cost of the Administrator, the Referee and any other costs approved by the Court;
 - (c) **Apartment** means a residential unit and sometimes, in addition, a parking space and/or storage locker located at Westcourt Place;
 - (d) **Approval Order** means the Order of Justice Nicholson approving the Agreement;
 - (e) **Claimant** means a Class Member, a Family Class Member, or a Subrogated Claimant, who submits a properly completed Claim Form and all required supporting document(s) to the Administrator on or before the Claims Bar Deadline;
 - (f) **Claim Form** is a form authorized by the Administrator and is available at the Administrator’s website; [insert address]
 - (g) **Claims Bar Deadline** means a date that is set in the Approval Order;
 - (h) **Class and Class Member** means all persons, excluding the Defendant, its employees, officers or directors, who on November 12, 2019:
 - i. rented an Apartment and/or Unit at Westcourt Place; or
 - ii. was ordinarily resident in an Apartment at Westcourt Place; or
 - iii. was present in an Apartment and/or a Unit at Westcourt Place on November 12, 2019 when the Fire occurred; or
 - iv. owned property in an Apartment and/or in a Unit and/or on the roof at Westcourt Place; or
 - v. had an interest in property located in an Apartment and/or a Unit and/or on the roof at Westcourt Place; or
 - vi. was a Commercial Tenant or an employee of a Commercial Tenant located in or attached to Westcourt Place.
 - (i) **Class Counsel** means Strosberg Wingfield Sasso LLP;

- (j) **Commercial Tenant** means a Class Member who rented a Unit at Westcourt Place;
- (k) **Commercial Tenants Fund** means \$500,000.00;
- (l) **Damages** means the sum of all amounts approved by the Administrator or by the Referee;
- (m) **Database** means the web-based database in which the Administrator stores information provided by the Representative Plaintiffs and Defendant and received from the Claimants and/or acquired through the claims process;
- (n) **Distribution** means the payment(s) to an Eligible Claimant in accordance with this Distribution Plan, the Agreement and any order of the Court;
- (o) **Distribution Plan** means this plan attached as Schedule B of the Approval Order;
- (p) **Distribution List** means a list containing the name and Distribution amount of each Eligible Claimant;
- (q) **Election Date** means the date being the deadline for elections to be received as set in the Notice Order;
- (r) **Eligible Claimant** means a Claimant that the Administrator and/or Referee determines is eligible to participate in the Distribution Plan held by;
- (s) **Escrow Account** means the trust account held by Class Counsel in the Settlement Amount less the amounts authorized by the Approval Order and the Distribution Plan;
- (t) **Family Class** and **Family Class Member** means the living partner, spouse, child, grandchild, parent, grandparent, or sibling of a Class Member who suffered personal injuries;
- (u) **Fire** means the fire which started in the third level of the underground parking garage known as B3 at Westcourt Place on the morning of November 12, 2019;
- (v) **Honoraria** means a one-time payment of \$5,000 from the Settlement Amount to each of the representative plaintiffs (Timothy Gordon, Angela Thomson, and John Sitter), if approved by the Court;

- (w) ***Lease Records*** means the records of residential leases maintained by the Defendant and produced to Class Counsel and the Administrator for the sole purpose of administering this Distribution Plan;
- (x) ***Notice Order*** means the Order of Justice Nicholson fixing the date for a hearing by Zoom to decide whether the Court will approve the Settlement Agreement and the Distribution Plan;
- (y) ***Objection Date*** means the date being the deadline for objections to be received as set in the Notice Order;
- (z) ***Personal Injury Fund*** means \$250,000;
- (aa) ***Protector of the Funds*** means B. Clint Cadden;
- (bb) ***Referee*** means retired Justice Richard Gates;
- (cc) ***Reference*** means a procedure before the Referee described in the Distribution Plan;
- (dd) ***Residential Tenant*** means a Class Member who rented an Apartment at Westcourt Place;
- (ee) ***Residential Tenants Fund*** means \$3,000,000;
- (ff) ***Settlement Agreement*** means the written agreement between Class Counsel on behalf of the Representative Plaintiffs and the Defendant;
- (gg) ***Settlement Amount*** means \$7,300,000, inclusive of the Administration Expenses, Class Counsel Fees, interest, taxes and any other costs or expenses related to this action or this settlement;
- (hh) ***Subrogated Claimant*** means an insurer who holds a Class Member's legally subrogated claim;
- (ii) ***Subrogated Claims Fund*** means \$800,000;
- (jj) ***Unit*** means a commercial office or other utilizable commercial space, including the roof, at Westcourt Place;
- (kk) ***Website*** means the Administrator's address on the internet; and

- (II) ***Westcourt Place*** means the residential and commercial rental building municipally known as 99 Chatham Street East and 251 Goyeau Street, Windsor, Ontario.

THE OVERVIEW

2. This Distribution Plan contemplates a determination of eligibility and a Distribution to each Eligible Claimant of a share of the Escrow Account.
3. At the end of the administration of the Distribution Plan, the Administrator will prepare the Distribution List for presentation to the Court for approval.
4. All costs incurred by a Class Member in complying with any procedure contemplated by this Distribution Plan, including any legal and accounting costs, shall be borne entirely by the Class Member.

OBJECTION TO THIS PLAN

5. A Class Member or a Family Class Member may object to the Settlement Agreement and/or the Distribution Plan by filing a written notice with the Protector of the Funds, before the Objection Date setting out the objection(s) to the Distribution Plan.

CLAIM FORM AND DOCUMENTS

6. In order to participate in the Distribution Plan, a Class Member, Family Class Member, or a Subrogated Claimant must deliver to the Administrator the following documents, on or before the Claims Bar Deadline:
 - (a) for an individual, a copy of government issued photo identification;
 - (b) a completed Claim Form; and
 - (c) documents sufficient for the Administrator or Referee to determine:
 - i. the value of the Class Member's claim;
 - ii. whether insurance proceeds were received by the Class Member and, if applicable, the amount of the insurance proceed(s) received by the Class Member; and
 - iii. whether the insurer holds a legally subrogated claim.

CALCULATION OF THE DISTRIBUTION

7. The Distribution contemplates a separate calculation for a Claimant based upon the Claimant's relationship with the Defendant.

SUBROGATED CLAIMS

8. The Distribution of the Subrogated Claims Fund for each Subrogated Claimant shall be calculated in accordance with this section.
9. A subrogated claim is the amount which an insurance company paid to a Residential Tenant and/or to a Commercial Tenant, without interest.
10. The Referee will decide each subrogated claim in a summary fashion. The Protector of the Funds will participate in accordance with this Distribution Plan, and as the Referee directs.
11. Each Subrogated Claimant, before the Claims Bar Deadline, may submit one Claim Form to the Administrator itemizing the name and the amount of each Residential Tenant and/or each Commercial Tenant, the amount of each subrogated claim and sufficient information for the Referee to adjudicate each subrogated claim.
12. In considering a subrogated claim for damages under this section, the Referee shall approve all amount(s) that is/are reasonable given general contract law and/or negligence principles and/or gross negligence principles and/or the remaining term of the Commercial Tenant's lease at Westcourt Place with the Defendant as at the time of the Fire.
13. The amount of each subrogated claim shall be reduced by:
 - (a) 35% for Class Counsel's fees, disbursements, taxes and Administrative Expenses;
 - (b) 15% for litigation risk; and
 - (c) if the Commercial Tenant's lease excluded liability for the Defendant's negligence but requires proof of gross negligence, a further reduction of 10%; or
 - (d) if the Commercial Tenant's lease excluded liability for the Defendant's negligence and gross negligence, a further reduction of 20%.

Any applicable reductions shall be calculated *cumulatively* before the Referee decides the amount of the subrogated claim.

14. The decision of the Referee is final when dealing with the Subrogated Claimants.
15. In the event the total sum of all subrogated claims exceeds the Subrogated Claims Fund of \$800,000, the Administrator will reduce each subrogated claim *pro rata* to ensure that the sum of all Distributions is equal to \$800,000.
16. In the event the total sum of all Distributions for subrogated claims does not exceed \$800,000, the residue shall be paid into the Residential Tenants Fund.

PERSONAL INJURY CLAIMS BY CLASS MEMBERS AND FAMILY CLASS MEMBERS

17. Any Class Member and Family Class Member who believes that s/he has suffered a compensable, personal injury as a result of the Fire, s/he may apply to the Administrator before the Claims Bar Deadline for adjudication before the Referee of the personal injury incurred by a Class Member and a Family Class Member.
18. A Family Class Member is not entitled to claim damages under the Distribution Plan unless his/her Class Member applied for personal injury as a result of the Fire and the Class Member was awarded damages under the Distribution Plan.
19. The personal injury damages awarded to the Class Members and Family Class Members shall be reduced by 35% for Class Counsel's fees, disbursements, taxes and Administration expenses.
20. The Referee shall adopt a summary procedure for the adjudication of Class Members' personal injury claims and the Family Class Members' claims, which shall be governed by the following principles:
 - (a) the Defendant and Third Parties shall have no right or opportunity to participate in the adjudication of a Class Member's personal injury claim.
 - (b) the Protector of the Funds will participate in accordance with this Distribution Plan, and as the Referee directs.;
 - (c) the Class Member must provide her or his Ministry of Health card number, documentation such as a hospital record(s) and/or medical record(s) to support

his/her personal injury claim and a summary of the Ministry's subrogated amounts;

- (d) the Class Member and the Family Class Member have the right to deliver documentation to the Referee;
- (e) the Class Member shall have the opportunity to provide further documentation if the Referee agrees;
- (f) the Class Member and/or the Family Class Member may meet with the Referee in person or electronically, if the Referee directs;
- (g) the Referee shall make all reasonable inquiries of the Class Member and/or Family Class Member(s) to ensure s/he has the requisite information to adjudicate the Class Members's personal injury claim and the Family Class Member's claim;
- (h) the Referee's decision shall provide (i) the value of the Class Member's personal injury claim and the Ministry of Health award; if any; (ii) brief reasons explaining the Referee's decision; and (iii) if there is a Family Class claim, the amount of the claim is to be accompanied with a brief reason;
- (i) the Referee shall issue his decision in writing within two weeks of receiving the Class Member's and/or the Family Class Member's completed claim;
- (j) the Class Member and Family Class Member shall have fourteen (14) days after receipt of the Referee's decision to deliver to the Referee, in writing, any discrepancies, omissions, oversights, or concerns about the Referee's decision;
- (k) if the Class Member and/or the Family Class Member assert discrepancies, omissions, oversight or error, the Referee shall reconsider his decision and reply in writing his further decision to vary or uphold the Referee's initial decision within fourteen (14) days; and
- (l) thereafter, the Referee's decision is final with no right of appeal.

21. In the event the sum of all Class Members' approved personal injury claims and Family Class members claims exceeds the Personal Injury Fund of \$250,000, the Administrator will reduce each Class Member's approved personal injury and each Family Law Claim

on a *pro rata* basis to ensure that the sum of all personal injury Distributions is equal to \$250,000.

22. In the event the sum of all Class Members' approved personal injury and the Family Law Claims does not exceed \$250,000, the residue shall be paid into the Residential Tenants Fund.

COMMERCIAL TENANTS

23. The Distribution for Commercial Tenants shall be calculated in accordance with this section.
24. A Claimant who was a Commercial Tenant and who received insurance proceeds for their losses incurred as a result of the Fire shall not claim for any amounts or damage which was paid by an insurance company and shall disclose this amount.
25. A Claimant who was a Commercial Tenant shall be entitled make a claim to the Administrator before the Claims Bar Deadline, for all reasonable amounts incurred as a result of the Fire, including but not limited to:
 - (a) damaged/destroyed chattels, including but not limited to, furniture, clothing, electronics, food, vehicles, and other personal items;
 - (b) displacement from their place of business and damage to contents including, but not limited to:
 - i. loss of income;
 - ii. business interruption; and
 - iii. other reasonable damages/costs incurred in the relocation of the operating business to equivalent leased premises;
 - (c) in addition to the foregoing, the Corporation of the City of Windsor as a Commercial Tenant may make a claim for all reasonable amounts incurred for:
 - i. the costs of social services provided to the Class Members immediately after the Fire including, but not limited to, shelter, food, transportation, and clothing; and

- ii. the costs incurred as a result of Windsor Fire & Rescue Services attending at the Fire

which will not exceed \$169,364 before any relevant deductions in paragraph 28.

- 26. A Commercial Tenant shall not be entitled to make a claim for the costs of acquiring property in which the Commercial Tenant has an ownership interest in the property or the costs of renovating property in which the Commercial Tenant previously had or has an ownership interest. Notwithstanding this paragraph, the Commercial Tenant may claim its moving costs to move the Commercial Tenant's chattels.
- 27. In considering a Commercial Tenant's claim for damages under this section, the Referee shall approve all amounts that are reasonable given general contract law and/or negligence principles and/or the remaining term of the Commercial Tenant's lease at Westcourt Place with the Defendant as at the time of the Fire.
- 28. The amount of each Commercial Tenant's damages shall be reduced by:
 - (a) 35% for Class Counsel's fees, disbursements, taxes and Administration's expenses;
 - (b) 15% for litigation risk; and
 - (c) if the Commercial Tenant's lease excluded liability for the Defendant's negligence but requires proof of gross negligence, a further reduction of 10%; or
 - (d) if the Commercial Tenant's lease excluded liability for the Defendant's negligence and gross negligence, a further reduction of 20%.

Any applicable reductions shall be calculated *cumulatively* before the Referee decides the amount of the claim.

HOW IS A CLAIM MADE

- 29. The Commercial Tenant who believes that he or she or it has suffered damages may submit a Claim Form to the Administrator before the Claims Bar Deadline for transmission to the Referee. The Protector of the Funds will participate in accordance with this Distribution Plan, and as the Referee directs.
- 30. The Referee shall approve all amount(s) that is/are reasonable given general contract law and/or negligence principles and/or gross negligence principles and/or the remaining term

of the Commercial Tenant's lease at Westcourt Place with the Defendant as at the time of the Fire.

31. In the event the sum of all Distributions to Commercial Tenants exceeds the Commercial Tenants Fund of \$500,000, the Administrator will reduce each Commercial Tenant's Distribution *pro rata* to ensure that the sum of all Distributions is equal to \$500,000.
32. In the event the sum of all Distributions to Commercial Tenants does not exceed the Commercial Tenants Fund of \$500,000, the residue will be paid into the Residential Tenants Fund.

RESIDENTIAL TENANTS

33. The damages for Residential Tenants shall be calculated by the Administrator in accordance with paragraphs 36 to 45.
34. A Residential Tenant who asserts damages as a result of the Fire, must file a Claim Form with the Administrator before the Claims Bar Deadline.
35. Each Residential Tenant who wishes to make a claim pursuant to this Distribution Plan shall submit a Claim Form.

ESCAPE FROM FIRE

36. Each Residential Tenant who was present in the Apartment at the time of the Fire and evacuated from Westcourt Place will be entitled to claim \$1,000.
37. Each Residential Tenant who was not present at the Apartment at the time of the Fire will be entitled to claim \$500.

INITIAL DISPLACEMENT FROM AN APARTMENT

38. Each Residential Tenant who was displaced because of the Fire will be entitled to claim \$6,000 for her/his displacement from the time of the Fire until to December 31, 2019.
39. A Residential Tenant who believes that s/he has suffered damages to chattels and displacement expenses from the time of the Fire to December 31, 2019, which exceeds \$15,000, may elect to prove this claim with sufficient documentation. The Referee shall adjudge the Residential Claim and the Protector of the Funds will participate in accordance with this Distribution Plan, and as the Referee directs. If the Referee approves

the Residential Tenant's claim, the Residential Tenant shall be entitled to claim \$6,000 with reduction, plus the amount approved by the Referee in excess of the \$15,000 then reduced by 35%.

DISPLACEMENT FROM AN APARTMENT FROM AND AFTER JANUARY 1, 2020

40. A Residential Tenant will be entitled to claim \$200 per Apartment per month from January 1, 2020 to March 30, 2024, a maximum of forty (40) months, provided that the Residential Tenant did not surrender or terminate the lease on the Apartment. If the Residential Tenant terminated or surrendered the lease on the Apartment, the claim of \$200 per month terminates on the last day of the month and year of the termination of the lease. This amount per Apartment shall be divided *pro rata* among all the Residential Tenants in the Apartment who submit a valid Claim Form.
41. Every Residential Tenant shall disclose whether they maintained a tenant insurance policy and, if so, must disclose the amount of proceeds received the tenant. This amount of proceeds received by the Residential Tenant from the insurer, except those separately and expressly paid to the Residential Tenant for loss of income, will be set-off only against the amount the Residential Tenant may claim under paragraphs 38-40 above.

RESIDENTIAL TENANTS WHO HAVE TERMINATED THE APARTMENT LEASE

42. If a Residential Tenant surrendered or terminated the lease on the Apartment in the period from November 12, 2019 to the date of the Notice Order, the Residential Tenant will be entitled to claim \$2,000 per Apartment. This amount per Apartment shall be divided *pro rata* among all the Residential Tenants in the Apartment who submit a valid Claim Form.

RESIDENTIAL TENANTS WHO HAVE NOT TERMINATED THE APARTMENT LEASE

43. Before the date of the Notice Order, a Residential Tenant who has **not** surrendered or terminated the lease on the Apartment, may elect to surrender or terminate the lease and will be entitled to claim an additional \$5,500 per Apartment. This amount per Apartment shall be divided *pro rata* among all the Residential Tenants in the Apartment who submit a valid Claim Form.
44. If a Residential Tenant intends to reclaim his/her/their Apartment, when Westcourt Place becomes habitable, he/she/they must advise the Protector of the Funds in writing to

reclaim his/her/their Apartment by 4:30 PM EST on the Election Date. A Residential Tenant who has advised the Protector of the Funds in writing to reclaim his/her/their Apartment in accordance with this paragraph and who no longer wishes to reclaim his/her/their Apartment must advise the Protector of the Funds in writing to revoke the claim to his/her/their Apartment by 4:30 PM EST on the Election Date

45. If the Residential Tenant does not advise the Protector of the Funds in writing by 4:30PM EST on the Election Date to reclaim his/her/their Apartment, the Apartment lease will be deemed to be terminated and all the Residential Tenants in the Apartment shall be entitled to claim \$5,500 per Apartment in accordance with the above.

THE DEFENDANT'S OPTION TO TERMINATE THE SETTLEMENT AGREEMENT

46. If Class Members representing 31 or more Apartments elect to reoccupy his/her/their Apartment, the Defendant shall have the absolute right, but not the obligation, at its sole discretion, to terminate the Settlement Agreement. The Defendant must give written notice of its election to terminate the Settlement Agreement five (5) days before the date that the Court will deal with a motion to approve the Settlement Agreement.

RESIDENTIAL TENANT'S DISTRIBUTION

47. A Residential Tenant's Distribution shall be calculated by determining the sum of all payments that each Residential Tenant is entitled to, and has claimed for, in accordance with this Distribution Plan.
48. The Distribution for each Residential Tenant will be calculated separately and then totaled.
49. In the event the sum of all Distributions to Residential Tenants exceeds the Residential Tenants Fund, the Administrator will reduce each Residential Tenant's Distribution *pro rata* to ensure that the sum of all Distributions equals the Residential Tenants Fund.
50. In the event the sum of all damages to Residential Tenants is less than the Residential Tenants Fund, the Administrator will increase each Residential Tenant's Distribution *pro rata* to ensure that the sum of all Distributions equals the Residential Tenants Fund.

GENERAL PRINCIPLES OF THE ADMINISTRATION OF THE SETTLEMENT

51. The administration process shall:

- (a) implement and conform to the Distribution Plan;
- (b) follow the Approval Order;
- (c) employ secure, paperless, web-based systems with electronic registration and record keeping, wherever practical; and
- (d) operate a website and a toll-free telephone helpline.

THE REFEREE, THE ADMINISTRATOR, AND THE PROTECTOR OF THE FUNDS

52. The Referee and the Administrator must comply with the Distribution Plan. The Referee, the Administrator, and the Protector of the Funds shall have such powers and rights reasonably necessary to discharge its duties and obligations under the Distribution Plan in accordance with the Approval Order, subject to the direction of the Court.

THE ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

53. The Administrator shall administer the Distribution Plan under the direction of the Court.

54. The Administrator shall, wherever practical, develop, implement and operate an administration system utilizing web-based technology and other electronic systems to enable the following:

- (a) notify the Class Members about the Distribution Plan;
- (b) notify the Residential Tenants, who have not surrendered or terminated the lease of their Apartment, about the facts set out in paragraphs 43 to 46 of this Distribution Plan;
- (c) prepare a specimen Claim Form on its website;
- (d) collect identification of Class Members;
- (e) receive Claim Forms;
- (f) issue its decisions and the Referee's decisions;
- (g) calculation of the Distribution(s) to each Class Member;

- (h) payment of all administration expenses; and
- (i) to report to the Court.

55. The Administrator's duties and responsibilities include the following:

- (a) receiving the monies in the Escrow Account from Strosberg Wingfield Sasso LLP and investing them in trust in accordance with the Agreement;
- (b) make all necessary returns to the Canada Revenue Agency regarding interest;
- (c) providing the hardware, software solutions and other resources necessary for an electronic web-based claims processing centre to function in a commercially reasonable manner;
- (d) train and instruct personnel to perform his/her duties in a commercially reasonable manner;
- (e) developing, implementing and operating electronic web-based systems and procedures for receiving the claims of Class Members, Family Class Members, and Subrogated Claimants, including making all necessary inquiries to determine the validity of such claims;
- (f) if practicable, providing any Class Member, Family Class Member, and Subrogated Claimant whose Claim Form is not properly completed or does not include some of the required supporting documentation, an opportunity to remedy any deficiency;
- (g) if practical, making timely assessments of eligibility, if possible, for compensation and providing prompt notice thereof;
- (h) dedicating sufficient personnel to communicate with Class Members, Family Class Members, and Subrogated Claimants;
- (i) using its best efforts to ensure that its personnel provide timely, helpful and supportive assistance to Class Members, Family Class Members, and the Subrogated Claimants in completing the claims application process and in responding to inquiries respecting claims;
- (j) sending to the Referee Claim Forms and providing the Referee with access to all necessary documents;
- (k) follow direction by the Referee about the Protector of the Funds;
- (l) maintaining a Database with all information necessary to permit Class Members, Family Class Members, the Subrogated Claimants and the Court to evaluate the progress of the administration, as may, from time to time, be required;
- (m) allowing the Referee and the Protector of the Funds access to its Database;
- (n) reporting to the Court respecting claims received and administered, and Administration Expenses; and
- (o) preparing such statements, reports and records as directed by the Court.

56. The Administrator shall give notice to the Class Members, Family Class Members, and Subrogated Claimants as the Court dictates.
57. The Administrator shall cause the information in the Database to be secured and accessible from the Website to Class Members, Family Class Members and the Subrogated Claimants with a user identification name and password.
58. Information in the Database concerning a claim shall be accessible to the Class Member, Family Class Members, and the Subrogated Claimants electronically. Each of them shall use a unique personal user identification name and personal password that will permit the Class Members, Family Class Members, and the Subrogated Claimants to access only his/her/its own information in the Database.
59. Once a Claim Form and supporting documentation is received by the Administrator, the Referee or Administrator shall in accordance with the Distribution Plan:
 - (a) determine whether the Claimant is an Eligible Claimant; and
 - (b) calculate the Eligible Claimants Distribution.
60. Once the Administrator or the Referee determines the Claimant's eligibility and Distribution, the Administrator shall advise the Claimant of the Administrator's decision or the Referee's decision by posting it on his/her/its online claim file.
61. The Administrator may deal with Class Members in a manner that is not through an electronic medium, as and when it determines that such a step is feasible and/or necessary. However, in all cases the information acquired concerning Class Members, Family Class Members, and the Subrogated Claims shall be entered into the Database.
62. Any decision of the Referee or the Administrator must be in accordance with the Distribution Plan.

THE REFEREE

63. The Referee shall have such powers and rights as are reasonably necessary to discharge his or her duties and obligations.
64. The Referee shall establish and employ a summary procedure to review any disputes and may enter into such mediation proceedings as the Referee may deem necessary.

65. The Referee will direct the Protector of the Funds of his participation.
66. All decisions of the Referee shall be in writing and shall be final and conclusive and there shall be no appeal therefrom whatsoever.

ADMINISTRATION EXPENSES

67. Class Counsel shall pay its fees, disbursements, taxes and other costs of:
 - (a) giving the notices required pursuant to the Approval Order and the Distribution plan;
 - (b) the Administrator;
 - (c) the Referee;
 - (d) the Protector of the Funds; and
 - (e) such other persons at the direction of the Courtout of the Settlement Amount in accordance with the provisions of the Agreement, the Approval Order, the Distribution Plan and any other orders of the Court.

DISTRIBUTION TO CLAIMANTS

68. As soon as practicable after the Claims Bar Deadline, claims submissions and the reference process, the Administrator will bring a motion to the Court for authorization to make Distributions from the Subrogated Fund, Personal Injury Fund, Commercial Tenants Fund and the Residential Tenants Fund to each Eligible Claimant.
69. No Distribution shall be made by the Administrator until authorized by the Court.
70. The Administrator may make interim Distributions if authorized by the Court.
71. Each Eligible Claimant who appears on the Distribution List shall comply with any condition precedent to Distribution that the Court may impose.
72. The Administrator shall pay the Distributions forthwith after receipt of authorization from the Court to make Distributions to the Eligible Claimants whose names are on the Distribution List.

RESTRICTION ON CLAIMS

73. Any Class Member who does not submit a Claim Form before the Claims Bar Deadline, will not be permitted to participate in the Distribution without permission of the Court. The Administrator will not accept or process any Claim Form received after the Claims Bar Deadline unless directed to do so by the Court.

NO ASSIGNMENT

74. No amount payable under this Distribution Plan may be assigned without the written consent of the Administrator and/or a Court Order.

ADMINISTRATOR'S FINAL REPORT TO THE COURT

75. Upon the conclusion of the administration of this Distribution Plan, or at such other time as the Court directs, the Administrator and Class Counsel shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed by Distribution or otherwise.
76. Thereafter, the Administrator and Class Counsel may obtain an order from the Court discharging Class Counsel, the Administrator, the Referee, and the Protector of the Funds from their obligation under the Approval Order.

Schedule C – Claim Form

SCHEDULE D

NOTICE OF SETTLEMENT OF THE WESTCOURT PLACE FIRE CLASS ACTION

Read this notice carefully as it may affect your rights.

This notice is directed to all Class Members who are persons, excluding the Defendant and its employees, officers or directors, who on November 12, 2019:

- (i) rented an Apartment and/or Unit at Westcourt Place; or
- (ii) was ordinarily resident in an Apartment at Westcourt Place; or
- (iii) was present in an Apartment and/or a Unit at Westcourt Place; or
- (iv) owned property in an Apartment and/or in a Unit and/or on the roof at Westcourt Place; or
- (v) was an employee, partner, associate, officer, director or an independent contractor whose business was located in the Units in Westcourt Place; or
- (vi) an insurance company who paid a Class Member and has a subrogated interest.

and to all Family Class Members who are the living partner, spouse, child, grandchild, parent, grandparent or sibling of a Class Member.

On November 12, 2019 a fire occurred at Westcourt Place. This certified class action was commenced seeking compensation for those affected by the fire (the "Action").

The proposed settlement of the Action was approved by Justice Nicholson on •. This notice provides a summary of the terms of the settlement.

Persons eligible to participate in the settlement are Class Members and Family Class Members who did not opt out of the Action.

SUMMARY OF THE TERMS OF THE SETTLEMENT

The Defendant will pay \$7.3 million, in full and final settlement of all claims, to be distributed in accordance with the following priorities:

- (a) \$• to the lawyers for the Class for fees, out of pocket expenses and taxes;
- (b) all costs and expenses incurred in the administration of the settlement, including the costs of Trilogy Class Action Services, Retired Justice Richard Gates, and B. Clint Cadden, the Court appointed Administrator, Referee, and Protector of the Funds respectively; and
- (c) a portion of the balance to each Class Member in accordance with the Court-approved claims process and Distribution Plan.

The Settlement Agreement, the Plan of Allocation and a description of the claims process may be viewed at <https://class-action.swslitigation.com/class-actions/westcourt/>.

A CLAIM FOR COMPENSATION MUST BE MADE BY •, 2024

Each Class Member must submit a completed Claim Form on or before •, 2025 in order to participate in the settlement. The Claim Form can be accessed or downloaded at **WEBSITE** or obtained by calling the Administrator at **PHONE NUMBER**. If you do not submit a completed Claim Form by •, 2025, you will not receive any compensation.

The Claim Form should be submitted to the Administrator by using the secure Online Claims System at WEBSITE. Please contact the Administrator at **PHONE** or **EMAIL** if you require assistance submitting a Claim Form.

QUESTIONS

Questions for the lawyers for the Class should be directed to:

Debbie Tocco
Strosberg Wingfield Sasso LLP
1561 Ouellette Avenue
Windsor, ON N8X 1K5
Tel: 519.561.6296
Fax: 1.866.316.5308 (toll free)
debbie.tocco@swslitigation.com

**This notice has been approved by the Court. Questions regarding this notice should
NOT be directed to the Court**

Schedule E – Residential Leases Not Terminated

TIMOTHY GORDON *et al.*
Plaintiffs

837690 ONTARIO LIMITED
Defendant

TYCO INTEGRATED FIRE & SECURITY et al.
Third Parties

Court File No. CV-19-00028402-A1CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

**ORDER
(Settlement Approval)**

STROSBERG WINGFIELD SASSO LLP

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Lawyers for the Plaintiffs

Our File No. 95.130.000
#2037961