

SCHEDULE "A"

DISTRIBUTION PLAN

INTERPRETATION

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

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

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

- (b) "Action" means the action *Kennedy et al. v. Toronto Hydro-Electric System Ltd.*, court file no. CV-08-361906;
- (c) "Administrator" means Marsh Risk Consulting Canada or its successor appointed from time to time by the Court;
- (d) "Arbitrator" means Reva Devins or her successor appointed from time to time by the Court;
- (e) "Claim Form" means the claim form generally approved by the Court for use under this Distribution Plan attached to the Judgment as Schedule "B";
- (f) "Claims Bar Date" means October 3, 2014;
- (g) "Class" or "Class Members" means those persons (who did not opt out of this action) who on July 20, 2008:
- (a) rented a Unit; or
 - (b) ordinarily resided in a Unit; or
 - (c) was present in a Unit but was not ordinarily resident in that Unit; or
 - (d) owned or had an interest in property located in or on a Unit; or
 - (e) owned one or more of the Units.

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

- (h) “**Class Counsel**” means Sutts, Strosberg LLP, Charney Lawyers and Hotz Lawyers;
- (i) “**Class Counsel’s Fees**” means the award for fees, disbursements and taxes to Class Counsel awarded in the **Judgment** in this **Action**;
- (j) “**Cost of Administration**” means a fixed fee of \$319,138 for notice, fees, disbursements and taxes for the **Administrator** and **Arbitrator**;
- (k) “**CPA**” means *Class Proceedings Act, 1992*;
- (l) “**Court**” means the Ontario Superior Court of Justice;
- (m) “**Distribution Plan**” means this plan and the procedures set out herein for distributing the **Settlement Amount** less **Class Counsel’s Fees** and the **Costs of Administration**;
- (n) “**DSM-5**” means American Psychiatric Association Diagnostic and Statistical Manual, 5th edition;
- (o) “**Insurer**” or “**Insurers**” means any insurance company of any of the Class Member(s) who did not opt out of the Action.
- (p) “**Judgment**” means the judgment of Justice Belobaba approving the settlement of this **Action** and the **Distribution Plan**;
- (q) “**Ministry of Health**” means the Ministry of Health and Long-Term Care;
- (r) “**Minor**” or “**Minors**” means a person, who as of the date of this judgment, has not attained the age of 18 years;
- (s) “**Notice**” means a notice of the **Settlement** of this **Action** substantially in the form of the **Notice** attached to the **Judgment** as Schedule “C”;
- (t) “**Notice Program**” means the method of giving **Notice** to the **Class Members** particularized in paragraph 5 of the **Judgment**;
- (u) “**Settlement Amount**” means \$6,526,679.01;
- (v) “**Toronto Hydro**” means Toronto Hydro-Electric System Ltd., and its employees, officers, directors, servants and agents; and
- (w) “**Unit**” means an apartment or townhouse or other utilizable space located at 2 Secord, particularized in subparagraph 1(a).

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

2. The insurer of Toronto Hydro will pay the amount of \$6,526,679.01 to Sutts, Strosberg LLP, in trust, within ten days of the approval of this settlement. Sutts, Strosberg LLP will pay and reserve the following amounts:

Settlement Amount	\$6,526,679.01
Reserve and pay the fixed fee for Notice, Administration & Arbitration other than the Personal Injury Arbitrations	(319,138.00)
Reserve and pay for Class Counsel fees, disbursements and taxes	(1,982,541.00)
Balance	4,225,000.01
Reserve and pay to the Ministry of Health	25,000.00
Reserve for Class Members who were Ordinarily Resident and Lost the Use of a Unit and Guests	1,425,000.00
Reserve for Subrogated Losses	1,200,000.00
Reserve for Deductibles	75,000.00
Reserve for Additional Living Expenses that Were Incurred and Were Not Paid by an Insurance Company	1,000,000.00
Reserve for Loss of Income	100,000.00
Physical Injuries and Psychiatric Injuries	400,000.00

PAYMENT TO THE MINISTRY OF HEALTH

3. Sutts, Strosberg LLP will pay the Ministry of Health the sum of \$25,000 in full settlement of Class Members' claim for medical and hospital services in the Action.

POWERS AND RESPONSIBILITIES OF THE ADMINISTRATOR

4. The Administrator is appointed to fulfill the duties and responsibilities set out in the Judgment and this Distribution Plan, including but not limited to the following:

- (a) give notice of the settlement of this action in accordance with the Judgment;

- (b) establish an electronic, secure, private system for communicating with the Administrator, Arbitrator, Class Counsel, counsel for the defendants, the Public Trustee, the Children's Lawyer and Class Members;
- (c) forward all documents electronically to all authorized persons;
- (d) receive all notices of appeal;
- (e) distribute all decisions for the Arbitrator;
- (f) establish a toll-free (or local 416 or 647 phone number) which will be designated as a help line for Class Members with questions about the Claim Forms and the claims process;
- (g) draft the Claim Forms with the input of Class Counsel;
- (h) receive and process Claim Forms and other documentation as provided in the Judgment and this Distribution Plan;
- (i) decide whether persons are eligible Class Members and communicate those decisions;
- (j) determine what level of compensation Class Members are entitled to receive and communicate those decisions;
- (k) maintain all necessary records;
- (l) make any calculations;
- (m) perform all necessary accounting functions;
- (n) make any decisions necessary for the orderly administration of this settlement;
and
- (o) report to the Court when required.

POWERS AND RESPONSIBILITY OF THE ARBITRATOR

5. The Arbitrator is appointed to fulfill the duties and responsibilities set out in the Judgment and this Distribution Plan including but not limited to the following:

- (a) deal with all disputes requiring a determination including, without limitation, question of fact, law or mixed fact and law;

- (b) establish a summary procedure to determine each dispute;
- (c) enter into mediation and/or arbitration proceedings as she establishes; and
- (d) deliver all decisions in writing to the Administrator for distribution within 30 days of completion of the hearing or process.

6. The decisions of the Arbitrator shall be final and conclusive and there shall be no appeal from her decisions whatsoever.

INFORMATION ABOUT THE CLASS MEMBERS

7. Class Counsel have information for about 463 Class Members who resided in 243 Units.

The Distribution Plan is based on the following formula:

$$\frac{463 \text{ persons}}{243 \text{ Units}} = 1.91 \text{ persons/Unit} \times 327 \text{ Units} = 624 \text{ Class Members} - 2 \text{ residential opt outs} = 622 \text{ Class Members}$$

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

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

THE CLAIMS PROCESS

9. Each Class Member must submit a Claim Form electronically, unless the Administrator agrees in advance to receive the Claim Form, by fax or mail, on or before the Claims Bar Date, to claim compensation under this Distribution Plan.
10. If a Class Member is:
- (a) deceased, the Claim Form must be submitted electronically by the estate trustee or by the spouse or by any other of his or her family members; or
 - (b) a mentally incapable person, the Claim Form must be submitted electronically by the Guardian of Property or the Attorney for Property or by the Public Trustee or by the spouse or by any other of his or her family members.
11. If a Class Member is:
- (a) a Minor, he or she must be represented by her/his parent(s) or person(s) with custody and any award to a Class Member who is a Minor shall be paid to the Accountant of the Superior Court of Justice to the credit of the minor, until the Minor attains the age of 18 years, at which time the Accountant shall pay the amount to the Class Member without any further order of the Superior Court of Justice;
 - (b) a Minor who is 16 years old but has not yet attained the age of 18 years, the Class Member must be represented by her/his parent(s) or person(s) with custody, and the signature of the Minor is also required on all Claim Forms or elections to appeal; or
 - (c) a mentally incapable person, she/he must be represented by her/his Guardian of Property or the Attorney for Property or by the Public Trustee or by a spouse.
12. The Claimant must establish, on the balance of probabilities to the Administrator, that he or she or it was a Class Member and he or she or it is entitled to receive payment(s) under the Distribution Plan.

13. The Claimant or the Class Member has the right within 30 days of receiving the Administrator's decision to appeal to the Arbitrator by delivering an appeal to the Administrator electronically.

14. The Arbitrator will establish a summary procedure given the nature of the heads of damage.

15. The Arbitrator, within 30 days, will communicate each of her decisions in writing, electronically, or by mail if requested, to all authorized persons, including the Administrator.

16. The decisions of the Arbitrator are final.

CATEGORY 1: CLASS MEMBERS WHO WERE ORDINARILY RESIDENT AND LOST THE USE OF A UNIT/WERE INCONVENIENCED UPON RETURN AND GUESTS

17. Under this category, the amount of \$1,425,000 is reserved.

18. The Administrator will award \$2,250 per Class Member to each Class Member who was ordinarily resident in a Unit on July 20, 2008 and lost the use of a Unit for 41 or 42 days. For any claims of lost use which are in excess of 42 days, the Administrator will award \$50 per day of displacement. For greater certainty, the days of displacement are the number of days the Units were unavailable for occupancy by the Class Members.

19. A Class Member who ordinarily resided in a townhouse a 2 Second will receive \$2,250 to compensate for the inconveniences associated with the explosion, regardless of whether they were displaced.

20. If a Class Member was present, but not ordinarily resident in the Unit (a guest) on July 20, 2008, he or she will receive \$200.

CATEGORY 2: SUBROGATED LOSSES

21. Under this category, the amount of \$1,200,000 is reserved.

22. Each Insurer of a Class Member must submit a Claim Form and supporting documents, including the Class Members' proofs of loss and particulars of the deductible(s) for each Class Member.

23. Each Insurer of a Class Member and the insured Class Member must submit separate Claim Forms.

CATEGORY 3: DEDUCTIBLES

24. Under this Category, the amount of \$75,000 is reserved. Each Deductible is in the amount that each Insurer deducted from each Class Member's insurance claim which was paid.

25. If the Insurer does not submit appropriate documentation to the satisfaction of the Administrator, the Class Member must demonstrate that she or he was charged a Deductible.

CATEGORY 4: ADDITIONAL LIVING EXPENSES THAT WERE INCURRED AND WERE NOT PAID BY AN INSURANCE COMPANY OR BY THE CITY OF TORONTO

26. Under this category, the amount of \$1,000,000 is reserved. Receipts, invoices or other satisfactory documentary proof are required for this Category.

27. Class Members will not be compensated for manual work that he and/or she did personally to repair and/or clean the Unit and/or repair or clean chattels.

CATEGORY 5: LOSS OF INCOME

28. Under this Category, the amount of \$100,000 is reserved.

29. Class Members must submit reliable documentation as proof of loss of income.

CATEGORY 6: PHYSICAL INJURIES

**LEVEL 6B0
MINOR PHYSICAL INJURIES
\$ 500**

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

31. Formal declaration from the Class Member (or on behalf of the Class Member, in the case of a Minor) describing the Class Member's injuries and their duration.

LEVEL 6B1

\$2,500 PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE

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

33. Formal declaration from the Class Member (or on behalf of the Class Member, in the case of a Minor) with contemporaneous medical records.

LEVEL 6B2

\$25,000 PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE

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

35. Injuries must be documented by contemporaneous medical records and any imaging which was done. Claims for medical expenses not covered by insurance must be supported by a letter from a doctor or health practitioner qualified to recommend the medical expenses for which payment is sought.

LEVEL 6B3

\$50,000 PLUS ALL PECUNIARY DAMAGES, NOT COVERED BY INSURANCE OR SUCH AMOUNT ASSESSED BY AN ARBITRATOR

36. Permanent, serious impairment of an important bodily function caused by physical injuries sustained during the explosion/evacuation.
37. Injuries must be documented by the Class Member's contemporaneous medical records and any imaging which was done, plus a letter from a specialist identifying the nature of the injury and expressing an opinion on how the Class Member's injury meets the grid criteria.
38. Level 6B3 Class Members may elect to have their claim assessed by an arbitrator. Class Members making this request must submit a report from a doctor which provides an opinion that the injuries meet the level 6B3 criteria. The arbitrator can award disbursements associated with the Class Member's Level 6B3 claim.

CATEGORY 6C: PSYCHIATRIC INJURIES

LEVEL 6C0

MINOR PSYCHIATRIC INJURIES

\$500

39. Anxiety, fearfulness, nightmares, sleeplessness, irritability, emotional distress or the temporary exacerbation of other physical or emotional issues or problems of a person including such diverse conditions as heart condition, asthma, depressions, substance abuse, paranoia or other psychiatric conditions as a result of the explosion/evacuation/displacement.

40. No contemporaneous visit to a doctor or medical records required.

41. Formal declaration from the Class Member (or on behalf of the Class Member, in the case of a Minor) describing the Class Member's injuries and their duration.

LEVEL 6C1

\$2,500 PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE

42. Psychiatric disorder as defined in DSM-5 with resolution of symptoms within 90 days.

43. Letter from a psychiatrist or psychologist or physician identifying a psychiatric disorder and expressing the opinion the disorder was sustained as a result of the explosion / evacuation / displacement, with resolution of symptoms within 90 days.

44. Contemporaneous records are not required.

LEVEL 6C2

\$ 10,000 PLUS MEDICAL EXPENSES AND COSTS OF RECORDS NOT COVERED BY INSURANCE

45. Psychiatric disorder as defined in DSM-5 where the duration of the symptoms was more than 90 days with resolution of the symptoms within one year.

46. Letter from a psychiatrist or psychologist identifying a psychiatric disorder sustained and expressing the opinion the disorder was sustained as a result of the explosion / evacuation / displacement where the duration of the symptoms was more than 90 days with resolution within

one year. If a claim for medical expenses not covered by insurance is made, the letter from the psychiatrist or psychologist must support the need for the medical expenses not covered by insurance.

47. Contemporaneous records are required.

LEVEL 6C3

\$15,000 PLUS MEDICAL EXPENSES AND COST OF RECORDS NOT COVERED BY INSURANCE

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

49. Letter from a psychiatrist or psychologist identifying a psychiatric disorder sustained and expressing the opinion the disorder was sustained as a result of the explosion / evacuation / displacement with symptoms exceeding one year and resolution by January 20, 2010. If a claim for medical expenses not covered by insurance is made, the letter from the psychiatrist or psychologist must support the need for the medical expenses not covered by insurance.

50. Contemporaneous records are required.

LEVEL 6C4

\$25,000 PLUS PLUS MEDICAL EXPENSES AND COST OF RECORDS NOT COVERED BY INSURANCE

51. Psychiatric disorder defined in DSM-5 with no resolution of symptoms.

52. Letter from a psychiatrist or psychologist identifying a psychiatric disorder and expressing the opinion that the disorder was sustained as a result of the explosion/evacuation/displacement with ongoing symptoms. If a claim for medical expenses not covered by insurance is made, the letter from psychiatrist or psychologist must support the need for the medical expenses not covered by insurance.

53. Contemporaneous medical records are required.

LEVEL 6C5

\$50,000 PLUS ALL PECUNIARY DAMAGES NOT COVERED BY INSURANCE OR SUCH AMOUNT TO BE ASSESSED BY AN ARBITRATOR.

54. A chronic psychiatric disorder as defined in DSM-5 causing a level of impairment that significantly impedes useful functioning in at least one of four aspects: limitations in activities of daily living; social functioning; concentration, persistence, and pace; and deterioration or decompensation in work or work-like settings as described in chapter 14 of the American Medical Association Guides to the Evaluation of Permanent Impairment fourth edition.

55. Letter from a psychiatrist identifying a chronic psychiatric disorder and explaining why there exists a marked impairment caused by the disorder and expressing the opinion that the marked impairment and disorder was caused by the explosion.

56. The Class Member must submit medical records evidencing that he or she underwent some medical treatment since the explosion consistent with this type of diagnosis.

57. Level 6C5 Class Members may ask the Claims Administrator to have their claim assessed by an Arbitrator. Class Members making this request must submit a report from a psychiatrist which provides an opinion that the alleged psychiatric disorder meets the Level 6C5 criteria. The Arbitrator can award disbursements associated with the Class Member's Level 6C5 claim.

MISCELLANEOUS PROVISIONS APPLICABLE TO PHYSICAL INJURIES AND PSYCHIATRIC INJURIES

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

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

60. The Class Member may deliver a notice of appeal to the Arbitrator within 30 days of receipt of the Administrator's decision.

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

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

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

64. Toronto Hydro, City of Toronto and Gonte do not have the right to participate in the Distribution Plan.

EXCESS FUNDS OR INSUFFICIENT FUNDS

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

66. If the total amount awarded to the Class Members in any given Category is more than the allocated money for the Category, the payment to each Class Member shall be reduced *pro rata* for that Category, and the amount of the shortfall in the Category must be calculated.

67. If the amount allocated to a Category exceeds the total amount awarded to the Class Members in that Category, then the surplus is to be applied to fund Categories where there is a shortfall, subject to paragraph 69. If there is more than one Category with a shortfall, then the Administrator shall divide the surplus among the Categories where there is a shortfall *pro rata*, subject to paragraph 69.

68. If there remains any surplus after all reallocations are calculated and each Class Member will receive all of the awards, the surplus will be divided up equally amongst all the Class Members and paid to the Class Members.

69. The Insurers and the Ministry of Health shall not participate in the surplus funds should the amount allocated to their Categories be insufficient to pay the total amounts awarded. In the event

that the amounts allocated to the Insurers exceeds the total amount awarded, the Insurers will share the excess *pro rata*.

70. In the event that the amounts awarded to the Insurers is more than the amount allocated to the Insurers in that Category, the payment to the Insurers shall be reduced *pro rata*.

REPORTING TO THE COURT AND DISTRIBUTION OF SETTLEMENT FUNDS

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

72. If the Court is satisfied with the Administrator's report, the Court shall approve the distribution and/or make any other order that the Court deems appropriate.

73. The Administrator shall deliver the report by email to Class Counsel, Toronto Hydro, City of Toronto and Gonte's counsel, the Children's Lawyer, the Public Trustee and any other person that the Court orders. The Court will decide whether or not this report will be sealed in whole or in part.

74. After distributing the cheques to the Class Members, inevitably there will be some cheques that will not be negotiated. After six months, each cheque that has not been negotiated

will be cancelled, and the funds will be paid to the City of Toronto, Office of Emergency Management.

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