

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**ELAINE QUINTE, JOHN QUINTE and 1358896 ONTARIO INC. (CARRYING ON  
BUSINESS AS HUNGRY JACK'S)**

Plaintiffs/Moving Parties

-and-

**EASTWOOD MALL INC., BOB NAZARIAN, THE CORPORATION OF THE CITY OF  
ELLIOT LAKE, M.R. WRIGHT & ASSOCIATES CO. LTD., R.G.H. WOOD, G.J.  
SAUNDERS, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, ALGOMA  
CENTRAL PROPERTIES INC., CORESLAB STRUCTURES (ONT) INC., JOHN  
KADLEC, JAMES KEYWAN, NON-PROFIT RETIREMENT RESIDENCES OF  
ELLIOT LAKE INC. (CARRYING ON BUSINESS AS RETIREMENT LIVING), AND  
1425164 ONTARIO LTD. INC. (CARRYING ON BUSINESS AS NORDEV)**

Defendants/Responding Parties

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**PLAINTIFFS' FACTUM  
(MOTION FOR SETTLEMENT APPROVAL)**

Date: April 3, 2026

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## **PART I – OVERVIEW**

1. This is a motion by the Representative Plaintiffs seeking approval of a proposed \$10 million settlement agreement executed by the parties effective as of November 27, 2025 (the “**Settlement Agreement**”) of this certified Class Action arising from the tragic Collapse of the Algo Centre Mall in the summer of 2012. If approved, the \$10 million set out in the Settlement Agreement will amount to a fair and reasonable overall level of compensation for the hundreds of Class Members. If approved by the Court, the Settlement Agreement will resolve nearly fourteen years of litigation, and avoid:

(a) the risks and delays of litigating the merits of the common issues (which would address which Defendants are liable and respective degrees of fault) through a summary judgment motion (or trial) and appeal(s);

(b) the risks and delays arising from contested proceedings to set the appropriate process for addressing individual damage claims, and

(c) hundreds of potentially contested individual damage assessments, and potential appeals from those individual assessments.

2. In addition to the approval of the Settlement Agreement, the Plaintiffs also seek approval of a proposed Distribution Plan (the “**Distribution Plan**”). The Distribution Plan is a relatively streamlined process that will allow an independent third-party adjudicator (the “**Adjudicator**”), with a limited right of appeal, to assess the Class Members’ claims in advance of what would ultimately be a *pro rata* distribution of the Net Settlement Fund (as defined in the Settlement Agreement).<sup>1</sup>

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<sup>1</sup> Affidavit of J. Adam Dewar, sworn March 13, 2026 (“**Dewar Settlement Approval Affidavit**”), Exhibit A: Settlement Agreement, para. 1(u), *Plaintiff’s Motion Record* (“*PMR*”), TAB 2.

3. The test on this motion is whether the Settlement Agreement and the Distribution Plan are fair, reasonable, and in the best interests of the Class. In making this determination, courts determine whether the features and benefits of the agreement and plan fall within a “zone of reasonableness”. This form of analysis involves measuring the proposed terms of the settlement against the risk, delay and potential return of going forward in a contested lawsuit.

4. Class Counsel respectfully submits that both the Settlement Agreement and the Distribution Plan pass the approval test. The Settlement Agreement was reached after more than thirteen years of litigation, exhaustive factual and legal investigation (including a public inquiry) in respect of both liability and damages, and extended arm’s-length negotiations between Class Counsel and the Defendants that, as set out immediately below, included years of mediation before two retired justices of the Court of Appeal.

5. The mediation initially proceeded under the Honourable Stephen Goudge, Q.C. and later the Honourable Warren Winkler. As part of the mediation process, Class Counsel collected and reviewed an exceptionally large volume of detailed information from Class Members concerning their individual damage claims. Class Counsel believes that \$10 million represents a reasonable settlement amount and was the maximum amount of money that could have been extracted from the Defendants in the extended mediation process.

6. Class Counsel’s view of the settlement is supported by the mediators. In short, essentially at the direction of the then case management judge (Justice Belobaba), Justice Goudge assessed Class Members’ damages at \$11.7 million. Justice Goudge further indicated that a settlement in the \$10-\$10.5 million range would be reasonable and should be accepted by the Class, if offered. Moreover, after Chief Justice Winkler was appointed mediator (following the full retirement of Justice Goudge in the fall of 2022) and began working with the Defendants, the Defendants made

a final and best offer of a total all-inclusive payment of \$10,775,000 to settle both this Class Action and the individual action by the Foodland grocery store that was destroyed in the Collapse (the “**Foodland Action**”). Chief Justice Winkler advised, and Class Counsel later confirmed, that the Defendants were not prepared to pay any more money in settlement and, if this offer was rejected, the parties would return to adversarial litigation with the Defendants. Former Chief Justice Winkler urged Class Counsel to accept the offer. It was left to Class Counsel and the Foodland plaintiffs to negotiate a reasonable split of the \$10,775,000. It was eventually agreed that the Class would receive \$10 million of that total and Foodland would receive \$775,000.

7. In the opinion of Class Counsel and the Representative Plaintiffs, the \$10 million settlement represents a favourable outcome for Class Members. As discussed below, the establishment of liability is not certain and, even if the liability of the Defendants (or some of them) was finally established following a summary judgment motion or trial (likely years from now once all appeals were exhausted), the quantum of damages would have to be determined through individual assessments. The total quantum of damages from all such individual assessments could amount to less than the proposed \$10 million settlement amount. That individual damages process could add more years to this action. Conversely, approving the \$10 million Settlement Agreement will bring this adversarial proceeding to a fair conclusion that sees Class Members being able to receive reasonable compensation much sooner.

8. The City of Eliot Lake is a city of approximately 11,000 to 12,000 residents. The Collapse of the Mall was a terrible and tragic event. It devastated the City, traumatized its residents and destroyed many of its businesses. The Collapse was, for obvious reasons, the subject of profound local interest and media coverage and this settlement was the subject of a rigorous notice process. Given the foregoing notoriety, it is significant that, as of the date of this factum, Class Counsel

have received no submissions opposing the proposed \$10 million Settlement Agreement or the proposed Distribution Plan. The only submission received to date supports the settlement.

9. The Plaintiffs respectfully request that the Court approve the Settlement Agreement and the Distribution Plan. The request for the payment of honoraria to the Representative Plaintiffs, and the approval of the payment of Class Counsel Fees and the payment of (or reservations for) Administrative Expenses (both as defined in the Settlement Agreement) and the CPF levy are the subject of a separate Fee Approval factum.

## **PART II – THE FACTS**

### ***(a) Case Investigation***

10. On June 23, 2012, the parking deck located on the roof of the Algo Centre Mall (the “**Mall**”) suffered a catastrophic structural failure and collapsed into the Mall’s food court (the “**Collapse**”).<sup>2</sup> Two people were killed, more were injured, businesses devastated, many people lost their jobs or income, and many others were traumatized.<sup>3</sup>

### ***(b) Commencement of the Action***

11. Elaine and Jack Quinte (the “**Quintes**”) agreed to act as representative plaintiffs. This action was commenced when a Notice of Action was issued on July 6, 2012.<sup>4</sup> A more detailed Statement of Claim followed and was subsequently amended, with a Second Fresh as Amended Claim dated March 4, 2014.<sup>5</sup> Thirteen defendants are named in this action. Each of the Defendants (save one, John Kadlec, who was later noted in default) defended this action. Each Defendant also crossclaimed against the other Defendants.

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<sup>2</sup> Dewar Settlement Approval Affidavit, paras. 2 and 8, *PMR*, TAB 2.

<sup>3</sup> Dewar Settlement Approval Affidavit, para. 8, *PMR*, TAB 2.

<sup>4</sup> Dewar Settlement Approval Affidavit, paras. 9-10, *PMR*, TAB 2.

<sup>5</sup> Dewar Settlement Approval Affidavit, Exhibit C: Second Fresh as Amended Claim dated March 4, 2014, *PMR*, TAB 2.

12. The Claim essentially alleged negligence by the Defendants in the construction, inspection, and maintenance of the Mall.<sup>6</sup>

13. The Defendants in this action are Eastwood Mall Inc. (“**Eastwood**”), Bob Nazarian (“**Nazarian**”), The Corporation of the City of Elliot Lake (the “**City**”), M.R. Wright & Associates Co. Ltd. (“**MR Wright**”), R.G.H. Wood (“**Wood**”), G.J. Saunders (“**Saunders**”), His Majesty the King in Right of Ontario (“**Ontario**”), Algoma Central Properties Inc. (“**ACP**”), Coreslab Structures (Ont) Inc. (“**Coreslab**”), John Kadlec (“**Kadlec**”), James Keywan (“**Keywan**”), Non-Profit Retirement Residences of Elliot Lake Inc. (carrying on business as Retirement Living) (“**Retirement Living**”), and 1425164 Ontario Ltd. Inc. (carrying on business as Nordev) (“**Nordev**”) (collectively, the “**Defendants**”). Paragraph 11 of Mr. Dewar’s Affidavit sworn March 13, 2026 sets out a more detailed description of the alleged roles of each of the various Defendants.

**(c) Public Inquiry**

14. Shortly after the Collapse, the government of Ontario commissioned a public inquiry (the “**Inquiry**”).<sup>7</sup> Justice Bélanger was charged to investigate the events leading up to and the cause of the Collapse. The Inquiry was divided into two phases addressing the cause of the Collapse (Phase 1) and the subsequent response to the Collapse (Phase 2). The mandate of the Inquiry and the findings of the resulting Inquiry Report did not involve expressing any conclusions or findings regarding civil or criminal liability of any person or organization.<sup>8</sup>

15. Members of the Class Counsel team were retained by a group of citizens (namely, the Elliot Lake Mall Action Committee (“**ELMAC**”)) to represent the interests of those citizens of Elliot

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<sup>6</sup> Dewar Settlement Approval Affidavit, Exhibit C: Second Fresh as Amended Claim dated March 4, 2014, paras. 113-157, *PMR*, TAB 2.

<sup>7</sup> Dewar Settlement Approval Affidavit, para. 14, *PMR*, TAB 2.

<sup>8</sup> Dewar Settlement Approval Affidavit, para.14, *PMR*, TAB 2.

Lake affected by the Collapse at the Inquiry.<sup>9</sup> All of the Defendants, but for John Kadlec, were represented by legal counsel at the Inquiry. Each Defendant, or their representatives, gave evidence at the Inquiry and were subject to examination-in-chief and cross-examination.<sup>10</sup> The evidence entered into the public record during the Inquiry included approximately 11,000 exhibits and the transcripts of 118 witnesses.<sup>11</sup> Part 1 of the Inquiry Report was released on October 15, 2014.<sup>12</sup>

***(d) Certification of the Action***

16. Class Counsel brought a motion to certify the action as a class proceeding, which was resisted by some Defendants.<sup>13</sup> The contested motion for certification was heard in November 2013.<sup>14</sup> In Reasons dated February 13, 2014, Justice Belobaba certified this action as a class proceeding.<sup>15</sup>

17. The class definition was certified to include all individuals or businesses (except the Defendants) who:

- i. were occupants in the Mall at the time of the Collapse, or were the occupants' parents, spouses, children and siblings;
- ii. were tenants in the Mall at the time of the Collapse; and
- iii. were employed in the Mall at the time of the Collapse (even if they were not working on the day of the Collapse).<sup>16</sup>

18. The Plaintiffs were appointed as the Representative Plaintiffs and Roy O'Connor LLP, Feifel Broadbent Gualazzi, and Aubé Law Office were appointed as Class Counsel.<sup>17</sup>

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<sup>9</sup> Dewar Settlement Approval Affidavit, para. 15, *PMR*, TAB 2.

<sup>10</sup> Dewar Settlement Approval Affidavit, para. 16, *PMR*, TAB 2.

<sup>11</sup> Dewar Settlement Approval Affidavit, para. 101, *PMR*, TAB 2.

<sup>12</sup> Dewar Settlement Approval Affidavit, para. 16, *PMR*, TAB 2.

<sup>13</sup> Dewar Settlement Approval Affidavit, para. 23, *PMR*, TAB 2.

<sup>14</sup> Dewar Settlement Approval Affidavit, para. 23, *PMR*, TAB 2.

<sup>15</sup> Dewar Settlement Approval Affidavit, para. 24, *PMR*, TAB 2.

See also Dewar Settlement Approval Affidavit, Exhibit G: Reasons of Justice Belobaba and Certification Order, *PMR*, TAB 2.

<sup>16</sup> Dewar Settlement Approval Affidavit, Exhibit G: Certification Order, para. 2, *PMR*, TAB 2.

<sup>17</sup> Dewar Settlement Approval Affidavit, Exhibit G: Certification Order, para. 3, *PMR*, TAB 2.

19. Pursuant to the Certification Order, the following common issues were certified:

***Common Issue 1 – Duties & Breach***

*a. Did the Defendants (or any of them) owe a duty of care (whether at common law, statute or otherwise) to the Class Members regarding safety at the Mall?*

*b. If the answer to Common Issue 1(a) is yes, did the Defendants (or any of them) breach the foregoing duty (or duties) of care? If so, how?*

***Common Issue 2 – Causation & Damages***

*a. If the answer to Common Issue 1(b) is yes, did the Defendants (or any of their) breaches of duty cause or contribute to the Collapse?*

*b. If the answer to Common Issue 2(a) is yes, what types or heads of damages may Class Members be entitled to recover from the Defendants (or any of them), subject to any individual defence to the claim of individual class members?*

***Common Issue 3 – Apportionment of Liability***

*a. If the answer to Common Issue 1(b) is yes, what degree of fault should be assigned to the defendants under the common law, the Negligence Act or under any other statute?*

20. It is important to note that the certified common issues did not include a quantification of the Class Members' damages. In other words, if the Plaintiffs were successful in establishing the Defendants' liability following a motion for summary judgment or common issues trial, Class Members would still need to establish their individual damages.

21. The government of Ontario moved for leave to appeal from the Certification Order.<sup>18</sup> The Plaintiffs opposed that motion and, in Reasons dated April 3, 2014, Justice Kiteley dismissed that motion for leave to appeal.<sup>19</sup>

***(e) Post-Certification***

22. After this action was certified, the Plaintiffs essentially adopted and pursued a two-track approach, moving forward with a multi-party mediation (in part, over many years, at the urging and at times direction of the class action judge) but recognizing that the mediation may not be

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<sup>18</sup> Dewar Settlement Approval Affidavit, para. 28, *PMR*, TAB 2.

<sup>19</sup> Dewar Settlement Approval Affidavit, para. 29, *PMR*, TAB 2.

See also Dewar Settlement Approval Affidavit, Exhibit I: Reasons of Justice Kiteley, *PMR*, TAB 2.

successful so Class Counsel was also preparing for a trial or a motion for summary judgment on the common issues.<sup>20</sup>

23. The parties exchanged affidavits of documents between September, 2014 and March, 2023.<sup>21</sup> The Defendants collectively produced approximately 3,000 documents.<sup>22</sup> Class Counsel reviewed those documents and thousands of pages of exhibits and transcripts from the Inquiry (the “**Inquiry Evidence**”).<sup>23</sup>

24. Importantly, beginning in 2014, the parties agreed to engage in mediation under, as noted above, the Honourable Stephen Goudge Q.C., a former and well-respected judge of the Court of Appeal of Ontario.<sup>24</sup> The mediation under Justice Goudge proceeded for eight years until Justice Goudge’s retirement in 2022.

25. During that extended and multi-faceted process, Class Counsel compiled and reviewed tens of thousands of pages of documentation regarding Class Members’ damages. This raw data was reviewed and analyzed, as were many related legal issues, to establish the foundation for Class Counsel’s internal valuation of individual claims and the total damages.<sup>25</sup>

26. The parties first attended a mediation session from January 20-22, 2015 in Toronto, which did not result in a settlement.<sup>26</sup> After this meeting was adjourned, Class Counsel was requested to, and did, seek further information, details and supporting documentation from Class Members and exchanged documentation with the Defendants regarding the damage issues and analyses.<sup>27</sup> Justice

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<sup>20</sup> Dewar Settlement Approval Affidavit, para. 30, *PMR*, TAB 2.

See also Affidavit of Elaine Quinte, sworn March 18, 2026 (“**Quinte Affidavit**”), para. 5, *PMR*, TAB 4.

<sup>21</sup> Dewar Settlement Approval Affidavit, para. 31, *PMR*, TAB 2.

<sup>22</sup> Dewar Settlement Approval Affidavit, para. 101, *PMR*, TAB 2.

<sup>23</sup> Dewar Settlement Approval Affidavit, para. 31, *PMR*, TAB 2.

<sup>24</sup> Dewar Settlement Approval Affidavit, paras. 32-33, *PMR*, TAB 2.

<sup>25</sup> Dewar Settlement Approval Affidavit, para. 36, *PMR*, TAB 2.

<sup>26</sup> Dewar Settlement Approval Affidavit, paras. 37-38, *PMR*, TAB 2.

See also Quinte Affidavit, para. 4(i), *PMR*, TAB 4.

<sup>27</sup> Dewar Settlement Approval Affidavit, para. 39, *PMR*, TAB 2.

Goudge also raised the need to consider various limitations, restrictions, and issues affecting the quantification of damages, as well as their availability or recoverability in law.<sup>28</sup>

27. Subsequently, counsel for all parties attended many, many calls and meetings over several years to debate and, at times, narrow the issues and explore potential mediation positions.<sup>29</sup>

28. As the parties continued to submit information concerning the quantum, availability and/or recoverability of damages, Justice Goudge advised that Class Counsel should continue to seek and provide even more information and documentation regarding Class Members' damages.<sup>30</sup> It was in part understood that the lengthy process of gathering more documentation, analyzing legal and factual issues, and preparing submissions on various issues that impacted individual damages and recoverability, was the same sort of process that Class Members' would have to engage in if and when they got to individual damages assessments.<sup>31</sup>

29. Pursuant to a letter and effective direction from Justice Belobaba in 2019,<sup>32</sup> Justice Goudge set about determining a figure for overall damages, which was to be followed by Justice Goudge determining (solely for the mediation) the respective degrees of fault (if any) of the Defendants.

30. Over a prolonged period, Justice Goudge received submissions from the parties and later assessed the damages for settlement purposes of the entire Class at a total of \$11.7 million.<sup>33</sup>

31. By this point, Class Counsel were not confident that the mediation would result in a reasonable settlement and sought to advance toward a summary judgment motion. While the class action judge directed that the mediation, including having the mediator issue a determination on the relative degrees of fault of the Defendants (solely for purposes of the mediation), should be

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<sup>28</sup> Dewar Settlement Approval Affidavit, para. 39, *PMR*, TAB 2.

<sup>29</sup> Dewar Settlement Approval Affidavit, para. 40-41, *PMR*, TAB 2.

<sup>30</sup> Dewar Settlement Approval Affidavit, paras. 40 and 42, *PMR*, TAB 2.

<sup>31</sup> Dewar Settlement Approval Affidavit, para. 42, *PMR*, TAB 2.

<sup>32</sup> Dewar Settlement Approval Affidavit, Exhibit K: February 21, 2019 Letter from Justice Belobaba, *PMR*, TAB 2.

<sup>33</sup> Dewar Settlement Approval Affidavit, para. 49, *PMR*, TAB 2.

See also Quinte Affidavit, para. 10, *PMR*, TAB 4.

completed before any summary judgment motion was brought, Class Counsel recognized that they could take steps to prepare for that summary judgment on the common issues.<sup>34</sup>

32. To prepare for the potential summary judgment motion, Class Counsel sought to settle with some of the Defendants, who were viewed as having lesser exposure in an effort not only to secure what Class Counsel saw as a reasonable contribution by those Defendants, but also to narrow the number of Defendants for the purpose of summary judgment. In addition, Class Counsel also brought a unique motion for authorization to use, or confirmation that we could use, the Inquiry Evidence of individuals (employees, etc.) against the corporate Defendants.<sup>35</sup>

33. As this Action and Phase 1 of the Inquiry both concerned the causes of the Collapse, the Plaintiffs sought to use that Inquiry Evidence to avoid the cost and delay of obtaining similar evidence through the discovery process.<sup>36</sup> This was opposed and the Plaintiffs brought a motion before Justice Belobaba in January 2022.<sup>37</sup> In a Decision dated January 6, 2022, Justice Belobaba provided general directions for the presumptive admissibility of the Inquiry Evidence.<sup>38</sup> The Divisional Court dismissed a motion for leave to appeal from that Decision on or about April 29, 2022.<sup>39</sup>

34. As referred to above, Justice Goudge retired in the fall of 2022. Class Counsel immediately inquired if the Honourable Warren Winkler, a former Chief Justice of the Court of Appeal for Ontario, would act as the new mediator in 2023. In 2023, the parties agreed with the appointment of Chief Justice Winkler and the mediation resumed in late 2023.<sup>40</sup> The Chief Justice met with the parties (largely with the Defendants in both joint and individual sessions) in 2024.

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<sup>34</sup> Dewar Settlement Approval Affidavit, para. 51, *PMR*, TAB 2.

<sup>35</sup> Dewar Settlement Approval Affidavit, para. 51, *PMR*, TAB 2.

<sup>36</sup> Dewar Settlement Approval Affidavit, paras. 51-52, *PMR*, TAB 2.

<sup>37</sup> Dewar Settlement Approval Affidavit, para. 53, *PMR*, TAB 2.

<sup>38</sup> Dewar Settlement Approval Affidavit, para. 54, *PMR*, TAB 2.

<sup>39</sup> Dewar Settlement Approval Affidavit, para. 55, *PMR*, TAB 2.

<sup>40</sup> Dewar Settlement Approval Affidavit, para. 58, *PMR*, TAB 2.

35. Meanwhile, Class Counsel worked to move the case closer to a summary judgment motion. At a case conference in early 2023, Justice Belobaba provided directions on the necessary, more detailed protocol for the admissibility of the Inquiry Evidence and, at the request of Class Counsel, also set a date for Mr. Nazarian to attend to be examined for his personal discovery.<sup>41</sup> Mr. Nazarian's initial examination-for-discovery sessions took place in March 2023 but were not completed.<sup>42</sup> In an endorsement dated July 31, 2023, Justice Morgan (who had replaced Justice Belobaba after his passing) directed that the examination of Mr. Nazarian could continue.<sup>43</sup> Mr. Nazarian's examination for discovery was completed on October 20 and 23, 2023.<sup>44</sup>

36. Later, at a case conference on March 27, 2024, Justice Morgan scheduled the Plaintiffs' motion for summary judgment to be heard over five days in September 2025.<sup>45</sup> Class Counsel had previously spent considerable time reviewing and synthesizing the evidence from the Inquiry but increased those efforts in 2024 to prepare to tender that evidence on the summary judgment motion.

37. Subsequently in the fall of 2024, Chief Justice Winkler advised that he expected that the Defendants would be making an offer to settle the action. The Defendants did, in fact, make an offer to settle both this action and the Foodland Action<sup>46</sup> for a total all-inclusive payment by the Defendants of \$10,775,000<sup>47</sup> (the actions relating to the fatalities from the Collapse and an action by Sobeys as the head office/franchisor of Foodland (as we understood it) had previously settled). Chief Justice Winkler advised, as noted above, that this was the best and final offer that the

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<sup>41</sup> Dewar Settlement Approval Affidavit, para. 59, *PMR*, TAB 2.

<sup>42</sup> Dewar Settlement Approval Affidavit, para. 61, *PMR*, TAB 2.

<sup>43</sup> Dewar Settlement Approval Affidavit, para. 61, *PMR*, TAB 2.

<sup>44</sup> Dewar Settlement Approval Affidavit, para. 61, *PMR*, TAB 2.

<sup>45</sup> Dewar Settlement Approval Affidavit, para. 62, *PMR*, TAB 2.

<sup>46</sup> *749416 Ontario Inc. carrying on business under the firm name and style of Elliot Lake Foodland et al. v. Eastwood Mall Inc. carrying on business under the firm name and style of Algo Centre Mall et al.*, bearing court file no. CV-3316-14.

<sup>47</sup> Dewar Settlement Approval Affidavit, para. 63, *PMR*, TAB 2.

See also Quinte Affidavit, para. 10, *PMR*, TAB 4.

Defendants would be making, failing which the Defendants would return to litigation. Chief Justice Winkler urged Class Counsel to reach some division with the Foodland Plaintiffs and accept the Defendants' offer.

38. Class Counsel confirmed with Defendants' counsel that the Defendants were not prepared to increase the settlement figure and that settling the class action was contingent on also settling the Foodland Action with the available settlement funds.<sup>48</sup> Ultimately, an agreement was reached with the Foodland Plaintiffs, with \$10,000,000 being payable to settle this class action and \$775,000 to settle the Foodland Action.<sup>49</sup>

39. After the negotiation and exchange of draft settlement agreements over the next several months, the Settlement Agreement was signed by all parties in January 2026.<sup>50</sup>

***(f) Settlement Agreement***

40. The key terms of the Settlement Agreement include a non-reversionary \$10,000,000 payment by the Defendants to settle all issues arising from the Collapse. If that Settlement Agreement is approved, this action will be dismissed and all claims by the Class Members will be released.<sup>51</sup> If the Settlement Agreement is approved, the Defendants will effectively exit this proceeding and the \$10,000,000 will be distributed based on a distribution plan subject to Court approval. However, approval of the Settlement Agreement is not contingent on the approval of the currently proposed Distribution Plan.

41. The Settlement Agreement also provides for the deduction (as approved by the Court) of Class Counsel Fees, Ontario Ministry of Health (OHIP) subrogated claim for health care costs, Administration Expenses, and the Class Proceedings Fund levy from the \$10,000,000, after which

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<sup>48</sup> Dewar Settlement Approval Affidavit, paras. 64-65, *PMR*, TAB 2.

<sup>49</sup> Dewar Settlement Approval Affidavit, para. 66, *PMR*, TAB 2.

<sup>50</sup> Dewar Settlement Approval Affidavit, para. 67, *PMR*, TAB 2.

<sup>51</sup> Quinte Affidavit, para. 11(a), *PMR*, TAB 4.

the resulting Net Settlement Fund will be available for distribution to the Class.<sup>52</sup> The proposed deductions from the \$10,000,000 are discussed in the honoraria and fee approval Factum.

***(g) Administration of the Settlement and Distribution Plan***

42. Under the proposed Distribution Plan, Class Members will be able to submit claims for damages to the third-party Adjudicator to be subsequently appointed or approved by the Court.<sup>53</sup> Class Counsel are currently in discussions with a potential Adjudicator to propose to the Court. The Adjudicator will review and assess the value of each claim.<sup>54</sup> Each Class Member's relative share of the Net Settlement Fund will be a function of the value of their damages claim relative to the total value of all Class Member claims. Neither Class Counsel, the Defendants, nor the Settlement Administrator (as defined in the Settlement Agreement)<sup>55</sup> will have any role in assessing and valuing the claims made under the Distribution Plan.<sup>56</sup>

43. The Distribution Plan contains various operational elements, including the following:

- a) Broadly stated, and as reflected by the Class Definition, Class Members generally may have suffered the types of damages as noted below:
  - a. Class Members who were in or on the Mall, on the Mall's larger property or in the immediately adjacent area or properties during the Collapse (including those who rushed to the Mall immediately after the Collapse to assist in recovery efforts or to find their family and friends who were in the Mall) that suffered physical or psychological injuries (and any related medical or other expenses)<sup>57</sup> or property

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<sup>52</sup> Dewar Settlement Approval Affidavit, Exhibit A: Settlement Agreement, para. 1(u), *PMR*, TAB 2.

<sup>53</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 5, *PMR*, TAB 2.

<sup>54</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 15, *PMR*, TAB 2. See also Quinte Affidavit, para. 11(c)(ix), *PMR*, TAB 4.

<sup>55</sup> Dewar Settlement Approval Affidavit, Exhibit A: Settlement Agreement, para. 1(dd), *PMR*, TAB 2.

<sup>56</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 6, *PMR*, TAB 2.

<sup>57</sup> Dewar Settlement Approval Affidavit, para. 83(a), *PMR*, TAB 2.

damage (i.e. cars, tools, etc.)<sup>58</sup> as a result of the Collapse (the “**occupant Class Members**”);<sup>59</sup>

- b. Class Members who were employed in the Mall at the time of the Collapse (although they may not have been actively working on the particular day of the Collapse) may, subject to their subsequent employment history and efforts to mitigate their losses (including their efforts to find alternative employment), have a claim for wages lost as a result of the loss of their jobs due to the Collapse<sup>60</sup> (the “**employee Class Members**”);<sup>61</sup> and
  - c. Class Members who were tenants or had businesses in the Mall (or businesses whose employees performed work/services in the Mall, or others who had possessions in the Mall that were destroyed) may have claims for compensation arising from the damage to their business or possessions (including loss of fixtures, inventory, equipment, tools, personal property, and net profits, and/or various additional expenses or costs)<sup>62</sup> (the “**tenant Class Members**”).<sup>63</sup>
- b) occupant, tenant and employee Class Members may make claims for damages sustained by them (the actual occupant, tenant or employee Class Member) for which those Class Members have not already received any compensation from any other person, company or entity to date, including insurers (the “**Class Member Unpaid Direct Claim(s)**” as defined in the proposed Distribution Plan);<sup>64</sup>

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<sup>58</sup> Dewar Settlement Approval Affidavit, para. 83(c), *PMR*, TAB 2.

<sup>59</sup> Dewar Settlement Approval Affidavit, para. 12(a) and (e), *PMR*, TAB 2.

<sup>60</sup> Dewar Settlement Approval Affidavit, para. 83(b), *PMR*, TAB 2.

<sup>61</sup> Dewar Settlement Approval Affidavit, para. 12(c), *PMR*, TAB 2.

<sup>62</sup> Dewar Settlement Approval Affidavit, para. 83(c), *PMR*, TAB 2.

<sup>63</sup> Dewar Settlement Approval Affidavit, para. 12(d), *PMR*, TAB 2.

<sup>64</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 12(a), *PMR*, TAB 2.

- c) the parents, spouses, children and siblings (the “**Family Member(s)**”)<sup>65</sup> of occupant Class Members that sustained a personal injury may make claims (the “**Family Member Claim(s)**” as defined in the proposed Distribution Plan), as discussed further below;<sup>66</sup>
- d) any other persons who provided compensation, financial assistance, reimbursement or any other financial benefit provided to Class Members as a result of damages or expenses sustained as a result of the Collapse (including but not limited to insurance proceeds paid to the Class Member by an insurance company or other compensation paid to, or expenses paid on behalf of, the Class Member (with the exception of the Family Members)) (the “**Subrogated Party(s)**” as defined in the proposed Distribution Plan)<sup>67</sup> may (or may not) have the right to make or advance what would be subrogated claims (the “**Subrogated Claim(s)**” as defined in the proposed Distribution Plan). Those advancing Subrogated Claims will have to establish to the satisfaction of the Adjudicator their status or entitlement to make a claim;<sup>68</sup>
- e) the estates, estate representatives, heirs and successors of any occupant, tenant or employee Class Members (the “**Estates**” as defined in the proposed Distribution Plan) will be entitled to advance claims to the extent that such claims by an estate or estate representative would otherwise be permitted at law in Ontario. Those estate representatives, heirs, successors and assigns will be required to establish to the satisfaction of the Adjudicator their status, appointment or entitlement to make a claim;<sup>69</sup>

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<sup>65</sup> Dewar Settlement Approval Affidavit, para. 12(b), *PMR*, TAB 2.

<sup>66</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 12(b), *PMR*, TAB 2.

<sup>67</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 12(c), *PMR*, TAB 2.

<sup>68</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 12(c), *PMR*, TAB 2.

<sup>69</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 12, *PMR*, TAB 2.

- f) the Adjudicator will assess the claims of Class Members, Family Members, Subrogated Parties and Estates (the “**Claimants**” as defined in the proposed Distribution Plan)<sup>70</sup> for damages and whether the damages were caused by the Collapse.<sup>71</sup> This assessment will be carried out based on the material provided to the Adjudicator by Claimants. Where Claimants have previously provided materials to Class Counsel (other than occupant Class Members who are advancing a personal injury claim), Class Counsel will provide said material to the Adjudicator unless a Claimant notifies Class Counsel otherwise within thirty-five days after the Notice of Approved Settlement is first posted or provided to any Claimant.<sup>72</sup> In the case of occupant Class Members who are submitting a claim for personal injuries, those occupant Class Members (and their Family Members) may request that Class Counsel provide them or the Adjudicator with a copy of the materials that Class Counsel currently has in their records with respect to those personal injury claims. Claimants may supplement those with further materials, to be submitted by them to the Adjudicator;<sup>73</sup>
- g) for personal injury claims, each occupant Class Member will first be asked to determine if their claim falls within set categories of thresholds of physical or psychiatric injury.<sup>74</sup> The Distribution Plan includes two grids/charts valuing categories of physical and psychiatric injuries and setting out the level of proof/evidence required for each category.<sup>75</sup> The grids/charts are set out in Schedule “C” to this factum. All Class Members making a personal injury claim will be required to submit a statutory declaration alongside the

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<sup>70</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 12, *PMR*, TAB 2.

<sup>71</sup> Quinte Affidavit, para. 11(c)(i), *PMR*, TAB 4.

<sup>72</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, paras. 32-33, *PMR*, TAB 2.

<sup>73</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 34, *PMR*, TAB 2.

<sup>74</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 64, *PMR*, TAB 2.

<sup>75</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 59, Physical Injury Grid/Chart and Psychiatric Injury Grid/Chart, *PMR*, TAB 2.

proof/evidence corresponding to the category of personal injury claim they are making, with higher categories of injuries having heightened proof/evidence requirements;<sup>76</sup>

h) if a Class Member believes their injuries exceed the highest threshold set out in the Distribution Plan, they will be able to make an Extraordinary Application that will be individually evaluated by the Adjudicator.<sup>77</sup> The proof/evidence required for an Extraordinary Application includes both (a) the same proof/evidence required for category A6 or B6 (as set out in the grids/charts at Schedule “C” of this factum and depending on whether the Class Member has sustained physical or psychiatric injury or both) and (b) the occupant Class Member and/or the Family Member(s) must prepare and submit detailed affidavits (along with supporting documents/exhibits) particularizing how and on what basis the occupant Class Member purportedly suffered such a materially more serious injury or such a permanent serious impairment;<sup>78</sup>

i) In response to an Extraordinary Application:

- a. if the material provided by an occupant Class Member satisfies the Adjudicator that the requirements of an Extraordinary Application are met, the Adjudicator may accept the claim and set a value of not less than \$60,000.00. The Adjudicator will also determine a reasonable value for any related Family Member’s claim;
- b. if the material provided does not satisfy the Adjudicator that the claim is Extraordinary, the Adjudicator may find that it satisfies one of the categories set

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<sup>76</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 58, Physical Injury Grid/Chart and Psychiatric Injury Grid/Chart, *PMR*, TAB 2.

<sup>77</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 67, *PMR*, TAB 2. See also Quinte Affidavit, para. 11(c)(ii), *PMR*, TAB 4.

<sup>78</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 69, *PMR*, TAB 2.

out in the grids/charts and, if so, value the occupant Class Member's claim at the compensation level for that category;

- c. if the Adjudicator concludes that the occupant Class Member had no reasonable basis to make an Extraordinary Application (for lack of either the injury or material to make an Extraordinary Application), the Adjudicator shall have the discretion to reduce the ultimate value of the claim by up to 10%; and
- d. lastly, if the Adjudicator initially concludes that the occupant Class Member may qualify for an Extraordinary Application, the Adjudicator may request and require further information or other reasonable steps if it is necessary or appropriate to reach a fair decision and/or valuation of the Extraordinary Application.<sup>79</sup>
- j) recoverable claims for loss of wages or employment income will be limited to two-years post-Collapse. An exception to this will be for employee Class Members who owned (or their spouses or immediate family owned) the business that employed them, who will be limited to five-years post-Collapse;<sup>80</sup>
- k) claims for lost net profits from businesses/property damaged in the Collapse will be limited to five-years post-Collapse;<sup>81</sup>
- l) claims for loss of property or possessions in the Collapse will be limited to the actual cash value of the property at the time, not the replacement value;<sup>82</sup>

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<sup>79</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 69(a)-(d), *PMR*, TAB 2.

<sup>80</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, paras. 71-72, *PMR*, TAB 2. See also Quinte Affidavit, para. 11(c)(iii), *PMR*, TAB 4.

<sup>81</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 70(a)-(b), *PMR*, TAB 2. See also Quinte Affidavit, para. 11(c)(iii), *PMR*, TAB 4.

<sup>82</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 70(c), *PMR*, TAB 2. See also Quinte Affidavit, para. 11(c)(iv), *PMR*, TAB 4.

- m) any claims for wage, business or property losses are subject to reduction based on the Adjudicator determining that the tenant and/or employee Class Member mitigated their losses or failed to take reasonable steps to mitigate their losses;<sup>83</sup>
- n) any Class Member who incurred an insurance deductible will have said deductible added to their damages;<sup>84</sup>
- o) the Adjudicator will try to arrive at a fixed dollar value for each claim. If and to the extent that the Adjudicator is unable to determine a fixed dollar value for any such claim, and instead is only able to determine that one or more of those claims falls within a range of values, the Adjudicator shall adopt the mid-point of any such range as the ultimate value attributable to any particular claim at issue;<sup>85</sup>
- p) if the claims of any occupant, tenant or employee Class Members include a Class Member Unpaid Direct Claim, Subrogated Claim, and/or Family Member Claim, the value determined for each such claim will be added together to arrive at a total value of the damages claimed on behalf of or relating to that occupant, tenant or employee Class Members (the “**Class Member’s Total Claim Value**” as defined in the proposed Distribution Plan).<sup>86</sup> The Adjudicator will disclose that Class Member’s Total Claim Value along with the value determined for any Class Member Unpaid Direct Claim(s), Subrogated Claim(s) and/or Family Member Claim(s) in relation to that occupant, tenant or employee Class Member in writing to, as applicable, the Class Member, any Subrogated Parties and/or Family Members;<sup>87</sup>

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<sup>83</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 74, *PMR*, TAB 2. See also Quinte Affidavit, para. 11(c)(v), *PMR*, TAB 4.

<sup>84</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 32(c)(i), *PMR*, TAB 2. See also Quinte Affidavit, para. 11(c)(vi), *PMR*, TAB 4.

<sup>85</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 13, *PMR*, TAB 2.

<sup>86</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 14, *PMR*, TAB 2.

<sup>87</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 14, *PMR*, TAB 2.

- q) The Distribution Plan proposes the following appeal process:
- a. occupant, tenant or employee Class Members, Subrogated Parties, and Estates (but not Family Members) will have a limited right to appeal the Adjudicator's determination or valuation of their damages to an independent Appeal Officer, who will be proposed by Class Counsel and must be approved by the Court;<sup>88</sup>
  - b. Family Members do not have a right to appeal under the proposed Distribution Plan;
  - c. any such appeal must be commenced within thirty days of receipt of the Adjudicator's determination by occupant, tenant or employee Class Members, Subrogated Parties, and Estates, at the cost of a \$250 filing fee to be paid by the appellant (to assist with the costs of resolving any appeals).<sup>89</sup> Within twenty days of receiving notification of the Adjudicator's determination, Class Members, Subrogated Parties, and Estates may submit a written indication of an intention to appeal setting out the specific valuation(s) being appealed from, and forward or pay the filing fee via cheque to the Settlement Administrator;<sup>90</sup>
  - d. within thirty days of receiving both the written notice and notice that the filing fee has been paid, the Adjudicator will provide the Class Member, Subrogated Party, or Estate, and the Appeal Officer with a summary not longer than three pages of the basis or reasons for the determination.<sup>91</sup> The Appeal Officer will also receive copies of all material submitted to or reviewed by the Adjudicator regarding the claim being appealed from;<sup>92</sup>

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<sup>88</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, paras. 17, 43, and 45, *PMR*, TAB 2.

<sup>89</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, paras. 43 and 45, *PMR*, TAB 2.  
See also Quinte Affidavit, paras. 11(c)(vii)-(viii), *PMR*, TAB 4.

<sup>90</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, paras. 44-45, *PMR*, TAB 2.

<sup>91</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 47, *PMR*, TAB 2.

<sup>92</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 47, *PMR*, TAB 2.

- e. Class Members, Subrogated Parties, and Estates will then have fourteen days from receipt of the Adjudicator's written summary to provide the Appeal Officer with written submissions not longer than five pages explaining the basis for the appeal, to be sent to the Appeal Officer by email at an email address to be set.<sup>93</sup> No new documents or records may be submitted by Class Members, Subrogated Parties, or Estates to the Appeal Officer but, if further information is required, the Appeal Officer may contact the Adjudicator for further information or explanation about the claims by the Class Member, Subrogated Party, or Estate, or the Adjudicator's decision;<sup>94</sup> and
- f. The Appeal Officer will decide whether the Adjudicator's determination was reasonable and, if not, determine what is reasonable.<sup>95</sup> The Appeal Officer will not be required to provide reasons for his/her appeal determination. The Appeal Officer will notify the Settlement Administrator and Class Counsel whether an appeal is granted and, if so, provide particulars of the appeal determination. The determination by the Appeal Officer shall be final, with no further right of appeal.<sup>96</sup>
- r) once all claims have been valued by the Adjudicator and all appeals are complete, the Settlement Administrator will calculate the proportionate or *pro rata* compensation available and to be paid in respect of each Class Member's Total Claim Value. In particular, the Settlement Administrator will divide the Class Member's Total Claim Value by the total value determined for all claims (the "**All Claims Value**" as defined in the proposed Distribution Plan) and multiply that resulting fraction by the Net Settlement Fund to arrive

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<sup>93</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 48, *PMR*, TAB 2.

<sup>94</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 49, *PMR*, TAB 2.

<sup>95</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 50, *PMR*, TAB 2.

<sup>96</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 51, *PMR*, TAB 2.

at the compensation payable in respect of that Class Member's Total Claim Value (the "**Claimant's Compensation**" as defined in the proposed Distribution Plan);<sup>97</sup>

- s) following the determination of the Claimant's Compensation, the Settlement Administrator shall send a letter notifying each Claimant of the Claimant's Compensation and reiterate the value determined of each Class Member Unpaid Direct Claim, Subrogated Claim, and/or Family Member Claim;<sup>98</sup>
- t) where there is no Subrogated Claim or a Subrogated Claim was entirely rejected (valued at \$0), the Claimant's Compensation will be paid by cheque forwarded under cover of the letter referred to at paragraph 43(s) above to the Class Member and any Family Member(s) based on the percentage that the value of the Class Member Direct Unpaid Claim and Family Member Claim represent of the Class Member's Total Claim Value;<sup>99</sup>
- u) where there is no Class Member Unpaid Direct Claim or a Class Member Unpaid Direct Claim has entirely been rejected (valued at \$0), the Claimant's Compensation will be paid by cheque forwarded under cover of the letter referred to at paragraph 43(s) above to the Subrogated Party, if there is only one Subrogated Party;<sup>100</sup>
- v) if a Class Member's Total Claim Value include a value (above \$0) for both a Class Member Unpaid Direct Claim and a Subrogated Claim, or if there is more than one Subrogated Claim valued above \$0, the letter referred to at paragraph 43(s) above will set out that the Claimants' Compensation will be available for payment by the Settlement Administrator

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<sup>97</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 15, *PMR*, TAB 2.

<sup>98</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 16, *PMR*, TAB 2.

<sup>99</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 17, *PMR*, TAB 2.

<sup>100</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, para. 18, *PMR*, TAB 2.

in accordance with a written direction as signed by all the Claimants entitled to share in that compensation (whose claims were valued above \$0);<sup>101</sup> and

w) the Representative Plaintiffs, Class Counsel, the Defendants, counsel for the Defendants, the Adjudicator, the Appeal Officer and the Settlement Administrator will have no involvement, role, responsibility or liability with respect to any issues relating to the division of a Claimant's Compensation if such compensation includes any payment in respect of a Subrogated Claim.

44. There are two proposed revisions to the Distribution Plan pertaining to the potential claims of Family Members:

i. first, that the Distribution Plan be amended to allow Family Members to make a claim for loss of care, guidance and companionship where the related occupant Class Member's personal injury claim is assessed at the A4 or B4 level or above (instead of just allowing such claims if there is a successful Extraordinary Application).<sup>102</sup> The Adjudicator will have the discretion, based on a case-by-case assessment of the actual loss of care, guidance, and/or companionship (as set out in the proposed guidance discussed below) and the particular facts of the occupant Class Member, his or her Family Member(s), and their relationship,<sup>103</sup> to award compensation to each Family Member for any loss of care, guidance or companionship:

- up to \$5,000, if the relevant occupant Class Member's personal injury is assessed at level A4 or B4; or

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<sup>101</sup> Dewar Settlement Approval Affidavit, Exhibit B, paras. 19, *PMR*, TAB 2.

<sup>102</sup> Under the proposed Distribution Plan, only family members of occupant Class Members who successfully advance an Extraordinary Application may make a claim for loss of care, guidance and companionship. See Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, *PMR*, TAB 2.

<sup>103</sup> Dewar Settlement Approval Affidavit, Exhibit E: Family Law Act Damages Extract, *PMR*, TAB 2.

- up to \$20,000, if the relevant occupant Class Member’s personal injury is assessed at one of the higher levels (A5, B5, A6 or B6).
- ii. second, the Adjudicator should be provided with some general guidance from caselaw as it relates to claims for loss of care, guidance and companionship. The proposed guide for the Adjudicator containing statements from caselaw is attached hereto as Schedule “D” to this factum.<sup>104</sup>

45. A further revision or addition to the Distribution Plan would make it clear that occupant Class Members (and their Family Members) can ask Class Counsel to forward the material relating to personal injury claim (or Family Member Claims) as set out in paragraph 43(f).

46. The Notice of Proposed Settlement published on March 2, 2026 contained an overview of the Distribution Plan.<sup>105</sup> The Distribution Plan has been published on the website of Class Counsel since March 13, 2026.<sup>106</sup>

***(h) Benefits of the Settlement***

47. If approved, it is submitted that the Settlement Agreement and proposed Distribution Plan represent a fair and reasonable result for the Class. After nearly fourteen years of litigation, Class Members will be able to receive compensation for their damages and avoid continued litigation. Specifically:

- a) the quantum of \$10 million is a significant benefit to the Class. Class Counsel believes that the total quantum is reasonable in part because there is no guarantee that continued litigation would result in either success or an award of total damages exceeding \$10 million;<sup>107</sup>

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<sup>104</sup> Dewar Settlement Approval Affidavit, para. 12, Exhibit E: Family Law Act Damages Extract, *PMR*, TAB 2.

<sup>105</sup> Dewar Settlement Approval Affidavit, Exhibit P: Notice of Proposed Settlement, *PMR*, TAB 2.

<sup>106</sup> Dewar Settlement Approval Affidavit, Exhibit B: Proposed Distribution Plan, *PMR*, TAB 2.

<sup>107</sup> Dewar Settlement Approval Affidavit, paras. 94 and 96, *PMR*, TAB 2.

b) approval of the Settlement Agreement skips over an adjudication of the merits of the common issues and proceeds directly to an assessment of Class Members' individual damages. As set out above, the certified common issues do not include a quantification of the Class Members' damages. Even if liability was established following a trial or summary judgment motion on the common issues (and any appeals therefrom), Class Members would still need to prove their individual damages and resolve any resulting appeals.<sup>108</sup> This would delay payments for years. After nearly fourteen years, obtaining settlement funds today is a significant reason to approve the Settlement Agreement.<sup>109</sup>

48. Some individual Class Members have passed away over the nearly fourteen years since the Collapse.<sup>110</sup> If the Settlement Agreement is rejected and the litigation continues, it is expected that the entire process described above at paragraph 47(b) would take many more years to complete.<sup>111</sup> Further delays may see additional Class Members who deserve compensation pass away before any resolution is reached.

49. Instead, the proposed Settlement Agreement will resolve the need for the determination of any liability issues and streamline the individual damage assessment process.<sup>112</sup> The proposed Distribution Plan will make funds available to be paid to Class Members in a fair and efficient manner, without the involvement of the Defendant and potential appeals.<sup>113</sup> Class Members who have been waiting for compensation since June 23, 2012 will finally be able to receive compensation.

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See also Quinte Affidavit, para. 12, *PMR*, TAB 4.

<sup>108</sup> Dewar Settlement Approval Affidavit, para. 97, *PMR*, TAB 2.

<sup>109</sup> Quinte Affidavit, paras. 7, 13-14, *PMR*, TAB 4.

<sup>110</sup> Dewar Settlement Approval Affidavit, para. 94, *PMR*, TAB 2.

<sup>111</sup> Dewar Settlement Approval Affidavit, para. 97, *PMR*, TAB 2.

<sup>112</sup> Dewar Settlement Approval Affidavit, para. 98, *PMR*, TAB 2.

<sup>113</sup> Dewar Settlement Approval Affidavit, para. 95, *PMR*, TAB 2.

## PART III – ISSUES & THE LAW

### *(a) General Principles*

50. This Court has recently summarized the principles on settlement approval in class proceedings.<sup>114</sup> To approve a settlement in a class action, the Court must find that in all circumstances the settlement is fair, reasonable, and in the best interests of those affected by it.<sup>115</sup>

A settlement must fall within a “zone of reasonableness.” Reasonableness allows for a range of possible resolutions and is an objective standard that allows for variation depending on the subject-matter of the litigation and the nature of the damages.<sup>116</sup>

51. When considering the approval of negotiated settlements, the court may consider, among other things: (a) the likelihood of recovery or likelihood of success; (b) the amount and nature of discovery, evidence or investigation; (c) the proposed settlement terms and conditions; (d) the recommendation and experience of counsel; (e) the future expense and likely duration of the litigation and risk; (f) the recommendation of neutral parties; (g) the number of objectors and nature of objections (if any); (h) the presence of good faith, arm’s-length bargaining and the absence of collusion; (i) the degree and nature of communications by counsel and the representative parties with class members during the litigation; and (j) the information conveyed to the court on the dynamics of and the positions taken by the parties during the negotiation.<sup>117</sup>

The relevant criteria are generally applied further below.

52. Deciding what is fair and reasonable requires the court to analyze the desirability of the certainty and immediate availability of a settlement over the probabilities of failure or of a whole

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<sup>114</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#) at para. 32.

See also *Dadzie v. Ontario*, [2025 ONSC 6342 \(CanLII\)](#) at para. 106, and *Gilchrist v. Just Energy Group*, [2025 ONSC 6275 \(CanLII\)](#) at paras. 32-34.

<sup>115</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#), at para. 32(ii)-(iii).

<sup>116</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#), at para. 32(v).

<sup>117</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#), at para. 32(iv).

or partial success later at a trial.<sup>118</sup> The court must also assess the fairness and reasonableness of the terms and the scheme of distribution under the proposed settlement,<sup>119</sup> which may involve considerations of what is economical and practical on the facts of the case.<sup>120</sup>

53. Public policy favours the settlement of complex disputes and there is a strong presumption of fairness where a settlement has been negotiated at arms-length.<sup>121</sup> As Justice Morgan held in *Micevic v. Johnson & Johnson*:

To reiterate, a settlement is inevitably the product of compromise but that does not mean that it should simply strike a median level of payment for every class member such that it seriously undercompensates those whose damages are greatest... the interests of all class members must be taken into account. Any settlement must be fair to the entire class, including those who suffered the most.<sup>122</sup>

54. The Court is not permitted to unilaterally re-write the settlement. It may only approve or reject the settlement.<sup>123</sup> The Court may, however, suggest revisions.

### ***(b) Application to the Circumstances***

#### **i. The amount and nature of discovery, evidence or investigation**

55. The information and materials revealed to and reviewed by Class Counsel – thousands of documents from the Inquiry, Inquiry transcripts, expert reports, Defendants’ productions, thousands of pages of documents relating to Class Member individual damages, etc.<sup>124</sup> - have been extensive. Class Counsel spent thousands of hours reviewing, evaluating, summarizing and synthesizing the evidence and materials.<sup>125</sup> More than a sufficient level of information was

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<sup>118</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#), at para. [32\(vi\)](#).

See also *Gilchrist v. Just Energy Group*, [2025 ONSC 6275 \(CanLII\)](#) at para. [34\(iv\)](#).

<sup>119</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#), at para. [32\(vi\)](#).

<sup>120</sup> *Mancinelli v. Royal Bank of Canada*, [2018 ONSC 4192](#), para. [49](#).

<sup>121</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#), at para. [32\(vii\)](#).

See also *Dadzie v. Ontario*, [2025 ONSC 6342 \(CanLII\)](#) at para. [121](#), and *Gilchrist v. Just Energy Group*, [2025 ONSC 6275 \(CanLII\)](#) at para. [34\(v\)](#).

<sup>122</sup> *Micevic v. Johnson & Johnson*, [2019 ONSC 665](#), para. [21](#).

<sup>123</sup> *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#), at para. [32\(viii\)](#).

<sup>124</sup> Dewar Settlement Approval Affidavit, para. 101, *PMR*, TAB 2.

<sup>125</sup> Dewar Settlement Approval Affidavit, para. 102, *PMR*, TAB 2.

disclosed or otherwise obtained through the discovery process, public record, as well as the certification, the detailed and involved mediation and settlement processes, to allow Class Counsel to recommend the settlement to the Court and the Class Members.

**ii. The proposed settlement terms and conditions**

56. The key terms of the settlement are discussed at paragraph 40 above. In short, the Defendants will pay \$10 million in exchange for a release of all Class Members claims.<sup>126</sup>

57. While approval of the Settlement Agreement is not contingent on the approval of the Distribution Plan, the proposed Distribution Plan provides the Adjudicator and Class Members with a principled and relatively detailed road-map of the how the claims process should work.

**iii. The recommendation and experience of counsel**

58. Class Counsel do not hesitate in recommending this settlement as being fair, reasonable and in the best interests of the Class.<sup>127</sup> The \$10 million amount is a fair and reasonable amount and a reasonable compromise (which almost all settlements involve) based on the claims information we received and evaluated and based on the evaluations, comments and directions from both Justice Goudge and Chief Justice Winkler (as discussed above).

59. A settlement of \$10 million is also reasonable because, as noted above and to repeat, it will see compensation going to Class Members sooner, without further delay and without the risk that any damages for any particular Class Member may, at some point years from now if the litigation continued (after a common issues trial and likely appeals), be less than they would receive under this proposed settlement.<sup>128</sup>

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<sup>126</sup> Quinte Affidavit, para. 11(a), *PMR*, TAB 4.

<sup>127</sup> Dewar Settlement Approval Affidavit, para. 93, *PMR*, TAB 2.

<sup>128</sup> Quinte Affidavit, paras. 7, 12-13, *PMR*, TAB 4.

60. Class Counsel believe that the Distribution Plan is also reasonable and will make funds available to be paid to the Class Members in a fair and efficient manner.<sup>129</sup> The Distribution Plan strikes a reasonable balance between maintaining a simple process for Class Members and providing meaningful direction to the Adjudicator and Appeal Officer that will allow them to make fair, efficient and consistent determinations.

**iv. Likelihood of recovery or likelihood of success**

61. There has been no finding of liability of the Defendants in this action. Accordingly, there is still some liability risk in continuing to litigate this class action. There are thirteen Defendants, ranging from prior and current owners of the Mall, professionals, and governments. If the settlement is not approved and litigation continues, the liability of each Defendant would need to be established – and likely subjected to appeal - before proceeding to the determination of Class Members’ damages. Some of the issues raised in this case are highly technical, stemming from the issues in the construction, inspection, and maintenance of the Mall, and relate to alleged liability by former owners and government entities that may give rise to a greater likelihood of an appeal or appeals to higher courts.<sup>130</sup> Any findings on these issues to establish the liability of any or all of the thirteen Defendants would be strongly contested and require a unique and/or nuanced analysis and approach that took into account standards and statutes that varied over the Mall’s thirty-two year history.<sup>131</sup>

62. As set out above, the certified common issues did not include the quantification of Class Members’ damages. If the liability of some or all of the Defendants is established, Class Members’

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<sup>129</sup> Dewar Settlement Approval Affidavit, para. 95, *PMR*, TAB 2.  
See also Quinte Affidavit, para. 14, *PMR*, TAB 4.

<sup>130</sup> Affidavit of J. Adam Dewar, sworn March 17, 2016 (the “**Dewar Fee Approval Affidavit**”), para. 9, *PMR*, TAB 3.

<sup>131</sup> Dewar Fee Approval Affidavit, para. 10, *PMR*, TAB 3.

damages will need to be established on an individual basis. There is no guarantee that Class Members' recovery following such a process will meet or exceed what they would recover pursuant to the Settlement Agreement and Distribution Plan. The rejection of the proposed settlement and continued litigation would delay any potential compensation of Class Members by several more years.<sup>132</sup>

**v. The future expense and likely duration of the litigation**

63. If the \$10 million settlement is not approved, it could easily take three to five years to bring this action to an adjudicated and final resolution (after all appeals) on the liability issues alone.<sup>133</sup> Once liability issues are determined, it could take years more to set a process to evaluate each Class Member's damage claim and carry out that process (with potential appeals) for each Class Member.

64. As to the likely future expense of this litigation, Class Counsel have already incurred millions in fees and \$280,000 in disbursements.<sup>134</sup> Hundreds of thousands (if not millions) more in fees and disbursements could be required to resolve liability and then see Class Members moving into individual and potentially quite contested damage assessments as against the Defendants.<sup>135</sup>

**vi. Objections and the nature of communications with class members**

65. Pursuant to this Court's February 25, 2026 endorsement, Notice of Proposed Settlement was distributed by Class Counsel on March 2, 2026.<sup>136</sup> As of the date of this factum, no objections

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<sup>132</sup> Quinte Affidavit, para. 13, *PMR*, TAB 4.

<sup>133</sup> Dewar Settlement Approval Affidavit, para. 103, *PMR*, TAB 2.  
See also Quinte Affidavit, para. 13, *PMR*, TAB 4.

<sup>134</sup> Dewar Settlement Approval Affidavit, para. 104, *PMR*, TAB 2.

<sup>135</sup> Dewar Settlement Approval Affidavit, para. 104, *PMR*, TAB 2.

<sup>136</sup> Dewar Settlement Approval Affidavit, para. 69, *PMR*, TAB 2.

to the proposed Settlement Agreement or Distribution Plan have been received from Class Members. One submission supports the settlement.

**vii. The presence of good faith, arm's-length bargaining and the absence of collusion**

66. The process, and various dynamics, of the settlement negotiations are set out above. The \$10 million settlement is the product of an extensive series of arms-length and hard-fought negotiations. Each side zealously, and in great detail, advanced the interests of their clients before two seasoned Court of Appeal Justices. The parties certainly did not collude to reach the \$10 million amount.<sup>137</sup>

67. The total value of the \$10,000,000 is well into what Class Counsel, as well as the two Court of Appeal Justices, viewed as a reasonable range for settlement. Class Counsel is of the view that the maximum settlement amount available from the Defendants was secured.<sup>138</sup>

68. Overall, and as noted above, it is respectfully submitted that the proposed \$10 million Settlement Agreement is well within the “zone of reasonableness”. It is further submitted that both the Settlement Agreement and the Distribution Plan are fair, reasonable and in the best interest of the Class and the Plaintiffs respectfully submit that they should be approved.

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<sup>137</sup> Dewar Settlement Approval Affidavit, para. 106, *PMR*, TAB 2.

<sup>138</sup> Dewar Settlement Approval Affidavit, para. 107, *PMR*, TAB 2.

**PART IV – ORDER REQUESTED**

69. The Plaintiffs request that the Settlement Agreement and Distribution Plan be approved, with the Adjudicator, Appeal Officer and Settlement Administrator (if not proposed on April 10<sup>th</sup>) to be proposed and approved by subsequent order of this Court.<sup>139</sup>

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 3rd day of April, 2026.



Per: \_\_\_\_\_

**Roy O'Connor LLP | Aubé Law Office | Broadbent Law**

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<sup>139</sup> This action was commenced prior to the current version of the *Class Proceedings Act, 1992*, [SO 1992, c 6](#) coming into force.

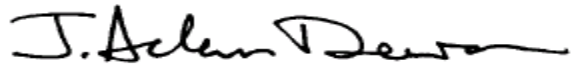
## SCHEDULE "A"

1. *Dadzie v. Ontario*, [2025 ONSC 6342 \(CanLII\)](#).
2. *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#).
3. *Gilchrist v. Just Energy Group*, [2025 ONSC 6275 \(CanLII\)](#).
4. *Mancinelli v. Royal Bank of Canada*, [2018 ONSC 4192](#).
5. *Micevic v. Johnson & Johnson*, [2019 ONSC 665](#).

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date April 3, 2026



Signature

## SCHEDULE “B”

*Class Proceedings Act, 1992, [SO 1992 c 6](#)*

### **Discontinuance, abandonment and settlement**

**29** (1) A proceeding commenced under this Act and a proceeding certified as a class proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate. 1992, c. 6, s. 29 (1).

### **Settlement without court approval not binding**

(2) A settlement of a class proceeding is not binding unless approved by the court. 1992, c. 6, s. 29 (2).

### **Effect of settlement**

(3) A settlement of a class proceeding that is approved by the court binds all class members. 1992, c. 6, s. 29 (3).

### **Notice: dismissal, discontinuance, abandonment or settlement**

(4) In dismissing a proceeding for delay or in approving a discontinuance, abandonment or settlement, the court shall consider whether notice should be given under section 19 and whether any notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding; and
- (c) a description of any plan for distributing settlement funds. 1992, c. 6, s. 29 (4).

## SCHEDULE “C”

### Physical Injury Grid/Chart:

| <b><u>\$ VALUE BY CATEGORY</u></b>  | <b><u>TYPE OF PHYSICAL INJURY</u></b><br>(references to time periods below start or run from the date of the Collapse, June 23, 2012)  | <b><u>LEVEL OF PROOF/EVIDENCE REQUIRED</u></b><br>*Statutory declaration required for all Claims <sup>140</sup>   |
|---|--|---|
| A1<br>\$750   | Minor physical injuries such as sprains, cuts bruises that were resolved in 45 days.   | A statutory declaration describing the Class Member’s minor injury and the duration of his or her minor injury must be provided, with any supporting photos or other readily available supporting records. No immediate or any visit to a physician or a hospital required.             |
| A2<br>\$5,000 +<br>medical/treatment<br>expenses & costs of<br>medical records not<br>covered by insurance  | Musculo-skeletal (soft tissue) injuries which lasted for 45 days but were resolved within 6 months   | Injuries must be documented with contemporaneous medical records <sup>141</sup> (including any proof and dates of treatments).<br><br>A statutory declaration will also be required.  |
| A3<br>\$12,500 +<br>medical/treatment<br>expenses & costs of<br>medical records not<br>covered by insurance | Musculo-skeletal (soft tissue) injuries which lasted for at least 6 months but were resolved within 1 year   | Injuries must be documented with contemporaneous medical records (including any proof and dates of treatments) with confirmatory/supporting letter from doctor or other qualified health care treating practitioner/professional.<br><br>A statutory declaration will also be required. |
| A4<br>\$20,000 +<br>medical/treatment<br>expenses & costs of<br>medical records not<br>covered by insurance | Musculo-skeletal (soft tissue) injuries which lasted for at least 1 year but were resolved within 2.5 years  | Injuries must be documented with contemporaneous medical records (including any proof and dates of treatments) and confirmatory/supporting letter from doctor or other qualified health care treating practitioner/professional.<br><br>A statutory declaration will also be required.  |
| A5<br>\$30,000 +<br>medical/treatment<br>expenses & costs of<br>medical<br>records/letter/report            | Orthopedic injuries such as broken bones, sprains (with symptoms and/or treatment for sprain lasting more than 45 days), fractures, muscle tears, and/or ligament damage, which healed within 1 year with no ongoing impairment. | Orthopedic injuries must be documented with contemporaneous medical records and imaging, and confirmatory/supporting letter from doctor or other qualified health care treating practitioner/professional.<br><br>Musculo-skeletal injuries must be documented                          |

<sup>140</sup> The occupant Class Member, or a parent or guardian in the case of a Minor, must complete a statutory declaration.

<sup>141</sup> Contemporaneous medical records means medical records (hospital, clinic, OHIP, physician, psychiatrist, psychologist, treating professional or specialist for 3 years prior to the Collapse and for any relevant period thereafter (relevant to the period applicable to the category of compensation claimed by an occupant Class Member under the grids or to date for any Extraordinary Application).

|   |   |   |
|---|---|---|
|   | <p><u>Or, alternatively,</u></p> <p>Musculo-skeletal (soft tissue) injuries which lasted at least 2.5 years but resolved within 5 years.</p>  | <p>with contemporaneous medical records (including any proof and dates of treatments) and confirmatory report from doctor or other qualified health care treating practitioner/professional.</p> <p>A statutory declaration will also be required.</p>  |
| <p>A6<br/>\$60,000 +<br/>medical/treatment<br/>expenses &amp; costs of<br/>medical records/report +<br/>all pecuniary damages</p> | <p>Orthopedic injuries such as broken bones, sprains, fractures, muscle tears, and/or ligament damage, which did not heal within 1 year or involved material impairment longer than 1 year</p> <p><u>Or, alternatively,</u></p> <p>Musculo-skeletal (soft tissue) injuries which lasted at least 2.5 years but resolved within 5 years.</p> | <p>Orthopedic injuries must be documented with contemporaneous medical records and imaging, and confirmatory opinion/report from a physician or specialist.</p> <p>Musculo-skeletal injuries must be documented with contemporaneous medical records (including any proof and dates of treatments) and confirmatory opinion/report from a physician or specialist.</p> <p>A statutory declaration will also be required (for any of these claims), plus all supporting documentation.</p> |

**Psychiatric Injury Grid/Chart:**

| <b><u>\$ VALUE BY CATEGORY</u></b>   | <b><u>TYPE OF PSYCHIATRIC INJURY</u></b><br>(references to time periods below start or run from the date of the Collapse, June 23, 2012)   | <b><u>LEVEL OF PROOF/EVIDENCE REQUIRED</u></b><br>*Statutory declaration required for all Claims  |
|--|--|---|
| <p>B1<br/>\$750</p>  | <p>Minor psychiatric injuries or conditions such as anxiety, fearfulness, nightmares, loss of sleep, emotional distress or temporary exacerbation of another physical or emotional issue. All such injuries are completely resolved.</p> | <p>A statutory declaration will be required.</p> <p>No physician or hospital visits are required, and no medical records are required.</p>  |
| <p>B2<br/>\$5,000 +<br/>medical/treatment<br/>expenses &amp; costs, and<br/>costs of letter (if any)</p> | <p>Psychiatric disorder with resolution of symptoms within 6 months</p>  | <p>Confirmatory/supporting letter from doctor, psychologist, psychiatrist or physician required. Contemporaneous medical records are not required, but may be helpful to Adjudicator.</p> <p>A statutory declaration will be required.</p>  |
| <p>B3<br/>\$12,500 +<br/>medical/treatment<br/>expenses &amp; costs of<br/>medical records/letter</p>    | <p>Psychiatric disorder with resolution of symptoms between 6 months and 1 year</p>  | <p>Contemporaneous medical records and a confirmatory/supporting letter from psychiatrist or psychologist identifying a disorder and expressing the opinion this disorder was caused or contributed to by the Collapse are required.</p> <p>A statutory declaration will be required.</p> |

|  |   |  |
|--|---|--|
|  |   |  |
| B4<br>\$20,000 +<br>medical/treatment<br>expenses & costs of<br>medical records and letter   | Psychiatric disorder with symptoms that exceed 1 year and resolution of symptoms within 2 years   | Contemporaneous medical records and a confirmatory/supporting letter from psychiatrist or psychologist identifying a disorder and expressing the opinion this disorder was caused or contributed to by the Collapse are required.<br><br>A statutory declaration will be required.   |
| B5<br>\$30,000 +<br>medical/treatment<br>expenses & costs of<br>medical records and<br>letter  | Psychiatric disorder with symptoms that exceed 2 years  | Contemporaneous medical records and a confirmatory/supporting letter from psychiatrist or psychologist identifying a disorder and expressing the opinion this disorder was caused or contributed to by the Collapse are required..<br><br>A statutory declaration will be required.  |
| B6<br>\$60,000 +<br>medical/treatment<br>expenses & costs of<br>medical records and<br>report, + all<br>consequential pecuniary<br>damages | Chronic psychiatric disorder as defined in DSM-5-TR (Diagnostic and Statistical Manual of Mental Disorders (DSM) 5 Text Revision) 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, 6 <sup>th</sup> edition 2025. <sup>142</sup> | Confirmatory report from psychiatrist identifying a disorder and expressing the opinion this disorder was caused or contributed to by the Collapse and explaining why there exists a marked impairment cause by the disorder and expressing the opinion that the marked impairment and disorder was cause or contributed to by the Collapse required, together with all medical records evidencing medical treatment since the Collapse consistent with this type of diagnosis also required.<br><br>A statutory declaration will be required. |

<sup>142</sup> Chapter 14 of the [American Medical Association \(AMA\) Guides to the Evaluation of Permanent Impairment](#) focuses on the assessment of Mental and Behavioral Disorders (M&BD). It provides a standardized framework for psychiatrists and physicians to evaluate impairment stemming from psychiatric conditions, often utilizing criteria from the American Psychiatric Association's [Diagnostic and Statistical Manual of Mental Disorders \(DSM\)](#).

## SCHEDULE “D”

### Extract Re *Family Law Act Damages*

#### *Coffey v. Cyriac*, 2020 ONSC 6411 (CanLII)

J.E. Ferguson J.

### “FAMILY LAW ACT DAMAGES

[158] Damages for loss of guidance, care, and companionship are governed under [s. 61\(2\)\(e\)](#) of the *Family Law Act* (the “*FLA*”).<sup>[44]</sup> They are assessed on a case-by-case basis.<sup>[45]</sup> Opportunities to experience guidance, care, and companionship will be informed by whether relatives lived in the same home, or even the same city, as the main plaintiff. When a mother, father, or sibling does not live in the same city as their relative, damages will be reduced accordingly.<sup>[46]</sup>

[159] In assessing damages for loss of care, guidance, and companionship under [s. 61\(2\)\(e\)](#) of the *FLA*, the court applies the following principles:

- a) For a claim to succeed, there must be an actual loss of care, guidance, and companionship;
  - (i) “Guidance” includes such things as education, training, discipline, and moral teaching;<sup>[47]</sup>
  - (ii) “Care” includes such things as feeding, clothing, cleaning, transporting, helping, and protecting another person;<sup>[48]</sup> and
  - (iii) “Companionship” includes the joy of sharing experiences; it is the loss of rewards of association that flow from the family relationship.<sup>[49]</sup>
- b) No damages can be awarded for grief, sorrow, or mental anguish by reason of an injury sustained by a relative;
- c) Each claim must be assessed on its particular facts, although a judge may have regard to:
  - (i) the age, mental, and physical condition of the claimant;
  - (ii) whether the injured party lived with the claimant and, if not, the frequency of family visits;
  - (iii) the intimacy and quality of the claimant’s relationship with the injured party;
  - (iv) whether or not the claimant is emotionally self-sufficient; and
  - (v) the joint life expectancy of the claimant and the injured party (though this is not relevant to the matters in issue).<sup>[50]</sup>

QUINTE et al.

-and-

EASTWOOD MALL et al.

Plaintiffs

Defendants

Court File No. CV-12-458218-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at TORONTO**

**PLAINTIFFS' FACTUM  
(SETTLEMENT APPROVAL)**

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