

Jan 25/07

PURSUANT TO CONFORMEMENT A

Court file #06-CV-307624CP

THE ORDER OF  
JUDICIAL OFFICE DU  
DATE / DATE

Justice Hoy

Jan 12/07

(Mr Brenton)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN

DEREK ASHLEY WAMBOLDT, CRAIG DENBY, ASSAD KAMAL,  
MARK PHELAN and LINDA WATSON

Plaintiffs

and

NORTHSTAR AEROSPACE (CANADA) INC. and  
NORTHSTAR AEROSPACE INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM**

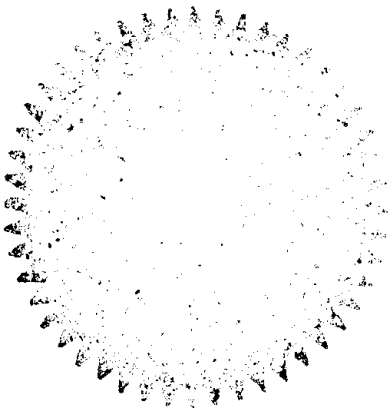
TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyers or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.


If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.



IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

✓  
- 12 '  
January 24, 2007

Issued by:   
Registrar (M. Brentan)

Address of Court Office:  
393 University Avenue  
10<sup>th</sup> Floor  
Toronto ON M5G 2M2

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TO:

NORTHSTAR AEROSPACE (CANADA) INC.  
695 Bishop Street  
Cambridge ON N3H 2K8

NORTHSTAR AEROSPACE INC.  
695 Bishop Street  
Cambridge ON N3H 2K8

## CLAIM

### DEFINITIONS

1. The following definitions apply for the purpose of this statement of claim:
  - (a) **“Assad”** means Assad Kamal;
  - (b) **“Bishop Street Plant”** means the industrial facility located on the **Bishop Street Property**;
  - (c) **“Bishop Street Property”** means the property municipally known as 695 Bishop Street, Cambridge, Ontario more particularly described as Part of Lot 37, Registrar’s Compiled Plan 1374, City of Cambridge, Regional Municipality of Waterloo, designated as Part 3 on Reference Plan 67R-2011, and Lots 38 and 39, Plan 1374 and Block “A”, Plan 1319, City of Cambridge, in the Regional Municipality of Waterloo;
  - (d) **“CEPA”** means the Canadian Environmental Protection Act, 1999, S.C. 1999, c. 33, schedule 1;
  - (e) **“Chromium”** means hexavalent chromium;
  - (f) **“Class” or “Class Members”** means all persons owning real property in the **Contaminated Area** as of August 23, 2005, excluding **Northstar** and any of its officers and directors;
  - (g) **“Contamination”** means the spread of TCE and Chromium from the **Bishop Street Property**;
  - (h) **“Contaminated Area”** means the area within the City of Cambridge, Ontario, highlighted on the map attached hereto and marked as Schedule “A” generally described as the area bounded by a line commencing at the corner of Bishop Street North and Industrial Road, south along Industrial Road to Dunbar Road, west to Concession Road, south to Coronation Boulevard, east to Highland Park, and following Highland Park and the Grand River to a point south of the southwest limit of Bishop Street North, north to the southwest limit of Bishop Street North and north and east along Bishop Street North back to the corner of Bishop Street North and Industrial Road;

- (i) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) “**CPA**” means the *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
- (k) “**Craig**” means Craig Denby;
- (l) “**Denby Residence**” means the lands and premises known municipally as 1505 Concession Road, Cambridge, Ontario;
- (m) “**Derek**” means Derek Wamboldt;
- (n) “**EPA**” means the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and the regulations thereunder, as amended;
- (o) “**Havlik**” means Havlik Technologies Inc.;
- (p) “**Kamal Business**” means the lands and premises known as 653 Bishop Street North, Cambridge, Ontario;
- (q) “**Linda**” means Linda Watson;
- (r) “**Mark**” means Mark Phelan;
- (s) “**MOE**” means Ontario Ministry of the Environment;
- (t) “**Northstar Aerospace**” means Northstar Aerospace Inc.;
- (u) “**Northstar Canada**” means Northstar Aerospace (Canada) Inc.;
- (v) “**OWRA**” means the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40;
- (w) “**Phelan Residence**” means the lands and premises known municipally as 517 Pine Street, Cambridge, Ontario;
- (x) “**TCE**” means trichloroethylene;
- (y) “**VC**” means vinyl chloride;
- (z) “**Wamboldt Residence**” means the lands and premises known municipally as 629 Severn Avenue, Cambridge, Ontario; and
- (aa) “**Watson Residence**” means the lands and premises known municipally as 1723 Concession Road, Cambridge, Ontario.

**CLAIM FOR RELIEF**

2. The plaintiffs claim:
- (a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs;
  - (b) a declaration that the defendants' use, handling, application, storage and disposal of TCE and Chromium caused a nuisance in the Contaminated Area;
  - (c) a declaration that defendants' are strictly liable for the escape of TCE and Chromium into the Contaminated Area;
  - (d) a declaration that the defendants' use, handling, application, storage and disposal of TCE and Chromium breached the EPA and the OWRA and thereby caused loss and damage to the Class Members;
  - (e) a declaration that the defendants owed a duty of care to the plaintiffs and to the other Class Members;
  - (f) a declaration that the defendants were negligent in the use, handling, application, storage and disposal of TCE and Chromium;
  - (g) a declaration that the Class Members are entitled to remediate the properties they own in the Contaminated Area to completely eliminate all traces of TCE and Chromium and the defendants must pay the costs of so doing as damages;
  - (h) general damages and special damages in the amount of \$200,000,000 or such further sum as this Honourable Court may find appropriate;
  - (i) punitive damages in the amount of \$10,000,000;
  - (j) an order directing a reference or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
  - (k) prejudgment interest, compounded, and postjudgment interest, compounded, or pursuant to the *CJA*;

- (l) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to s. 26(9) of the CPA, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and
- (m) such further and other relief as to this Honourable Court seems just.

#### **THE NATURE OF THIS ACTION**

3. Northstar Aerospace and Northstar Canada used TCE and Chromium at the Bishop Street Property and allowed these chemicals to escape. As a result, they contaminated the Contaminated Area with TCE and Chromium. The Contamination was caused by Northstar Aerospace and Northstar Canada improperly handling, storing and disposing of TCE and Chromium in and around the Bishop Street Plant.

4. The TCE and Chromium which escaped from the Bishop Street Property seeped into a groundwater plume lying directly beneath the Contaminated Area and caused the build up of TCE gases in various buildings and homes in the Contaminated Area in amounts higher than the maximum levels established by the MOE and Health Canada.

5. Northstar Aerospace and Northstar Canada admitted that the Bishop Street Plant is the source of the TCE and Chromium that is found in the groundwater plume beneath the Contaminated Area as well as the source of the TCE in various buildings and homes in the Contaminated Area.

6. The properties owned by the Class Members in the Contaminated Area have declined in value as a result of the Contamination of the groundwater in the Contaminated Area.

7. In this action, the Class Members seek to recover damages equal to the costs of removing the TCE and Chromium from their properties and from the groundwater beneath their properties, the reduction in the value of their properties in the Contaminated Area, consequential damages and punitive damages.

#### **THE PLAINTIFFS**

8. In September, 2004, Derek purchased the Wamboldt Residence which is located about 200 meters from the Bishop Street Plant and is within the Contaminated Area. Since the purchase, Derek and his family have resided in the Wamboldt Residence.

9. In December, 1992, Craig purchased the Denby Residence which is located about 700 meters from the Bishop Street Plant and is within the Contaminated Area. Since the purchase, Craig and his family have resided at the Denby Residence.

10. In January, 2001, Assad purchased the Kamal Business which is located adjacent to the Bishop Street Plant and is within the Contaminated Area. Since the purchase, Assad and his wife Merline have owned and operated Kaieteur Gold Jewellery Centre at the Kamal Business.

11. In March, 1998, Mark purchased the Phelan Property which is located about 1400 meters from the Bishop Street Plant and is within the Contaminated Area. Since the purchase, Mark and his family have resided in the Phelan Residence.

12. In or about March, 1984, Linda purchased the Watson Residence which is located about 800 meters from the Bishop Street Plant and is within the Contaminated Area. Since the purchase, Linda has resided in the Watson Residence.

#### **THE DEFENDANTS**

13. 466586 Ontario Limited was a corporation incorporated pursuant to the laws of the Province of Ontario on January 9, 1981. On December 10, 1985, 466586 Ontario Limited changed its name to Havlik.

14. On May 1, 1989, Havlik was amalgamated with Controlled Machines Inc. to create Derlan Aerospace Canada Limited.

15. On January 1, 1994, Derlan Aerospace Canada Limited amalgamated with Derlan Manufacturing Inc. to create Northstar Aerospace.

16. Northstar Aerospace is an Ontario corporation and its shares are publicly traded on the TSX under the symbol "NAS". Northstar Aerospace is the successor of Havlik as a result of several amalgamations. Northstar Aerospace owns the Bishop



Street Property but title to the Bishop Street Property is still registered in the name of Havlik.

17. Northstar Canada is an Ontario corporation incorporated on January 1, 1994. It is headquartered in the City of Milton. It is a wholly-owned subsidiary of Northstar Aerospace. It carries on business at the Bishop Street Property.

18. Northstar Aerospace and Northstar Canada both occupy the Bishop Street Property.

19. Northstar Aerospace and Northstar Canada operate as if Northstar Canada is functionally part of Northstar Aerospace. They both have managed and continue to manage, supervise and control the Bishop Street Property. Together they have jointly designed, manufactured and sold components and assemblies to the global aerospace industry. Their principal products include gears, transmissions, accessory gearbox assemblies, rotocraft drive systems and other machines and fabricated parts for helicopters and fixed wing aircrafts. Together, they purchased TCE and Chromium. Each is the agent of the other. Each is jointly and severally liable for the wrongful acts and omissions particularized in this statement of claim because:

- (a) the acts and omissions particularized in the statement of claim were done in the pursuit of their common enterprise;
- (b) Northstar Aerospace operates Northstar Canada as if it were its alter ego;
- (c) Northstar Aerospace prepares its financial statements on a consolidated basis with Northstar Canada;

- (d) Northstar Aerospace controlled and continues to control, through its management, the day-to-day operations of Northstar Canada;
- (e) Northstar Aerospace and Northstar Canada have and use common offices and employees;
- (f) Northstar Aerospace's officers and directors control Northstar Canada;
- (g) Northstar Aerospace has taken charge of and paid for all remediation and investigation particularized herein;
- (h) Northstar Aerospace's officers, directors and employees are the officers and directors of Northstar Canada; and
- (i) Northstar Aerospace provides management and other services to and for Northstar Canada.

#### **TCE AND CHROMIUM**

20. TCE is a colourless liquid that is used as a solvent for degreasing metal parts. As it breaks down by various biological and chemical processes, TCE produces chemical byproducts including VC.

21. TCE is classified by Health Canada as a "probable human carcinogen." VC is classified by Health Canada as a "known carcinogen." TCE and VC are both listed as "Toxic Substances" under *CEPA*.

22. Chromium is classified by Health Canada and the World Health Organization as a "human carcinogen."

23. Inhaling large amounts of TCE may cause impaired heart function, unconsciousness and death. Drinking small amounts of TCE for long periods may cause liver and kidney damage, impaired immune system function and impaired fetal development in pregnant women.

24. Chromium is a human carcinogen. If inhaled can cause irritation to the nose such as nosebleeds, ulcers and holes in the nasal septum and increases the risk of lung cancer. Ingesting large amounts of Chromium can cause stomach upsets, ulcers, convulsions, kidney and liver damage and death.

25. The removal of TCE and Chromium and its derivatives from groundwater and real property is expensive, time-consuming and difficult.

26. Northstar Aerospace and Northstar Canada have continuously and frequently used TCE and Chromium throughout the period of their ownership, possession, occupation and operation of the Bishop Street Plant.

**NORTHSTAR'S TESTING OF THE BISHOP STREET PROPERTY AND THE CONTAMINATED AREA**

27. In or prior to 2004, Northstar Aerospace and Northstar Canada tested the Bishop Street Property and concluded that it was contaminated with TCE and Chromium at levels that exceeded the standard established by the MOE.

28. In 2004, Northstar Aerospace and Northstar Canada began conducting ground water and soil testing immediately adjacent to the Bishop Street Plant. The results of the testing revealed that TCE and Chromium were present at levels that exceeded the standards established by the MOE.

29. Northstar Aerospace and Northstar Canada retained an agent to put in place a comprehensive testing schedule to ascertain if unacceptable levels of these substances existed in areas adjacent to the Bishop Street Plant.

30. In early 2005, Northstar Aerospace and Northstar Canada expanded its ground water and soil testing program to the south and north side of Bishop Street North.

31. In June, 2005, Northstar Aerospace and Northstar Canada again expanded its testing south of Bishop Street. Four temporary ground water testing wells were sunk. One of the wells displayed levels of TCE considerably higher than the MOE standard of 50 parts per billion. As a result of the findings, the ground water and soil testing was suspended pending an investigation. The plaintiffs do not know the results of this testing but the results are known to Northstar.

32. Northstar Aerospace and Northstar Canada also tested the air in residences near the Bishop Street Plant for TCE and Chromium. The plaintiffs do not know the results of this testing, but the results are known to Northstar Aerospace and Northstar Canada.

33. On July 11, 2005, Northstar Aerospace and Northstar Canada resumed temporary ground water and soil testing in the vicinity of Severn Avenue, Hopewell Road, Grand Valley Drive and Fairview Road in an attempt to establish the perimeters of the areas affected by their TCE and Chromium contamination. The testing was completed on July 15, 2005. The results of the testing revealed levels of TCE and Chromium considerably higher than MOE regulations. As a result of these test results, Northstar Aerospace and Northstar Canada began conducting or they continue to conduct indoor air sampling at certain residences in this expanded area.

34. In August, 2005, Northstar Aerospace and Northstar Canada sunk temporary ground water wells on Pine, Dunbar, Queenston, Blue Heron, Ridge and Pheasant streets. The plaintiffs do not know the results of these tests, but the results are known to Northstar Aerospace and Northstar Canada.

35. All of the areas tested for TCE and Chromium are heavily populated residential neighbourhoods within the Contaminated Area.

36. On or about August 23, 2005, Northstar Aerospace and Northstar Canada first stated publicly that the Bishop Street Property was severely contaminated by TCE, that the TCE had migrated through the groundwater and that TCE vapours had seeped into some of the properties and buildings located in the Contaminated Area.

37. The full extent and geographic scope of the migration of the TCE and Chromium from the Bishop Street Plant throughout the Contaminated Area is not known to the plaintiffs, but is known to Northstar Aerospace and Northstar Canada. The plaintiffs' best information is that the groundwater lying underneath the Contaminated Area has been significantly contaminated with TCE and that some of the properties in the Contaminated Area have been contaminated with Chromium.

38. Northstar Aerospace and Northstar Canada continue to test the area and residential homes in and around the Bishop Street Plant for exposure to TCE and Chromium. The results of some of the testing revealed that both TCE and Chromium were found in at least 226 residences within the Contaminated Area. The complete results of the testing are known only to Northstar Aerospace and Northstar Canada.

39. The plaintiffs and the other Class Members, as well as the public at large, have been informed of the numerous, serious health risks associated with prolonged exposure to TCE and Chromium.

40. Northstar Aerospace and Northstar Canada advised Derek, Craig, Assad, Mark and Linda that TCE levels on their respective properties were far in excess of what is objectively considered to be safe, healthy and acceptable.

41. Northstar Aerospace and Northstar Canada advised Craig, Mark and Linda and their respective families to evacuate their homes because of unsafe levels of TCE and Chromium. They did so and lived in a hotel while Northstar attempted remediation to their respective homes and real property.

42. Despite Northstar Aerospace and Northstar Canada's efforts, there continues to be further work required to remediate their homes and properties.

43. On January 25, 2006, Craig underwent a hair toxic element exposure profile. The results of the test showed elevated levels of Chromium.

44. The plaintiffs have also lost the use and enjoyment of their residences due to the Contamination, particularly during the period of time the plaintiffs and their families were evacuated from their homes. Other Class Members have lost and/or will lose the use and enjoyment of their residences until and while they are remediated.

45. As a direct result of the Contamination, the fair market value of the properties owned by the plaintiffs and the other Class Members in the Contaminated Area has been significantly reduced and will, in the future, be further reduced in value.

## THE CLAIMS AGAINST THE DEFENDANTS

### NUISANCE

46. Northstar Aerospace and Northstar Canada created a nuisance through their use, handling, application, storage and disposal of TCE and Chromium at or near the Bishop Street Plant.

47. Northstar Aerospace and Northstar Canada are liable in nuisance for causing or permitting the discharge or movement of TCE and Chromium from the Bishop Street Property to the properties of the plaintiffs and the other Class Members in the Contaminated Area. They are also liable for failing to take timely, complete and effective actions to stop the discharge and movement of TCE and Chromium from the Bishop Street Property to the Contaminated Area.

48. Northstar Aerospace and Northstar Canada are also liable in nuisance because they adopted a pre-existing nuisance. That is, they were aware of, or were willfully blind to, leakage or discharge of TCE and Chromium from the Bishop Street Property by their predecessor(s) in title or former occupier(s), and failed to take any timely, or any effective, steps to stop the continuing discharges of TCE and Chromium and remediate the groundwater, the environment and the properties in the Contaminated Area.



49. As a result of the acts and omissions describe above, Northstar Aerospace and Northstar Canada are jointly and severally liable to the plaintiffs and the Class Members for damages for nuisance.

#### STRICT LIABILITY

50. The plaintiffs plead and rely upon the doctrine of strict liability (*Rylands v. Fletcher*). Northstar Aerospace and Northstar Canada are liable for any and all damage caused to the plaintiffs and the other Class Members as a result of the Contamination because:

- (a) at all material times, they owned and/or occupied the Bishop Street;
- (b) they made or allowed a non-natural, hazardous, unusual use of the Bishop Street Property, in that they used, stored, handled, applied, and disposed of TCE and Chromium at the Bishop Street Property, thereby subjecting the plaintiffs and the other Class Members to the risks associated with such storage and use;
- (c) they knew or should have known that if TCE and Chromium escaped the Bishop Street Property, that damage and loss to the plaintiffs and the other Class Members would result and damage and loss did result; and
- (d) TCE and chromium escaped from the Bishop Street Property and contaminated the Contaminated Area resulting in damage and loss to the plaintiffs and the other Class Members.

#### *EPA*

51. Section 99 of the *EPA* states that an owner or controller of a pollutant that is spilled and causes, or is causing, or is likely to cause an adverse effect, is absolutely liable for the resulting damage and loss.

52. Northstar Aerospace and Northstar Canada were the owners and/or controllers of the TCE and Chromium which was spilled onto the Bishop Street Property.

53. The spills caused, are causing, or are likely to cause, an adverse effect to the plaintiffs and the other Class Members within the meaning of s. 99 of the *EPA*, in that the TCE and Chromium have resulted or are resulting in:

- (a) impairment of the quality of the natural environment in the Contaminated Area and the use that can be made of it;
- (b) injury or damage to property or to plant or animal life in the Contaminated Area;
- (c) harm or material discomfort to the plaintiffs and the other Class Members;
- (d) rendering some of the properties in the Contaminated Area unfit for human use; and
- (e) loss of enjoyment of normal use of the properties in the Contaminated Area.

54. Northstar Aerospace and Northstar Canada are liable to the plaintiffs and the other Class Members for failing to abide by the duties under sections 13 and 14 of the *EPA* not to discharge, or cause or permit the discharge of, TCE and Chromium into the natural environment, and for failing to notify forthwith the MOE of such discharge, both omissions causing damage and loss to the plaintiffs and the other Class Members.

55. Northstar Aerospace and Northstar Canada were the owners of the TCE and Chromium. As the persons having control of those pollutants that spilled, they are liable to the plaintiffs and the Class Members for failing, and continuing to fail, to carry out their duties pursuant to s. 93(1) of the *EPA* to “forthwith do everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.” This duty became effective immediately upon Northstar Aerospace and Northstar Canada knowing, or when they ought to have known, that TCE and Chromium was spilled and was causing or was likely to cause an adverse effect upon the plaintiffs and the other Class Members.

***OWRA***

56. Northstar Aerospace and Northstar Canada are liable to the plaintiffs and the other Class Members for failing to comply with their legal duties under section 30 of the *OWRA*, not to discharge, or cause or permit the discharge of TCE and Chromium in a place or in any waters (including groundwater), where such discharge may impair the quality of the water of any waters, as well as failing to forthwith notify the MOE of such discharge. Their failure caused damage and loss to the plaintiffs and the other Class Members.

## NEGLIGENCE

57. Northstar Aerospace and Northstar Canada owed a duty of care to the plaintiffs and the other Class Members because they knew their acts and omissions in their dealings with TCE and Chromium could cause damage and loss to the plaintiffs and the other Class Members.

58. Northstar Aerospace and Northstar Canada breached the standard of care expected in the circumstances and were negligent in their operation of their business and in the use, handing, application, storage and disposal of TCE and Chromium at or near the Bishop Street Plant. Particulars of some, but not all of the acts of negligence follow:

- (a) they failed to properly use, handle, apply, store and dispose of the TCE and Chromium used at its Bishop Street Plant;
- (b) they continued to use or permit the use of TCE and Chromium in manufacturing processes when they could have used safer agents;
- (c) they allowed TCE and Chromium to escape from the Bishop Street Property;
- (d) they failed to adequately train, monitor and supervise their employees, servants and agents in the proper use, handling, application, storage and disposal of TCE and Chromium;
- (e) they hired incompetent employees, servants and agents to use, handle, apply, store and dispose of TCE and chromium;
- (f) they failed to warn the plaintiffs and the other Class Members that TCE and Chromium were present in the groundwater and air in the Contaminated Area in levels in excess of MOE standards;
- (g) they carried on operations or permitted operations to be carried on at the Bishop Street Plant that emitted TCE and Chromium into the air and groundwater;

- (h) they failed to provide and use, or require to be used, adequate safety equipment that would have prevented the escape of TCE and Chromium at or near the Bishop Street Plant into the groundwater and subsurface of the Contaminated Area;
- (i) they failed to implement plans and procedures to prevent the release of TCE and Chromium from the Bishop Street Plant to the Contaminated Area;
- (j) they failed to comply with the *EPA* by causing contaminants to be discharged into the environment that resulted in damage to property in the Contaminated Area;
- (k) they failed to prevent further release of TCE and Chromium into the environment after they first learned of the leakage and discharge;
- (l) they failed to properly handle and store TCE and Chromium on the Bishop Street Property;
- (m) they knew or ought to have known that the Bishop Street Property was immediately adjacent or in close proximity to the Contaminated Area, such that any contamination of the soil and groundwater in and under the Bishop Street Property could reasonably be expected to, and did in fact, extend to the Contaminated Area and failed to prevent the Contamination;
- (n) they caused, allowed or permitted or failed to prevent leakage, infiltration and/or seepage of TCE and Chromium into the subsurface and groundwater in the area around the Bishop Street Plant;
- (o) they failed to adequately or properly monitor their practices with respect to the use and disposal of TCE and Chromium in order to ensure that contamination of the Contaminated Area by TCE and Chromium would not occur;
- (p) they failed to institute timely or adequate remedial action to arrest the continuing Contamination;
- (q) they failed to give adequate and timely notice of the contamination to the plaintiff and the other Class Members; and
- (r) they failed to take reasonable steps to completely remove the TCE and Chromium contamination from the Contaminated Area through full remediation.

## TRESPASS

59. Northstar Aerospace and Northstar Canada are liable in trespass in that, without consent, they released or permitted the release of TCE and Chromium into the environment, contaminating the soil and groundwater in the Contaminated Area and thereby directly interfered with and damaged the properties owned by the plaintiffs and other Class Members in the Contaminated Area causing loss and damage to the plaintiffs and the other Class Members.

## DAMAGES

60. As a result of the acts and omissions of Northstar Canada and Northstar Aerospace described herein, the plaintiffs and the other Class Members have suffered damages and losses, including the following:

- (a) diminution in the fair market value of their properties in the Contaminated Area;
- (b) an inability to obtain mortgage financing or re-financing and/or the cost of additional service fees and interest charges in order to obtain mortgage financing or refinancing;
- (c) an inability to sell their property within a reasonable period of time, or at all;
- (d) an inability to obtain CMHC insurance;
- (e) an inability to obtain title insurance for property in the Contaminated Area;

- (f) the full cost of investigating and remediating their properties, including the cost of removing the TCE and Chromium;
- (g) the cost of monitoring the groundwater below their properties;
- (h) the cost of monitoring air quality on their properties and in their properties;
- (i) the general loss of use and enjoyment of their properties and increased loss of use and enjoyment during remediation and/or reconstruction;
- (j) loss of rental income from their properties in the Contaminated Area; and
- (k) miscellaneous related expenses and losses, full particulars of which will be provided at trial.

61. In addition, the plaintiffs and the other Class Members are entitled to recover damages at large.

#### **PUNITIVE DAMAGES**

62. The plaintiffs plead that the conduct of Northstar Aerospace and Northstar Canada in the ownership, occupation and use of the Bishop Street Plan and in the use, application, handling, storage and disposal of TCE and Chromium was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, in intentional disregard of the plaintiffs' rights and safety and the rights and safety of the other Class Members and indifferent to the consequences. Their conduct was motivated by the desire to increase profits by reducing expenses. When Northstar Aerospace and Northstar Canada could no longer ignore the Contamination of

the groundwater, they carried out engineering, geological and environmental test of the Contamination, but they failed to make full, prompt and candid disclosure of the results of their testing and the extent of the Contamination of the Contaminated Area to the MOE, the City of Cambridge, the Regional Municipality of Waterloo, the plaintiff and the other Class Members. Such conduct required the payment of punitive damages.

#### LEGISLATION

63. The plaintiffs plead an rely upon the *EPA*, ss. 13, 14, 93(1) and 99; the *OWRA*, s. 30; *CEPA*, Schedule 1; the *CPA* and the *CJA*.

#### PLACE OF TRIAL

64. The plaintiffs propose that this action be tried in the City of Toronto.

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- 12 ,  
Dated: January 24, 2007

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

FRESH AS AMENDED  
~~ORDER~~  
STATEMENT OF CLAIM

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Harvey T. Strosberg (LSUC#: 126400)

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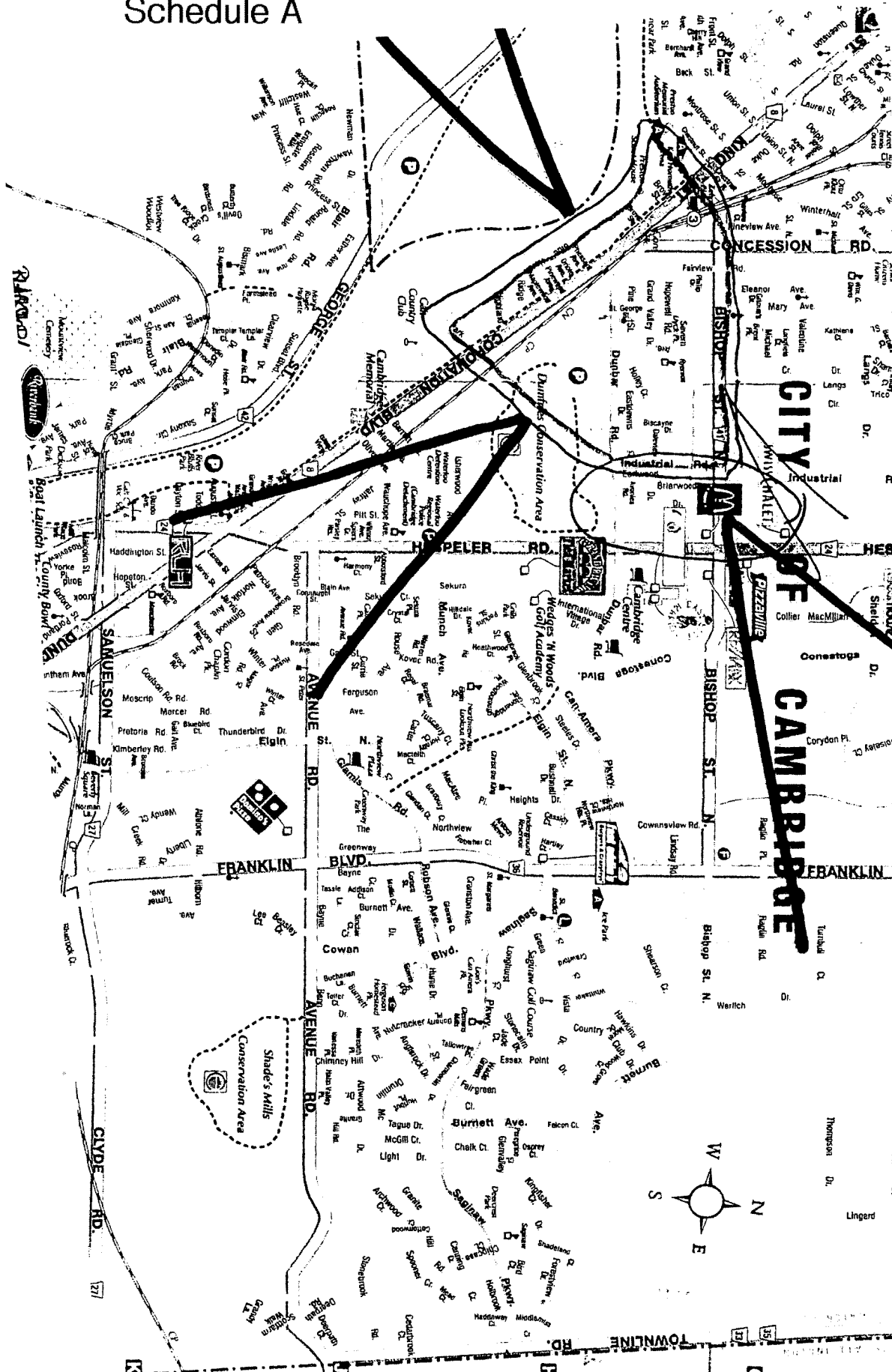
**HILBORN & KONDUROS**  
Barristers and Solicitors  
39 Queen Street West  
P.O. Box 25008  
Cambridge, ON N3C 4B6

Robert A. Konduros (LSUC#: 28095F)

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Fax: (519) 654-9127

Solicitors for the Plaintiff

# Schedule A



117 MITCHELL ST  
 Robert L. F  
 S & V Delle  
 The Flower

### Street Index

1st Ave	M-106
10th Ave	M-106
11th Ave	M-106
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13th Ave	M-106
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