

**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

STATEMENT OF DEFENCE

1. The defendants Northstar Aerospace (Canada) Inc. ("Northstar Canada") and Northstar Aerospace Inc. ("Northstar Aerospace") (collectively, "Northstar") admit the allegations contained in paragraphs 13, 20, 21, 22, 23, 24 and 25 (but deny that removal in all cases is necessarily expensive, time-consuming and difficult) of the fresh as amended statement of claim.
2. Northstar denies the allegations contained in paragraphs 3 through 7, 14 through 19, 26 through 42, and 44 through 62 of the fresh as amended statement of claim except where otherwise admitted herein.
3. Northstar has no knowledge in respect of the allegations contained in paragraphs 8 through 12, and 43 of the fresh as amended statement of claim.
4. On January 9, 1981, 466586 Ontario Limited was incorporated pursuant to the laws of Ontario. On December 10, 1985, 466586 Ontario Limited changed its name to Havlik Technologies Inc.

5. On May 1, 1989, Havlik Technologies Inc. amalgamated with Controlled Machining Inc., to form Havlik Technologies Inc., which changed its name to Derlan Aerospace Canada Limited on March 31, 1993.
6. On January 1, 1994, Derlan Aerospace Canada Limited amalgamated with Derlan Manufacturing Inc., to form Derlan Manufacturing Inc., which then changed its name to Northstar Canada on July 4, 2002.
7. Northstar Aerospace is a publicly-traded Ontario corporation with its head office at Toronto.
8. Northstar Canada is a wholly owned subsidiary of Northstar Aerospace. They are separate corporations and are not each other's agents.
9. Through predecessor corporations, Northstar Canada purchased the various parcels that comprise the property municipally known as 695 Bishop Street North, Cambridge, Ontario (the "Cambridge Plant") between 1985 and 1988 and since that time has used the facility to manufacture components and assemblies for the aerospace industry. The site of the Cambridge Plant has been used primarily for manufacturing and machine operations since about 1960.
10. Throughout its history, operators of the Cambridge Plant have used (i) trichloroethylene ("TCE") as a degreaser for equipment, until its use was discontinued by Northstar Canada in October 2005, and (ii) chromium.
11. At all times, Northstar used, handled, applied, stored and disposed of TCE and chromium safely and in accordance with then applicable practices, standards, regulations and other legal requirements.
12. In or about late 2004, Northstar began groundwater and soil testing on and immediately adjacent to the Cambridge Plant. Northstar's initial results indicated the presence of solvents, including TCE, in some boreholes and monitoring wells that exceeded the applicable Ontario Ministry of the Environment ("MOE") standards for TCE and chromium.

13. Upon learning of the results, Northstar implemented a phased testing program to determine if TCE and chromium had migrated to the area adjacent to the Cambridge Plant and to define the area where a concern about TCE and chromium might exist.
14. The investigation undertaken by Northstar determined that there were concentrations of TCE exceeding the MOE standards present in the groundwater in an area immediately to the south and west of the Cambridge Plant. Based on the information gathered during the investigation, Northstar concluded that it would have taken an extensive period of time for TCE to have moved through the groundwater from beneath the Cambridge Plant to its present location.
15. The results from groundwater sampling led Northstar, in consultation with the MOE, to conclude that it was necessary to undertake indoor air sampling for TCE vapours in a number of residences in the area. Testing of indoor air concentrations of TCE in several nearby residential houses began in July 2005. In August 2005, Northstar established the Community Information Centre ("CIC") to assist in the scheduling of indoor air sampling and to provide residents with access to the results and other information in person and by telephone.
16. The Public Health Department of the Region of Waterloo together with the MOE set standards for indoor air concentrations for which remediation or monitoring of homes was required. Based on these standards, for homes where remediation was required due to indoor air concentrations of TCE, the standard is 23 micrograms of TCE per cubic metre ($\mu\text{g}/\text{m}^3$).
17. In consultation with the MOE, Northstar has taken all reasonable steps to develop and implement a remediation program that will reduce the levels of TCE in the groundwater and air in and around the Cambridge Plant.
18. Northstar, in consultation with the applicable governmental authorities, developed and obtained approval for an interim remediation action plan for the area affected by TCE from the Cambridge Plant (the "IRAP"). The IRAP is now being implemented by Northstar. The significant steps in the IRAP are:
 - (a) a pump and treat system at the Cambridge Plant;

- (b) a reactive barrier at the boundary of the Cambridge Plant; and
- (c) a chemical injection system in the affected area.

19. However, before implementing the IRAP, Northstar, after consulting with the MOE, decided in 2005 to proceed immediately with tailored remediation measures for residences in which the level of TCE in indoor air exceeded $23 \mu\text{g}/\text{m}^3$ and to continue monitoring the air quality in residences with readings of between $2.3 \mu\text{g}/\text{m}^3$ and $23 \mu\text{g}/\text{m}^3$. The remediation methods implemented by Northstar, at Northstar's expense, to reduce the level of TCE in indoor air to below $23 \mu\text{g}/\text{m}^3$ included:

- (a) the installation of a heat recovery ventilator ("HRV") on a residence's furnace to refresh air from the residence and improve the air flow of outside air;
- (b) the installation of a photo-catalytic oxidation reactor ("PCO") to treat any vapours that may be present;
- (c) the installation of soil vapour extraction ("SVE") and sub-slab depressurization systems ("SSD") in the area of the Cambridge Plant to remove TCE in vapour; and
- (d) the sealing, finishing and refinishing of basements to prevent vapours from migrating into the home.

20. Northstar has compensated and is continuing to compensate homeowners for any electricity costs associated with the remediation methods outlined in paragraph 19 above.

21. Public Health advised Northstar that it was safe for residents to remain in their homes during these remediation measures where the TCE levels in indoor air were less than $230 \mu\text{g}/\text{m}^3$. Therefore, where the level was between $23 \mu\text{g}/\text{m}^3$ and $230 \mu\text{g}/\text{m}^3$, Northstar advised residents that they could remain in their homes while Northstar implemented remediation measures to bring the TCE levels to below $23 \mu\text{g}/\text{m}^3$.

22. For residences in which the TCE levels exceeded $230 \mu\text{g}/\text{m}^3$, Northstar advised the occupants to temporarily relocate until remediation measures could be implemented. For

those occupants who chose to relocate, Northstar paid their relocation expenses, including hotel, travel and meal vouchers. Because TCE levels can fluctuate daily and seasonally, while it was determined that these residents should not return to their homes until levels were less than 150 $\mu\text{g}/\text{m}^3$.

23. In many instances, the remediation measures improved or added to the value of the homes, including those of the plaintiffs and many others that previously had not had any improvements made to the basements.

24. These remediation measures have largely been completed, although a number of homes are still being monitored. Air sampling continues on a regular basis.

25. Northstar specifically denies the allegations in paragraph 60 of the fresh as amended statement of claim and states that none of the plaintiffs or the Class Members have suffered any damages as a result of the presence of TCE or chromium in the community. In particular, Northstar states that:

- (a) the properties owned by the plaintiffs and the Class Members have not suffered a loss or diminution in value as a result of TCE or chromium or as a result of any actual or perceived adverse effects connected with TCE or chromium;
- (b) the properties owned by the plaintiffs and the Class Members have in some cases increased in value as a result of the extensive work done on these residences during the remediation undertaken by Northstar;
- (c) neither the plaintiffs nor the Class Members have suffered or will suffer any permanent or ongoing loss of use and enjoyment of their property as a result of TCE or chromium;
- (d) to the extent that the plaintiffs and the Class Member suffered any temporary loss of use and enjoyment of their properties as a result of TCE or chromium, they were and continue to be properly compensated by Northstar as part of its remediation program; and

- (e) any TCE or chromium in soil or groundwater around the Cambridge Plant has not prevented and will not prevent the plaintiffs and the Class Members from obtaining mortgage financing and proper insurance coverage for their properties.

26. Further, Northstar states that none of the plaintiffs or the Class Members have suffered any damages as a result of the presence of chromium since it is a naturally occurring substance that is not volatile. Its presence in the groundwater does not create any exposure risks. There is no airborne chromium.

27. To the extent that the values of any properties in the affected area have diminished since the presence of TCE and chromium became known to residents, which is not admitted but denied, Northstar pleads that such alleged diminution has occurred due to the actions of the plaintiffs and others in engaging in activities designed to publicize the presence of TCE and chromium and their own public complaints about the remediation process.

28. The presence of TCE in the community is also as a result of activities on other nearby properties, in particular 610 Bishop Street North, Cambridge ("610 Bishop"), which has been used primarily for manufacturing and machine operations for over 40 years. Throughout its history, various owners, occupiers and operators of the facility at 610 Bishop have used TCE and/or chromium.

29. There are a number of water mains in and around Bishop Street North that are owned by and are the responsibility of the Corporation of the City of Cambridge (the "City"). In 2006 and 2007, a number of water main breaks occurred in and around Bishop Street North. The outflow of water from these broken mains caused TCE in surrounding groundwater to be directed into areas that it otherwise would not have moved. To the extent TCE has caused damage to any properties as a result of these water main breaks, which damage is not admitted but denied, responsibility rests with the City, not Northstar.

30. The plaintiffs have failed to allege sufficient facts to support their claim for punitive damages. In any event, Northstar specifically denies the facts pleaded in paragraph 62 of the fresh as amended statement of claim in support of the claim for aggravated, exemplary or

imposition of punitive damages, particularly when viewed in light of the extensive remediation measures it has implemented. In addition, Northstar has been accessible and forthcoming with accurate and timely information about the environmental situation in and around the Cambridge Plant through newsletters, open houses, public forums, a dedicated website, the Community Information Centre and personal visits with residents. Northstar has responded quickly and thoroughly to the issues while protecting privacy, working co-operatively with governmental authorities and regulators and avoiding tainting the community.

31. Northstar denies that this proceeding is appropriate for certification as a class proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. C.6 because, *inter alia*, the individual issues and individual claims overwhelm any judicial economy in resolving the alleged common issues.

32. Based on the foregoing, Northstar requests that this action be dismissed with costs on a substantial indemnity basis.

March 12, 2008

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Kathryn I. Chalmers LSUC#: 19460H1
Tel: (416) 869-5544

Douglas F. Harrison LSUC#: 29020J
Tel: (416) 869-5693
Fax: (416) 947-0866

Solicitors for the Defendants

TO: **SCARFONE HAWKINS LLP**
Barristers & Solicitors
One James Street South
14th Floor
P.O. Box 926, Depot #1
Hamilton, ON L8N 3P9

Mr. James A. Scarfone LSUC#: 14965U
David Thompson LSUC# 28221N

Tel: (905) 523-1333
Fax: (905) 523-5878

AND TO: SISKIND LLP
Barristers & Solicitors
680 Waterloo Street
London, ON N6A 3V8

Michael Eizenga
E-mail: mike.eizenga@siskinds.com
Matthew Baer
E-mail: matthew.baer@siskinds.com

Tel: 519-672-2121
Fax: 519-672-6065

AND TO: GOWLING LAFLEUR HENDERSON LLP
Barristers & Solicitors
50 Queen Street North
Suite 1020
Kitchener, ON N2H 6M3

Malcolm Ruby
E-mail: malcolm.ruby@gowlings.com
Neena Gupta
E-mail: neena.gupta@gowlings.com
Harry Dahme
E-mail: harry.dahme@gowlings.com

Tel: 519-575-7501
Fax: 519-571-5001

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

Robert A. Konduros
E-mail: robak@on.aibn.com

Tel: 519-658-6341
Fax: 519-654-9127

Solicitors for the Plaintiffs

Wamboldt et al. and Northstar Aerospace (Canada) Inc. and
Northstar Aerospace Inc.
Plaintiffs Defendants

Court File No: 06-CV-30762ACP

ONTARIO
SUPERIOR COURT OF JUSTICE
IN THE MATTER OF a Claim under the
Class Proceedings Act, 1992, S.O. 1992, c. 6

Proceeding commenced at Toronto

STATEMENT OF DEFENCE

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Kathryn I. Chalmers LSUC#: 1946011 1
Tel: (416) 869-5544

Douglas F. Harrison LSUC#: 290201
Tel: (416) 869-5693
Fax: (416) 947-0866

Solicitors for the Defendants