

Court File No. 19-69208

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CORINNE KLASSEN, BRIAN KLASSEN, ESTATE OF
MICHAEL SHOLER by his Estate Administrator, Edwin Sholer,
EDWIN SHOLER, MELISSA SHOLER, NATASHA SHOLER
and MATTHEW SHOLER**

Plaintiffs

and

CITY OF HAMILTON

Defendant

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act, 1992, S.O. 1992, c. 6*

TO THE DEFENDANT:

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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

DATE:

Issued by _____



Local Registrar

MAY 09 2019

Address of

Court office:

45 Main Street East
Suite 110
Hamilton ON L8N 2B7

TO:

CITY OF HAMILTON
71 Main Street West
Hamilton ON L8P 4Y5

DEFINITIONS

1. In this Statement of Claim, the defined terms shall have the meanings as set out in the List of Defined Terms attached as Schedule "A".

CLAIM

2. The Plaintiffs, Corinne and the Estate, claim on their own behalf and on behalf of Class Members:
 - (a) an order pursuant to the *CPA* certifying this action as a class proceeding appointing them as representative plaintiffs of the Class;
 - (b) general and aggravated damages in the amount of TWO HUNDRED MILLION DOLLARS (\$200,000,000.00);
 - (c) punitive and exemplary damages in the amount of FIFTY MILLION DOLLARS (\$50,000,000.00);
 - (d) prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *CJA*;
 - (e) costs of this proceeding on a substantial indemnity basis, plus disbursements and applicable taxes; and,
 - (f) such further and other relief as this Court may deem just.

3. The Klassen Family and the Sholer Family claim on their own behalf and on behalf of Family Class Members:
 - (a) an order pursuant to *CPA* certifying this action as a class proceeding and appointing them as representative plaintiffs of the Family Class;
 - (b) general damages in the amount of TEN MILLION DOLLARS (\$10,000,000.00);
 - (c) special damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00);
 - (d) punitive damages in the amount of TWO MILLION DOLLARS (\$2,000,000.00);
 - (e) prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *CJA*;
 - (f) costs of this proceeding on a substantial indemnity basis, plus disbursements and applicable taxes; and,
 - (g) such further and other relief as this Court may deem just.

OVERVIEW FOR THIS ACTION

4. Corinne and the Estate claim that they were injured or lost life as a result of the negligent design, construction and maintenance of the RHVP.

5. Corinne and the Estate claim that the City is ultimately responsible for the use of inferior products used to surface the RHVP which caused cars to slip and lose control on the RHVP, resulting in motor vehicle crashes.
6. Corinne and the Estate claim that the City failed to fulfill its statutory and common law duties to them and Class Members to provide a safe road for the public to travel.
7. The City failed to monitor and audit the actions of the design firm, construction firm, asphalt firm and all subcontractors, leading to a roadway that was unsafe for vehicular travel.
8. As a result of the unsafe roadway, close to 2,000 vehicles have lost control on the RHVP since it opened in November, 2007, and were involved either in a single motor vehicle crash into the median or off the roadway, and many other crashes involving a vehicle going out of control and making contact with another vehicle travelling in the same direction, or crossing the median and striking a vehicle or vehicles travelling in the opposite direction.
9. The City knew at least by November 20, 2013, when a Friction Testing Summary Report was authored by Tradewind Scientific and provided to the City, that the RHVP was not safe for travel and the surface was inadequate for vehicular travel.

10. Despite having this knowledge, the City failed to publicly disclose the report, or otherwise warn the public, and did nothing to remedy the deficiencies of the RHVP.
11. The City was also in possession of a report in November, 2015 authored by CIMA which confirmed the unsafe condition of the roadway surface and for passage of vehicles on the RHVP. Again the City did nothing to warn the public or remedy the situation.
12. The unsafe RHVP, which is in a state of non-repair, has cost people their lives, has caused many to be injured, and has resulted in people paying unnecessary traffic tickets, paying for lawyers unnecessarily, paying for property damage and paying increased insurance premiums, all as a result of the motor vehicle crashes that have taken place on the RHVP due to poor design, engineering, construction and maintenance of the RHVP.

THE PARTIES

a. Representative Plaintiffs

13. Corinne and the Estate propose to represent the Class.
14. At all material times, Corinne and Michael, were driving on the RHVP.

15. At all material times, Corinne and Michael were driving safely and abiding by the laws of Ontario. Despite that, their vehicles went out of control and a motor vehicle crash ensued.
16. The Klassen Family and the Sholer Family are family members of Corinne and Michael, who have been affected by the serious injuries and/or death of their family members.
17. The Klassen Family and Sholer Family bring this action under the *CPA* on their behalf and as proposed representative plaintiffs on behalf of all Family Class Members.

b. *The Defendant*

18. The City is a municipality incorporated pursuant to the *Municipal Act, 2002*, S.O. 2001, c.25.

THE CLASS

19. Class/Class Members means all persons who drove a motor vehicle on the RHVP after November 1, 2007, and who were involved in a motor vehicle crash.

FAMILY CLASS

20. Family Class/Family Class Members means all *FLA* section 61 family members of Class Members.

SITUATION OF THE REPRESENTATIVE PLAINTIFFS

a. Corinne

21. Corinne is a 54-year old mother of three who resides in London, Ontario.
22. Corinne was a full-time homemaker and part-time hairdresser.
23. Corinne was driving from London to St. Catharines, Ontario, on October 21, 2016.
24. Corinne was driving a motor vehicle that had good tires and was in good mechanical condition and was driving at or below the speed limit.
25. Corinne was travelling on the RHVP between the Greenhill Avenue and King Street ramps.
26. Corinne's vehicle, without warning or any logical reason, started to slip on the pavement. The vehicle spun out three times and hit the guardrail three times.
27. The unsafe, slippery condition and state of non-repair of the RHVP was the cause, proximate cause or a substantial contributory cause of Corinne's vehicle slipping on the road surface and crashing into the guardrail.
28. Corinne was dazed from the collision. She was involved with the Hamilton Police Service who investigated the accident.

29. Corinne was given a ticket for careless driving based on leaving her lane of travel, under the *HTA*.
30. Corinne agreed to pay an *HTA* fine of approximately \$400.00 for failing to share the roadway.
31. Corinne's insurance premiums were increased as a result of this conviction.
32. Corinne was significantly injured in this crash and has not since been able to work or participate in her domestic, leisure, recreational, social and work activities.
33. Corinne suffered significant musculoskeletal injuries, a concussion, and remains totally disabled from the crash.
34. Corinne has had a multitude of treatments including, but not limited to, physiotherapy, massage therapy and chiropractic care.
35. Corinne has psychological impairments from the accident.
36. Corinne's activities such as being a runner, a traveller, and doing mission trips, has been significantly curtailed.

b. Michael/The Estate

37. Michael was driving on the RHVP approximately 100 metres east of Dartnall Road.

38. Michael was on his way to work on January 25, 2017.
39. Michael's vehicle was in good condition with perfectly well-maintained tires.
40. Michael's vehicle, without any warning or logical reason, started slipping on the RHVP, veered to the right, then went out of control to the left and through the median and into a transport truck.
41. The unsafe, slippery condition and state of non-repair of the RHVP was the cause, proximate cause or a substantial contributory cause of Michael's vehicle slipping on the road surface, veering to the right, then going out of control to the left and through the median and into a transport truck.
42. Michael's vehicle ultimately went through the median and struck a transport truck in the other lanes of traffic.
43. Michael did not survive this impact and died as a result of his injuries from the crash.

d. The Klassen Family/Sholer Family

44. The Klassen Family and Sholer Family are family members of Corinne/Michael who continue to suffer loss of care, guidance and companionship as a result of injury to and/or death of their relatives caused by the poor design, poor construction, poor maintenance and state of non-repair of the RHVP.
45. Brian is the spouse of Corinne.

46. Brian fits the description of spouse under section 61 of the *FLA*.
47. Brian has suffered a loss of care, guidance and companionship as a result of Corinne's injuries and impairments.
48. Brian has had pecuniary losses and additional duties thrust upon him as a result of Corinne's injuries and impairments.
49. Edwin, Melissa, Natasha and Matthew have suffered a loss of care, guidance and companionship as a result of Michael's sudden and tragic death on January 25, 2017, and pecuniary losses and a loss of dependency.

NEGLIGENCE OF THE CITY

50. The City knew, or ought to have known, at least by November 20, 2013, upon receipt of the Tradewind Scientific report, that remedial work was required on the RHVP and the roadway was not safe for vehicular travel.
51. The City hid the Friction Testing Survey Summary Report done by Tradewind Scientific authored November 20, 2013 and did not acknowledge the existence of the report until January, 2019.
52. The City hid this report for approximately 62 months from the public and allowed traffic collisions to continue to occur on a roadway that was unsafe and in a state of non-repair.

53. The City also received a report in November, 2015 from CIMA detailing that the RHVP was an unsafe roadway and confirming it was in a state of non-repair.
54. The City took no remedial action and did not warn the public of the unsafe conditions of the RHVP.
55. Starting in 1990, the City was responsible for the environmental study, engineering studies, design studies and, ultimately, the design, construction and laying of the asphalt and maintenance of the RHVP.
56. The City did not meet its statutory duties under the *Municipal Act, 2001*.
57. Since the opening of the RHVP in November, 2007, the RHVP has been unsafe and in a state of non-repair.
58. The City used or allowed to be used, inferior products to construct the highway including, but not limited to, the asphalt, aggregate and base for the RHVP.
59. The City did not take into consideration that it was building this roadway in an area where a creek was rerouted causing significant water issues which was not considered when the section of the type of design, construction and materials were chosen for the roadway.
60. The City had friction measurement results as early as November 20, 2013 that confirmed that the average grip tester friction numbers of the tested sections of

the RHVP were found to be generally well below the investigatory level 2 standards.

61. The City knew as early as November 20, 2013 that virtually all of the data recorded regarding the centre of lane friction measurements on the RHVP were below the relevant UK investigatory levels.
62. The City made design changes in 2003 when construction was commenced and in November, 2007 the RHVP was open to traffic.
63. The City knew the roadway had high traffic volume which was increasing on a yearly basis.
64. The City did not design or construct a roadway that was safe for any volume of traffic from the day it was opened.
65. CIMA advised the City that there was a potential issue with the pavement skid resistance in its 2013 report and 2015 report.
66. The City did not do any remedial work as a result of this information.
67. The City opened the RHVP in November, 2007 when it knew, or ought to have known, that the products used to construct and pave the roadway were not safe.
68. The City did not do its due diligence and meet its statutory obligations when designing and supervising the construction and the use of the construction materials used in the RHVP.

69. The environmental conditions and uniqueness of the area in which the RHVP would be built were not taken into consideration when the products and materials were chosen to build the RHVP.
70. The City failed the public in not being involved hands-on during the design and construction to deal with these unique issues of the RHVP.

DAMAGES

71. As a result of the collision, Corinne suffered severe and permanent personal injuries including, but not limited to, the following: comminuted fracture of the tip of T1 spinous process, concussion, post concussive symptoms, back pain, neck pain, headaches, change in sleep pattern, anxiety, depression and irritability.
72. She has endured considerable pain and suffering and will continue to experience pain and suffering in the future, loss of enjoyment of life and will continue to suffer from loss of enjoyment of life into the future.
73. As a result of the injuries sustained in the collision, Corinne has been required to attend for physiotherapy and other treatment and will continue to require such treatment in the future.
74. As a result of the negligence of the City, Corinne has suffered a serious permanent impairment of an important physical, mental or psychological function including, but not limited to, the following:

- (a) substantial interference with her usual employment;
- (b) substantial interference with most of her usual activities of daily living;
- (c) impairment of a function necessary for her to provide for her own care and well-being;
- (d) impairment of a function which is important to her usual activities of daily living;
- (e) the impairments have been continuous since the accident and based on medical evidence is not expected to substantially improve; and
- (f) the impairment is of a nature that it is expected to continue without substantial improvement when sustained by persons in similar circumstances.

75. As a result of the negligence of the City, Corinne has suffered a loss of income and will continue to suffer a loss of income up to the time of trial and thereafter into the future.

76. As a result of the negligence of the City, Corinne has suffered a loss of competitive advantage and a decrease in employability, and will continue to suffer such losses up to the time of the trial and thereafter into the future.

77. As a result of the negligence of the City, Corinne has suffered a loss of homemaking and home maintenance capacity, and will continue to suffer such a loss into the future.

78. As a result of the negligence of the City, Corinne has incurred out-of-pocket expenses, and will continue to incur expenses for transportation, rehabilitation, homemaking and housekeeping, increased insurance premiums, the cost of a traffic ticket, and other expenses, the particulars of which will be provided prior to trial.

FLA CLAIMS

79. The Klassen Family claims damages including:

- (a) pecuniary losses both past and present, incurred as a result of injuries to Corinne;
- (b) compensation for the loss of guidance, care and companionship they might reasonably have expected to receive from Corinne;
- (c) compensation for the loss of income and household and home maintenance services they might reasonably have expected to receive from Corinne;
- (d) psychological, medical and other services incurred and will continue to incur as a result of the injuries of Corinne;
- (e) an amount to compensate for the negligent infliction of mental distress, and for the negligent infliction of psychological damages caused by the actions of the City; and,

(f) any out-of-pocket expenses.

80. The Sholer Family claims damages including:

- (a) pecuniary losses both past and present, and reasonable funeral expenses incurred as a result of the death of Michael;
- (b) compensation for the loss of guidance, care and companionship they might reasonably have expected to receive from Michael;
- (c) compensation for the loss of income and household and home maintenance services they might reasonably have expected to receive from Michael;
- (d) psychological, medical and other services incurred and will continue to incur as a result of the death of Michael;
- (e) an amount to compensate for the negligent infliction of mental distress, and for the negligent infliction of psychological damages caused by the actions of the City;
- (f) any out-of-pocket expenses; and,
- (g) inheritance losses and dependency losses they might reasonably have expected to receive from Michael.

PUNITIVE, AGGRAVATED AND/OR EXEMPLARY DAMAGES

81. The conduct of the City is deserving of an award for punitive, aggravated and/or exemplary damages.
82. As a result of the negligence and breach of statutory and common law duties of the City, Class Members have suffered losses to the following:
- (a) significant injuries and impairment physically and psychologically;
 - (b) property damage to their vehicle;
 - (c) out-of-pocket expenses to pay traffic tickets, lawyers/legal representatives, and increased insurance premiums.

STATUTORY GROUNDS

83. The Plaintiffs plead and rely upon the provisions of the following statutes:
- (a) *CJA*;
 - (b) *Insurance Act*, R.S.O. 1990, c18;
 - (d) *Negligence Act*, R.S.O. 1990, cN1;
 - (e) *FLA*;
 - (f) *Trustee Act*, R.S.O. 1990, c. T23;
 - (g) *Municipal Act, 2001*, S.O. 2001, c.25; and,

(j) CPA.

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LAWYERS FOR THE PLAINTIFFS

SCHEDULE "A"

LIST OF DEFINED TERMS

1. **"Brian"** means the Plaintiff, Brian Klassen;
2. **"CIMA"** is an engineering company practising in Ontario and authored reports on the RHVP on behalf of the City;
3. **"City"** means the defendant, The City of Hamilton;
4. **"CJA"** means the *Courts of Justice Act*, R.S.O. 1990 c. C.43;
5. **"Class/Class Members"** means all persons who drove a motor vehicle on the RHVP after November 1, 2007, and who were involved in a motor vehicle accident;
6. **"Corinne"** means the Plaintiff, Corinne Klassen;
7. **"CPA"** means the *Class Proceedings Act*, 1992, S.O. 1992, c.6, as amended;
8. **"Edwin"** means the Plaintiff, Edwin Sholer, father of Michael;
9. **"Estate"** means the Estate of Michael Sholer, by his Estate Administrator, Edwin Sholer;
10. **"Family Class/Family Class Members"** means all *FLA* section 61 family members of Class Members;
11. **"FLA"** means the *Family Law Act*, R.S.O. 19902, c.F.3;
12. **"HTA"** means the *Highway Traffic Act*, R.S.O. 1990, c.H.8;
13. **"Klassen Family"** means Corinne and Brian together;
14. **"Michael"** means the late Michael Sholer;

15. **"Melissa"** means the Plaintiff, Melissa Sholer, sister of Michael;
16. **"Natasha"** means the Plaintiff, Natasha Sholer, sister of Michael;
17. **"Matthew"** means the Plaintiff, Matthew Sholer, brother of Michael;
18. **"RHVP"** means the Red Hill Valley Parkway and all on-ramps and off-ramps, a municipal road in Hamilton;
19. **"Sholer Family"** means Edwin, Melissa, Natasha and Matthew collectively.

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CORINNE KLASSEN et al
Plaintiffs

v.

CITY OF HAMILTON
Defendant

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ACTION COMMENCED IN THE CITY OF
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STATEMENT OF CLAIM

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