

ONTARIO  
SUPERIOR COURT OF JUSTICE

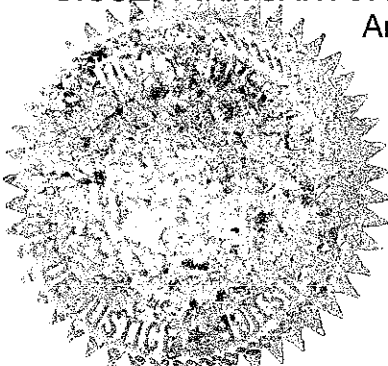
Court File No.

CV-08-363271-00CP

BETWEEN:

JAMES DURLING, JAN ANTHONY THOMAS, JOHN SANTORO,  
GIUSEPPINA SANTORO, ANNA MANCO, FRANCESCO MANCO  
And CESARE MANCO

Plaintiffs



- and -

SUNRISE PROPANE ENERGY GROUP INC., 1367229 ONTARIO INC.,  
1186728 ONTARIO LIMITED, 1452049 ONTARIO INC., VALERY BELAHOV,  
SHAY (SEAN) BEN-MOSHE, LEONID BELAHOV, ARIE BELAHOV,  
2094528 ONTARIO INC., HGT HOLDINGS LTD.,  
TESKEY CONSTRUCTION CO. LTD.  
and TESKEY CONCRETE CO. LTD.

Defendants

PROCEEDINGS UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, C.6, as  
*amended*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

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

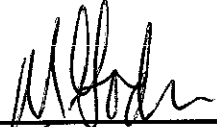
**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with 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.**

Date: Sept. 26, 2008

Issued By:   
FOR REORSTMAN

 Address of Court Office:  
393 University Avenue, 10th Fl  
Toronto, Ontario  
M5G 1E6

**TO: Sunrise Propane Energy Group Inc.**  
54 Murray Rd  
Toronto, ON M3K 1T1

**AND TO: 1367229 Ontario Inc.**  
54 Murray Rd  
Toronto, ON M3K 1T1

**AND TO: 1186728 Ontario Limited**  
54 Murray Rd  
Toronto, ON M3K 1T1

**AND TO: 1452049 Ontario Inc.**  
54 Murray Rd  
Toronto, ON M3K 1T1

**AND TO: Valery Belahov**  
8 Harvey Court

- AND TO:** Richmond Hill, ON L4C 5R2  
**Shay (Sean) Ben-Moshe**  
149 Bentoak Crescent  
Thornhill, Ontario L4J 8S6
- AND TO:** **Leonid Belahov**  
114 Regent Street  
Richmond Hill, ON L4C 9P3
- AND TO:** **Arie Belahov**  
114 Regent Street  
Richmond Hill, Ontario L4C 9P3
- AND TO:** **2094528 Ontario Inc.**  
20 Murray Road  
Toronto, Ontario M3K 1T2
- AND TO:** **HGT Holdings Ltd.**  
20 Murray Road  
Toronto, Ontario M3K 1T2
- AND TO:** **Teskey Construction Co. Ltd.**  
20 Murray Road  
Toronto, Ontario M3K 1T2
- AND TO:** **Teskey Concrete Co. Ltd.**  
20 Murray Road  
Toronto, Ontario M3K 1T2

**CLAIM**

1. The plaintiffs claim on their own behalf and on behalf of the class, against all defendants:

- (a) Non-pecuniary general damages in the sum of \$50 million dollars;
- (b) Pecuniary general damages in the sum of \$50 million dollars;
- (c) Special damages in the sum of \$50 million;
- (d) Punitive damages in the sum of \$10 million dollars;
- (e) Aggravated damages in the sum of \$10 million dollars;
- (f) A declaration that Sunrise Propane Energy Group Inc., 1367229 Ontario Inc., 1186728 Ontario Limited and 1452049 Ontario Inc. form one economic unit or one common enterprise and each is therefore vicariously liable for the others' acts and omissions;
- (e) A declaration that 2094528 Ontario Inc., Teskey Construction Co. Ltd., Teskey Concrete Co. Ltd. and HGT Holdings Ltd. form one economic unit or one common enterprise and each is therefore vicariously liable for the others' acts and omissions;
- (f) Prejudgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990 as amended;
- (g) Costs of this action on a partial indemnity basis, plus, pursuant to Section 26(9) of the *Class Proceedings Act*, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes;
- (h) Such further and other relief as this Honourable Court deems just.

**The Parties*****The Plaintiffs***

2. The plaintiff, James Durling was at all material times an owner and occupant, along with his wife, of the property located at 49 Murray Road, Toronto, Ontario.
  
3. The plaintiff, Jan Anthony Thomas, was at all material times the owner and occupant of the property located at 55 George Appleton Way, Unit 1035, Toronto, Ontario.
  
4. The plaintiff, John Santoro, was at all material times the owner of the property located at 29 Murray Road, Toronto, Ontario, which he rented to a tenant.
  
5. The plaintiff, Guiseppina Santoro, was at all material times an owner and occupant, along with her husband, of the property located at 174 Spalding Road, Toronto, Ontario.
  
6. The plaintiffs, Anna Manco and Francesco Manco, were at all material times owners and occupants of the property located at 149 Plewes Road, Toronto, Ontario. The plaintiff Cesare Manco is the son of Anna and Francesco and was at all material times an occupant of that property.

***The Sunrise Companies***

7. The defendant Sunrise Propane Energy Group Inc. (hereinafter "Sunrise Propane") is a corporation incorporated under the laws of Ontario, that supplies propane and industrial gases through a facility located at 54 and 62 Murray Road, Toronto, Ontario, operating under the names Sunrise Propane Industrial Gases and Sunrise Propane Industrial Cylinders.
  
8. The defendant 1367229 Ontario Inc. is a corporation incorporated under the laws of Ontario, carrying on business as Sunrise Propane, and is the holder of an authorization to operate a propane filling plant pursuant to Ontario Regulation 211/01, made under the *Technical Standards and Safety Act*, S.O. 2000 c.16. 1367229 Ontario Inc. is named as a tenant on the lease of the property located at 54 and 62 Murray Road.
  
9. The defendant 1186728 Ontario Limited is a corporation incorporated under the laws of Ontario, carrying on business as Sunrise Propane, and is the holder of an authorization to operate a propane filling plant pursuant to Ontario Regulation 211/01, made under the *Technical Standards and Safety Act*, S.O. 2000 c.16.
  
10. The defendant 1452049 Ontario Inc. is a corporation incorporated under the laws of Ontario, carrying on business as Sunrise Propane, and is the owner and operator of a fleet of trucks/tank trailers used for the purpose of transporting propane and other industrial gases to and from the Sunrise Propane facility.

11. Together, Sunrise Propane, 1367229 Ontario Inc., 1186728 Ontario Limited, and 1452049 Ontario Inc. (hereinafter "the Sunrise Companies") operate a facility located at 48 Murray Road and at 54 and 62 Murray Road, Toronto, Ontario, supplying propane and industrial gases, and operating under the names Sunrise Propane, Sunrise Propane Industrial Gases and Sunrise Propane Industrial Cylinders (hereinafter "the Facility").
12. At all material times Sunrise Propane, 1367229 Ontario Inc., 1186728 Ontario Limited, and 1452049 Ontario Inc. were each agent for the others and are therefore vicariously liable for the acts and omissions of the others as particularized below.

***The Sunrise Officers and Directors***

13. The defendant Valery (Valeri) Belahov is a resident of Richmond Hill, Ontario, and was at all material times an officer and director of Sunrise Propane and 1367229 Ontario Inc.
14. The defendant Shay (Sean) Ben Moshe is a resident of Thornhill, Ontario, and was at all material times an officer and director of Sunrise Propane, 1367229 Ontario Inc. and 1186728 Ontario Ltd.

15. The defendant Leonid Belahov is a resident of Richmond Hill, Ontario, and was at all material times an officer and director of 1367229 Ontario Inc.
16. The defendant Arie Belahov is a resident of Richmond Hill, Ontario, and was at all material times an officer and director of 1186728 Ontario Ltd.

***The Teskey Group of Companies***

17. The defendant 2094528 Ontario Inc. (hereinafter "the Teskey Numbered Company") is a corporation incorporated under the laws of Ontario and was at all material times the owner of the property municipally described as 54 and 62 Murray Road, Toronto, Ontario and owner of the property municipally described as 20 Murray Road, Toronto, Ontario.
18. The defendant HGT Holdings Ltd. (hereinafter "HGT") is a corporation incorporated under the laws of Ontario and was at all material times the owner of the property municipally described as 48 Murray Road, Toronto, Ontario.
19. The Teskey Numbered Company and HGT therefore each own part of the property where the Facility is located, which is hereinafter described as "the Property".
20. The defendants, Teskey Construction Co. Ltd. and Teskey Concrete Co. Ltd. (hereinafter "Teskey Construction" and "Teskey Concrete") are corporations

incorporated under the laws of Ontario who lease the Property from the Teskey Numbered Company and HGT. At all material times Teskey Construction, Teskey Concrete, HGT and the Teskey Numbered Company were operated as one economic unit or one economic enterprise (hereinafter "the Teskey Companies"). Alternatively, the Teskey Numbered Company and HGT were operated as the alter egos of Teskey Construction and Teskey Concrete.

21. At all material times Teskey Construction, Teskey Concrete, HGT and the Teskey Numbered Company were each agent for the other and vicariously liable for the acts and omissions of the others as particularized below.
  
22. The plaintiffs plead that all defendants can only act through their employees, directors, officers and agents and are vicariously liable for their acts and omissions as hereinafter pleaded. The acts and omissions particularized and alleged in this claim to have been done by the defendants were authorized, ordered or done by each of the defendants' employees, directors, officers and agents while engaging in the management, direction, control and transaction of business of the defendants and are therefore acts and omissions for which the defendants are vicariously liable.

### **Class Definition**

23. The plaintiffs bring this action pursuant to the Class Proceedings Act, 1992 on behalf of the following (the "Class"): All persons who were present or who

owned, leased, rented and/or occupied any properties located within the area of the City of Toronto bounded by Keele Street, Highway 401, Sheppard Avenue and Dufferin Street on August 10<sup>th</sup>, 2008, when the hereinafter described explosions occurred.

### **Facts Supporting Class Members' Claim Against the Defendants**

#### ***The explosions and fire***

24. On or about August 10<sup>th</sup>, 2008, at approximately 4:00 a.m. a series of explosions occurred at the Facility caused by the release of propane into the atmosphere and resulting in a fire at the Facility. Several massive fireballs were released into the air from the Facility, visible to many of the class members.
25. The series of explosions could be heard and felt by the plaintiffs and other class members. From the perspective of area residents, the noise, vibrations and fireballs made it appear as though some kind of bomb had gone off or explosion had taken place.
26. The explosions and fire caused damage to the surrounding properties, shattering windows and doors and setting buildings on fire. Noxious fumes, smoke, gas and other chemicals and contaminants, including asbestos were released from the facility as a result of the explosion and fire. Waste and debris from the explosion landed on the properties of the plaintiffs and class members and the residue of fumes, gas and other chemicals have contaminated the properties of

the plaintiffs and other class members. At the time of pleading, the properties remain contaminated.

27. As a result of the explosions and fire, the Toronto Police ordered a non-compulsory evacuation of everyone within 1.6 km of the facility, encompassing the area bounded by Keele Street, Highway 401, Sheppard Avenue and Dufferin Street.

***Facts regarding the Sunrise Companies***

28. Sunrise Propane was incorporated in 2004. Since that time the Sunrise Companies have been operating a business receiving, storing and distributing propane and other industrial gases out of the Facility. The Sunrise Companies lease the Property where the Facility is located. 1367229 Ontario Inc. is named as a tenant on the lease, though all of the Sunrise Companies operate on the Property. The facility is located in a well-established residential community and is open 24 hours a day for the supply of propane.
29. Propane is a gas used as fuel for a variety of purposes, including heating, cooking and as a fuel for certain vehicles. The Sunrise Companies supplied bulk propane as well as propane for home use.

30. From approximately 2004 and ongoing the Sunrise Companies currently have had control of the Property where the Facility is located by virtue of their lease of the Property and operation of a business on the Property.
31. Propane is a highly inflammable material and appropriate precautions should be taken when operating a Facility that stores and distributes propane. The Sunrise Companies permitted certain unsafe practices at the Facility. Specifically, the transfer of propane from one truck to another was a frequent and routine practice at the Facility.
32. The trucks involved in these transfers were owned and operated by 1452049 Ontario Inc. on behalf of the Sunrise Companies. As the owner of these trucks 1452049 Ontario Inc. is vicariously liable for the acts and omissions of the drivers of the trucks pursuant to *Highway Traffic Act*, R.S.O. 1990, c.H-8, s. 207(1). The Sunrise Companies are collectively liable for these acts as set out in paragraphs 33-38.
33. Immediately prior to the explosions and fire which occurred at the Facility on August 10<sup>th</sup>, 2008, one or more truck drivers at the Facility engaged in an illegal truck-to-truck propane transfer.
34. Truck to truck propane transfers are prohibited by law in Ontario. On or about November 9, 2006, an inspector from the Technical Standards and Safety

Authority conducted a spot inspection of the Facility and determined that the Facility had been carrying out truck-to-truck propane transfers. The inspector issued a cease and desist order pursuant to Section 21 of the *Technical Standards and Safety Act* that was served on the defendant Shay (Sean) Ben-Moshe.

35. In spite of the order, the Sunrise Companies, including 1452049 Ontario Inc., continued to routinely allow the unsafe practice of truck-to-truck propane transfers. The Sunrise Companies and their officers and directors failed to take reasonable precautions to ensure truck-to-truck propane transfers were not permitted at the Facility. The continuation of the truck-to-truck propane transfers indicated a lack of commitment on the part of the Sunrise Companies and their officers and directors to safety, and a general culture of lack of safety that persisted at the Facility. It also caused an immediate threat to public safety.
  
36. A further unsafe practice that routinely occurred at the Facility was the lighting and smoking of cigarettes in close proximity to propane and other inflammable substances, by employees of the Sunrise Companies and other people accessing the Property with their permission. The Sunrise Companies and their officers and directors failed to take reasonable precautions to ensure the lighting and smoking of cigarettes in close proximity to inflammable substances were not permitted at the Facility.

37. 1452049 Ontario Inc. failed to ensure that the drivers of the trucks which they owned did not smoke while on the property. 1452049 is vicariously liable for the acts and omissions of the drivers under the *Highway Traffic Act*, s. 207(1), as set out above.
38. A regulation to the *Technical Standards and Safety Act* requires that the operator of a propane filling facility apply for and receive permission from the Director before expanding or making changes to the operation of the facility. The Sunrise Propane facility fell within the definition of "propane filling facility". The officers and directors of the Sunrise Companies directed changes to the Facility without applying for or receiving permission from the Director. As a result, those changes were not reviewed or inspected by the Ministry to confirm that they complied with existing safety standards. The changes did not, in fact, comply with safety standards.
39. The Sunrise Companies are collectively liable to the plaintiffs and class members for acts or omissions attributable to one or more of the three companies because:
- (a) The acts and omissions set out in the claim were done by the Sunrise Companies in pursuit of their common enterprise;
  - (b) Sunrise Propane is the directing mind of 1367229 Ontario Inc., 1186728 Ontario Limited and 1452049 Ontario Inc.;
  - (c) The Sunrise Companies collectively carried out unlawful acts as described in paragraphs 33-38.

- (d) The Sunrise Companies prepare their financial statements on a consolidated basis;
- (e) Sunrise Propane controls the day-to-day operations of 1367229 Ontario Inc., 1186728 Ontario Limited and 1452049 Ontario Inc. and operates these companies as alter-egos of Sunrise Propane;
- (f) The Sunrise Companies have common officers and directors;
- (g) The Sunrise Companies carry on business jointly and are operated as one economic unit or one economic enterprise;
- (h) All of the companies held themselves out to the public and operate under the name Sunrise Propane;
- (i) Each of the Sunrise Companies was the agent of the other;

***Facts regarding the ownership of the property and relationship between the Teskey Group of companies***

40. On December 28<sup>th</sup>, 2007 the property located at 54 and 62 Murray Road was purchased by the Teskey Numbered Company. The Teskey Numbered Company was the owner of that property at the time of the explosions hereinafter described.
41. The Teskey Numbered Company purchased the property located at 54 and 62 Murray Road from the defendant Teskey Construction and then leased that property back to Teskey Construction or Teskey Concrete or both of them who was the lessee of that property at the time of the explosions. Teskey Construction purchased that property on March 1<sup>st</sup>, 1996 and continued to own the property at the time that the Sunrise Companies took possession of that

property. Teskey Construction leased that property to one or more of the Sunrise Companies. In leasing the property, Teskey Construction established specific standards and procedures regarding their supervision and control of that property which remained in place when the Teskey Numbered Company assumed legal ownership of that property and were in place at the time of the explosions and fire.

42. The transfer of the property to the Teskey Numbered Company did not change who controlled the property at 54 and 62 Murray Road, as the Teskey Numbered Company was, in effect, the alter ego of Teskey Construction or completely dominated by Teskey Construction and as the property was leased back to Teskey Construction or Teskey Concrete or both of them. That property remained under the control of Teskey Construction and its officers and directors, or subsidiaries, as described below.
43. On July 30<sup>th</sup>, 2007 the property located at 48 Murray Road was purchased by HGT, who was the owner of that property at the time of the explosions hereinafter described.
44. HGT purchased the property located at 48 Murray Road from the defendant Teskey Concrete and then leased that property back to Teskey Concrete or Teskey Construction or both of them who was the lessee of that property at the time of the explosions. Teskey Concrete purchased that property on March 1<sup>st</sup>,

1996 and continued to own the property at the time that the Sunrise Companies took possession of that property. Teskey Concrete leased that property to one or more of the Sunrise Companies. In leasing the property, Teskey Concrete established specific standards and procedures regarding their supervision and control of that property which remained in place when the HGT assumed legal ownership of that property and were in place at the time of the explosions and fire.

45. The transfer of the property to HGT did not change who controlled the property at 48 Murray Road, as the HGT was, in effect, the alter ego of Teskey Concrete or completely dominated by Teskey Concrete and as the property was leased back to Teskey Concrete or Teskey Construction or both of them. That property remained under the control of Teskey Concrete and its officers and directors, or subsidiaries, as described below.
  
46. The Teskey Companies were operated as one economic unit or a single group enterprise as follows:
  - (a) Each of the four companies is a parent or subsidiary of the others or is an affiliate of the others;
  - (b) Each of the four companies is the agent of the others;
  - (c) All four companies have the same officers and directors;
  - (d) All four companies have common offices and employees;
  - (e) All four companies operate under the same name;

- (f) The Teskey Companies hold themselves out to the public as a single company;
- (g) The residents in the area surrounding the Teskey Companies considered the Teskey Companies to own the properties located at 48 Murray Road, 54 and 62 Murray Road and 20 Murray Road and to be in control of all properties;
- (h) The Teskey Companies prepare their financial statements on a consolidated basis;
- (i) The acts and omissions set out in the claim were done by the Teskey Companies in pursuit of their common enterprise;
- (j) The Teskey Companies carry on business jointly and are operated as one economic unit or one economic enterprise.

47. While the Teskey Numbered Company and HGT held title to the Property at the time of the explosions and fire, all of the Teskey Companies are collectively liable to the plaintiffs because of their operation as one economic unit or a single group enterprise. Each company is vicariously liable for the acts and omission of the others.

48. Alternatively, Teskey Construction and Teskey Concrete are the controlling shareholders of the Teskey Numbered Company and HGT and should be held liable for the acts and omissions of the Teskey Numbered Company and HGT because:

- (a) They exercised complete control over the Teskey Numbered Company and HGT;
- (b) The Teskey Numbered Company and HGT had no independent decision making power and all decisions were made by Teskey Construction and Teskey Concrete;

- (c) They treated the Teskey Numbered Company and HGT like alter egos of Teskey Construction and Teskey Concrete.
- (d) They operated the Teskey Numbered Company and HGT in a manner that condoned illegal activity at the Property, specifically, the unlawful activities pleaded at paragraphs 33-38;
- (e) They failed to take steps to prevent or correct the illegal activity at the Property or have the Teskey Numbered Company or HGT take appropriate steps, when they knew of the illegal activity and had the power to take steps to prevent or correct the illegal activity.

49. The Teskey Companies were at all material times in control of the Property and acted as landlords to the Property where the Sunrise Propane Facility was located and leased the Property to one or more of the Sunrise Companies. The Teskey Companies have their head office located at 20 Murray Road, in close proximity to the Facility. As a result of their role as landlords and as a further result of their close geographic proximity to the Facility, the Teskey Companies exercised control over the Property and the Facility.

### **Plaintiffs' Individual Circumstances**

#### ***James Durling***

50. James Durling and his wife, Bice Amoroso, own a house located at 49 Murray Road, directly across from the Facility. Mr. Durling was home with his wife at the time of the explosions and was awoken when his house shook violently. He witnessed huge flames in the sky immediately in front of his house.

51. Mr. Durling and his wife immediately fled their home, running through broken glass and other debris. They ran several blocks along the street before they saw a police officer who advised them to keep running. They eventually found someone who offered to drive both of them to the hospital.
52. The roof of Mr. Durling's house collapsed on top of him, causing a deep cut to his head that required 6 stitches. He also suffered severe respiratory problems due to the inhalation of smoke and noxious fumes. Mr. Durling's wife suffered severe bruising on her body as a result of the collapse of their home and respiratory problems.
53. Mr. Durling's house was severely damaged by the explosion and fire. The roof collapsed, doors were blown off and windows shattered. His house was initially declared condemned by the City of Toronto, though this designation was later lifted. The house remains entirely uninhabitable and will likely have to be rebuilt. Durling and his wife lost all of the contents of their home in the explosion and fire.
54. As a result of feeling and seeing the explosions and as a result of the physical injuries he and his wife suffered, Mr. Durling experienced panic and terror and feared for his life and the life of his wife. He has experienced emotional distress. He has lost time from work and sustained a loss of income.
55. As a result of the explosions and fire Durling's property has been severely

damaged. In essence he has lost his house and its entire contents. His property has potentially been contaminated by debris, fumes and other chemicals. He has suffered a diminution in the resale value of his property as a result of the contamination and the stigma of being located near the Facility, if the Facility is allowed to continue operating as a facility for the storage and distribution of propane and other gases.

56. As a consequence of the damage to their home, Mr. Durling and his wife left their home following the explosion. After fleeing their home Mr. Durling and his wife stayed with relatives who provided them with both accommodation and food. He consequently incurred a moral obligation to those family members to compensate them.

***Jan Anthony Thomas***

57. Jan Anthony Thomas owns a condominium townhouse located at 55 George Appleton Way, Unit 1035, where he resides with his fiancée. He was home with his fiancée at the time of the explosions and was suddenly awoken when he felt his property shake severely. He and his fiancée were subsequently evacuated from their home.
58. As a result of feeling and seeing the explosions Mr. Thomas experienced panic and terror and feared for his life and the life of his fiancée. He has experienced emotional distress.

59. As a result of the explosions and fire Mr. Thomas's property has been damaged and potentially contaminated by debris, fumes and other chemicals. He has suffered a diminution in the resale value of his property as a result of the contamination and the stigma of being located near the Facility, if the Facility is allowed to continue operating as a facility for the storage and distribution of propane and other gases.
60. As a precaution, Mr. Thomas and his fiancée left their home following the explosion. After fleeing his home Mr. Thomas and his fiancée stayed with relatives who provided them with both accommodation and food. He consequently incurred a moral obligation to those family members to compensate them.

***John Santoro***

61. John Santoro is the owner of a house located at 29 Murray Road, across the street from the Facility. At the time of the explosion he rented the house to two tenants for approximately \$1200/month plus utilities.
62. Mr. Santoro's house suffered extensive damage in the explosion and fire, including damage to the windows, walls, chimney and tiles. The house requires extensive repair. Mr. Santoro's tenants were forced to flee the house and could not initially return due to the evacuation and damage to the house. One of the tenants has elected not to return to the house.

63. As a result of the explosions and fire Mr. Santoro's property has been damaged and potentially contaminated by debris, fumes and other chemicals. He has suffered a diminution in the resale value of his property as a result of the contamination and the stigma of being located near the Facility, if the Facility is allowed to continue operating as a facility for the storage and distribution of propane and other gases.
64. In addition, Mr. Santoro has lost rental income as one of his tenants chose not to return to the house following the explosion.

***Giuseppina Santoro***

65. Giuseppina Santoro is the mother of John Santoro and co-owns a house located at 174 Spalding Road where she resides with her husband. She was home at the time of the explosion and felt and witnessed the explosions. Mrs. Santoro and her husband were subsequently evacuated from their home.
66. As a result of feeling and seeing the explosions Mrs. Santoro experienced panic and terror and feared for her life and the life of her husband. She has experienced emotional distress.
67. As a result of the explosions and fire Mrs. Santoro's house suffered extensive damage. At the time of pleading the house remains uninhabitable. Mrs. Santoro's property has been damaged and potentially contaminated by debris,

fumes and other chemicals. She has suffered a diminution in the resale value of her property as a result of the contamination and the stigma of being located near the Facility, if the facility is allowed to continue operating as a Facility for the storage and distribution of propane and other gases.

68. As a consequence of the damage to their home, Mrs. Santoro and her husband left their home following the explosion. After fleeing their home Mrs. Santoro and her husband stayed with their daughter and son in law who provided them with both accommodation and food. She consequently incurred a moral obligation to those friends to compensate them.

***Francesco Manco, Anna Manco and Cesare Manco***

69. Francesco and Anna Manco own a house located at 149 Plewes Road where they reside with their three children, Cesare, Christina and Bianca. The family was home at the time of the explosions and awoke to hear a loud bang and feel their house shaking. The front and back doors of the house flew open and cracks appeared in the ceiling. The family fled the house in their sleepwear with no shoes.

70. While fleeing, Francesco, Anna and Cesare Manco witnessed large fireballs in the sky. As a result of feeling and seeing the explosions Francesco, Anna and Cesare experienced panic and terror and feared for their lives and the lives of their family members.

71. Anna Manco had severe difficulties breathing following the explosion and was taken to the emergency room as she feared that she was having a heart attack. She experienced emotional distress as a result of her illness and as a result of witnessing the explosions.
72. Francesco and Cesare have experienced emotional distress as a result of the illness of Anna and as a result of the explosions and the impact on their family.
73. Cesare Manco is employed as a plumber and his truck containing all of his equipment was parked at his home at the time of the explosions. He was unable to work for several days following the explosion as he was not permitted to recover his truck and equipment.
74. As a result of the explosions and fire the Manco family's house suffered extensive damage and remained uninhabitable for several weeks. At the time of the explosions the Mancos were completing a major renovation of their home. The Manco's property has been damaged and potentially contaminated by debris, fumes and other chemicals. They have suffered a diminution in the resale value of their property as a result of the contamination and the stigma of being located near the Facility, if the facility is allowed to continue operating as a Facility for the storage and distribution of propane and other gases.

75. As a consequence of the damage to their home, Francesco, Anna and Cesare Manco left their home following the explosion. After fleeing their home they stayed at a hotel for several weeks. Francesco, Anna and Cesare incurred expenses for lodging and food as a result of being unable to return to their home. While the Manco family has now returned to their home, the house requires further repairs and it is likely that the family will be unable to reside in the house while the repairs are being completed. Francesco, Anna and Cesare will therefore incur further expenses for food and lodging.

## **CAUSES OF ACTION**

### **A. Strict Liability**

76. The propane and other industrial gases distributed by the Sunrise Companies through the Facility are highly dangerous. Under the common law of Ontario, the storage and distribution of such large quantities of propane and other combustible and inflammable gases constitutes a non-natural use of the Facility. The Sunrise Companies are therefore strictly liable for damage caused by the escape of propane and other gases.

77. On the morning of August 10<sup>th</sup>, 2008, the Sunrise Companies failed to prevent the escape of a large quantity of propane from the Facility. The escape of the propane caused a series of explosions and a fire which caused personal injury to class members and damage to class members' property, and resulted in an

evacuation of the surrounding area. The Sunrise Companies are therefore liable for all damages flowing from the escape of propane from the Facility.

**B. Nuisance**

78. The escape of propane and the explosions and fire from the Facility substantially and unreasonably interfered with the plaintiffs' and class members' use and enjoyment of their lands and properties. Alternatively, the escape of contaminants and subsequent contamination of the plaintiffs' and other class members' properties substantially and unreasonably interfered with the plaintiffs' and class members' use and enjoyment of their lands and properties. The Sunrise Companies are therefore liable to the plaintiffs and other class members in nuisance. They are strictly liable for the nuisance.
79. The Sunrise Companies are liable in nuisance as operators of the Facility from which the nuisance emanated. As operators of the Facility, they have management or control of the Facility.
80. The Teskey Companies are also liable because they owned the Property and leased the Property to Teskey Construction and Teskey Concrete, who in turn sublease the Property to one or more of the Sunrise Companies. As landlords, the Teskey Companies exercised control over the Property, through the terms of the sublease and the operation of the *Commercial Tenancies Act*, R.S.O. 1990 c.L-7. Furthermore, the Teskey Companies are liable because the nuisance

arose from a use of the Property that is contemplated by the lease with one or more of the Sunrise Companies, that is, the operation of a propane storage and distribution facility.

81. By virtue of their operation as one economic unit or, alternatively, by virtue of the complete control exercised by Teskey Construction and Teskey Concrete over the Teskey Numbered Company and HGT, all of the Teskey Companies had control over the Property and all four companies are therefore liable to the plaintiffs and other class members in nuisance.
82. The escape of propane and other contaminants and the explosions and fire constitute a public nuisance causing harm to the environment under the *Environmental Bill of Rights*, S.O. 1993, C. 28. The plaintiffs plead and rely on Section 103 of that statute which permits any person who suffered personal injury or direct economic loss as a result of a public nuisance causing harm to the environment to bring an action in respect of such losses.
83. The plaintiffs and other class members suffered damages as a result of the nuisance including physical injury, psychiatric injury, emotional distress, damage to their properties and alternatively contamination of their properties, and damage to or loss of their chattels. These damages were a reasonably foreseeable result of the nuisance for which the defendants the Sunrise Companies and the Teskey Companies are liable.

**C. Trespass**

84. The Sunrise Companies are liable in trespass to the plaintiffs and other class members, in that they have discharged or have caused the discharge of contaminants onto lands owned and occupied by the plaintiffs and other class members. Specifically, the escape of propane, explosions and fire caused the release of propane, noxious fumes, debris and other contaminants onto the lands owned and occupied by the plaintiffs and other class members.
85. The discharge of the contaminants onto the lands owned and occupied by the plaintiffs and other class members caused damage to these lands and directly interfered with the use and enjoyment of the lands.

**D. Negligence**

86. All defendants are liable to the plaintiffs and other class members in negligence.

***Negligence of the Sunrise Companies***

87. The Sunrise Companies, as operators of a facility that stores and distributes large quantities of propane and other industrial gases, owed a duty of care to the plaintiffs and other class members to carefully monitor the facility and protect against explosions and fire caused by the escape or mishandling of propane or other combustible gases.

88. The circumstances of the Sunrise Companies being in the business of storing and supplying large quantities of propane and other industrial gases at a facility located in close proximity to a residential neighbourhood are such that the Sunrise Companies were under an obligation to be mindful of the safety of the plaintiffs and other class members when storing, distributing and supplying propane and other industrial gases. This is especially true since the Sunrise Companies knew that if any of the propane or gases escaped, causing an explosion and/or a fire, it was likely to cause damage to the class members' property and personal injury to the class members, including both physical injury and psychological trauma.

89. There was a sufficient degree of proximity between the plaintiffs and other class members and the Sunrise Companies to establish a duty of care because:

- (a) It was reasonable for the plaintiffs and other class members to expect that the Sunrise Companies had implemented adequate safeguards to ensure that the storage, supply and distribution of propane and other gases from the Facility was safe;
- (b) The nature of the Sunrise Companies' business, storing, supplying and distributing propane and other gases, had a direct causal connection to the explosions and fire that caused the plaintiffs and other class members to suffer damages;
- (c) The plaintiffs and other class members were vulnerable to any failure on the part of the Sunrise Companies to ensure the safety of the Facility, as they had no way of ensuring sufficient safety measures were taken, and no way of protecting themselves if sufficient measures were not taken.

90. The Sunrise Companies breached their duty of care to the plaintiffs and to the class members, as particularized below:

- (a) They breached the stop order issued by the Technical Standards and Safety Authority that they cease and desist truck-to-truck propane transfers;
- (b) They routinely allowed the unsafe practice of transferring propane from truck to truck, causing an immediate threat to public safety;
- (c) They breached the order of the Technical Standards and Safety Authority that they post adequate signage indicating that smoking was prohibited on the Property;
- (d) They failed to prevent employees and other people accessing the Property from smoking on the Property and in close proximity to inflammable material;
- (e) They breached Ontario Regulation 211/01 to the *Technical Standards and Safety Act*, requiring that they apply for and receive permission from the Director before expanding or changing the operation of the Facility;
- (f) They expanded or changed the Facility in a manner that made the operation of the facility unsafe;
- (g) They failed to provide adequate equipment or procedures for the construction and continued operation of the Facility;
- (h) They failed to provide adequate safety equipment or procedures to prevent the escape of propane or other gases from the Facility;
- (i) They failed to provide adequate equipment or procedures to detect the escape of propane or other gases from the Facility;
- (j) They failed to provide necessary facilities, equipment or procedures to ensure that any escape of propane or other gasses from the Facility would be contained so as not to affect the surrounding properties, including the property of the class members;

- (k) They failed to provide necessary facilities, equipment or procedures to ensure that any explosion or fire at the Facility was contained and did not cause damage to the surrounding properties, including the properties of the class members;
- (l) They failed to ensure that an adequate number of employees operated the Facility, and failed to ensure that those employees who did operate the Facility were properly qualified, properly trained and properly supervised;
- (m) They failed to ensure that customers accessing the Facility for the supply of propane and other gases were properly supervised;
- (n) They failed to operate the Facility in reasonably safe and prudent manner;
- (o) They failed to monitor or inspect the Facility in a reasonably safe and prudent manner;
- (p) They failed to comply with Section 14 of the *Environmental Protection Act*, R.S.O. 1990 c.E-19 by discharging or permitting the discharge of contaminants into the natural environment, causing an adverse affect.
- (q) They failed to comply with Section 13 of O. Reg. 214/01, regulation to the *Technical Standards and Safety Act 2000*, S.O. 2000 c.16, as they failed to ensure the safe operating condition of equipment used in the handling of a compressed gas, specifically propane;
- (r) They perpetuated a culture of lack of safety at the Facility;
- (s) They failed to respond in an adequate and timely manner to the explosions and fire.
- (t) They breached the *Occupier's Liability Act*, R.S.O. 1990, c.O-2 as particularized below.

91. The Sunrise Companies are also occupiers within the meaning of the *Occupier's Liability Act*, R.S.O. 1990, c. O-2, and owe a duty of care to the plaintiffs and

other class members as neighbours of the Property to ensure that they do not suffer damages as a result of the condition or activities carried on at the Property.

92. The Sunrise Companies breached their duty of care to the plaintiffs and other class members by failing to take steps to ensure that the business of storing and supplying propane and other industrial gases was operated in a reasonable and prudent manner.
93. The Sunrise Companies also breached their duty of care to the plaintiffs and other class members by failing to maintain the Property as reasonably safe, contrary to the *Occupier's Liability Act*.

***Negligence of the Sunrise Officers and Directors***

94. Valery Belahov, Shay Ben-Moshe, Leonid Belahov and Arie Belahov (hereinafter "the Officers and Directors"), as officers and directors of the Sunrise Companies, owed a duty of care to the plaintiffs and other class members to ensure that the Facility was operated in a safe and prudent manner so as to protect against explosions and fire caused by the escape or mishandling of propane or other combustible gases.
95. There is sufficient proximity between the Sunrise Officers and Directors and the plaintiffs and other class members to establish a duty of care because:

- (a) It was reasonable for the plaintiffs and other class members to expect that the Sunrise Officers and Directors had implemented adequate safeguards to ensure that the storage, supply and distribution of propane and other gases from the Facility was safe;
- (b) The Sunrise Officers and Directors had a duty to ensure that the Sunrise Companies complied with all relevant provincial standards relevant to the storage and distribution of propane, including the *Environmental Protection Act* and the *Technical Standards and Safety Act* and relevant regulations;
- (c) The plaintiffs and other class members were vulnerable to any failure on the part of the Sunrise Companies to ensure the safety of the Facility, as they had no way of ensuring sufficient safety measures were taken, and no way of protecting themselves if sufficient measures were not taken.

96. The Officers and Directors failed in their duty as set out below:

- (a) They failed to prevent employees and other persons authorized to enter the site from engaging in truck-to-truck transfers of propane, contrary to Ontario Regulation 211/01 to the *Technical Standards and Safety Act*;
- (b) They condoned and/or authorized employees to participate in repeated breaches of the order of the Technical Standards and Safety Authority by failing to take precautions to ensure truck-to-truck transfers of propane were not permitted at the Facility;
- (c) They failed to prevent employees and other persons authorized to enter the site from lighting and smoking cigarettes while on the site, in close proximity to inflammable materials, when they knew or ought to have known that this was routinely happening at the site;
- (d) They arranged for the Facility to be significantly expanded without applying for authorization or approval from the Technical Standards and Safety Authority, contrary to Regulation 211/01, and knew that such changes did not comply with statutory safety standards for the storage and distribution of propane;

- (e) They knew the Facility was being operated in an unsafe manner, contrary to law, and took no steps to correct the situation;
- (f) They created and/or perpetuated a culture of lack of safety at the Facility;
- (g) They failed to respond in an adequate or timely manner to the explosions and fire.

97. The officers and directors also breached their duty under the *Ontario Business Corporations Act* R.S.O. 1990 c.B-16, Section 134, to act honestly and in good faith and to exercise the care, diligence and skill of a reasonably prudent person. Particulars are described above in paragraph 60.

#### ***Negligence of the Teskey Companies***

98. The Teskey Companies, as owners and tenants of the Property where the Facility is located, owed a duty of care to the plaintiffs and other class members to ensure that the business located on the Property was operated in a reasonable, safe and prudent manner.

99. There is a sufficient degree of proximity between the Teskey Companies and the plaintiffs and other class members to establish a duty of care because:

- (a) The Teskey Companies were at all material times the owners and tenants of properties zoned industrial located in close proximity to a residential neighbourhood, and the class members were owners and occupiers of the surrounding properties;

- (b) The circumstances of the Sunrise Companies being in the business of storing and supplying large quantities of propane and other industrial gases at a Facility located in close proximity to a residential neighbourhood are such that the Teskey Companies were under an obligation to be mindful of the safety of the plaintiffs and other class members when exercising control over the Property as outlined below. This is especially true since the Teskey Companies knew that if any of the propane or gases escaped, causing an explosion and/or a fire, it was likely to cause damage to the class members' property and personal injury to the class members, including both physical injury and psychological trauma;
- (c) The Teskey Companies exercised control over the Sunrise Companies by virtue of their ownership and tenancy of the Property and powers as landlords under the sublease with one or more of the Sunrise Companies and under the *Commercial Tenancies Act*;
- (d) The Teskey Companies all exercised control over the Property by virtue of the operation of the Teskey Companies as one economic unit;
- (e) It was reasonable for the plaintiffs and other class members to expect the Teskey Companies to use their control to implement adequate safeguards and monitoring procedures to ensure that the Facility was being operated in a safe manner;
- (f) The plaintiffs and other class members were vulnerable to any failure on the part of the Teskey Companies to ensure the safety of the Facility, as they had no way of ensuring sufficient safety measures were taken, and no way of protecting themselves if sufficient measures were not taken.

100. The Teskey Companies are also occupiers within the meaning of the *Occupier's Liability Act*, R.S.O. and owe a duty of care to the plaintiffs and other class members as neighbours of the Property to ensure that they do not suffer damages as a result of the condition or activities carried on at the Property.

101. The Teskey Companies breached their duty of care to the plaintiffs and other class members by failing to take steps to ensure that the Sunrise Companies operated the business of storing and supplying propane and other industrial gases in a reasonable and prudent manner.
102. The Teskey Companies, with their office in close proximity to the Facility and by virtue of their position as tenants of the Property, were aware or ought to have been aware that the Facility was being operated in a manner unsafe and contrary to the law, as described in paragraph 57. The Teskey Companies breached their duty of care to the plaintiffs and other class members by failing to take any steps to remedy this situation through the exercise of their rights as landlords under the lease and under the *Commercial Tenancies Act*.
103. The Teskey Companies also breached their duty of care to the plaintiffs and other class members by failing to maintain the Property as reasonably safe, contrary to the *Occupier's Liability Act*.

***The Negligence of all defendants caused or contributed to the plaintiffs' losses***

104. The negligence of the defendants outlined above caused or contributed to the escape of propane and/or other contaminants from the Facility, resulting in a series of explosions and a fire which caused personal injury to the plaintiffs and other class members, damage to the plaintiffs' and other class members'

property, and required the plaintiffs and other class members to evacuate their properties.

105. It was reasonably foreseeable that the plaintiffs and other class members would suffer personal injuries as a result of the explosion or escape of propane and, alternatively, the escape of other contaminants from the facility, including emotional and psychological trauma and mental distress. The plaintiffs who resided near the Facility and other class members were awoken in the middle of the night, felt their homes being shaken, heard and felt a series of large explosions, saw several fireballs in the sky near their homes, and were evacuated from their homes. These events reasonably caused them to experience personal injury and to be in fear for their lives and the lives of their families.

106. It was also reasonably foreseeable that the plaintiffs' and other class members' property and contents would sustain property damage, and alternatively could be contaminated by the escape of propane and other contaminants from the facility. It was reasonably foreseeable that, as a result of the explosions and fear of further explosions, and alternatively as a result of the escape of contaminants, the plaintiffs and other class members would be displaced from their homes and businesses for a period of time, causing them to incur a variety of expenses, including expenses for shelter, transportation, meals and other necessities, and replacement of inventory. It was also reasonably foreseeable that, as a result of

this displacement and property damage, class members would suffer losses including the loss of personal and business income.

107. The plaintiffs plead and rely on the *Negligence Act*, R.S.O. 1990, c.N-1, as amended.

## **REMEDIES**

108. The plaintiffs and class members have suffered damages as a result of the escape of propane and other contaminants from the Facility and the explosions and fire at the Facility.

### **A. Non-Pecuniary General Damages**

109. The plaintiffs and other class members experienced physical injuries as a result of the explosions and fire, including the inhalation of noxious fumes and direct physical injury resulting from the explosion.

110. The plaintiffs who were on their properties at the time of the explosion and other class members suffered psychiatric injuries as a consequence of witnessing the explosion and fire and reasonably fearing for their lives and safety and the lives and safety of their families.

111. The plaintiffs and other class members suffered psychiatric injury as a consequence of suffering physical injuries, including the inhalation of noxious fumes and as a consequence of suffering property damage.
112. The plaintiffs and other class members will continue to suffer psychological injury and emotional upset flowing from the explosion and fire for the foreseeable future.
113. The plaintiffs and other class members also suffered inconvenience and emotional distress as a result of being evacuated from their homes.

**B. Pecuniary Damages**

114. The explosions and fire resulted in damage to the properties owned and occupied by the plaintiffs and other class members. There has been damage to the properties as a consequence of the explosions and fire, including damage to buildings and damage to and loss of contents.
115. As a further consequence of the explosions and fire, the properties of the plaintiffs and other class members have likely been contaminated by debris, noxious fumes, and other chemicals released by the Facility. The plaintiffs and other class members will have to incur the costs of testing their property for contamination and the cost of the remediation of the property if contaminated.

116. The plaintiffs and other class members have suffered a diminution in the resale value of their properties as a result of the proximity to the Facility and the stigma of being located close to the Facility, if the Facility is allowed to continue operating as a facility that stores and distributes propane. The plaintiffs and other class members have also suffered a diminution in the resale value of their properties as a result of the risk of contamination from the explosions and fire.
117. Class members who own or occupy property that may be contaminated may, as a precaution, not return to the property until the lack of contamination is confirmed, or the property is remediated. Others have been unable to return to their properties as a result of damage to their properties. As a result, those class members will incur the cost of relocation and alternative accommodation until it is determined that it is safe to return to their properties.
118. The plaintiffs and other class members were, as a precaution, evacuated from their properties following the explosions. The plaintiffs and other class members stayed away from their properties because of a fear of further explosions and, in the alternative, fear of contamination. The plaintiffs and other class members have incurred a moral obligation to compensate friends and family members who provided them with food and shelter, or have incurred the expense of food and alternative shelter. The plaintiffs and other class members incurred the cost of transportation in conjunction with the evacuation. Class members also incurred

the cost of personal care items and clothing which had to be purchased after they fled their homes in the middle of the night.

119. The plaintiff Cesare Manco and other class members lost income as a result of being unable to return to work following the explosion, due to an inability to access their property. Other class members also lost personal income as a result of being unable to go to work following the explosions, due to personal injuries and the inability to access clothing and other necessary supplies at their homes.

120. The plaintiff Mr. Santoro and other class members who own rental properties have lost rental income as a result of tenants being unable or unwilling to return to the properties following the explosion.

### **Punitive Damages**

121. The plaintiffs plead that the actions of all defendants in the ownership, occupation, use and control of the Property and the Facility and in the use, handling and storage of propane at the Facility, acted in a manner that was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, in intentional disregard of the plaintiff's property rights and the property rights of the other members of the Class, in intentional disregard for the safety of the plaintiffs and other class members, indifferent to the consequences and motivated by economic considerations.

121. Because of the conduct of the defendants outlined above, this is an appropriate case for an award of punitive damages.

**Venue**

123. The plaintiffs request that this action be tried in the City of Toronto.

**September 26, 2008**

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**Court File No.:**

**CV-08-36327/00CP**

**ONTARIO SUPERIOR COURT OF JUSTICE**

**Proceedings commenced in TORONTO**

**STATEMENT OF CLAIM**

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