

COURT FILE NO. _____
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF 1035807 ALBERTA LTD. as REPRESENTATIVE PLAINTIFF
DEFENDANTS CITY OF CALGARY,
ENMAX CORPORATION,
ENMAX ENERGY CORPORATION, and
ENMAX POWER CORPORATION



Brought under the Class Proceedings Act

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Napoli Shkolnik Canada
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NOTICE TO THE DEFENDANTS

You are being sued. You are a Defendant. Go to the end of this document to see what you can do and when you must do it.

I. STATEMENT OF FACTS RELIED ON

A. Parties

1. 1035807 Alberta Ltd. ("**Angel's Café**") is incorporated pursuant to Alberta laws and located in Calgary.
2. The City of Calgary (the "**City**") is a municipality incorporated under Chapter 33, Ordinance of North-West Territories, and operates, *inter alia*, under the *Municipal Government Act*, RSA 2000 c M-26.
3. Enmax Corporation is incorporated pursuant to Alberta laws and is a wholly owned subsidiary of, and in a joint enterprise with, the City. Enmax Energy Corporation and Enmax

Power Corporation are subsidiaries of, and controlled by, Enmax Corporation. Collectively, these Defendants are referred to as “**Enmax**”.

B. Factual Cause

1. Bearspaw Water Main

4. The Bearspaw south feeder main (“**Bearspaw Water Main**”) is a critical feeder main that runs from Calgary’s largest water treatment plant underneath the areas of Bowness and Montgomery. The 11 kilometre pipe is as wide as two metres in width at some points and supplies approximately 60% of the water in Calgary.

5. The Bearspaw Water Main was installed at the direction of the City in 1975. It is a prestressed concrete cylinder pipe (“**PCCP**”) from the 1970s.

2. PCCPs Manufactured in the 1970s

6. PCCPs were first used in water systems in 1942 and consist of a concrete core, a thin steel cylinder, high tensile prestressing wires, and a mortar coating.

7. By the 1960s the use of PCCPs became widespread in municipal water systems throughout North America. A set of standards for PCCPs were established, which included specifications for materials, design criteria, and quality control practices.

8. By the 1970s, as experience with using PCCPs and understanding of the behavior of PCCPs increased, along with advances in materials sciences, changes in the structural design of PCCPs were made to reduce manufacturing costs. This resulted in the introduction of lower-grade materials and design features in PCCPs that were manufactured throughout the 1970s.

9. PCCPs manufactured during the 1970s were made using Class IV prestressing wire. This wire suffers from a significant defect caused by insufficient corrosion protection and variability in material properties. PCCPs during this time were also manufactured using less durable concrete that was porous, and thus prone to erosion.

10. As a result of the Class IV prestressing wire, porous concrete, and other design and material defects (together, the “**Defects**”), PCCPs manufactured during the 1970s, including those used in the City’s water system, are prone to catastrophic premature failure.

11. The Defects have caused at least 600 catastrophic premature failures in PCCPs since they were first installed in the 1970s. These failures were well-documented and widely publicized.

12. As a result of the Defects, and the catastrophic premature failures they cause, changes in the manufacturing and design standards used in PCCPs were implemented beginning in the 1980s.

3. Bearspaw Water Main Rupture and Additional Weak Points

13. On June 5, 2024, the Defects caused the Bearspaw Water Main to rupture (the “**Rupture**”), resulting in water flooding the streets and forcing the closure of roads and nearby businesses. The Rupture caused Calgary’s water supply to fall to a critically low state.

14. Shortly after the Rupture, the City began monitoring other segments of the Bearspaw Water Main and uncovered 5 additional weak points in close proximity to where the Rupture occurred. All 5 weak points were the result of snaps in prestressing wires.

15. On July 10, 2024, the City’s monitoring devices detected 3 additional weak points caused by snapped prestressing wires along another segment of the Bearspaw Water Main.

16. Snapped prestressing wires are a common precursor to a catastrophic premature failure, such as the failure that caused the Rupture. All of these weak points existed before the Rupture and were capable of being detected by the City before the Rupture.

4. Aftermath of the Rupture

17. Following the Rupture, the City closed portions of 16th Avenue Northwest Road and issued a directive asking all Calgary residents and businesses to reduce water usage.

18. On June 6, 2024, the City implemented city-wide Stage 4 outdoor water restrictions, prohibiting outdoor water use. On this day, the City also issued a boil-water advisory to all residents and businesses located in Bowness.

19. On June 7, 2024, the City issued a directive asking all Calgary residents and businesses to reduce indoor water usage by 25%.

20. On June 10, 2024, the boil-water advisory for Bowness was lifted.

21. On June 11, 2024, the City issued a local state of emergency as a result of the critically low water levels caused by the Rupture.

22. On July 6, 2024, the City issued a directive moving to city-wide Stage 3 outdoor water restrictions for all Calgary residents and businesses.

23. As of the date of filing, the repairs on Bearspaw Water Main remain ongoing and the Main is not operating at full capacity.

24. As of the date of filing, city-wide Stage 3 outdoor water restrictions and the City's directive asking all Calgarians to reduce indoor water use are still in place.

5. Impact on the Plaintiff

25. Angel's Café is located on Montgomery View Northwest Road, directly adjacent to the Bow River Pathway, a few blocks south from where the Rupture occurred.

26. As a breakfast diner, Angel's Café generates most of its revenue on weekends, when people are more likely to go out to eat breakfast.

27. On June 5, 2024, following the Rupture, Angel's Café's water was shut off by the Defendants, forcing it to close early. The water remained shut off on June 6, 2024, forcing Angel's Café to remain closed.

28. Angel's Café was open the following weekend, June 8 to 9, 2024, however, unclear and contradictory messaging from the City pertaining to the extent of the damage caused by the Rupture in Bowness and Montgomery caused many Calgary residents to believe that businesses located in these areas were closed. As a result of the City's messaging, Angel's Café lost out on significant revenue between June 8 to 9, 2024.

29. The water at Angel's Café was again shut off by the Defendants from Friday, June 14 to Sunday, June 16, 2024 (Father's Day weekend). The Defendants also closed Montgomery View Northwest Road and the Bow River Pathway in front of Angel's Café, making it impossible for patrons to enter the establishment.

30. As a result of having its water shut off, and access to its establishment cut off, Angel's Café was forced to close down during Father's Day weekend, which has historically been one of its most profitable weekends.

31. From June 27 to 30, 2024 (Canada Day weekend), the water at Angel's Café was again shut off by the Defendants and access to the Café was closed by way of Montgomery View Northwest Road and the Bow River Pathway, making it impossible for patrons to enter the establishment. For the second weekend in a month, Angel's Café was forced to close down during another historically profitable weekend, Canada Day weekend.

32. Angel's Café sustained physical damage beyond that experienced by other persons affected by the Rupture in the form of a broken water heater and broken toilet resulting from a water line rupture caused by the Defendants' attempts to restore the Bears paw Water Main.

33. At no point did the Defendants provide Angel's Café with an adequate water replacement. Despite representations from the Defendants that it would provide water to Angel's Café by way of a water truck, no water truck was provided.

C. Nominate Cause

1. Section 532 of the *Municipal Government Act*

34. The Plaintiff sues the City under the s 532 of the *Municipal Government Act*, RSA, c M-26 ("**MGA**").

35. The Plaintiff also relies on s 35 of the *MGA* which provides that municipalities are responsible for the construction, maintenance, and repair of municipal public utilities located underneath a road for when the municipality provides municipal service to a parcel of land adjacent to the road (such as the Bearspaw Water Main).

a. Duty to Keep Public Works in a Reasonable State of Repair

36. The Bearspaw Water Main is a “public work” located in a public roadway and is subject to the direction, control, and management of the City.

37. The City, having been responsible for the installation of the Bearspaw Water Main, owed a duty to keep it in a reasonable state of repair under s 532(1) of the *MGA*.

38. the City breached its duty to keep the Bearspaw Water Main in a reasonable state of repair by allowing Bearspaw Water Main to fall into a state of disrepair prior to the Rupture.

b. Damage Beyond that Suffered in Common With All Others

39. The City is liable for any damage caused by the City’s failure to keep the Bearspaw Water Main in a reasonable state of repair under s 532(2) of the *MGA*.

40. As a result of the City’s breaches, and subsequent water restrictions, all residents of Calgary suffered damage in some form. Businesses in Calgary suffered additional damage associated with direct economic loss that was not suffered by all Calgary residents.

41. By reason of the City’s default, the Plaintiff suffered damage beyond damage suffered in common with all other persons affected by the state of disrepair and resulting Rupture, including:

- a. physical damage to property;
- b. complete shut down of business;
- c. complete shut off of all water supply;
- d. physical barriers blocking access to business; and
- e. direct economic loss.

42. The above damage were not suffered by all other persons affected by the state of disrepair. Only select businesses, including the Plaintiff, suffered all of the above damage.

c. City's Knowledge of the State of Disrepair and Failure to Act

43. As a result of the Defects, the Bearspaw Water Main was prone to catastrophic premature failure.

44. The City had knowledge that the Bearspaw Water Main contained the Defects and was prone to catastrophic premature failure, including from:

- a. other documented and publicized catastrophic premature failures that occurred throughout North America from 1970s PCCPs;
- b. reports from experts employed by the City that warned about the Defects associated with 1970s PCCPs; and
- c. the City's own standards handbook on feedermain design and construction which contained warnings about the Defects associated with 1970s PCCPs.

45. As a result of the City's knowledge, the City knew or ought to have known about the Bearspaw Water Main's state of disrepair before the Rupture and was required to take reasonable steps to prevent a catastrophic premature failure from arising.

2. Negligence

46. The City owed the Plaintiff the following duties of care, among other duties:

- a. to design a water system that would adequately function in the face of foreseeable malfunctions, including by avoiding reliance on one water main to provide the majority of water for the city;
- b. to take reasonable steps to keep the Bearspaw Water Main in a reasonable state of repair and to prevent harm arising from the City's operation of its water system;
- c. to undertake a vigilant course of inspection, monitoring, maintenance, and repair to avoid problems associated with the City's water system, and
- d. to develop and implement an adequate remedial response strategy to mitigate any damage caused by foreseeable malfunctions in the City's water system.

47. The City knew the risks posed to the Plaintiff that would result from the breach of its duties and it was reasonably foreseeable that breaching its duties could cause a rupture and consequent harm to the Plaintiff.

48. The standard of care expected of the City was elevated in relation to the Bearspaw Water Main as a result of the City's knowledge of the Defects and the propensity of 1970s PCCPs to catastrophic premature failure.

49. The City breached its duties to the Plaintiff in at least the following ways:

- a. failed to design the water system that would adequately function in the face of foreseeable malfunctions;
- b. failed to take reasonable steps to keep the Bearspaw Water Main in a reasonable state of repair;
- c. failed to reasonably implement and execute adequate inspection, monitoring, maintenance, and repair policies in relation to the Bearspaw Water Main;
- d. failed to take reasonable steps to guard against foreseeable damage resulting from the Rupture upon learning about the heightened risk of catastrophic premature failure associated with the Bearspaw Water Main;
- e. failed to have a proper remedial response strategy in place to guard against additional damage resulting from the Rupture; and
- f. failed to reasonably implement and execute a remedial response strategy to guard against additional damage resulting from the Rupture.

50. As a direct result of the City's breaches of its duties, the Plaintiff suffered damage, including physical damage to property and consequent economic loss.

3. Breach of Contract

51. The Plaintiff, operating under the name Angel's Ice Cream & Cappuccino, is a customer of Enmax and entered into a contract with Enmax for the services of water to Angel's Café.

52. It was an express, or alternatively an implied term of the contract, that Enmax and the City would provide adequate water services to the Angel's Café.

53. As a result of the Rupture, Enmax and the City failed to adhere to, and breached, the terms of the contract by failing to provide adequate water services to Angel's Café between June 5 to 6, 2024, June 14 to 16, 2024, and June 27 to 30, 2024, and failing to provide an adequate alternative water supply.

54. As a direct result of the Enmax's and the City's breach of contract, the Plaintiff suffered damages, including direct economic loss.

II. REMEDY SOUGHT

55. The Plaintiff therefore claims against the Defendants:

- a. An Order for certification;
- b. general damages in the amount of \$10,000,000.00;
- c. special damages in an amount to be proven at trial;
- d. interest under the *Judgment Interest Act*, RSA 2000, c J-1;
- e. costs; and
- f. such further and other relief as this Honourable Court deems just.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada

You can respond by filing a *Statement of Defence* or a *Demand for Notice* in the office of the clerk of the Court of King's Bench at Calgary, Alberta, AND serving your *Statement of Defence* or a *Demand for Notice* on the Plaintiff's address for service.

WARNING

If you do not file and serve a *Statement of Defence* or a *Demand for Notice* within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.