

Statement of facts relied on:

A. LITIGANTS

1. The proposed Representative Plaintiffs, Joshua Somers ("Somers") and Michael Whalen ("Whalen") are residents of the City of Fort McMurray, in the Province of Alberta, and are employed as a journeyman heavy equipment technician and a red seal journeyman parts technician, respectively.

2. ^

2.1 The ^ Defendant ATCO GAS AND PIPELINE LTD. ^ operates under the trade name "ATCO GAS", ^ and is an Alberta-based regulated natural gas distribution companies and distributors, ^ incorporated pursuant to the laws of Alberta.

2.2 ^

2.2.1 ^

2.3 The Class herein is defined as all:

i. resident homeowners,

ii. non-resident homeowners,

iii. resident and non-resident family members of homeowners,

iv. building owners,

v. tenants, sub-tenants, occupiers, and,

vi. property insurers

of each residence and building, as applicable, within a 1 kilometer radius of the residence located at 118 Clenell Crescent, Fort McMurray, Alberta (the "Origin Residence"), which were damaged or destroyed by the explosion described in paragraph 8 below (the "Affected Area"), and were in such position at the time of that explosion.

The Class herein as so defined is hereinafter referred to as the "Class", and any individual members of the Class are hereinafter referred to as a "Class Member" and collectively as "Class Members".

B. CLAIM

3. From May 3, 2016 to July 5, 2016, a series of wildfires ("the Wildfires") burned through Fort McMurray, Alberta and surrounding areas, covering 590,000 hectares, and destroying approximately 2,400 homes and buildings.
4. The Wildfires were active in Fort McMurray between May 3, 2016 and May 7, 2016.
5. At all material times, ATCO provided natural gas services to businesses and residences in and around Fort McMurray.
6. During the Wildfires, in an effort to prevent further damage or destruction, ATCO cut off the supply of natural gas in significant parts of Fort McMurray.
7. On or around May 17, 2016, ATCO began restoring natural gas service to areas of Fort McMurray that were deemed safe and free of ongoing wildfire risk, and had completed the restoration of natural gas service to approximately 60% of Fort McMurray.
8. On or around May 17, 2016, while ATCO was restoring natural gas service to residences in the Fort McMurray neighborhood of Dickinsfield, the Origin Residence was destroyed by an explosion related to the restoration of the natural gas. The explosion and resulting fire (the "Explosion") caused damage to numerous residences, other buildings and property. <>In the Explosion, a number of residences in the immediate vicinity of the Origin Residence were destroyed, and numerous residences in the Affected Area were damaged.
9. At all material times, Joshua Somers and Michael Whalen, were the owners and occupants of private residences located respectively at 134 Clenell Bay, Fort McMurray, Alberta and 117 McConachie Crescent, Fort McMurray, AB, in the affected area and <>nearby the Origin Residence. The Origin

Residence was the source or origin of the Explosion, and both residences were significantly damaged by the Explosion.

10. <>

11. <>

C. VICARIOUS LIABILITY

12. The Plaintiff pleads that the ^ Defendant can only act through ^ its employees, directors, officers and agents and is 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 ^ Defendant were authorized, ordered or done by the ^ Defendant's employees, directors, officers and agents while engaging in the management, direction, control and transaction of the ^ Defendant's business and are therefore acts and omissions for which the ^ Defendant is vicariously liable.

D. NEGLIGENCE

13. The ^ Defendant is liable to the Representative Plaintiff and the Class Members in ^ negligence.

14. At all material times, the ^ Defendant owed a duty of care to the Representative Plaintiffs and other Class Members to ensure that ^ it exercised due care and caution when restoring the natural gas to the neighborhood of Dickinsfield, and that said restoration would not result in harm or damage to the properties in the Affected Area.

15. The Representative Plaintiffs and the other Class Members plead that the ^ Defendant breached ^ its duty and the standard of conduct expected of ^ it in the circumstances.

16. The ^ Defendant owed to the Representative Plaintiffs and Class Members <> the following duties of care and other duties, among others:

- a. To ensure that it was safe to restore the natural gas to the neighborhood of Dickinsfield prior to proceeding to do so, and that

said restoration would not result in harm or danger to the Affected Area;

- b. To ensure that it was safe to restore the natural gas to the Origin Residence prior to proceeding to do so, and that said restoration would not result in harm or danger to the Origin Residence and Affected Area;
- c. To ensure that proper hazard assessments and safety procedures were adhered to during the natural gas restoration;
- d. To ensure that adequately trained personnel were present at the site of the natural gas restoration and properly carried out the restoration of the natural gas;
- e. To conduct adequate testing in the neighborhood of Dickinsfield prior to initiating the natural gas restoration;
- f. To conduct adequate testing on the Origin Residence prior to initiating the natural gas restoration;
- g. To develop and implement adequate control methods for dealing with situations of potential danger or damage, so as to ensure that said danger or damage was minimized or prevented;
- h. To ensure that duly authorized and properly, professionally trained personnel were on duty at all possible and material times;
- i. To monitor adequately or at all, whether it was safe to restore the natural gas, before, during, and after doing so;
- j. To use appropriate, safe, and sufficient piping and other materials to avoid natural gas leaks.

E. PARTICULARS OF NEGLIGENCE

17. The Representative Plaintiff and the Class Members state that the Explosion and consequent damages were caused by the negligence of the ^ Defendant,

jointly and severally, including but not limited to any one or more of the following:

- a. Failing to adhere to the proper Detailed Work Instructions, policies, and procedures applicable for undertaking a natural gas service shut down and restoration;
- b. Failing to undertake the proper risk management practices, including conducting surveys and inspections of the residences and surrounding areas in the Affected Area, prior to shutting down or reactivating the natural gas flow to the Dickinsfield neighborhood;
- c. Failing to ensure that proper testing in the Affected Area was conducted prior to attempting to restore the natural gas service to same;
- d. Failing to conduct proper testing on Origin Residence by clocking or testing the property's natural gas meters to ensure that no leak existed, prior to attempting to restore the natural gas service to same;
- e. Failing to inspect all natural gas flow risers to the residences in the Affected Area, particularly to the Origin Residence, prior to turning such risers back on, or restoring the natural gas service to the Affected Area;
- f. Failing to ensure that all natural gas flow risers (connections) to the residences in the Dickinsfield neighborhood, particularly to the Origin Residence, were properly shut off at the time natural gas service to the Affected Area was shut off, and prior to restoring the natural gas service;
- g. Failing to inspect the interior of residences and buildings within the Dickinsfield neighborhood, particularly at the Origin Residence to ensure that no natural gas leaks existed;

- h. Failing to implement, adhere to, and execute appropriate hazard and safety protocols;
- i. <>
- j. Failing to ensure that the restoration of natural gas service was properly supervised, conducted, and authorized by appropriately qualified and certified personnel;
- k. Failing to employ and properly train competent staff on proper, safe or adequate natural gas restoration techniques;
- l. Failing to devote sufficient financial resources to staffing personnel with expertise in appropriate safety and hazard procedures;
- m. Failing to develop and implement adequate control methods for dealing with situations of potential danger or damage, so as to ensure that such danger or damage was minimized or prevented;
- n. Failing to adequately train employees regarding product and goods safety and failing to implement adequate safety measures;
- o. Failing to have duly authorized and properly, professionally trained personnel on site at all possible and material times;
- p. Failing to use appropriate, safe, and, sufficient piping and other materials to avoid natural gas leaks;
- q. Such other particulars as maybe proven at trial.

17.1 ^

E. **NUISANCE** ^

18. The ^ Defendant is liable ^ to the Representative Plaintiffs and the Class Members inter alia ^ in Private Nuisance ^

19. The Private Nuisance resulted from the substantial and unreasonable interference with the use and enjoyment of the land in the Affected Area by the

Representative Plaintiffs and the Class Members who were occupiers thereof, resulting from the natural gas leak and Explosion, which caused the damages described in this pleading.

20. ^

21. The Private ^ Nuisances resulted in substantial interference with the occupation and enjoyment by the Representative Plaintiffs and Class Members, of the property of the residences they respectively owned and/or occupied in the Affected area through physical damage to such property, and with their health, comfort and convenience.

22. The ^ Defendant made a non-natural use of the land within the affected Area by allowing the natural gas leak causing or contributing to the Explosion from the ^ Defendant's property, namely its right of way for the natural gas pipeline concerned, and that pipeline and related material.

23. The ^ Defendant brought onto the Affected Area, something which was likely to do mischief if it escaped, namely a natural gas pipe and the natural gas which flowed through it.

24. The ^ Defendant is liable for said Private Nuisance ^ by allowing natural gas to escape onto the Affected Area during the Explosion.

25. As a result of the escape of the natural gas and the Explosion, damage was caused to property in the Affected Area.

26. ^

G. DAMAGES

27. <>As a result of the actionable acts and omissions of the ^ Defendant, the Representative Plaintiffs and Class Members sustained and suffered property damage to their respective residences, outbuildings, personal property, as applicable. Further, the Representative Plaintiffs and Class Members who are homeowners have and will sustain and suffer structural and foundational

seismic damage to their respective residences and outbuildings, due to seismic damage from the Explosion.

28. <>As a further result of the actionable acts and omissions of the ^ Defendant, the Representative Plaintiffs and Class Members have sustained and suffered general damages, particularly loss of enjoyment of life and life amenity in relation to the property damage from the Explosion.

28.1 <>As a further result of the actionable acts and omissions of the ^ Defendant, the Plaintiffs and Class Members also suffered and will continue to suffer psychological injuries and emotional upset as a consequence of the loss or damage of, and loss of amenity of, their property from the Explosion. Further, without limitation, such psychological injuries include mental stress and anxiety relating to the temporary or long-term loss of their respective property and residences, and to their ability or inability to secure alternate housing.

29. As a further result of the <> actionable acts and omissions of the ^ Defendant, the Plaintiffs and Class Members have suffered and incurred and will continue to suffer and incur pecuniary damages, including special damages, some of the particulars of which include but are not limited to:

- i. The cost of additional living expenses due to the temporary or long-term loss of their housing and residence;
- ii. The cost of repairing or replacing their damaged or lost property;
- iii. Out-of-pocket expenses for the purchase of various goods and amenities due to the lack of access to their property or belongings;
- iv. The cost of purchasing food, products or goods for usage or consumption;
- v. Costs of counselling services for their psychological injuries and emotional upset flowing from the loss or damage to their property;
- vi. Lost income;
- vii. Accommodation costs, transportation costs, out-of pocket expense;

- viii. Legislation relied on in *Judgment Interest Act* R.S.A 2000, c.J 1;
- ix. For each Class Member which is an insurer, all amounts it incurred or may incur, and/or for which it is liable or potentially liable, on account of indemnity and costs and expenses (including without limitation for related assessment and administration), including without limitation such amounts by claim payments, settlements and/or advances, under each of its issued property insurance policies as a result of the Explosion, whether constituting under each such policy subrogated claims, non-subrogated claims, ^pure economic loss or any combination of such claims.

29.1 If the subrogate claims of the Class Members which are insurers as outlined in paragraph 29.ix above may not be made by them directly then such claims are hereby made through their respective insureds who are Class Members.

30. The trial of this action will not likely take more than twenty-five days to complete.

31. The Representative Plaintiffs and the other Class Members propose that this action be tried in the City of Edmonton in the Province of Alberta.

H. REMEDY SOUGHT

32. As against ^ the Defendant the Representative Plaintiffs and the Class Members claim the following:

- i. An order certifying the action as a class proceeding;

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i.1. An interim and permanent preservation order for the protection of any and all evidence, including but without limitation piping, relating to the Explosion;

- ii. An order appointing Joshua Somers and Michael Whalen as the Representative Plaintiffs for the Class Members;

iii. A declaration that the ^ Defendant is liable to the Representative Plaintiffs and the Class Members for damages resulting from the restoration of natural gas services to the neighborhood of Dickinsfield, which caused the Explosion and ensuing damages claimed;

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iv. Judgment for non-pecuniary damages and pecuniary damages as claimed herein, including general and special damages in an estimated total amount of \$20,000,000;

<>

v. Judgment for aggravated damages, including without limitation, for mental distress in an amount to be proven at trial and to be apportioned by the Court;

vi. Judgment for interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J 1 as may be allowed;

vii. Judgment for G.S.T. where applicable;

viii. An Order for distribution amongst the Representative Plaintiffs and the Class Members of the aggregate assessment of monetary relief as this Honourable Court deems appropriate;

ix. Costs of this action on a solicitor/client basis or on such other basis as this Honourable Court may see fit; and,

x. Such further and other relief as this Honourable Court may allow or counsel may advise.

NOTICE TO THE DEFENDANT(S)

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 Queen's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(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(s) against you.