

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE HORKINS

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THURSDAY, THE 18th DAY
OF AUGUST, 2011

BETWEEN:

TORONTO COMMUNITY HOUSING CORPORATION and
HOUSING SERVICES INCORPORATED

Plaintiffs

- and -

THYSSENKRUPP ELEVATOR (CANADA) LIMITED,
THYSSENKRUPP NORTHERN ELEVATOR CORPORATION,
THYSSEN ELEVATOR LIMITED all from time to time carrying on business under
the names "ThyssenKrupp Northern Elevator" and "ThyssenKrupp Elevator"

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiffs for an Order, among other things, certifying this action as a class proceeding pursuant to s. 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 and amending the statement of claim, was heard on January 24, 25, 26, 27, 28, and April 7, 2011 at Toronto, Ontario.

ON READING:

1. Plaintiffs' Motion Record (Volumes I-III)
2. Plaintiffs' Reply Motion Record
3. Plaintiffs' Supplementary Motion Record

4. Plaintiffs' Factum (Motion for Certification)
5. Plaintiffs' Book of Authorities (Certification Motion)
6. Joint Supplementary Motion Record (Transcripts, Exhibits, Answers to Undertakings, Refusals and Questions Taken Under Advisement) (Volumes I-IV)
7. Plaintiffs' Reply Factum (Certification Motion)
8. Plaintiffs' Reply Book of Authorities (Certification Motion)
9. Plaintiffs' Second Supplementary Motion Record (Certification Motion)
10. Plaintiffs' Supplementary Book of Authorities (Certification Motion)
11. Defendants' Responding Motion Record (Certification Motion) – May 20, 2011
12. Defendants' Responding Factum (Certification Motion)
13. Briefs of Authorities of the Defendants Respecting Arbitration Issues (Volumes 1-3)
14. Briefs of Authorities of the Defendants Respecting Certification Issues (Volumes 1-2)
15. Defendants' Supplementary Responding Motion Record – January 12, 2011 (Certification Motion)
16. Defendants' Second Supplementary Responding Motion Record – January 21, 2011 (Certification Motion)
17. Supplementary Brief of Authorities of the Defendants Respecting Preferable Procedure and Tarion
18. Supplementary Brief of Authorities of the Defendants Re: Amendments
19. Plaintiffs' Motion Record (Motion to Amend Statement of Claim)
20. Plaintiffs' Factum (Motion to Amend Statement of Claim)
21. Plaintiffs' Book of Authorities (Motion to Amend Statement of Claim)
22. Plaintiffs' Reply Factum (Motion to Amend Statement of Claim)
23. Plaintiffs' Reply Book of Authorities (Motion to Amend Statement of Claim)
24. Common Issues provided by the Plaintiffs

25. Compendium of Maintenance Contract Comparisons provided by the Plaintiffs
26. Plaintiffs' Responding Submissions
27. Defendants' Responding Factum Regarding the Plaintiffs' Motion to Amend the Statement of Claim
28. Brief of Authorities of the Defendants Regarding the Plaintiffs' Motion to Amend the Statement of Claim
29. Written Submissions of the Defendants Regarding: 1) Plaintiffs' Proposed New Common Issues 2) *Seidel v. Telus Communications* 2011 SCC 15

and on hearing the submissions of counsel for the parties,

1. **THIS COURT ORDERS** that First Ontario Realty Corporation Limited is added as a plaintiff to this action.
2. **THIS COURT ORDERS** that the Plaintiffs are granted leave to amend the Statement of Claim and the Statement of Claim is hereby amended in accordance with the form attached as Schedule A to this Order.
3. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding.
4. **THIS COURT ORDERS** that the class includes members to whose rights Tarion Warranty Corporation claims it is subrogated, and is defined as:

All persons in Ontario who owned or own an elevating device that was fitted with a traction motor brake, known as a sheave jammer or sheave brake, designed, manufactured, sold or installed by any of the Defendants, that was replaced as required by TSSA Director's Order 207/06 with an alternative form of emergency ACO and UCM protection and incurred remediation expenses as a result. (the "Class")

5. **THIS COURT ORDERS** that Toronto Community Housing Corporation and First Ontario Realty Corporation Limited are hereby appointed as the representative plaintiffs for the Class.
6. **THIS COURT DECLARES** that the claim asserts causes of action against ThyssenKrupp Elevator (Canada) Limited ("TKE") and ThyssenKrupp Northern Elevator Corporation ("Northern") for the negligent design, manufacture, sale and installation of defective and dangerous sheave jammers, and seeks damages in respect of same.
7. **THIS COURT ORDERS** that the following issues are certified as common issues for the Class in this proceeding:
 - a. Was the sheave jammer dangerous and defective?
 - b. Was it dangerous for the Class to rely on the sheave jammer?
 - c. Did the Defendants, or either of them, owe a duty of care to the members of the Class to take reasonable care in the design, manufacture, sale or installation of the sheave jammer?
 - d. Did the Defendants breach their duty of care by designing, manufacturing, selling and/or installing sheave jammers that were dangerous and defective and/or sheave jammers that were dangerous for the Class to rely upon?
 - e. Were the members of the Class damaged by the breach of duty of care of the defendants, or either of them?

- f. Is the Class entitled to damages?
- g. What is the quantum of damages?
- h. Does the doctrine of betterment apply to the damages assessment in this case?

8. **THIS COURT ORDERS** that this action be and is hereby certified with respect to the common issues set out in paragraph 11 below on behalf of the following subclass (the "Subclass"), which includes members to whose rights Tarion Warranty Corporation claims it is subrogated:

All class members who had a standard form maintenance contract in force with TKE or its predecessors at the time that their sheave jammer(s) were replaced as required by TSSA Director's Order 207/06.

9. **THIS COURT ORDERS** that First Ontario Realty Corporation Limited is hereby appointed as the representative plaintiff for the Subclass.
10. **THIS COURT DECLARES** that the claim asserts a cause of action on behalf of the Subclass for damages for breach of contract against TKE.
11. **THIS COURT ORDERS** that the following issues are common issues for this proceeding in respect of the Subclass:
- a. Did TKE breach the standard form maintenance contracts with the Subclass by not replacing the sheave jammer at no additional charge?
 - b. Is the Class entitled to damages?
 - c. What is the quantum of damages?

- d. Does the doctrine of betterment apply to the damages assessment in this case?
12. **THIS COURT ORDERS** that notice of certification and the right to opt out shall be given to the Class substantially in the form attached to this Order as Schedule B, in the following manner:
- a. at the Defendants' expense in the industry publication *Elevator World* and in the national edition of the *Globe & Mail*;
- b. by Class Counsel, in a press release, on Class Counsels' website, and, to the extent Class Counsel have direct email addresses for members of the Class, via direct email.
13. **THIS COURT ORDERS** that prior to publication, the form and publication of the notice of certification and the right to opt out in Schedule B to this Order shall be finally approved by the Court, at a case conference to be scheduled by counsel, including the date by which opt outs must be received.
14. **THIS COURT ORDERS** that the class proceeding be remitted to the supervision of the Regional Senior Justice or to such judge as he directs to manage the action.
15. **THIS COURT ORDERS** that TKE's request to exclude from the Class and Subclass all members of the Class and Subclass who have contracts with TKE that include an arbitration clause is denied.

16. **THIS COURT ORDERS** that, on consent, the claim is dismissed as against the Defendant ThyssenKrupp Elevator Limited.

17. **THIS COURT ORDERS** that the parties shall agree on a schedule for the exchange of cost submissions and submit them to the court by September 30, 2011.

Justice E. Hallinan

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AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:

PER / PAR: 

SCHEDULE "A" TO THE ORDER

Court File No.: CV-08-00355006-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**TORONTO COMMUNITY HOUSING CORPORATION,
HOUSING SERVICES INCORPORATED and
FIRST ONTARIO REALTY CORPORATION LIMITED and**

Plaintiffs

- and -

**THYSSENKRUPP ELEVATOR (CANADA) LIMITED,
THYSSENKRUPP NORTHERN ELEVATOR CORPORATION,
THYSSEN ELEVATOR LIMITED all from time to time carrying on business under
the names "ThyssenKrupp Northern Elevator" and "ThyssenKrupp Elevator"**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED
FRESH AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS

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 court, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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 court. 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: May 16, 2008

Issued by _____
Local registrar

Address of court office:

10th Floor
393 University Avenue
Toronto, ON
M5G 1E6

TO: ThyssenKrupp Elevator (Canada) Limited
410 Passmore Avenue, Unit 1
Toronto, ON
M1V 5L1

AND TO: ThyssenKrupp Elevator Limited
410 Passmore Avenue, Unit 1
Toronto, ON
M1V 5L1

AND TO: ThyssenKrupp Northern Elevator Corporation
270 Finchdene Square
Toronto, ON
M1X 1A5

CLAIM

1. The Plaintiffs claim:

- (a) an Order pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6, certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative plaintiffs on behalf of the Class as defined herein;
- (b) compensatory damages in the amount of \$30 million for the replacement of sheave jammers as ordered by the Technical Standards and Safety Association in Director's Safety Order number 207/06 (July 27, 2006), and in revision 1 of that order (December 5, 2006) (collectively the "TSSA Safety Orders");
- (c) in addition or alternatively:
 - (i) an Order requiring the Defendants or any of them, to reimburse to the Class all costs incurred by the Class in replacing the sheave jammers in elevators owned by the Class as required by the TSSA Safety Orders; and/or
 - (ii) a mandatory Order requiring the Defendants or any of them, to replace the sheave jammers in elevators owned by the members of the Class (at the Defendants' expense), where the replacement is required by the TSSA Safety Orders.
- (d) pre-judgment and post-judgment interest, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;

(e) its costs of this action inclusive of GST; and

(f) such further and other relief as this Honourable Court finds just.

The Parties

2. The Plaintiff Toronto Community Housing Corporation (“TCHC”) is a corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the “OBCA”). It operates on a not-for-profit basis.

3. TCHC is the largest social housing provider in Canada and provides subsidized and market based housing services to more than 160,000 individuals living in approximately 57,000 housing units across the City of Toronto. More than 90% of the tenants receiving housing services from TCHC are recipients of rental subsidies to assist with their housing expenses.

4. The Plaintiff Housing Services Incorporated (“HSI”) is a corporation incorporated under the OBCA. It is a wholly owned subsidiary of TCHC. It is a major provider of construction and maintenance solutions to property managers and owners in the multi-residential social housing market.

5. The Plaintiff First Ontario Realty Corporation Limited (“First Ontario”) is a corporation incorporated under the OBCA. First Ontario operates a real estate development business in the Province of Ontario.

5.6. The Plaintiffs bring this action on their own behalf and on behalf of all persons in Ontario who:

owned or owns an elevating device that ~~is or was~~ fitted with a traction motor brake, known as a sheave jammer or sheave brake, designed, manufactured, sold, or installed by any of the Defendants, or any of them, and requires replacement or that was replaced, as required by the TSSA Safety Orders TSSA Director's Order 207/06 with an alternative form of emergency ACO and UCM protection and incurred remediation expenses as a result.

6.7. The Defendants are corporations incorporated pursuant to the laws of Canada, and are engaged in the design, manufacture, sale, installation, and servicing of elevators. The former legal name of the Defendant ThyssenKrupp Northern Elevator Corporation is Northern Elevator Limited.

Overview of Claim

7.8. The Defendants designed, manufactured, sold and installed elevator traction motors with an emergency traction motor brake known as a sheave jammer or sheave brake ("sheave jammer"). The sheave jammers designed, manufactured, sold and installed by the Defendants are defective, leading to a risk of serious personal injury.

8.9. The regulatory authority in Ontario responsible for ensuring the public safety with respect to elevating devices is the Technical Standards and Safety Association (the "TSSA"). The TSSA has ordered that all owners of elevating devices in Ontario containing the Defendants' sheave jammers must replace the defective sheave jammers with alternate emergency braking devices.

9.10. The cost of replacing one defective sheave jammer with an alternate emergency braking device is approximately \$10,000 to \$15,000.

~~10.11.~~ There are approximately 2,000 elevating devices in Ontario that are subject to the TSSA Safety Orders.

~~11.12.~~ At all material times, TCHC, First Ontario and the class members, are or were ~~the~~ owners of buildings containing elevating devices with sheave jammers manufactured by the Defendants (and subject to the TSSA Safety Orders) and have incurred or will incur tens of millions of dollars in replacement expenses. The Plaintiffs state that the Defendants, and not they and the class members, are obliged at law to bear the cost of eliminating the risk that the Defendants' defective product poses to the public of Ontario.

Elevator Safety in Ontario

~~12.13.~~ Elevator safety in Ontario is governed by the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16 (the "*Act*") as well as the regulations made pursuant to that Act.

~~13.14.~~ Prior to the enactment of the *Act*, elevator safety was governed by the *Elevating Devices Act*, R.S.O. 1990, c. E-8.

~~14.15.~~ The administration of the *Act* is delegated to the TSSA which has the power to appoint directors, who in turn have the power to make safety orders for the protection of the public.

The B44 Code

~~15.16.~~ The "Elevating Devices Code Adoption Document" is incorporated by reference into the *Act's* regulations and requires elevating devices in Ontario to comply with the

“B44 Safety Code for Elevators” (the “Code”). The Code is published by the Canadian Standards Association.

16.17. At all relevant times since 1990, the Code has required elevators to be fitted with a device providing “Ascending Car Overspeed Protection” to protect against elevator cars ascending at excessive speeds, which could result in a collision at the top of the elevator shaft, or in some other potentially injurious consequence for the elevator car occupants.

17.18. Depending on the date they were installed, some elevators are also required by the Code to have “Car Uncontrolled Low Speed Protection” and “Unintended Car Movement Protection.” The former addresses the problem of an elevator continuing at a low speed without fully stopping; the latter addresses the problem of an elevator rolling slowly from a stationary position.

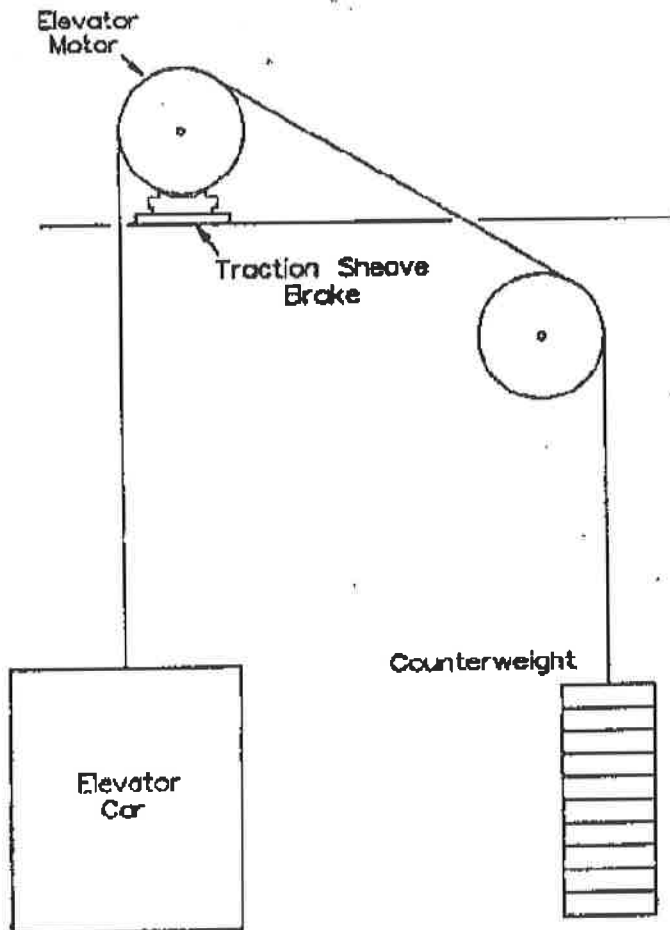
18.19. Devices designed to provide these three kinds of protection against unintended elevator movement (collectively the “Safety Devices”) are required by the Code and by the TSSA because they are important to the safety of elevator car occupants.

Sheave Jammers

19.20. The Defendants designed, manufactured, sold, and installed Safety Devices known as sheave jammers on elevators throughout Ontario to satisfy the mandatory safety requirements of the Code.

20.21. The sheave jammer was intended to operate as a brake on the wheel (the “sheave”) through which the elevator cable runs. Upon activation, the device would

“jam” the “sheave,” which in turn would freeze any movement in the elevator cable, and consequently the elevator car would stop. This figure illustrates the placement of a sheave jammer (identified as the Traction Sheave Brake) in an elevator mechanism:



21.22. The sheave jammer is a form of emergency brake. When a sheave jammer does not work properly, the safety of the occupants of an elevator car is at risk.

2004 Notification of Failures in the Defendants' Sheave Jammers

22.23. In 2004 the TSSA became aware of incidents in which sheave jammers designed, manufactured, sold, and installed by the Defendants failed to prevent

“Ascending Car Overspeed.” In at least one case, the elevator crashed into the top of the building.

23.24. The TSSA raised concerns with the Defendants over these failures. In conjunction with the TSSA, the Defendants then conducted spot audits of various elevators with the Defendants’ sheave jammers, and found the sheave jammers to have a failure rate of approximately 50%. This failure rate poses an unacceptable danger to public safety.

24.25. Initially, the Defendants took the position that the solution to the sheave jammer failures was to increase maintenance and cleaning. The cleaning and maintenance program proposed by the Defendants was inadequate, and did not significantly decrease the rate of failure of the sheave jammers.

The Defendants Recommend Replacement

25.26. The Defendants eventually determined that its sheave jammers could not be relied upon to satisfy their important safety and emergency role required by the Code. They advised the TSSA by letter dated May 17, 2006 that, in their view as the “original equipment manufacturer,” the sheave jammers they had designed, manufactured and sold should be replaced or retrofitted as soon as possible. Moreover, the Defendants stated that they could “only sanction a retrofit kit as passed and accepted by [their] Engineers”.

Director’s Replacement Order

26.27. Consequently, the TSSA Director issued a safety order on July 27, 2006 requiring that “All elevating devices that incorporate a ThyssenKrupp Northern Elevator

Traction Sheave Brake, known as the "Sheave Jammer," (manufactured by ThyssenKrupp Northern Elevator) **shall be replaced or retrofitted** by August 1, 2007 (emphasis in original). This order compels all Class members to replace or retrofit the Defendants' defective sheave jammers, failing which the elevators must be removed from service.

27-28. The TSSA Director later revised the order on December 5, 2006 to clarify that retrofitting was no longer an option. All the Defendants' sheave jammers had to be replaced by August 1, 2007 "with a device capable of meeting the requirements [for Ascending Car Overspeed Protection and Unintended Car Movement Protection as mandated by the Code]. Given logistical difficulties associated with replacing over 2000 of the Defendants' sheave jammers, the TSSA later administratively allowed individual property owners to apply for an extension beyond the August 1, 2007 date. Nevertheless, in Ontario all owners of elevating devices containing sheave jammers manufactured by the Defendants are obliged to replace the sheave jammers.

28-29. The sheave jammers designed, manufactured, sold and installed by the Defendants were and are dangerous, defective, unfit for their intended purpose, and pose a significant risk to public safety. The Defendants admit and acknowledge this in their letter to the TSSA dated May 17, 2006 which resulted in the TSSA Safety Orders.

The Defendants' Negligence

29-30. The Defendants were under a duty of care to the Plaintiffs and the other members of the class to design, manufacture, sell and install Safety Devices and, in

particular, sheave jammers that were not dangerous and defective, and/or unfit for their intended purpose.

31. The Defendants breached their duty of care to the members of the class and were negligent in the design, manufacture, sale and installation of the sheave jammers.

32. Intended to be an important safety device in the operation of elevators, as admitted by the Defendants and confirmed by the TSSA in the TSSA Safety Orders, the sheave jammers, as designed and manufactured by the Defendants, in fact cannot be relied upon to function properly and protect against unintended car movement. This falls short of the required standard of care to design and manufacture sheave jammers that can be relied upon to perform their intended safety function.

33. At all material times when the Defendants were selling and/or installing sheave jammers, or otherwise placing sheave jammers into the stream of Canadian commerce, the Defendants knew or ought to have known that the sheave jammers could not be relied upon to perform their intended safety function. This falls short of the required standard of care to sell and/or install sheave jammers that can be relied upon to perform their intended safety function.

34. As a result of the Defendants' negligence, and on the recommendation of the Defendants themselves, the TSSA ordered the class members to replace the sheave jammers. The Defendants' negligence caused damages to the class members.

The Plaintiffs' Damages and the Class' Damages

34.35. ~~The TCHC and HSI Plaintiffs~~ were required to replace one hundred and sixty seven (167) of the Defendants' sheave jammers in various elevators located on their properties. The total cost to ~~the TCHC and HSI Plaintiffs~~ of replacing all the Defendants' defective sheave jammers was approximately \$2,000,000.

36. First Ontario was required to replace two (2) of the Defendants' sheave jammers in elevators located in one of its properties. The total cost to First Ontario of replacing the Defendants' defective sheave jammers was \$18,540 plus applicable taxes.

32.37. Similarly, each member of the proposed class has or will be forced to incur an expense in the range of \$10,000 to \$15,000 per elevator in replacing sheave jammers, as they have been ordered by the TSSA to replace the sheave jammers or to shut down operation of their elevators.

37.38. The Plaintiffs and the other members of the Class have been damaged, accordingly. This was a direct consequence of the Defendants' negligent design, manufacture, sale, and/or installation of the defective sheave jammers, which purported to satisfy the safety requirements of the Code but in fact did not. The Defendants are liable to the Plaintiffs for the cost of replacing the sheave jammers.

Breach of Contract

34.39. In addition to manufacturing elevators, the Defendants also maintain and repair elevators pursuant to maintenance contracts entered into between the Defendants and the many of the class members ("maintenance contract class members"). Under the maintenance contracts, the Defendants are paid a fixed monthly fee.

35.40. Pursuant to the maintenance contracts, for the monthly fee paid by the maintenance contract class members, the Defendants are contractually obliged, *inter alia*, to repair or replace electrical and mechanical parts as and when required, to keep the elevators operating in the same manner to which they was originally designed, to change defective or worn parts, and to replace any defective component that the Defendants have installed.

36.41. The Defendants have breached their contractual obligations to the maintenance contract class members by failing to replace the sheave jammers under the terms of their maintenance contracts without additional charge. As a result, the maintenance contract class members have suffered damages in the amounts charged by the Defendants for the replacement of the defective sheave jammers.

42. To the extent the maintenance contract class members have already incurred costs regarding the replacement of sheave jammers, such costs constitute damages for breach of contract and the Plaintiffs seeks reimbursement on behalf of the maintenance contract class members. To the extent maintenance contract class members have not yet replaced the sheave jammers, the Defendants are obliged to complete the replacement required pursuant to the TSAA Safety Orders without any additional cost or charge.

43. First Ontario was party to a standard form maintenance contract with the Defendants at all relevant times. The maintenance contract between First Ontario and the Defendants required the Defendants to maintain and replace the sheave jammers for no additional charge to the Plaintiffs. However, the Defendants refused to maintain

or replace the defective sheave jammers under the terms of the maintenance contract between the parties.

37.44. The Defendants' proposal to replace the defective sheave jammers in First Ontario's elevators for an additional fee, in breach of the maintenance contract, was not competitive with other elevator contractors. First Ontario paid another elevator contractor \$18,540 plus applicable taxes for this work.

38.45. At all relevant times, either TCHC, HSI, or both, were parties to a maintenance contract with one or more of the Defendants for certain of TCHC's elevator sites. Under the terms of the maintenance contract, for the contract price paid by the Plaintiffs, the Defendants were required to replace the defective sheave jammers in the Plaintiffs' elevators at the stipulated elevator sites at no additional charge to the Plaintiffs.

39.46. The Defendants replaced the defective sheave jammers in the ~~TCHC and HSI~~ Plaintiffs's elevators and, in breach of the maintenance contract, charged the Plaintiffs approximately \$1,400,000 for this work. ~~The Plaintiffs have suffered damages in breach of contract accordingly.~~

47. The Plaintiffs have suffered damages in breach of contract accordingly.

40.48. The Plaintiffs propose that this action be tried at Toronto.

May 16, 2008

**PALIARE ROLAND ROSENBERG
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John Chapman

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Email: jchapman@millერთhompson.com

Solicitors for the Plaintiffs

SCHEDULE "B" TO THE ORDER

Attention: ThyssenKrupp Elevator Customers

NOTICE OF CERTIFICATION AS A CLASS PROCEEDING

This Notice may affect your rights. Please read carefully.

THE CLASS ACTION

A class proceeding has been certified by the Ontario Superior Court of Justice against ThyssenKrupp Elevator (Canada) Limited and ThyssenKrupp Northern Elevator Corporation carrying on business under the names "ThyssenKrupp Northern Elevator" and "ThyssenKrupp Elevator" on behalf of the Class of *all persons in Ontario who owned or own an elevating device that was fitted with a traction motor brake, known as a sheave jammer or sheave brake, designed, manufactured, sold or installed by any of the Defendants, that was replaced as required by TSSA Director's Order 207/06 with an alternative form of emergency ACO and UCM protection and incurred remediation expenses as a result (the "Class")*.

The lawsuit seeks, among other things, reimbursement to class members for the costs incurred in replacing ThyssenKrupp sheave jammers in elevating devices owned by class members. It is alleged that the ThyssenKrupp sheave jammers were defective and negligently made and, accordingly, ThyssenKrupp is liable for damages. It is also alleged that ThyssenKrupp was obliged to complete the replacements at no charge under their maintenance contracts with class members.

ThyssenKrupp denies the allegations made in the action.

By certifying this action as a class proceeding, the court has made no determination as to the merits of the plaintiffs' claims or the defendants' denials. The plaintiffs will be required to prove their allegations at a trial on the merits in order to obtain the relief that they seek for the Class.

THE CERTIFICATION ORDER

On August 18, 2011, the Court certified the action, Court File No. CV-08-00355006-00CP as a class proceeding, (the "Class Action").

If you are a member of the Class, your rights will be affected by the Class Action.

Each member of the Class who does not opt out of the Class Action will be bound by the terms of any judgment or settlement. Each member of the Class may be entitled to share in the amount of any judgment awarded or settlement reached in the Class Action.

LEGAL FEES AND DISBURSEMENTS

Counsel for the plaintiff class ("Class counsel") have entered into a contingency fee agreement with the representative plaintiffs with respect to legal fees and disbursements. The agreement provides that Class counsel will be entitled to up to ●% of any amounts

recovered by way of settlement or judgment in the action but will not receive payment for their work unless the Class Action is successful or costs are received from the defendants. The agreement must be approved by the court to be effective.

CLASS MEMBERS MUST OPT OUT IF THEY DO NOT WISH TO PARTICIPATE IN THE CLASS ACTION

Class members who wish to participate in the Class Action need not do anything at this time. They are automatically included in the Class Action.

Class members who do not wish to participate in the Class Action must opt out.

If you wish to opt out of the Class Action, you must deliver a written and signed election to opt-out, including your full name and address on or before [DATE] at 5:00 pm EST to Class Counsel at the following address:

By prepaid mail or courier to:

Elevator Class Action
Paliare Roland LLP
250 University Ave., Suite 501 Toronto, ON
M5H 3E5

Fax: 416-646-4301

No Class member will be permitted to opt out after [DATE].

ADDITIONAL INFORMATION

Any questions about the matters in this notice should be addressed to Class Counsel.

The certification order and other information are available on the website: www.paliareroland.com.

Requests for information or questions for Class Counsel should be directed to:

Odette Soriano
Paliare Roland LLP
250 University Ave., Suite 510 Toronto, ON, M5H 3E5
e-mail: info@elevatorclassaction.com

INTERPRETATION

This notice is a summary of the terms of the certification order. If there is a conflict between the provisions of this notice and the terms of the certification order, the certification order prevails. The certification order can be viewed at

This notice was approved by the Ontario Superior Court of Justice

**TORONTO COMMUNITY HOUSING CORPORATION and
HOUSING SERVICES INCORPORATED**

v.

**THYSSENKRUPP ELEVATOR (CANADA) LIMITED,
THYSSENKRUPP NORTHERN ELEVATOR
CORPORATION, ET AL.**

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**
Proceeding commenced at TORONTO

ORDER

R

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Lawyers for the Plaintiffs