

No. C976377
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALBERT PAUSCHE, as representative plaintiff,

PLAINTIFF

AND:

BRITISH COLUMBIA HYDRO & POWER AUTHORITY and
DISTRICT OF MAPLE RIDGE

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

SETTLEMENT AGREEMENT

WHEREAS:

- A. On July 10, 2002, this action was certified as a class proceeding on behalf of a Class comprised of:
 - 1. a Resident Subclass comprised of all persons or entities who were residents of British Columbia at the date of the certification of this action, who claim to have sustained loss and damage as a result of a flood (the "Flood") on the South Alouette River that occurred on or about November 29, 1995 in or near Maple Ridge, British Columbia and who did not opt out of this action by September 10, 2002; and
 - 2. a Non-Resident Subclass comprised of all persons or entities who are not members of the Resident Subclass who claim to have sustained loss and damage as a result of the Flood and who opted into this action by the September 10, 2002.
- B. Albert Pausche was appointed by the Court as the representative plaintiff for the Class.
- C. The Representative Plaintiff and the Defendants enter into this Settlement Agreement providing for the settlement of this action, pursuant to the terms and conditions set out in



this Settlement Agreement, subject to the approval of the Supreme Court of British Columbia.

- D. Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, as well as the fair, cost effective, and assured method of resolving claims of Class Members, the Representative Plaintiff has concluded that this Settlement Agreement provides substantial benefits to Class Members and is fair, reasonable, adequate and in the best interest of class members.
- E. The Defendants have concluded that this Settlement Agreement is desirable to resolve finally and completely the pending and potential claims against them related to the Flood.
- F. The Defendants, notwithstanding their consent to this Settlement Agreement, have denied and continue to deny any wrongdoing or liability regarding the claims of the Class Members in this action. The Parties agree that this Settlement Agreement, and any approval of this Settlement Agreement by the Court, does not constitute an admission or finding of liability by the Defendants.
- G. The Parties intend by this Settlement Agreement to resolve all of the present and future claims of Class Members against the Defendants for or relating in any way to the Flood.
- H. Subject to the approval of the Court, the Parties agree that this action shall be resolved as set out in this Settlement Agreement.

Definitions

- 1. Unless a particular section of this Settlement Agreement explicitly provides for another interpretation, the following definitions apply to this Settlement Agreement and its Exhibits. Terms used in the singular are deemed to include the plural, and vice versa.
 - (a) "Claims Administrator" means an independent firm of insurance adjusters selected by the Parties and appointed by the Court to determine the amounts of compensation payable to Class Members under this Settlement Agreement;
 - (b) "Claim Deadline" means the deadline for Class Members to file claims under this Settlement Agreement, being the date which is 90 days from the date that the Notice referred to in paragraphs 19 and 20 is published;
 - (c) "Class" means collectively the Resident Subclass and the Non-Resident Subclass as defined by the July 10, 2002 certification order;



- (d) "Class Counsel" means the law firm of Klein Lyons;
- (e) "Class Counsel Fee" means the legal fees and disbursements approved by the Court for payment to Class Counsel together with applicable GST and PST.
- (f) "Class Member" means a member of the Class;
- (g) "Court" means the Supreme Court of British Columbia;
- (h) "Fund" means the settlement money paid by the Defendants to Class Counsel in trust pursuant to this Settlement Agreement plus all accrued interest;
- (i) "Hydro" means the Defendant, the British Columbia Hydro & Power Authority;
- (j) "Loss" means loss of or damage to real or personal property caused by the Flood but does not include economic loss;
- (k) "Maple Ridge" means the Defendant, the District of Maple Ridge;
- (l) "Proof of Loss" means written estimates, receipts or invoices regarding a Loss;

Court Approval

- 2. Promptly after the execution of this Settlement Agreement, the Representative Plaintiff shall bring a motion for an Order that:
 - (a) approves this Settlement Agreement;
 - (b) declares that this Settlement Agreement is fair and reasonable and in the best interest of the class;
 - (c) appoints the Claims Administrator;
 - (d) approves the notice to class, the claim form package and other documents specified in it;
 - (e) sets a deadline for filing a claim under the settlement;
 - (f) declares that all class members are bound by the terms of the Settlement Agreement;



- (g) declares that the Defendants are released from all claims by Class Members pursuant to the terms of the Settlement Agreement.
3. If approval of the settlement by the Court is not obtained, this Settlement Agreement will be null and void.

General Provisions

4. Promptly after approval of this Settlement Agreement by the Court, Hydro will pay Four Hundred and Twelve Thousand, Two Hundred and Fifty Dollars (\$412,250) to Class Counsel in trust, and Maple Ridge will pay Seventy-two Thousand, Seven Hundred and Fifty Dollars (\$72,750) to Class Counsel in trust.
5. The Fund will be held by Class Counsel in an interest bearing trust account at a Canadian chartered bank with all accrued interest added back into the Fund.
6. All amounts previously paid to a Class Member for any Loss pursuant to the Provincial Emergency Program ("PEP") or by any private insurers shall be deducted from the calculation of that Class Member's Loss under the terms of this Settlement Agreement unless the Class Member is required by law or contract to claim for such amounts before making any claim for their own Loss.
7. For the purposes of making a claim under this Settlement Agreement, no Class Member shall be considered ineligible to obtain compensation or have the amount of the Class Member's Loss reduced on the basis of any statute of limitation, prescription period, or any other limitation or prescription defence.
8. Subject only to the terms of this Settlement Agreement, the Defendants are released from all claims that were advanced in this action. For greater certainty, the Class Members will be deemed to have given the Defendants the release and undertaking set out in paragraph 21 below.
9. The Class Counsel Fee will be paid out of the Fund and will be deducted from the Fund prior to distribution of the Fund to Class Members.
10. The Court shall retain continuing jurisdiction over the Class Action and over this Settlement Agreement to, inter alia, assure that all payments made under this Settlement Agreement are properly made, supervise the administration of this Settlement Agreement,



enforce the releases provided for herein, determine appeals regarding claims decisions, and interpret and enforce this Agreement's terms and conditions.

11. Class Counsel and the Defendants may jointly or separately apply to the Court at any time for directions and further Orders regarding any aspect of the administration of the settlement.

Administration of Settlement

12. The Parties will select an independent firm of insurance adjusters to determine the amounts of compensation payable to Class Members based on the information and documentation provided to the Claims Administrator by the Class Members using customary rules of adjustment in the insurance industry. The standard of proof for determining claims will be a balance of probabilities. The costs of claims administration will be paid by the Fund.
13. To participate in the settlement, a Class Member must deliver to the Claims Administrator a signed claim form in the form attached as Schedule "A" to this Agreement and the other documents specified in this Settlement Agreement on or before the Claim Deadline.
14. To prove that the Class Member has sustained a Loss, the Class Member must provide evidence in the form of a sworn affidavit or affidavits together with appropriate documentation. To establish the amount of the Loss, a Class Member must provide written estimates, receipts or invoices regarding the Loss.
15. Within 30 days of receipt of a claim, the Claim Administrator will send written notification by mail to the claimant that:
 - (a) The claim has been accepted in the amount submitted.
or
 - (b) The claim has been accepted in an amount that is different from the amount submitted.
or
 - (c) The claim has been rejected and the reason for rejection.



or

- (d) Additional information or documentation is required to support the claim. Details of the information or documentation required will be included with the notice. The claimant will have 30 days from the date of the notice to provide the additional information or documentation.
16. If the Claims Administrator rejects a claim under paragraph 15(c) above or disputes any amount being claimed under paragraph 15(b), the Claims Administrator shall promptly provide written notice by registered mail to the class member. The Class Member may, within 30 days from the date of receipt of notification, appeal the Claims Administrator's decision to the Court. The appeal will be on the basis of written submissions with no right to an oral hearing. The Court's decision will be final and binding with no further right of appeal or review. Notwithstanding the filing of an appeal, the Claims Administrator is authorized to negotiate directly with the Class Member to resolve the dispute.
17. Within 30 days from the Court's decision of all Class Member appeals or the expiry of the time for filing Class Member appeals, whichever is later, the Claims Administrator will calculate the total amount of all approved claims. If the total of all approved claims is less than the amount in the Fund (after deduction of claims administration expenses, the cost of notice, and the Class Counsel Fee), the Claims Administrator will pay the full approved amount to each Class Member and the balance remaining will be returned to the Defendants in proportion to the amount each Defendant contributed to the Fund. If the total amount of all approved claims is more than the amount in the Fund (after deduction of claims administration expenses, the cost of notice, and the Class Counsel Fee), the Claims Administrator will make a pro-rata reduction in the approved amount of each claim and then pay the reduced amount to each Class Member.
18. Within 21 days of completion of the settlement distribution, the Claims Administrator will provide a written report to Class Counsel and the Defendants setting out the amount claimed, the amount approved and the amount paid for each Class Member who made a claim. All information regarding Class Members and their claims shall be kept strictly confidential by the Claims Administrator and the Parties and may not be divulged except with leave of the Court.

Notice of the Settlement to the Class

19. Notice of the settlement in the form set out as Schedule "B" to this Agreement will be given to the Class in the same manner that the Class was given notice of certification,



with the exception that the Parties agree that it is unnecessary to publish the notice of settlement in the National Post. The cost of notice will be paid out of the Fund.

20. Class members shall have until the Claim Deadline to file a claim under the settlement, failing which any further claims against Defendants by class members will be barred.

Release & Miscellaneous

21. Upon Court approval of this Settlement Agreement, Class Members shall be deemed to have accepted the terms of this Settlement Agreement and to have:
- (a) released the Defendants and any of their successors, parents, partners, subsidiaries, assigns, affiliates, and past, present, future directors, officers, lawyers, employees, agents, consultants, advisors, and other representatives of any type (collectively the "Released Parties") from any and all claims, lawsuits, demands and causes of action that were asserted in this action;
 - (b) undertaken not to commence any claim or proceeding which may result in a claim or proceeding being brought against any Released Party. If a Class Member takes any step by way of any claim or proceeding that results in a subsequent claim or proceeding against a Released Party, then that Class Member shall indemnify and save harmless the Released Parties and each of them from any and all resulting liabilities, obligations, legal fees, costs and disbursements.
22. Nothing in this Settlement Agreement shall constitute or shall be deemed to constitute a waiver by the Defendants of defences based on statutes of limitation or repose, prescription periods, or any other limitation or prescription defences with respect to any member of Resident Subclass who opted out of this class action or any member of the Non-resident Subclass who did not opt into this class action, or in the event this Settlement Agreement fails to be approved by the Court.
23. All amounts payable under this Settlement Agreement are paid without admission of liability. The Parties agree that this Settlement Agreement, and any approval of this Settlement Agreement by the Court, will not constitute an admission or be used as evidence against either of the Defendants. Nothing in this Settlement Agreement will be used for any purpose in this action or in any proceeding or matter, except as is expressly contemplated in this Settlement Agreement.
24. This Settlement Agreement may be amended only by a subsequent written instrument executed by the Parties and approved by the Court.



25. This Settlement Agreement is binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.
26. This Settlement Agreement may be executed in counterparts.

Dated at Vancouver, this 25 day of August, 2004.

Counsel for the Representative Plaintiff
Klein Lyons

Per: 

Counsel for British Columbia Hydro &
Power Authority
McCarthy Tetrault

Per: 

Counsel for District of Maple Ridge
Singleton Urquhart

Per: 

Schedule A

Maple Ridge (South Alouette River) Flood of November 29, 1995 Class Proceeding Settlement

Compensation Claim Form and Instructions

Please complete the designated sections below and return this form by letter or courier
postmarked no later than _____, 2004, to:

Claims Administrator

Attention: Maple Ridge Flood Class action settlement administration

Class members may be eligible for compensation for all or some of their loss or damage to property sustained as a result of the flooding of the South Alouette River on November 29, 1995. Please read this Claim Form carefully to determine whether you are entitled to compensation and in what amount.

All claimants for compensation must fill out all applicable parts of the Claim Form and send it and other documents specified in the Claim Form to the Claims Administrator. If you do not follow the instructions or complete the Claim Form, your claim may be delayed or denied.

Please type or print clearly.

Section I – Claimant Information

Last Name(s):	First Name:	Middle Initial:
Address:		

(Street)		
_____	_____	_____
(City)	(Province)	(Postal Code)
Telephone No. (Home):	Telephone No. (Alternate):	
()	()	
Email Address (optional):		

Section II – Property Lost or Damaged

To prove that you have sustained damage or loss to real or personal property, you must provide evidence in the form of a sworn declaration, verifying the particular property loss or damage and the nature and extent of that loss or damage.

In addition, appropriate documentation to establish the amount of the loss or damage must be provided and attached to the sworn declaration. Such documentation may include written estimates with respect to costs of repair or replacement and/or invoices or receipts verifying the actual cost incurred in repair or replacement of the lost or damaged real or personal property.

PART B (to be completed by either a Commissioner of Oaths, Notary Public or Justice of the Peace etc):

Declared before me at _____
(city or town)

in the province or territory of _____
(province or territory)

this _____ day of _____, 20_____.

Name of Commissioner, notary public etc.
(please print):

Signature of Commissioner or notary
public etc.:

Name of Organization (please print):

Section III – Prior Compensation

All amounts previously paid to a Class Member for any loss or damage to real or personal property pursuant to the Provincial Emergency Plan ("PEP") or by any private insurers shall be deducted from the calculation of that Class Member's claim under the terms of the Settlement Agreement, unless that Class Member is required by law or contract to claim for such amounts before making any claim for their own loss or damage.

Please check the box which applies to you, and sign in the space indicated.

- I have not received any compensation from PEP or any private insurer with respect to this claim.
- I have received compensation from PEP and/or a private insurer with respect to this claim in the following amounts:

PEP – Amount of \$_____. This amount was paid to me on _____ / _____ / _____.
(day) (month) (year)

Private Insurer – Amount of \$_____. This amount was paid to me on _____ / _____ / _____.
(day) (month) (year)

Section IV – Claimant's Declaration

This section must be completed by ALL CLAIMANTS in order for your claim to be considered:

I hereby declare that the information provided in this Claim Form is true and accurate, to the best of my knowledge.

(signature of claimant)

(date – day / month / year)

Schedule B

**1995 MAPLE RIDGE FLOOD
Class Action Settlement**

A settlement has been approved in the Class Action for persons who suffered loss or damage due to the November 29, 1995 flood of the South Alouette River in Maple Ridge.

If you are a class member you may be entitled to compensation under the settlement. For Information about the settlement, contact:

Klein Lyons

1100-1333 West Broadway

Vancouver, B.C. V6H 4C1

Phone: (604) 874-7171 Fax: (604) 874-7180

Or visit the Klein Lyons Website at:

www.kleinlyons.com