

**SUPERIOR COURT OF JUSTICE**

Court House  
361 University Avenue  
TORONTO, ON M5G 1T3  
Tel. (416) 327-5284  
Fax (416) 327-5417

**FACSIMILE**

<b>TO</b>	<b>FIRM</b>	<b>FAX NO.</b>	<b>PHONE NO.</b>
<b>Ms. Sharon Strosberg</b>	<b>Sutts, Strosberg LLP</b>	<b>(519) 561-6203</b>	<b>(519) 561-6244</b>

**No. of Pages Including Cover Sheet:** Two

**Date:** June 17, 2014

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**RE: LEE KENNEDY v. TORONTO HYDRO-ELECTRIC SYSTEM LTD. ET AL.  
COURT FILE NO.: CV-08-00361906 CP**

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Please contact Gladys Gabbidon at (416) 327-5052 if you do not receive all pages. Thank you.

June 16, 2014

[Endorsement attached to Motion Record]

**Kennedy and Yusuf v. Toronto Hydro-Electric System Ltd, City of Toronto et al**

- Mr. Charney, Ms. Strosberg and Mr. Eckart for the Class / Plaintiffs
- Ms. Finkel for Toronto Hydro / Defendant
- Ms. Mendelson for City of Toronto / Defendant
- Ms. Bowker for Gonte Construction Limited / Defendant
- Mr. Mackenzie for RBC and State Farm / Objecting subrogated insurers

*Motion for an order approving the settlement of this class action in the amount of \$6.526 Million, and related approvals and orders, including the approval of class counsel legal fees. Explosion and fire on July 20, 2008 at a residential apartment building located at 2 Secord Ave. Toronto. About 600 class members in more than 300 units displaced from premises for 42 or more days. Damage claims re out of pocket expenses, lost income, and personal injuries including psychological injuries.*

**Decision:**

1. I have no difficulty approving this settlement. I find it fair and reasonable and very much in the best interests of the class members. I note that class counsel had several meetings with class members and were able to satisfy themselves that the proposed settlement would cover most if not all of the losses sustained. This is, to say the least, an excellent result. My congratulations to all counsel.
2. I also have no difficulty approving the request for legal fees. Class counsel ask for 25% contingency, plus disbursements and taxes, as based on the retainer agreement. The amount being requested in total is less than a 33% contingency that I would readily have awarded as per my reasons in *Cannon*. Thus the legal fees requested are approved.
3. Mr. Mackenzie's request on behalf of two insurers, RBC and State Farm, that the pre-determined reserve of \$1.2 Million, allocated for the subrogated insurers, be increased to reflect the actual amount paid out to the insured class members, is dismissed. I note that the \$1.2 Million reserve already reflects about 91% of the subrogated amount (before deduction of class counsel legal fees) which is by any measure a fair and reasonable reserve. I also note that neither RBC nor State Farm chose to participate in the mediation process. In short, I find no basis for Mr. Mackenzie's objections to the proposed settlement and in particular to the proposed \$1.2 Million reserve. (The objection re the deductibles was withdrawn given that this item is fully covered in the draft Judgment.)

The draft Judgment will be signed by me later this week. My thanks again to all counsel.

