

06-22553-CP

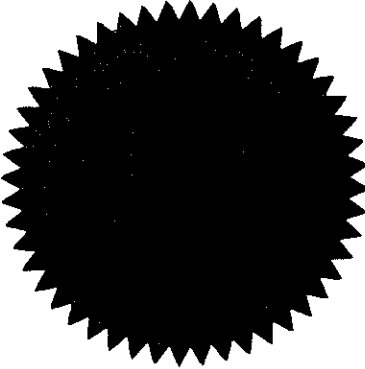
File No.

CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF a Claim under the  
Class Proceedings Act, 1992, S.O. 1992, c.6**

**BETWEEN:**



**LINDA WATSON**

**Plaintiff**

**and**

**NORTHSTAR AEROSPACE, INC. and  
NORTHSTAR AEROSPACE (CANADA) INC.**

**Defendants**

**STATEMENT OF CLAIM**

**TO THE DEFENDANT(S)**

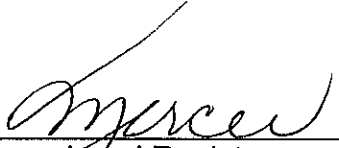
A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

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 Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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 Civil Procedure. 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 27 January 06 Issued by   
Local Registrar

Address of court office:  
Suite 110, 45 Main Street E.  
Hamilton, Ontario  
L8N 2B7

TO **NORTHSTAR AEROSPACE, INC.**  
695 Bishop Street North  
Cambridge, Ontario  
N3H 4V2

AND **NORTHSTAR AEROSPACE, INC.**  
TO 6006 West 73<sup>rd</sup> Street  
Bedford Park, Illinois  
USA  
60638

AND **NORTHSTAR AEROSPACE (CANADA) INC.**  
TO 695 Bishop Street North  
Cambridge, Ontario  
N3H 4V2

## CLAIM

1. Linda Watson, ("the Representative Plaintiff"), claims on her own behalf and on behalf of all Class Members (hereinafter defined):
  - (a) Damages for negligence, nuisance and breach of duty, as set out below, in the amount of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00);
  - (b) Punitive, aggravated and exemplary damages in the amount of TEN MILLION DOLLARS (\$10,000,000.00);
  - (c) Prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (d) Post judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (e) The costs of this proceeding on a full indemnity basis, plus applicable goods and services tax; and,
  - (f) Such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

## THE PARTIES

2. Linda is an individual residing at 1723 Concession Road, Cambridge, Ontario. Linda is the owner of that property. Linda's home is located in close proximity to a manufacturing plant owned and operated by the Defendants.

3. Northstar Aerospace, Inc. ("Northstar"), is a publicly traded company (TSX:NAS) incorporated pursuant to the laws of the United States of America. Northstar has operating subsidiaries in Canada, including the Defendant, Northstar Aerospace (Canada) Inc., which is a wholly-owned subsidiary.
4. Northstar's main corporate office is located in Bedford Park, Illinois, USA.
5. Northstar is the leading independent manufacturer of components and assemblies to the global aerospace industry. Its principal products include gears and transmissions, accessory gear-box assemblies, rotorcraft drive systems and other machined and fabricated parts for helicopters and fixed-wing aircraft.

#### **GENERAL BACKGROUND INFORMATION**

6. The Defendants own and operate a manufacturing plant at 695 Bishop Street North, Cambridge, Ontario ("the Cambridge Plant").
7. In the manufacturing process, the Defendants use a chemical substance called Trichloroethylene ("TCE") which is used in liquid and/or solvent form to treat and/or clean tools, machinery and/or manufacturing parts. TCE is used by the Defendants as a "degreaser".

8. TCE is widely-used in the Cambridge Plant and has been used by the Defendants in the Cambridge Plant for many years.

## **BACKGROUND INFORMATION ON TCE**

9. TCE was invented in approximately 1864 and eventually became widely-used. TCE was used widely as a "degreaser" in the United States of America, Europe and Canada by approximately 1940.
10. TCE is a non-flammable, colourless liquid with a sweet odor like chloroform. It is mainly used in metal degreasing. It is also used as a raw material to make other chemicals and for general solvent purposes in paints, paint strippers and adhesives.
11. TCE does not occur naturally in the environment. It is a man-made chemical.
12. TCE is sometimes known by other names such as trichloroethylene, ethylene trichloride, or ethinyl trichloride. It is sold under many different brand names including "Tri-Clene", "Trielene", "Trilene", "Trichloran", "Trichloren", "Algylen", "Trimar", "Triline", "Tri", "Trethylene", "Westrosol", "Chlorylen", "Germalgene", and "Germalgene".
13. Industrial processes are the main source of TCE in the environment.

14. TCE dissolves slightly in water, however, it can remain in groundwater for an extended period of time.
15. TCE quickly evaporates from surface water and becomes a vapour in the air.
16. TCE evaporates less easily from soil than from surface water. It sticks to particles and remains present for an extended period of time. It can also settle and remain as sediment in which case it does not evaporate.
17. In the early 1970s, the American Standards Institute established standards for workers in respect of exposure to TCE.
18. Furthermore, the National Institute of Occupational Safety and Health in the United States of America began to study TCE and make recommendations in respect of its use.
19. By 1974, the U.S. National Cancer Institute considered that TCE was a potential carcinogen.
20. Regulation of TCE in the United States by the Environmental Protection Agency began in the 1980s.

21. The use and disposal of TCE also began to be regulated in Canada.
22. It was recognized in Canada that quantities of TCE entering the environment may constitute a danger to human health. The improper handling/disposal of TCE from solvent degreasing operations was recognized to potentially result in contamination of soils, surface water and/or groundwater.
23. TCE is not presently produced domestically. Canadian demand is met by imports from the US and Europe.
24. Regulations under the *Environmental Protection Act* were designed to phase out the use and sale of TCE in Canada.
25. Canadian guidelines in respect of quantities of TCE in drinking water have recently been implemented on a more stringent basis.
26. It is widely known that TCE can affect human health.
27. Breathing small amounts of TCE may cause headaches, lung irritation, dizziness, poor co-ordination, difficulty concentrating and other adverse health affects.

28. Breathing large amounts of TCE can cause impaired heart function, unconsciousness and death. Long term exposure to TCE vapours in the air can cause nerve, kidney and liver damage, as well as other adverse health affects.
29. Drinking small amounts of TCE for long periods of time can cause liver and kidney damage, impaired immune system function, impaired fetal development in pregnant woman, etc.
30. Drinking large amounts of TCE can cause nausea, liver damage, unconsciousness, impaired heart function or death.
31. Skin contact with TCE for short periods of time can cause severe skin irritation and rash.
32. Some studies show that people exposed to high levels of TCE over long periods of time have a significantly increased risk of cancer.

#### **TCE USE BY THE DEFENDANTS**

33. In or about 1980, the Defendants began operations in Canada, specifically at the Cambridge Plant. TCE was used as a degreaser on a continuous and frequent basis.

34. TCE was widely used by the Defendants as a “degreaser” at the Cambridge Plant from the commencement of business operations up to approximately October, 2005, at which point the Defendants indicated discontinuance of the use of TCE by them.

#### **TCE CONTAMINATION AROUND CAMBRIDGE PLANT**

35. The area surrounding the Cambridge Plant is contaminated with TCE, both in the subsurface and in groundwater. The specific geographic area of contamination is not known at this time, however, the contamination is significant and includes the area of Linda’s home.
36. Readings of TCE levels indicate the existence of TCE in the subsurface and groundwater around the Cambridge Plant, far in excess of acceptable standards. The readings are such that they would cause any reasonable person to be extremely concerned about adverse health affects as a result of exposure to TCE.
37. The surrounding public community is well aware of the TCE contamination.

### **SITUATION OF THE REPRESENTATIVE PLAINTIFF**

38. Linda owns a home located in close proximity to the Cambridge Plant.  
Her property has been contaminated by TCE which emanated from the Cambridge Plant.
39. As a direct result of TCE contamination, Linda has suffered significant loss of property value with respect to her home.
40. Readings taken in Linda's home indicate TCE levels far in excess of what is considered to be safe, healthy and acceptable.

### **NEGLIGENCE, NUISANCE AND BREACH OF DUTY**

41. The Defendants had and have a duty of care to all property-owners in close proximity to the Cambridge Plant, to ensure that TCE would not contaminate the property around the Cambridge Plant.
42. The Defendants furthermore had and have a duty to use the Cambridge Plant in such fashion as to prevent spillage, seepage or infiltration of TCE so as to affect neighbouring property-owners and property values.

43. The Defendants had and have a duty of care to ensure that any use made of TCE by them does not impact negatively on others, in particular those who reside in close proximity to the Cambridge Plant.
  
44. The Representative Plaintiff and Class Members state that the Defendants acted negligently and in breach of their duties of care described above, particulars of which are as follows:
  - (a) The Defendants were negligent in the handling and disposal of TCE;
  
  - (b) The Defendants caused, allowed or permitted leakage, infiltration and/or seepage of TCE into the subsurface and groundwater in the area around the Cambridge Plant;
  
  - (c) The Defendants caused, allowed or permitted TCE to contaminate the subsurface and groundwater around the Cambridge Plant;
  
  - (d) The Defendants failed to employ sufficient and/or competent staff to ensure that TCE did not contaminate the subsurface and groundwater around the Cambridge Plant;
  
  - (e) The Defendants failed to monitor and supervise their employees to ensure that TCE contamination did not occur;

- (f) The Defendants failed to adequately or properly monitor their practices with respect to TCE use and disposal in order to ensure that TCE contamination would not occur;
- (g) The Defendants failed to take proper steps to ensure that TCE was properly and safely used and disposed of so as not to cause contamination of subsurface and groundwater around the Cambridge Plant;
- (h) The Defendants failed to utilize proper prophylactic efforts to prevent TCE contamination;
- (i) The Defendants failed to take reasonable steps to prevent further TCE contamination, failed to properly inform the public, in particular the Representative Plaintiff and Class Members affected, and furthermore failed to take proper and/or reasonable remedial steps at the earliest possible time;
- (j) The Defendants failed to take reasonable steps to completely eradicate the TCE contamination through complete, proper and full remediation.

45. The Representative Plaintiff and Class Members furthermore state that the use of the Cambridge Plant by the Defendants, in particular allowing TCE seepage and contamination of surrounding properties, constitutes a nuisance.
46. The Representative Plaintiff and Class Members furthermore state that the Defendants breached their duties to the Representative Plaintiff and Class Members, in respect of TCE use, handling and disposal, causing TCE contamination.
47. The Representative Plaintiff and Class Members state that the general public is aware of the TCE contamination.

## **DAMAGES**

48. The Representative Plaintiff and Class Members state that they have suffered damages as a result of the negligence, nuisance and breach of duty of the Defendants as described above, specifically, at a minimum, the following:
  - (a) Loss and diminution of property value as a result of TCE contamination;
  - (b) Loss and diminution of property value as a result of actual and perceived adverse health affects which might be suffered as a consequence of residing in an area known to be contaminated by TCE;

- (c) Loss of use and enjoyment of property, both inside and out, as a result of TCE contamination and fear of adverse health affects;
  - (d) Inability to obtain mortgage financing and proper insurance coverage in respect of TCE-contaminated properties around the Cambridge plant;
49. The Representative Plaintiff and Class Members state that the conduct of the Defendants is such that it offends the moral standards of the community in the circumstances, and that such conduct warrants the condemnation of this Court through an award of punitive, aggravated and exemplary damages in favour of all Class Members.
50. The Representative Plaintiff and Class Members, accordingly claim entitlement to punitive, aggravated and exemplary damages in favour of all Class Members.
51. The Representative Plaintiff and Class Members state that the Defendants have performed some remedial clean-up work in respect of some properties around the Cambridge Plant, however, that work is inadequate and insufficient and does not in any event diminish the public perception that the properties are contaminated with TCE, and therefore does not properly compensate the affected property owners.

52. Despite some remediation having been performed by the Defendants on the property owned by the Representative Plaintiff as well as properties owned by some Class Members, readings continue to indicate TCE levels far in excess of what is considered to be safe, healthy and acceptable. There will be a continuing diminution in property value in respect of all properties surrounding the Cambridge Plant for many years to come.

### **THE CLASS**

53. The Representative Plaintiff proposes that the Class herein be defined as follows:

*Any person or persons who own real property within a three (3) mile radius of the Cambridge Plant, whose real property has been contaminated with TCE.*

54. The Representative Plaintiff and Class Members state that the Defendants have evidence and information as to the geographic area of contamination as they have arranged for studies to be performed and TCE readings measured and monitored, and are well aware of the contamination.

## LEGISLATION

55. The Representative Plaintiff and Class Members plead and rely upon the provisions of the *Class Proceedings Act*, S.O. 1992, c. C.6, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the *Negligence Act*, R.S.O. 1990, c. N.1.

## SERVICE OUTSIDE ONTARIO

56. The Representative Plaintiff anticipates that it might be necessary to serve this Statement of Claim on the Defendants, or one of them, outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, and in particular:

- (a) Rule 17.02 (a) – the claim relates to real property in Ontario;
- (b) Rule 17.02 (g) – the claim relates to a tort committed in Ontario;
- (c) Rule 17.02 (h) – the claim relates to damages suffered in Ontario; and
- (d) Rule 17.02 (p) – the claim is against parties who carry on business in Ontario.

*Date of issue)*

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Solicitors for the Plaintiff,  
LINDA WATSON

**LINDA WATSON**  
Plaintiff

-and-  
**NORTHSTAR AEROSPACE, INC. et al.**  
Defendants

Court File No.

~~EP~~

06-22553-CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**HAMILTON, ONTARIO**

**STATEMENT OF CLAIM**

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