

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

**FRED PISCLEVICH, JOHN HOWDEN, STEPHEN MORAN, SHAUN MORAN,
5904511 MANITOBA LTD., ALEX MCDERMID, KEITH MCDERMID, and
SUNSHINE RESORT LTD.,**

Plaintiffs,

- and -

THE GOVERNMENT OF MANITOBA,

Defendant.

Proceeding under
The Class Proceedings Act, C.C.S.M. C. C130

AMENDED STATEMENT OF CLAIM

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File No. 118388-0001

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TO THE DEFENDANT:

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 a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

Amended on 17th day of October
2014 on file with the court


L. Hanville
DIRECTOR OF COURT SERVICES
COURT OF QUEEN'S BENCH
WINNIPEG, MANITOBA

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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: March 15, 2013

Issued by: "M. Lacanilao"
"Deputy Registrar"
"Court of Queen's Bench"
"For Manitoba"
Deputy Registrar
Court of Queen's Bench
100C-408 York Avenue
Winnipeg MB R3C 0P9

TO: The Honourable Andrew Swan
Minister of Justice and Attorney General of Manitoba
104 Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

CLAIM

1. The Plaintiffs claim, on their own behalf and on behalf of the members of the classes of persons described in paragraph 10 of this pleading, the following:

- i) An Order certifying this action as a class proceeding and appointing the Plaintiffs as the Representative Plaintiffs for the classes herein described and any appropriate subclass thereof;
- ii) A Declaration that the flooding of Lake Manitoba in 2011 was a deliberate and/or reckless action of the Defendant and not as a result of natural causes; alternatively, a Declaration that the flooding of Lake Manitoba in 2011 was “artificial flooding” by the Defendant within the meaning of *The Water Resources Administration Act*, C.C.S.M. c. W70 (Manitoba);
- iii) General non-pecuniary damages;
- iv) Damages for:
 - a) out-of-pocket expenses;
 - b) evacuation and relocation expenses, including evacuation and relocation of livestock;
 - c) loss of business and other income, past and future;

- d) temporary or permanent damage to farm/ranch lands and loss of business associated therewith, including for loss of crops, past and future;
- e) cost of repairs and/or replacement of personal property, past and future;
- f) cost of remediation of real property, past and future;
- g) diminution in value and/or loss of real property;

all in the aggregate amount of \$250,000,000.00.

- v) Punitive, exemplary and/or aggravated damages in the amount of \$10,000,000.00;
- vi) Prejudgment and postjudgment interest, where applicable, pursuant to *The Court of Queen's Bench Act, C.C.S.M., c. C280*, as amended;
- vii) Costs of this action on a lawyer and client basis; and,
- viii) Such further and other relief as this Honourable Court may deem just.

PARTIES

2. The Plaintiff, Fred Pisclevich ("Pisclevich"), is an individual who resides in the Rural Municipality of St. Laurent, Manitoba, and owns property in the community of Twin Lakes Beach, Manitoba, which is located at or around Lake Manitoba and legally described as:

Lot Four, in Block One, which lot is shewn on a play of survey of part of the North half of Fractional Section 32-15-4 West, in Manitoba, registered in the Winnipeg Land Titles Office as No. 10154, subject to the reservations and provisos contained in the Grant from the Crown.

Pisclevich has suffered damages as hereinafter described.

3. The Plaintiff, John Howden (“Howden”), is an individual who resides in the City of Winnipeg, Manitoba, and owns property in the community of Twin Lakes Beach, Manitoba, which is located at or near Lake Manitoba and legally described as:

Lot 2 Plan 34326 WLTO subject to the reservations and provisoes contained in the Grant from the Crown in FRAC NW $\frac{1}{4}$ 32-15-4 WPM.

Howden has suffered damages as hereinafter described.

4. The Plaintiff, Stephen Moran (“Stephen”), is a farmer and owns multiple properties in the area at or around Lake Manitoba, including, but not limited to, properties legally described as:

Parcel 1, NE $\frac{1}{4}$ 17-14-8 WPM; and,

Parcel 2, S $\frac{1}{2}$ 17-14-8 WPM.

Stephen has suffered damages as hereinafter described.

5. The Plaintiff, Shaun Moran (“Shaun”), is a farmer and owns multiple properties in the area at or around Lake Manitoba, including, but not limited to, properties legally described as:

Fractional NE $\frac{1}{4}$ 30 and Fractional SE $\frac{1}{4}$ 31-14-8 WPM, Lying West of the March bounding the Shores of Lake Manitoba;

NW $\frac{1}{4}$ 30-14-8 WPM; and,

The Fractional SW $\frac{1}{4}$ 31-14-8 WPM and All that Portion of NW $\frac{1}{4}$ 31-14-8 WPM Not Covered by the Waters of Lake Manitoba as shown Township Diagram dated June 1, 1872.

Shaun has suffered damages as hereinafter described.

6. The Plaintiff, 5904511 Manitoba Ltd. ("5904511"), is a corporation duly incorporated pursuant to the laws of Manitoba, and carries on business as a farming operation in Manitoba. Stephen is a principal of 5904511. 5904511 farmed in the area at or around Lake Manitoba and has suffered damages as hereinafter described.

7. The Plaintiff, Alex McDermid ("Alex"), is a business owner and a member of the Community of Twin Lakes Beach, Manitoba, which is located at or around Lake Manitoba and has suffered damages as hereinafter described.

8. The Plaintiff, Keith McDermid ("Keith"), is a business owner and a member of the Community of Woodlands, Manitoba, which is located at or around Lake Manitoba and has suffered damages as hereinafter described.

9. The Plaintiff, Sunshine Resort Ltd. ("Sunshine"), is a corporation duly incorporated pursuant to the laws of Manitoba, and carries on business as a Campground and Boat Launch. Alex and Keith are principals of Sunshine. Sunshine owns property in the Community of Twin Lakes Beach, Manitoba, which is located at or near Lake Manitoba and legally described as:

Lot 33 Plan 5503 WLTO Exc Firstly: SLY 50 feet perp And Secondly: Public Road Plan 5928 WLTO subject to the reservations and provisos contained in the Grant from the Crown In Frac 9-16-4 WPM;

SLY 50 feet perp of Lot 33 Plan 5503 WLTO subject to the reservations and provisos contained in the Grant from the Crown In Frac Section 9-16-4 WPM;

Lot 13 Plan 5503 WLTO Exc all mines and minerals as set forth in the original Grant from the Crown In Frac Sec 9-16-4 WPM;

Parcel Y3 Plan 34292 WLTO Exc out of said Parcel 2: all mines and minerals as set forth in the original Grant from the Crown In Frac Sec 9-16-4 WPM; and,

Lots 30, 31, and 32 Plan 5503 WLTO subject to the reservations and provisos contained in the Grant from the Crown In Frac Section 9-16-4 WPM.

Sunshine has suffered damages as hereinafter described.

10. The Plaintiffs propose that the Plaintiff Classes be defined as follows:

i) The “**Property Class**” includes all individuals, corporations, partnerships or other legal entities that own real property and/or have an interest in real property situated at or around Lake Manitoba within 30 kilometers of Lake Manitoba (the “Class Area”):

a) whose property, real or personal, was flooded in 2011 by Lake Manitoba, its tributaries or distributaries, or surrounding bodies of water affected by overland flooding emanating from any of the above; and

b) who suffered damages, including loss of income, as a result of the said flooding in 2011,

including the estates of any persons who have died since March 1, 2011 who meet the preceding criteria;

ii) The “**Business Class**” includes all individuals, corporations, partnerships or other legal entities situate, and carrying on business, within 30 kilometers of Lake Manitoba:

a), whose business or farming property, real or personal, was flooded in 2011 by Lake Manitoba, its tributaries or distributaries, or surrounding bodies of water affected by overland flooding emanating from any of the above; or

b) who were restricted from or otherwise unable to carry on business, including but not limited to, farming or ranching, as a result of the said flooding in 2011.

11. The Plaintiff Classes exclude those parties included in the classes defined in Manitoba Court of Queen’s Bench File No. CI12-01-77146, *Clifford J. Anderson et al v. The Government of Manitoba*.

12. This action is commenced against the Defendant, the Government of Manitoba (“Manitoba”), pursuant to *The Proceedings Against the Crown Act*, C.C.S.M. c. P140 (Manitoba), including section 10 thereof.

BACKGROUND

12(a) In or about 1958, a study was completed by or on behalf of Manitoba into methods of controlling water levels on Lake Manitoba in response to concerns

expressed by residents; including farmers and ranchers; communities; and, businesses ('stakeholders') located on or in the vicinity of Lake Manitoba, as to record high lake levels reaching 816.25 ft above sea level ("asl") and shoreline flooding in the mid-1950s. Since that time, levels on Lake Manitoba have been managed by Manitoba to a target level of 812.67 feet asl. In turn, that target level required continual adjustment of the outflow from Lake Manitoba into the Fairford River.

13. In or about 1961, the Fairford River Water Control Structure ("Fairford Structure") was constructed and commenced operation. The purpose of the Fairford Structure is to control the outflow of water from Lake Manitoba. The Fairford Structure is a "water control work" under *The Water Resources Administration Act*, C.C.S.M. c. W70 (Manitoba). The natural outflow of water through the Fairford River at that time emanated primarily from Lake Winnipegosis through the Waterhen River.

14. In or about 1964, the Shellmouth Dam ("Dam") was constructed and commenced operation in or about 1972. The Dam is a "designated water control work" under *The Water Resources Administration Act*, C.C.S.M. c. W70 (Manitoba) and Regulations thereto ("the WRAA"), and controls water outflows from the Lake of the Prairies (the "Shellmouth Reservoir") into the Assiniboine River. One of its purposes is to provide a reservoir for irrigation purposes in years of drought conditions.

15. In or about 1970, the Portage Diversion (“Diversion”) was constructed and commenced operation in or about 1971. The purpose of the Diversion is to control water levels along the Assiniboine River by diverting water from the Assiniboine River into Lake Manitoba. By controlling the water levels in the Assiniboine River ~~the Defendant~~ Manitoba is able to prevent flooding in and around the City of Winnipeg (“Winnipeg”), as well as downstream of the Diversion. The Diversion is a “water control work” under *The Water Resources Administration Act, C.C.S.M. c. W70 (Manitoba)* ~~the WRAA~~.

15(a) The Diversion was constructed based on design modeling which took into account the water flows on the Red River upstream of Winnipeg and the inflows into the Red River floodway at Winnipeg.

15(b) As a result, the Diversion was designed and constructed to a capacity of 25,000 cfs, without any analysis or modeling of the potential adverse impacts on either Lake Manitoba or the stakeholders of Lake Manitoba; without any analysis or modeling of the capacity and/or ability of the Fairford Structure to handle any greater water outflows than the natural outflows from Lake Winnipegosis through the Waterhen River; and without any input from the stakeholders of Lake Manitoba.

16. At all material times hereto, the Plaintiffs state that:

- i) Manitoba owned and was responsible for the construction, maintenance, repair, reinforcement and operation of all dams,

dykes, riparian structures, and all other water control works throughout the Province of Manitoba, including, but not limited to:

- a) the Dam;
- b) the Diversion;
- c) the Shellmouth Reservoir; and
- d) the Fairford Structure.

- ii) Manitoba was responsible for both predicting water levels and for drawing down the water level in the Shellmouth Reservoir in anticipation of annual spring melts.

16(a) Since construction of the Diversion, Manitoba developed certain Diversion operation rules with objectives including:

(a) To provide maximum benefits to the City of Winnipeg and areas along the Assiniboine River downstream of Portage la Prairie.

(b) To not increase the water level in Lake Manitoba beyond the maximum regulated level of 812.87 feet (247.76 m), if possible.

16(b) The operation rules also provided that in emergency situations, where the waterflow in the Assiniboine River is 45,000 cfs, 25,000 cfs would be diverted into the Diversion and 20,000 cfs (being the capacity of the dyke system on the Assiniboine River between Portage la Prairie and Headingley) would be diverted

downstream of the Diversion into the Assiniboine River. The flow into the Diversion was not altered to exceed 25,000 cfs.

16(c) These operation rules have been in place since in or around 1984 and were never reviewed and/or changed to meet changing conditions or to consider adverse impacts to Lake Manitoba.

16(d) Further, in the last several years leading up to the 2011 flood, the wetlands in Western Manitoba had been receding, which in turn contributed to a gradual increase in water flow and thus created further problems to Lake Manitoba.

16(e) In the last several years leading up to the 2011 flood, Manitoba knew or ought to have known that there had been flooding and consequent substantial damage sustained by stakeholders on Lake Manitoba and that any increase in lake level by the diverting of water from the Diversion into Lake Manitoba would cause damage.

16(f) In or about 2001, the then Minister of Conservation for Manitoba appointed the Lake Manitoba Regulation Review Advocacy Committee (LMRRAC) to review the then current regulation of water levels on Lake Manitoba and areas downstream, again as a result of continuing concerns expressed by stakeholders. The LMRRAC included, as members, representatives of the Plaintiff groups, who were consulted and involved in bringing concerns of the water levels on Lake Manitoba to the attention of Manitoba.

16(g) In or about July, 2003 the LMRRAC issued a report, which among other things, determined that:

- (a) All water that enters Lake Manitoba must leave through the Fairford River, except for water evaporation.
- (b) At various points around Lake Manitoba, water level gauging stations recorded a maximum level of between 813.4 ft to 816.32 ft for the period for 1913-1996.
- (c) There had been continuous complaints by stakeholders around Lake Manitoba as to the regulation of the Lake.
- (d) A 1973 study from the Manitoba Water Commission ('Commission') was that the water regulation target level should be 812.17 ft asl within a range of 810.87 ft asl - 812.87 ft asl.
- (e) A 1978 Commission report suggested there should be an evaluation of a plan in which the entire watershed leading to and from Lake Manitoba be considered as a single unit.
- (f) The Diversion on average had contributed about one foot (1') to the lake level even with the operation of the Fairford Structure.
- (g) Since the construction of the Diversion, the lake level has exceeded the regulated level on several occasions to a maximum of approximately 813.3 ft asl.

(h) Prior flooding experienced in Lake Manitoba caused substantial property damage, loss of hayland for ranchers and loss of business to fisherman and tourist operations.

16(h) The LMRRAC recommended among other things, the following:

(a) Water levels on Lake Manitoba should be permitted to fluctuate between 810.5 and 812.5 feet above sea level (asl) over a period of years, insofar as this may be reasonably possible, with the expectation that water levels on the lake may rise to 813.0 ft asl in some years and drop to 810.0 ft asl in others;

(b) Manitoba should work with cottage owners, tourist operators, rural municipalities and First Nations to facilitate and enhance access to Lake Manitoba and Lake St. Martin for swimming and boating and to maintain or enhance the quality of the lakeshore for associated activities.

(c) A multi-year scientific study should be carried out to ascertain whether the proposed water level management regime for Lake Manitoba, Fairford River, and Lake St. Martin is successful at reversing the degradation of the lakeshores, coastal marshlands and beaches.

(d) The use of the Diversion should be restricted to those periods of time and flows which are absolutely necessary to protect downstream interests along the Assiniboine River and in Winnipeg. The operating rules of the Diversion should be re-examined, with the objective of asserting its

primary function as a short-term flood protection work, and to minimizing its discharge of nutrients, sediments, debris, and other materials into Lake Manitoba.

16(i) Since the LMRRAC report, the Plaintiffs state that there has been a continual and increasing concern by the stakeholders expressed to Manitoba about the increasing risk of potential flooding, but Manitoba has done nothing to ameliorate the worsening conditions of Lake Manitoba caused by Manitoba's operation of said water control structures. Furthermore, none of the above cited recommendations were either implemented or carried out by Manitoba; adequately or at all.

17. The Plaintiffs state that during the winter summer and fall months of 2010-2011, precipitation and groundwater levels were substantially above average. The level of groundwater In addition, during the winter months of 2010-2011, the snow fall was well above average. These factors directly contributesd to the volume of water in the Assiniboine River.

17(a) The Plaintiffs state that up to date flood forecasting models were available to Manitoba in order to forecast the outcome of conditions as they presented themselves in 2010-2011 (pre-flooding). However, Manitoba did not have or avail itself of such flood forecasting models.

17(b) In addition, the Plaintiffs state that Manitoba either removed or otherwise failed to maintain measuring gauge stations on Lake Manitoba, which gauges

had been used to measure lake levels at various points on Lake Manitoba and which had been used in forecasting potential flood conditions.

18. ~~The Plaintiffs further states that,~~ in or about early April, 2011 and subsequent thereto, Manitoba began: (a) to operate the Diversion at its maximum capacity; (b) and then subsequently increased the maximum capacity of the Diversion to approximately 34,000 cfs so as to deliberately cause an excessive volume of water to be diverted from the Assiniboine River into Lake Manitoba, thereby increasing the water level in Lake Manitoba beyond its natural and/or operating limits.

19. The inflow of water from the Diversion into Lake Manitoba was substantially in excess of the outflow capacity of the Fairford Structure.

19(a) The Plaintiffs state that the Diversion with its expended capacity operated for approximately 120 consecutive days.

20. The result of Manitoba's operational decision to divert an excessive volume of water from the Assiniboine River into Lake Manitoba for the sole purpose of protecting Winnipeg and surrounding communities caused flooding in and around the putative Plaintiffs' classes' properties and businesses, without regard to the damage or losses which would inevitably occur.

20(a) The volume of water diverted from the Diversion in 2011 resulted in:

(a) A peak level of 817.27 ft asl (with a wind aided and wave upcharge of up to 822 ft asl);

(b) 310 days with Lake Manitoba being above the regulated maximum level of 812.87 ft asl; and,

(c) 4,751,000 acre feet being diverted; which was approximately 3.4x greater than the previous highest volume experienced since 1974.

21. The flooding destroyed, damaged, and/or contaminated the homes, cottages, garages, sheds, businesses, farm and other buildings, and, land, including farm/ranch land, owned and/or occupied by the Plaintiffs.

NEGLIGENCE

22. The Plaintiffs state that, at all material times hereto, Manitoba owed a duty of care to the Plaintiffs to:

- i) protect the Plaintiffs from flooding;
- ii) properly design, construct, inspect, repair, maintain, operate and supervise said water control works which it owned, operated and controlled;
- iii) have in place adequate and appropriate flood control systems and structures to prevent or otherwise minimize flooding to said properties and businesses at or around Lake Manitoba;
- iv) provide accurate, timely and appropriate forecasting and warning of potential flooding;

- v) take reasonable steps to prevent, or alternatively, to minimize flooding resulting from Manitoba's operation of its water control works;
- vi) avoid interference with the Plaintiffs' exercise of their rights of use and occupation of their properties and businesses;
- vii) assist the Plaintiffs in a timely manner so as to restore and to allow a prompt return to their properties and businesses; and
- viii) adequately compensate the Plaintiffs, and in a timely manner, so as to allow the Plaintiffs to restore their real and/or personal property or interest therein and allow a prompt return to their properties and/or businesses.

22(a) The Plaintiffs state, as the facts are, that the Diversion's operation rules were ignored or breached in 2011 to the substantial detriment of the stakeholders along Lake Manitoba.

22(b) In addition, the Plaintiffs state that the dykes on the Assiniboine River downstream of the Diversion were in a poor state of repair such that Manitoba would or could utilize only a portion of the capacity of the dyke system. Further, Manitoba attempted to shore up the dykes in the winter of 2011 into the Assiniboine River east downstream of Portage la Prairie, which was the worst possible time to stabilize and increase the capacity, as it created unstable conditions in not allowing proper settling and compaction of the dykes to occur.

22(c) The Plaintiffs state that Manitoba knew or ought to have been aware in 2010 and the winter of 2011 that a major flood was possible, given the precipitation and ground level water conditions which existed as a result of precipitation and ground level water receding wetlands.

22(d) Manitoba did not warn the putative Plaintiff classes on Lake Manitoba of that possibility adequately or at all. Warnings were only given to the putative Plaintiff classes in the form of evacuation notices when flooding started to occur.

22(e) In the premises, the Plaintiffs state that Manitoba ought to have developed and implemented adequate operational plans to alleviate and/or mitigate such damage from re-occurring.

22(f) Furthermore, Manitoba advised the putative Plaintiff classes that the operation of the Diversion would only raise the lake level by three (3") inches.

22(g) Manitoba failed to forecast peak levels accurately, such that the putative Plaintiff classes were given false advance warning of the extent of the flood.

22(h) In the result, the putative Plaintiff classes were ill prepared to save their properties or at least take sufficient measures to protect their properties such as to reduce the damage. In addition, Manitoba did not provide the necessary protection.

23. The Plaintiffs state that Manitoba, its servants, employees or agents breached the duty of care owed to the Plaintiffs by:

- i) failing to have in place adequate flood forecast models or tools or procedures to obtain, calculate, analyze or interpret data properly, or in a timely manner, to estimate water levels in the Assiniboine River, the Shellmouth Reservoir, and Lake Manitoba in the spring of 2011 and subsequent thereto;
- ii) failing to take into account the above average precipitation and groundwater levels in, along or near the properties and businesses at or around Lake Manitoba;
- iii) failing to take reasonable steps, in anticipation of above average precipitation and groundwater levels, to achieve earlier drawdown of water in the Shellmouth Reservoir before the spring runoff in 2011;
- iv) failing adequately, or at all, to inspect and maintain its water control works prior to diverting water from the Assiniboine River into Lake Manitoba;
- v) failing adequately, or at all, to construct, maintain, and repair its water control works, along the Assiniboine River to accommodate greater volume of water flow east of the Diversion;
- vi) failing to operate said water control works in a proper and adequate manner, or at all, to avoid, or alternatively, to minimize flooding around Lake Manitoba;

- vii) diverting an excessive volume of water into Lake Manitoba beyond its natural and/or operating limits, including by increasing the operational capacity of the Diversion;
- viii) failing to warn the Plaintiffs of the impending flood in a timely manner;
- ix) failing to take adequate measures to protect the Plaintiffs and their properties and businesses from the flooding caused by Manitoba's diversion of water from the Assiniboine River;
- x) failing to assist the Plaintiffs in a timely manner so as to restore and to allow a prompt return to, their properties and businesses; and
- xi) failing to compensate the Plaintiffs, adequately or at all, and in a timely manner, so as to allow the Plaintiffs to restore their real and/or personal property or interest therein and allow a prompt return to their properties and/or businesses.

24. The Plaintiffs further state that Manitoba breached its duty to the Plaintiffs when it knowingly diverted a massive volume of water into Lake Manitoba via the Diversion, which would not have otherwise flowed into Lake Manitoba, at all, or at a rate and over a length of time such as not to have caused flooding; or, flooding to the extent experienced.

NUISANCE

25. The Plaintiffs state that the flooding caused by Manitoba's operational decisions and conduct stated herein constitutes a nuisance against the putative Plaintiffs' classes' properties and businesses, including such losses arising directly due to the putative Plaintiff classes being prevented from enjoying the use of their property or businesses due to flooding at or near their properties and businesses, that has caused permanent damage for which Manitoba is responsible in law.

26. The Plaintiffs state that, but for Manitoba's deliberate operation of the Diversion in 2011, the Plaintiffs would not have suffered the flooding damage or losses, as alleged, or at all.

DAMAGES

27. As a result of the negligence and nuisance by Manitoba, the Plaintiffs have suffered significant damages including, but not limited to:

- i) out-of-pocket expenses;
- ii) evacuation and relocation expenses, including evacuation and relocation of livestock;
- iii) loss of business and other income, past and future;
- iv) temporary or permanent damage to farm/ranching lands and loss of business associated therewith, including for loss of crops, past and future;

- v) cost of repairs and/or replacement of personal property, past and future;
- vi) cost of restoration of real property, past and future;
- vii) diminution in value and/or loss of real property;
- viii) contamination of soil and buildings;
- ix) loss of use and enjoyment of said properties and businesses;
- x) loss of amenities of life and loss of community; and,
- xi) mental, emotional, psychological damage and loss of enjoyment of life.

DAMAGES TO THE REPRESENTATIVE PLAINTIFFS

28. Until the flooding in the spring of 2011, Pisclevich, and his family, had been residents of the Community of Twin Lakes Beach for 45 years. As a result of the flooding, the family house was completely destroyed and had to be demolished. Currently, Pisclevich and his family have been forced to live in rented accommodations in Winnipeg. The family has not been able, and will not be able, to return to their community. Pisclevich and his family have suffered significant financial damages and severe emotional distress, trauma and harm, including loss of community.

29. Until the flooding in the spring of 2011, Howden had been a seasonal resident of the Community of Twin Lakes Beach for his entire life and had owned his present residence for 20 years prior to the flood. Howden's family had been

residents of Twin Lakes Beach for 110 years. Howden's cottage was destroyed by the flooding and they will not be able to return to their property. In addition, to substantial financial losses incurred, Howden and his family have suffered severe emotional distress, trauma and harm, including loss of community.

30. Shaun and Stephen and their family have farmed properties at or about Lynch's Point and Rignold through their farming corporations, of which 5904511 is one, for approximately 100 years. The farming operation encompasses approximately 12,000 acres around Lake Manitoba. They suffered immediate loss of crops, as well as long term losses stemming from soil damage and saturation. Shaun and Stephen and their family have suffered severe emotional distress, trauma and harm, including loss of community.

31. Until the flooding in the spring of 2011, Sunshine, owned by Alex and Keith, operated the Sunshine Campground at Twin Lakes Beach for 42 years. As a result of the flooding, Sunshine was effectively put out of business. The entire Sunshine Campground site, including the offices of Sunshine and other outbuildings, was completely destroyed and is now devoid of vegetation and stripped of electrical and sewer connections. Alex and other members his family lost personal residences and cottage properties at Twin Lakes Beach. In addition, they have suffered severe emotional distress, trauma and harm, including loss of community.

RESPONSE OF MANITOBA

32. The Plaintiffs have demanded full and fair compensation from Manitoba, but Manitoba has refused and/or neglected and continues to refuse and/or neglect to pay said compensation and in some cases has paid no compensation at all; notwithstanding public announcements from Manitoba that it was responsible for the flooding and would provide full and fair compensation for the damages caused.

33. In the alternative, the Plaintiffs state that any compensation paid to members of the Classes described in paragraph 10 hereof by Manitoba is based on flawed programs which are woefully inadequate, inconsistently and arbitrarily applied, arbitrary and deliberately capped to avoid fair and full compensation.

33(a) More particularly, the programs initiated by Manitoba, among other things, are:

(a) Capped as to amount recoverable;

(b) Do not include loss of property values;

(c) In most cases, do not allow for business losses as a result of the flood, where actual property was not flooded;

(d) Do not allow for loss of certain personal property;

(e) Do not recognize business losses beyond 2011.

34. In the further alternative, the Plaintiffs state that, Manitoba has failed to declare the 2011 flooding to be “artificial flooding”, as defined by ~~The Water Resources Administration Act, C.C.S.M. c. W70 (Manitoba)~~ the WRAA notwithstanding that:

- i) it knew or ought to have known that said flooding was caused by the deliberate diversion of a massive volume of water into Lake Manitoba via the Diversion, which would otherwise not have flowed into Lake Manitoba, at all, or at a rate and over a length of time such as not to have caused flooding; or, flooding to the extent experienced;
- ii) it made public statements through its authorized Ministers and/or other officials that Manitoba deliberately flooded the Plaintiffs’ properties; and,
- iii) Manitoba has declared flooding south of the Dam and Reservoir to have been caused by artificial flooding.

35. The Plaintiffs state, further to paragraph 34 above, that Manitoba thereby has deliberately and arbitrarily prevented or prohibited the Plaintiffs from seeking availing themselves of the compensation process available under ~~The Water Resources Administration Act, C.C.S.M. c. W70 (Manitoba)~~ the WRAA in an effort solely to avoid or minimize compensation to which the Plaintiffs are otherwise entitled; alternatively, in deliberately not expanding the program available under the WRAA to the putative Plaintiff classes.

PUNITIVE DAMAGES

36. The Plaintiffs state that as a result of said arbitrary, deliberate, callous, highhanded and reckless conduct on the part of Manitoba, as set out in paragraphs 32 to 35 of the Statement of Claim, the Plaintiffs have suffered and will continue to suffer enormous damage and losses and the Plaintiffs say that they are entitled to punitive, exemplary, and/or aggravated damages.

STATUTORY PROVISIONS

37. The Plaintiffs plead and rely on *The Water Resources Administration Act*, C.C.S.M. c. W70 (Manitoba), and amendments thereto; *The Dyking Authority Act*, C.C.S.M. c. D110 (Manitoba), and amendments thereto; *The Class Proceedings Act*, C.C.S.M. c. C130 (Manitoba), and amendments thereto; and *The Proceedings Against the Crown Act*, C.C.S.M. c. P140 (Manitoba), and amendments thereto.

38. The Plaintiffs therefore claim for the relief described in Paragraph 1 herein.

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