

CITATION: Avedian et al. v. Enbridge Gas Distribution Inc. et al., 2025 ONSC 5700
COURT FILE NO.: CV-12-458715
DATE: 20251007

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BEDROS (PETER) AVEDIAN, CLAUDIO PETTI and MARIO D'ORAZIO,
Plaintiffs

AND:

ENBRIDGE GAS DISTRIBUTION INC. operating as ENBRIDGE GAS
DISTRIBUTION, ENBRIDGE SOLUTIONS INC. operating as ENBRIDGE
ENERGY SOLUTIONS, ENBRIDGE INC., LAKESIDE PERFORMANCE GAS
SERVICES LTD. operating as LAKESIDE GAS SERVICES, Defendants

AND:

ALPHA DELTA HEATING CONTRACTOR INC. and AUBREY LEONARD
DEY, Third Parties

AND:

TQB HEATING and AIR CONDITIONING INC., BRETNOL BISHOP a.k.a.
BRENT BISHOP, ENBRIDGE SOLUTIONS INC. operating as ENBRIDGE
ENERGY SOLUTIONS, and ENBRIDGE INC., Fourth Parties

BEFORE: Schabas J.

COUNSEL: Christine G. Carter, for the Plaintiffs

James Norton, for Enbridge Gas Distribution Inc. operating as Enbridge Gas
Distribution and Lakeside Performance Gas Services Ltd. operating as Lakeside
Gas Services

C. Kirk Boggs and Michael Dunk for Alpha Delta Heating Contractor Inc. and
Aubrey Leonard Dey

Christopher Morrison and Margaret Klassen for TBQ Heating and Air
Conditioning and Brentol Bishop a.k.a.. Brent Bishop

Patrick Copeland for Enbridge Inc. and Enbridge Solutions Inc.

HEARD: February 10 - 14, 18 - 21, 24 – 28, March 3 – 7, April 29, 2025

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Overview

- [1] This action is about economic losses alleged to have been suffered by the plaintiffs following an explosion and fire which occurred at a 15-story apartment building located at 399 Markham Road in Scarborough (Toronto) (“399 Markham” or “the building”) on September 14, 2010.¹ A few weeks prior to the explosion, the building had been purchased by 1815212 Ontario Inc. (“1815”). The three individual plaintiffs, through personal holding companies, were the shareholders of 1815.
- [2] It is admitted that the explosion and fire was caused by the negligence of the defendants other than Enbridge Solutions Inc. and Enbridge Inc., and by the negligence of the third and fourth parties.² The action has been permanently stayed against Enbridge Solutions Inc. and at the outset of the trial the action against Enbridge Inc. was dismissed without costs, on consent.
- [3] The explosion and fire damaged 399 Markham’s ground floor laundry room and caused damage to adjacent units and common space in the hallway. Repairs were made over approximately the next 10 months and were completed by early July 2011. The cost of those repairs, which was about \$300,000, were paid for by 1815’s insurer, Intact Insurance Company (“Intact”). Intact settled its subrogated claim with the defendants in 2012 for \$162,457.81, which was paid to 1815 for losses arising from lost rental and other income, business interruption, and for expenses incurred by 1815 during the repair period.
- [4] However, the plaintiffs claim that 1815’s consequential economic losses were far greater than what Intact paid. They commenced this action in 2012. At that time, 1815 was the first-named plaintiff. The individual plaintiffs sold their shares in 1815, and therefore their interest in 399 Markham, in 2015, but as part of that transaction they received an assignment of the right to continue with this action and the right to receive any proceeds found to be owing to 1815. By way of an Order to Continue obtained on July 16, 2019, the title of proceedings was amended to only name the three individuals as plaintiffs, but the action remains a claim for damages suffered by 1815.

¹ The property also included a single-family dwelling on Markham Road that was also leased to tenants. I treat the properties together as “399 Markham” or “the building.”

² Throughout these reasons, where I refer to “the defendants” I include the third and fourth parties.

- [5] At the conclusion of the trial, the damages claimed were over \$16 million. The plaintiffs claim that the explosion and fire had a long-lasting impact and caused economic losses until 1815 was sold in 2015.
- [6] Among other things, the plaintiffs claim that, as a result of the fire and explosion, the building developed a high vacancy rate which reduced the income from rents. The plaintiffs say that they were unable to increase rents as they had anticipated when they purchased the building due to the unhappiness of the tenants as a result of the damage. This also prevented them from instituting charges for parking and the use of storage lockers.
- [7] The plaintiffs also claim to have incurred significant management and other fees resulting from the fire and explosion, as well as paying higher insurance premiums and continuing to pay a high-interest second mortgage negotiated prior to acquiring 399 Markham. They assert that the fire and explosion prevented them from constructing 17 additional units on the ground floor and in the basement of the building which would have provided additional income. Lastly, the plaintiffs submit that the fire and explosion caused the building to be worth approximately \$10 million less than it would have been when the plaintiffs sold 1815 in 2015.
- [8] For the reasons that follow, I dismiss the plaintiffs' action.
- [9] Aside from the immediate economic losses and diminution in value of 399 Markham assessed immediately after the date when the repairs ought to have been completed, the damages claimed by the plaintiff are not proven. The plaintiffs have failed to prove, on a balance of probabilities, that the additional losses claimed, if they were suffered at all, were consequential losses which were reasonably foreseeable and would not have occurred but for the explosion and fire that occurred on September 14, 2010. Nor have the plaintiffs proven, on a balance of probabilities, that the asserted hypothetical losses until July 2015, when they sold their shares in 1815, were substantially connected to the explosion and fire in the laundry room.
- [10] The evidence supporting the plaintiffs' claims came, largely, from the plaintiff, Bedros Avedian ("Avedian"), whose company, Orion Group Properties Inc. ("Orion Group"), provided management services to the building. Much of Avedian's evidence was based on hearsay and consisted of assertions that were either unsupported or contradicted by contemporaneous documents. Despite having legal advice from the outset and having commenced this claim in 2012, there was very little documentation presented to support the claims, and documents produced belatedly, just before the trial, or obtained by the defendants, undermined the plaintiffs' claims and were inconsistent with any connection to the explosion and fire.
- [11] The plaintiffs have had almost 15 years to gather and present evidence supporting Avedian's assertions. Their failure to call witnesses with direct knowledge of the situation in the building who could provide evidence, if it exists, of any link between vacancies and other claims of losses allegedly suffered over five years, to the explosion and fire in the laundry room, leads to the inference that there is no such evidence.

Background

The plaintiffs' acquisition of the building

- [12] In 2009, the three plaintiffs, Avedian, Claudio Petti (“Petti”) and Mario D’Orazio (“D’Orazio”), decided to purchase an apartment building together with the expectation that it would produce income for their retirement years. As Avedian put it, the property was meant to be owned for many years so that they could pass it on to their children.
- [13] Avedian is in the property management business through his company, Orion Group. He had over 30 years experience operating, managing, and in some cases being a part owner of, large rental apartment buildings.
- [14] D’Orazio owns and operates a company, Drainstar, which builds sewers and watermains. His company’s office is in the same building as Orion. Petti works with D’Orazio at Drainstar. Petti and D’Orazio had previously invested with Avedian in an apartment building on Keele Street. They were not involved in the day-to-day management of the building and left it in Avedian’s hands to manage through the Orion Group.
- [15] Avedian became aware that 399 Markham was for sale in early 2010. He obtained a Confidential Information Memorandum (“CIM”) from the agent for the vendor and shared it with Petti and D’Orazio. Avedian also inspected the property and was given access to the rent roll for the preceding three years.
- [16] Avedian testified that the building was attractive for several reasons.
- [17] First, 399 Markham had 250 units which were fully leased and had historically low vacancies. Avedian knew from his work managing other buildings that this presented an opportunity: when tenants moved out, rather than simply renting units to new tenants immediately, Avedian would keep them vacant for a period of time in order to renovate them, including updating the bathrooms and kitchens. This would allow them to then charge the new tenants a higher rent.
- [18] Second, many of the tenants were not charged for parking or for the use of storage lockers, even though the terms of the leases seemed to allow for it. This also created an opportunity to increase revenues.
- [19] Third, Avedian saw opportunities to provide amenities, such as installing security cameras, modernizing the elevators, improving the landscaping outside, and making the laundry room more appealing, all of which could be used to seek above-guideline rent increases for the building’s units from the Landlord and Tenant Board (“LTB”).
- [20] Avedian explained that he had used some of these strategies to increase revenue at the building on Keele Street.
- [21] Avedian also saw an opportunity to increase revenue from the laundry room by negotiating a new contract with the supplier, Coinamatic.

- [22] The CIM referred to the possibility of building out several additional apartment units in vacant space on the ground floor. Avedian explored this with an architect and obtained information from the City, then concluded that as many as 17 new units could be added on the ground floor and in the basement, which could be rented out at market rents, creating yet another opportunity to increase revenues.
- [23] Avedian also learned that the owner had recently completed concrete and balcony repairs and had an application pending before the LTB to obtain above-guideline rent increases as a result of that improvement.
- [24] Based on Avedian's projections, and taking into account financing the acquisition, he estimated that the building would generate a net income of over \$100,000 per month without taking into account the possibility of above-guideline increases, the 17 additional apartments, and the increased rent that would come from renovating units when they turned over.
- [25] Following negotiations, Avedian, Petti, and D'Orazio entered into an Agreement of Purchase and Sale dated May 19, 2010, to buy the building for \$17,475,000.00. Prior to closing, each of the plaintiffs incorporated a holding company which then became shareholders in 1815, which became the purchaser of 399 Markham.
- [26] The closing was to be in the fall of 2010 but was advanced to August of the same year. The plaintiffs arranged to finance the purchase by way of a first mortgage from First National LP in the amount of \$14,695,100 with an interest rate of 4.25%.
- [27] Because the closing date was moved forward, the plaintiffs needed additional financing which they obtained from a company called Terra Firma. The loan facility was for up to \$1,104,900 at an interest rate of 13% per annum for five years, but only \$500,000 was advanced. Avedian said that the plaintiffs expected to be able to pay off this high-interest second mortgage quickly as Drainstar was expecting a large receivable to be paid to it. Avedian also testified that there was an opportunity to borrow funds from Terra Firma to finance construction of the proposed new units. The loan agreement with Terra Firma contained a clause indicating that there was "no right of prepayment", but Avedian testified that his understanding was that there could be prepayment.

The explosion and fire

- [28] On September 14, 2010, an explosion occurred while new natural gas equipment was being installed by the defendant Lakeside Gas. Too much pressure was applied to the lines, causing the explosion in the laundry room and a fire ensued. Fire trucks were called and the fire was quickly put out. One tenant was injured by the explosion.
- [29] The laundry room was badly damaged, as was the exterior wall of the room on the ground floor of the building. There was also damage to a cement block wall between the laundry room and a storage room, as well as damage to the storage room itself and to unit 103 (adjacent to the laundry room) and unit 211 which was directly above the laundry room.

- [30] There was some evidence that the over-pressurization also caused some damage to boilers on the 16th floor which provided hot water to the building.
- [31] Avedian, Petti and D’Orazio all attended the building to see the damage, as did Anthony Melino, who worked for Orion Group and helped manage the building.
- [32] Avedian testified that there was water in the lobby, the office, and the area of the elevators on the ground floor, and that there was soot throughout the building. However, there was little or no reliable evidence to corroborate these observations. Although many photographs of damage to the building were presented at trial, I did not see any photographs supporting the presence of water beyond the laundry room and the hallway immediately outside it. The Fire Captain who led the team to put out the blaze testified that very little water was required to do so, perhaps no more than would fill a large bathtub.
- [33] There was some limited evidence of soot in the adjacent units that required repairs, but no evidence of soot beyond that.

The repairs to the building necessitated by the explosion and fire

- [34] The damage to the building reported to the insurers by Avedian and Melino, including the damage to the boilers, was repaired over the next approximately ten months. These repairs included constructing a new, expanded laundry room, which had windows added to the exterior wall to bring in more light. The walls were repaired and the damage to adjacent units was fixed, including cleaning out the soot that had made its way into the walls of those units. This was all paid for by 1815’s insurers, Intact and another company which insured the boilers.
- [35] Subject only to the plaintiffs’ position respecting the elevators, there is no claim in this lawsuit that physical damage to the building caused by the fire and explosion was not repaired or covered by insurance. As the plaintiffs stated in their closing submissions, “it is not important for this court to determine the extent of the physical damage caused by the fire and explosion; all that matters is that there was some physical damage to the laundry room, units 103 and 211, which provides the necessary peg ‘on which economic losses may be hung’”, citing *Attorney-General for Ontario v. Fatehi et al.*, (1982), 34 O.R. (2d) 129 (C.A.) per Wilson J.A. (as she then was) at p. 134, rev’d on other grounds [1984] 2 S.C.R. 536.
- [36] By July 2011, all repairs had been completed and no complaint was made thereafter that more had to be done.

The elevators

- [37] The plaintiffs testified that the elevators had been damaged in the explosion as, they said, two of the three elevators in the 15-storey building were not functioning. Avedian testified two of the elevators were damaged beyond repair. As a result, Avedian said that the modernization of the elevators, which he said was planned for three years later, had to be advanced to be done as soon as possible.

- [38] The elevators are not mentioned in the statement of claim. The first time the elevators were mentioned in the action was during examinations for discovery in 2017. As a result of the need to incur the large expense associated with modernizing the elevators – approximately \$400,000 – Avedian asserted at trial that the plaintiffs were unable to pay off the second mortgage or proceed with other investments in the building. The plaintiffs also claim that the lack of working elevators contributed to tenants leaving the building and to tenant unrest such that the plaintiffs could not implement their plan to charge for parking and storage or seek to increase the rent due to other improvements.
- [39] Tenants may well have been unhappy about the lack of elevators. The evidence, however, does not support a finding that the elevators were damaged by the explosion and fire.
- [40] Avedian did not make any claim to the insurers for damage to the elevators. He asserted at trial that he had sent emails to the insurance adjustor, Shelley Nicholson, about the elevators. But no such emails were produced by the plaintiffs. Nicholson kept a detailed log of notes, documents and emails on this matter, as she was required to do by her employer. There is no mention of damage to the elevators.
- [41] Avedian testified that he was aware that the elevators needed modernizing when he purchased the building, but that the modernization could be delayed for three years, and that the plaintiffs' plan was to start this project in the third year after the building was acquired. He asserted that he was unable to claim compensation for the damage to the elevators under the insurance policy because the plaintiffs had already planned to modernize them. He says he discussed this with Nicholson. However, Nicholson has no recollection of any such discussion nor, again, was there any reference to it in her detailed daily log notes. Additionally, Avedian's explanation does not make any sense. If the elevators were damaged by the explosion and fire, they would have been claimed.
- [42] Nicholson attended at 399 Markham a day or two after the explosion with an engineer. No mention was made of damage to the elevators.
- [43] Olanzo Jarrett, who worked in sales for the elevator company ThyssenKrupp, attended at 399 Markham the day after the explosion. He testified that two of the elevators were not functioning. He said he saw some water in the "pit", but it is not clear how much. He did not see any damage but said he was told later that rails were bent due to the blast. This is hearsay and I place no weight on it. Aside from Jarrett, no one from ThyssenKrupp, which serviced the elevators, testified.
- [44] Jarrett did not document or assess the scope of any alleged damage; as he acknowledged, that was not his responsibility. He was not involved in any repairs to the elevators. Jarrett's evidence was not supported by any other witness. No one else saw water in the pit, and a finding that water from the fire had drained into the pit was inconsistent with the evidence of the Fire Captain and the photographs.
- [45] I found Jarrett to be an advocate for the plaintiffs. For example, he offered the comment that tenants expressed anger about the elevators on the one occasion he attended at 399

Markham, which was also a regular theme in Avedian's testimony. If there had been damage to the elevators, others at ThyssenKrupp would have dealt with it and could have been called as witnesses. I give no weight to Jarrett's evidence.

- [46] The firefighters used the elevators on the day of the explosion, as they were required to check every floor of the building for gas leaks. Kevin Dailey, the Fire Captain, said that the elevators would have automatically stopped when the fire alarm went off, but when the alarm was reset they functioned again. He said the elevators were working, and that if they did not work that would have been documented. Dailey was not challenged on that evidence in cross-examination. Other investigators at the scene following the explosion did not mention that elevators were not working or had been damaged, nor was there any mention of ThyssenKrupp technicians being present at 399 Markham "24/7" following the fire and explosion, as was asserted by Avedian.
- [47] Melino did not mention any damage to the elevators at that time either. He was onsite at 399 Markham for two weeks after the explosion and had been instructed by Avedian to keep a log of his interactions with contractors so that Melino's time could be billed to Intact. There is no record in Melino's notes or the summaries of his work of anything to do with the elevators.
- [48] As the owner of the building, 1815 was required by law to keep an elevator logbook, documenting every repair to the elevators. This was not produced by the plaintiffs. Presumably it would have informed the court of whether elevators were, in fact, not working, and for how long, among other things. Although the plaintiffs no longer own 1815 and may not have ready access to the logs, they did have access to them until August 2015, three years after this lawsuit began, and could have compelled their production at trial. The failure to produce them suggests that they would not have supported Avedian's evidence.
- [49] Terry Smith, an engineer who oversaw the repairs to the building over the next several months in 2010 and 2011, had no record of any damage to the elevators and did not recall being asked to look at them.
- [50] Due to the nature of the explosion and fire, the scene was investigated by experts retained by 1815, Enbridge Gas, Toronto Police Service, Toronto Fire Service, Ontario's Technical Standards and Safety Authority, and Intact Insurance. There is not a single report, letter, email, photograph, handwritten note, sketch, or writing on any document of any kind that states, suggests, or infers that the elevators were damaged by the explosion, or that even mentions them.
- [51] Then there is the elevator modernization contract. One week before the trial, after 13 years of litigation, the plaintiffs produced the elevator modernization contract which had been signed with ThyssenKrupp. The production followed a request by the defendants after seeing a reference to the contract in one of the plaintiffs' expert reports prepared in 2018. The contract, which was signed before the fire and explosion occurred, expressly contemplated the modernization work was to be performed in 2011, not three years later.

This contradicts Avedian's testimony that the modernization had to be advanced and completed immediately due to the fire and explosion. In fact, the modernization schedule was altered by only one month following the explosion.

- [52] Avedian's evidence about damage to the elevators is not credible. It is unsupported and is contradicted by others. His claim that the modernization project was advanced due to the fire and explosion is demonstrably false – a fact the plaintiffs concealed by not disclosing the contract until they could not avoid it, just prior to trial. If there had been any damage to the elevators it would have been documented and evidence would have been called to describe it.
- [53] I find, therefore, that the elevators were not damaged by the fire and explosion. However, elevator service in the building was affected for a lengthy period of time following the explosion because of the plaintiffs' decision to modernize them, with work beginning in about January 2011.
- [54] The elevator modernization was expensive and would have had an impact on the plaintiffs' plans to invest in other improvements in the building. It also would have likely led to complaints by tenants and may have led some tenants to leave. Indeed, Avedian stated that for a lengthy period of time only one elevator was functioning and that people sometimes had to wait up to 45 minutes for an elevator. To the extent this had an economic impact on 1815, however, it was not a result of the physical damage caused by the fire and explosion and is not compensable in this action.

The aftermath – 399 Markham between September 2011 and 2015

- [55] A temporary, smaller laundry room was set up while repairs were made. Undoubtedly tenants were inconvenienced by the lack of a large laundry room. However, Avedian's and Melino's evidence about tenant unhappiness was focused on the elevators. They said tenants complained about the wait times for elevators, shouting at the owners when they visited, as well as at the live-in superintendents. One tenant is said to have picked up a chair and threatened physical violence. Some tenants who moved out reportedly threw their furniture off the balcony because of the lack of elevators.
- [56] Avedian stated that this led to people moving out of the building, often without giving the required 60 days notice, and leaving no forwarding address. Avedian and Melino said the building became stigmatized as the building that "blew up." The number of vacancies increased in 2011 which, according to Avedian, led to the building operating at a net loss for the entire time the plaintiffs owned 1815, until 2015. He said the vacancies were a direct result of the fire and explosion.
- [57] There is some limited evidence that people were upset about the delay in repairing the laundry room. Melino referred to it in an email to Nicholson at Intact on July 13, 2011, saying that the delays in completing the laundry room "have now started to manifest and tenants have had enough", noting that in that month they received vacancy notices from nine tenants. However, the laundry room was completed and back in action by, at the latest,

early July 2011. In that email Melino made no mention of the elevator modernization project which was not part of the insurance claim.

- [58] Yet the plaintiffs put it this way in their closing submissions: “As Mr. Melino testified, it was very difficult to rent apartments when it was apparent to prospective tenants that the elevators were malfunctioning, that there was no laundry room available and that they would have to take their laundry to a laundromat.”
- [59] This submission is not persuasive or helpful to the plaintiffs. First, any problems with the elevators were not the result of the fire and explosion. Second, there was a temporary laundry room on site. Third, the new laundry room was completed and in use by no later than early July 2011. Fourth, the plaintiffs’ evidence is just Avedian and Melino making assertions based on hearsay. Saying it is so does not make it so. The plaintiffs did not call any first-hand evidence from tenants who were unhappy, from people who left the building, or people who declined to rent an apartment at 399 Markham. They did not even call the superintendent who dealt with the tenants. The plaintiffs did not name anyone, or produce any notes, letters, or written or electronic complaints or explanations from any tenants which would support the assertion that tenants were unhappy and left, or did not want to rent there, which would have caused a higher vacancy rate during 2010 and up to July 2011.
- [60] The plaintiffs led evidence to show that from July 2011 to 2015 the vacancy rate at 399 Markham was above the average vacancy rate for Scarborough East (where the building is located) as tracked by Canada Mortgage and Housing Corporation. Avedian and Melino claimed that this was because the building was stigmatized as “the building that blew up.” But, as I have noted, the plaintiffs called no evidence that this was the case.
- [61] The plaintiffs highlight that in the summer of 2011, 399 Markham at one point had 15 vacancies when it would normally have two. However, this was an outlier, was when the elevator modernization project was in progress, and was after the new laundry room was completed. The evidence shows that vacancies continued to fluctuate throughout the period from 2011 to 2015, including as many as 13 vacant units in May 2014, long after the work was completed on the laundry room and on the elevators.
- [62] It must also be recalled that the plaintiffs wanted vacancies so that they could renovate the units and charge higher rents. However, Avedian said this became expensive as each unit cost about \$7,500 to renovate. Nevertheless, the plaintiffs did upgrade 159 units during the period they owned 1815.
- [63] Avedian also testified that because of the tenants’ unhappiness, 1815 could not proceed with its plan to increase revenue by charging for parking and storage. Nor, he said, did 1815 seek above-guideline rent increases due to the elevator and other improvements because of “big problems” with the tenants in the building. However, aside from Avedian and Melino saying this, there is no evidence to support these assertions, which are not limited to the period when the laundry room was under repair.

Sale of 1815 and assignment of action

- [64] In 2014, the plaintiffs entered into negotiations with Golden Equity Properties to sell the building. An Agreement of Purchase and Sale was signed on December 30, 2014, but the deal was ultimately structured as a share purchase agreement where Golden Equity bought all the shares in each plaintiff's personal holding company. The deal closed in July 2015. The total purchase price was \$33,550,000, almost double the price paid by 1815 five years earlier. The share purchase agreement contained an assignment of this claim to the plaintiffs by 1815 and the holding companies.
- [65] As D'Orazio admitted in cross-examination, prior to the sale to Golden Equity, the building was leveraged to about 50% of the purchase price. There was, therefore, substantial equity in the property.

Commencement of the claim and litigation history

- [66] The statement of claim was issued on July 12, 2012, twenty-two months after the fire and explosion.
- [67] The action proceeded slowly. Discoveries were held in 2017, which led to the disclosure to the defendants of the sale of 1815 to Golden Equity in 2015 and of the assignment of the claim to Avedian, Petti, and D'Orazio. No personal claims are made on behalf of the individuals. All the claims are for losses allegedly suffered by 1815. Indeed, the individual plaintiffs have since confirmed that they have "withdrawn" any personal claims. This was addressed in detail in an interlocutory decision in this case by D. Wilson J. (as she then was) which denied the plaintiffs' request to amend the statement of claim to permit a claim for shareholder losses arising out of the 2015 sale of the shares in 1815: *Avedian v. Enbridge Gas Distribution Inc.*, 2022 ONSC 3343 at paras. 42-43 and 51-63, aff'd 2023 ONCA 289.
- [68] Following Justice Wilson's dismissal of the motion to amend, the plaintiffs served an expert report which put forward a theory that, had the investment in 399 Markham been more successful, the plaintiffs could have used the equity in the building to purchase an additional building and made more money. On a motion for directions following the delivery of that expert report, Wilson J. rejected this new theory of damages and said that it could not be asserted some 12 years after the action was commenced: *Avedian v. Enbridge Gas Distribution*, 2024 ONSC 2376 at paras. 57 – 90.
- [69] Accordingly, the claims that must be addressed in this action are limited to consequential economic losses to 1815, not its shareholders, arising from the explosion and fire in September 2010.

The plaintiffs' evidence at trial

Avedian's evidence

- [70] Avedian testified for five days, most of which was direct examination.

- [71] While Avedian was certainly knowledgeable about the management of apartment buildings, his evidence was largely self-serving and unreliable. Avedian was often evasive, not answering straightforward questions. He gave explanations where none were requested, sometimes in an attempt to avoid answering questions.
- [72] His description of the damage following the explosion was not supported by independent evidence; to the contrary, photographs and the evidence of disinterested parties contradicted his evidence.
- [73] As I have discussed, Avedian's evidence about the elevators was not credible. When asked why the elevator logbook was not disclosed or produced, even though Avedian knew it was stored at the building, he professed that he didn't remember if he attempted to get it. The inference I draw is that the logbook would have contradicted Avedian's assertion of damage. Avedian's evidence that the elevator modernization was planned for a few years down the road is contradicted by the contract signed a week before the explosion and which was only produced a week before the trial. Avedian was unable to explain why the contract was produced to an expert several years ago but not to the defendants.
- [74] When asked about charging tenants a fee to cover electricity for air conditioning, Avedian denied it, saying "we never charged them for air conditioning." However, when confronted by a July 2011 email he was copied on from Melino to Linda, who was the on-site superintendent, that "Bedros stands firm" on the air conditioning charges, he said that "the tenants were not paying it", or that he could not remember. His evidence was also contradicted by the rent rolls which showed charges for air conditioning. As he did on several occasions, Avedian said there must be other documents to support his case, but none were produced. Again, an adverse inference is drawn.
- [75] Dealing with vacancies and tenant complaints, Avedian blamed all vacancies from the time of the explosion to selling 1815 in 2015 on the explosion. Yet Avedian did not work at 399 Markham and went there infrequently. Linda, the long-time superintendent, was not called as a witness. To the extent Avedian's source for tenant grievances was Linda, this was double hearsay. Avedian could not identify a single tenant or unit number that was a source of his assertion that the explosion and fire led to complaints and to tenants leaving. Avedian claimed to have produced "all the information he had", but no memos, complaints, emails, or notes of any kind were produced to support Avedian's assertions.
- [76] Blaming the fire and explosion for all the vacancies is not reasonable or credible. Tenants move out for many reasons – work, relationships, death, family expansion or contraction, and finances, to name a few. The laundry room was fully repaired by July 2011. Indeed, it was much nicer than before the explosion. Yet according to Avedian this continued to be the reason for tenant grievances for four more years. In cross-examination Avedian reasonably conceded that the elevators might also have caused vacancies, but still asserted that they were damaged by the explosion.
- [77] Avedian claimed the building was stigmatized by the explosion but provided no evidence of anyone even saying this to him, let alone any other evidence to make this point. This

assertion was contradicted by the unchallenged evidence of one of the principals of Golden Equity, Michael Bregman. His evidence, which was led by the plaintiffs in an affidavit admitted on consent, was that Golden Equity was unaware of the explosion and fire when it negotiated the purchase price of \$33,550,000. When Golden Equity became aware of the explosion prior to closing, it assigned this action to the plaintiffs, and the purchase price did not change.

- [78] Avedian claimed that Orion hired additional staff to deal with 399 Markham, but produced no T4 slips to support the claim.
- [79] Avedian's failure to provide documentary evidence to support his claims is particularly glaring given that, as he testified, he anticipated suing the defendants within weeks of the explosion. Within days of the explosion, the plaintiffs' counsel, Ms. Carter, was involved and she has acted for them ever since, including at the trial. Avedian and Ms. Carter dealt directly with Shelley Nicholson at Intact. The lawsuit was commenced in 2012 when the plaintiffs still owned 399 Markham and had access to all records for the building, which continued until 2015. Avedian also said that when 1815 was sold in 2015, all the documents that were needed for the lawsuit were kept.
- [80] Of equal concern is that when the plaintiffs produced records, they produced the records selectively or produced only portions. An example is the insurance policies. Avedian claimed that the premiums increased because of the fire, but only produced portions of the policies that did not show whether the policies provided the same coverage. When confronted with this shortcoming, Avedian agreed that the full policies should have been produced.
- [81] In short, Avedian's evidence was neither reliable nor credible. The lack of evidence to support his assertions, and inconsistencies between those assertions and the documentary record support this conclusion. When confronted with contradictory evidence or asked for details of his assertions, he frequently resorted to saying he could not remember, that they produced everything, or gave other answers that were evasive or non-responsive.

Petti and D'Orazio

- [82] Petti and D'Orazio testified briefly at the trial. They discussed their expectations when the building was purchased and their observations of the damage caused by the fire and explosion. Their evidence added very little to the trial, as they were not involved in the management of the building.

Anthony Melino

- [83] Anthony Melino, who was the operations manager for Orion Group and oversaw day-to-day operations of several buildings, including the building the plaintiffs had invested in on Keele Street and 399 Markham, testified for the plaintiffs. He left Orion Group in 2012. He has been a firefighter for the past ten years. Melino confirmed much of what Avedian said about the plans for the building and how they intended to increase revenue, as they had done at Keele Street.

- [84] Melino worked out of the Orion office in Vaughan. He noted that Linda, the superintendent, and her husband were on site. He said they were responsible for cleaning, maintenance, collecting rents, taking notice, and looking for new tenants. Melino said Linda “was great”, as she had a good rapport with the tenants and was well-known to them. As I have noted, Linda did not testify.
- [85] Melino was at 399 Markham for several days after the explosion. He said that tenants were upset about it and wondered if the explosion was due to changes the new owners were making. Melino also interacted with Nicholson as well as the contractors on the insurance claim and repairs to the laundry room. Melino said that vacancies started to “skyrocket” as people were frustrated by not having facilities, referring in particular to July 2011 when nine tenants gave notice.
- [86] Melino claimed that because of tenants’ anger, the owners were unable to charge for parking. He also testified that due to the vacancies the return on income was not high enough to build out the additional 17 apartment units.
- [87] Melino said he that he sometimes made notes and would transcribe them into emails, which was his way of reporting to Avedian. Nevertheless, very few emails were produced by the plaintiffs.
- [88] Melino’s evidence about tenant complaints and unhappiness is, like Avedian’s, hearsay or double hearsay. His interaction with tenants was very limited. Linda would have received complaints and reasons for tenants leaving, but, again, she was not called as a witness. Once repairs were completed in July 2011, Melino’s involvement in the building diminished, and he left Orion in 2012. Overall, his evidence is of little assistance to the plaintiffs.

Other witnesses

- [89] Olanzo Jarrett’s evidence relating to the elevators is discussed above. Michael Bregman’s affidavit evidence dealing with the sale of 1815 in 2015 has also been addressed earlier in these reasons. Neither of them help the plaintiffs’ case.
- [90] Michael Loeters, the plaintiffs’ insurance broker, described his involvement in the claim process and the alleged impact of the fire on the cost of insurance. I address his evidence later in these reasons.
- [91] Kevin Ramsay, Orion’s accountant, testified about the preparation of financial statements for 399 Markham. He prepared them in 2014 for the prior years when the plaintiffs owned 1815. This was two years after the lawsuit started. Ramsay also prepared *pro forma* financial statements relating to 399 Markham based on information provided by Avedian.
- [92] Alanoor Dharsee, a licensed paralegal, described the application for an above-guideline rent increase he brought in 2009 for the prior owner of 399 Markham and his retainer in 2010 to vary a rent reduction. He also gave helpful explanations of above-guideline increases and the process for landlords to seek them.

- [93] The other witnesses called by the plaintiffs were experts.
- [94] Ivor Gottschalk, a forensic accountant, prepared a report to support the plaintiffs' claim for economic losses in the form of lost income. I excluded his evidence following a *voir dire*. I provided written reasons for that decision: *1815212 Ontario Inc. et al. v. Enbridge Gas Distribution Inc. et al.*, 2025 ONSC 1243. I concluded that Gottschalk had simply taken the plaintiffs' information and manufactured a report to reflect the plaintiffs' position. He did not provide an independent and objective opinion of the plaintiffs' losses which was the product of his independent judgment "uninfluenced by who has retained him ... or the outcome of the litigation": *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182, at para. 32. Nevertheless, Gottschalk's calculations were still able to be used by the plaintiffs in closing argument as they reflected the plaintiffs' theory of damage, and no one took issue with the arithmetic.
- [95] The plaintiffs also led expert real estate appraisal evidence from Terry Rout to support the claim that the property was sold in 2015 for much less than it would have been if the fire and explosion had not occurred. However, Rout's opinion was based on a number of assumptions provided to him by the plaintiffs which are not supported in the record and which undermine his conclusions. This included, for example, that the elevators were damaged by the explosion and that the failure to increase income – from higher rents, parking, storage and new units, among other things – was also due to the explosion and fire.

The defendants' evidence

- [96] The defendants began their case by calling Kevin Dailey, the Acting Fire Captain who was first on the scene at 399 Markham and put out the fire in the laundry room.
- [97] Nicholson, the insurance adjustor, testified for the defendants. She gave detailed evidence for several hours over the course of two days about the insurance claim and the repairs.
- [98] The defendants also called several engineers and contractors: Terry Smith, whose company was retained by Intact to assess the damage and prepare drawings and obtain permits to do the repairs; Brian Smith, who worked with Terry Smith to complete the repairs; and Gary Howard, a participant expert who investigated the boilers and concluded that they were not damaged by the explosion.
- [99] Zaher Hmayed, a professional engineer, gave expert opinion evidence on the time necessary to complete the repairs and the cost and time needed to build 17 additional units. David Atlin, a real estate appraiser, addressed the impact, if any, of the explosion and fire on the value of 399 Markham, and provided his opinion on the appropriate date to consider that impact. He also addressed the feasibility of building 17 additional apartment units. Farley Cohen, a forensic accountant and business valuator, gave opinion evidence on the economic losses alleged to have been suffered by 1815. I address this evidence later in these reasons.

[100] The witnesses called by the defendants gave their evidence in a straightforward manner, which was well-supported by either contemporaneous records or, in the case of the experts, cogent and compelling analysis. I found their evidence to be credible and reliable.

Issues

[101] This case requires determination of the following issues:

- (1) the diminution in value, if any, of 399 Markham, following the reasonable period of time necessary to complete the repairs;
- (2) the economic losses suffered by 1815 as a result of the explosion and fire; and
- (3) whether compensation for economic losses already paid by Intact should be deducted from any award of damages.

1. Diminution in value of 399 Markham

[102] The plaintiffs claim compensation for the diminution in value of 399 Markham caused by the fire and explosion.³ The defendants do not dispute that such a claim may be made, although they caution that it should not lead to double recovery, as the value of an income-producing asset may be measured based on the income it produces: *Ronald Elwyn Lister Ltd. v Dayton Tire Canada Ltd.* (1985), 52 O.R. (2d) 88 (C.A.); *McClellan v. Manorgate Estates*, 2010 ONSC 949, 88 C.L.R. (3d) 237 at para. 65.

[103] The parties disagree over the date when any diminution in value of 399 Markham should be determined. The plaintiffs say that the time period should run until 1815 was sold to Golden Equity in 2015 and the claim was assigned to the plaintiffs. They argue that the impact of the fire on the income the building was earning continued to that date such that, but for the explosion, 399 Markham would have been worth much more than what Golden Equity paid for it on July 15, 2015.

[104] The defendants disagree, stating that any losses claimed by the plaintiffs – economic and diminution in value – should be assessed at the date shortly after the property damage ought to have been fully repaired, citing *Manorgate Estates* at para. 65, citing *Payton v. Brooks*, [1974] R.T.R. 169 (C.A.) at p. 176.

Time required to complete repairs

[105] The explosion and fire occurred on September 14, 2010. However, the repairs to the laundry room and adjacent areas were not fully completed until early July 2011. There were delays in completing the repairs due to design changes Avedian wanted made,

³ In their reply submissions the plaintiffs say that “this is not a case of a claim for the diminution in value of the building” but for “consequential economic losses resulting from the property damage.” However, the plaintiffs go on to say that “[o]ne of those losses does happen to be the claim related to the capital loss or diminution in value caused by the high vacancy rate as at the date of the assignment of the losses”, which they say is July 15, 2015.

including improvements such as adding windows, as well as due to miscommunication between Avedian, the insurance adjustors and the contractors.

- [106] Towards the end of the trial the parties agreed that, in the absence of any delays, it should have taken 121 calendar days to complete all the repairs, meaning the repairs should have been completed by January 13, 2011, and not until the beginning of July 2011.
- [107] The defendants' property appraisal expert, David Atlin, determined that there should also be a "normalization period" of three months following the completion of repairs to allow the building's business operations to return to normal before assessing any diminution in value of the building due to the explosion. Atlin stated this despite his own opinion that any interference with the business operations of 399 Markham diminished quickly and normalized shortly after the explosion.
- [108] The plaintiffs' property appraisal expert, Terry Rout, agreed that once the laundry room was repaired and was in its new and improved condition, any potential tenant would view it as a positive or neutral attribute. Put another way, it no longer had a negative impact on the value of the building. Rout agreed the same was true for the elevator modernization which was completed sometime in 2012.
- [109] Atlin's approach is compelling and logical, and supported by the evidence. Rout's admission that the laundry room repairs would have a time-limited impact supports Atlin's approach.
- [110] The plaintiffs had a duty to mitigate their losses by working promptly with the insurer to get the repairs completed as soon as possible. This did not happen due, at least in part, to the actions and inaction of the plaintiffs. Further, the delays were not the fault of the defendants. However, the delays had limited impact as, among other things, there was a temporary laundry room for the tenants, and there were other disruptions during the period not caused by the explosion. Accordingly, and following the agreement between the parties on the 121-day repair period and Atlin's three month adjustment, I adopt April 12, 2011, as the appropriate date on which the building ought to be found to be restored to its pre-explosion condition.

Assessing the diminution in value

- [111] The general rule in assessing damages is that they are intended to put the plaintiff "in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation": *Livingstone v. Rawyards Coal Co.* (1880), 5 App. Cas. 25 at p. 39, quoted with approval in *James Street Hardware and Furniture Co. v. Spizziri* (1987), 62 O.R. (2d) 385 (C.A.) at p. 401. Once repaired, is the property itself worth more or less than it would have been but for the damage, having regard to the nature of the repairs and any other impacts on the value of the building stemming from the harm, such as stigma associated with the damage?
- [112] The choice of a date shortly after the repairs ought to have been completed, rather than a date far in the future as asserted by the plaintiffs, makes sense here, as it does in most cases:

As stated in *Electronic Superstore Ltd. v. Geransky Brothers Construction Ltd. et al.* (1990), 87 Sask. R. 194 (K.B.) at para. 44:

The true measure is the difference between the value of the plaintiff's business immediately before the wall collapse and its value immediately after the wall collapse. This measure of general damages, taking into account as well reasonable losses incurred by the plaintiff in mitigation of such damages, inherently includes loss of future profit that was originally claimed by the plaintiff in its statement of claim. It also inherently includes a consideration of the causation and mitigation issues. [Citations omitted]

- [113] The late Professor Waddams noted that “there is good reason for an early crystallization of damages”, as postponing a date for assessment enables speculation and uncertainty: S.M. Waddams & Patrick Healy, *The Law of Damages*, (Toronto: Thomson Reuters Canada Ltd., 2024) (loose-leaf 2024-Rel. 1) at 1:30.
- [114] The plaintiffs’ position that damages should be assessed as of July 15, 2015 is flawed factually and legally.
- [115] First, the factual problems.
- [116] In this case, the plaintiffs’ date of July 15, 2015, may be seen as arbitrary. It is selected solely on the basis that it is the date when they sold their interest in 399 Markham. The proposed date is almost five years after the explosion and four years after repairs were completed. Many other factors will have affected the value of the building in the interim.
- [117] The plaintiffs’ appraisal expert, Terry Rout, conceded that once the laundry room was repaired it no longer had a negative impact on the value of the building. Indeed, the new laundry room, paid for by the insurer, was much improved from the previous one and would have enhanced the value of the building. Rout also acknowledged that the elevator modernization, once completed, would have had a positive impact on the value of 399 Markham.
- [118] There is no connection between the damage caused on September 15, 2010 and the sale price negotiated with Golden Equity in 2015. Golden Equity was unaware of the laundry room explosion and fire when it negotiated the purchase price in 2015 – an arms-length negotiation which, presumptively, settled on the fair market value of the building at that date. And when it was disclosed, the price was not renegotiated. This is not a case like *Vangar Properties v. Belmar Roofing*, 2022 ONSC 4258, aff’d 2023 ONCA 906, relied on by the plaintiffs, where the purchase price was lowered due to the need to make repairs or because of some other deficiency in the building.
- [119] The purchase price for 399 Markham paid by Golden Equity, \$33,500,000, may be compared with Rout’s opinion, based on “extraordinary and hypothetical conditions”, that the value of 399 Markham ought to have been \$43,900,000 had the explosion and fire not occurred. I take no issue with Rout’s methodology. He is a competent and professional appraiser. The problem is with the assumptions he was asked to make, which are, stated

broadly, that the fire and explosion impacted the value of 399 Markham as an income-earning asset long after the laundry room was repaired, up until July 15, 2015. As I discuss below, those assumptions are not supported in the evidence and are unreasonable.

- [120] Atlin calculated the losses related to diminution in value of the building on two dates: March 31, 2011 and October 31, 2011. The latter date was used to reflect the fact that repairs were not actually completed until early July 2011, to which Atlin added a three-month normalization period. However, Atlin's opinion, based on his review of the rent rolls and other data, was that the building had recovered from the fire and explosion even before March 31, 2011, and that any diminution in value that continued was due to other things happening in the building and the market. The March 31, 2011 date was adjusted at trial, following the agreement between the parties on the time it ought to have taken to repair the laundry room, to April 12, 2011.
- [121] Atlin explained that it is difficult to isolate the impact of the damage to the laundry room when other things were also happening in the building, including elevator modernization, the addition of security cameras and efforts to charge for parking and other changes that were not present prior to the explosion and fire. Atlin noted that buildings like 399 Markham have many issues. Elevators, underground parking, balconies and windows all need to be addressed. Elevators can have a particularly significant impact on tenants, although in the longer term modernized elevators add value, just as a new laundry room does.
- [122] Changes to rules and new charges can be upsetting to tenants. It is not reasonable, Atlin said, to ascribe 100% of negative value impacts to the laundry room and related repairs. Further, as Atlin noted, at least until March 2011 there were no changes in rental rates or vacancies.
- [123] Atlin's conclusion was that on or about April 12, 2011, 399 Markham's "impeded value" was \$200,000 less than its unimpeded value. However, given other things impeding the value of the building, including the elevator modernization work and other changes, Atlin's opinion was that 50% of that impeded or diminished value – \$100,000 – could be attributed to the laundry room. For October 31, 2011, Atlin calculated a \$600,000 diminution in value, but by that date he would only ascribe one-third of the impeded value to the laundry room, or \$200,000.
- [124] Rout was not asked to conduct an analysis similar to Atlin's approach, although Rout agreed in cross-examination that he could have done so.
- [125] Then there is the legal problem with the plaintiffs' position.
- [126] It has long been the law that "individual shareholders have no cause of action in law for any wrongs done to the corporation": *Hercules Managements Ltd. v. Ernst & Young*, [1997] 2 S.C.R. 165 at para. 59, citing the "rule" in *Foss v. Harbottle* (1843), 2 Hare 460, 67 E.R. 189. A shareholder cannot sue for the decline in value of shares; any wrong to the company that caused the diminution in value must be pursued by the company itself,

regardless of the corporate structure: *Meditrust Healthcare Inc. v. Shoppers Drug Mart* (2002), 61 O.R. (3d) 786 (C.A.) at para. 42.

- [127] Here, the action was brought by 1815 and has been assigned to the plaintiffs. By seeking to fix damages in 2015 the plaintiffs are suing over a loss to them of the value of their investment, not a loss to the company, which continued, and apparently continues, to own 399 Markham. Put another way, the only loss, if it is a loss, which crystallized on July 15, 2015, was a loss to the individual plaintiffs, not a loss to 1815. The “Rule in *Foss v. Harbottle*” bars the plaintiffs’ claim for losses associated with the alleged diminution in value of 1815 in July 2015. Indeed, the loss, if it is a loss, was actually suffered by the plaintiff’s individual holding companies, making the loss one more level removed from the plaintiffs and barred again by *Foss v. Harbottle*.
- [128] Further, by seeking damages for an alleged diminution in value of 1815 when they sold it, the plaintiffs are continuing to pursue individual claims that were barred by Wilson J. and affirmed by the Court of Appeal in the interlocutory rulings in this case. Although Wilson J. did not determine the *Foss v. Harbottle* issue, she took it into account in dismissing the plaintiffs’ motion to amend the statement of claim, noting at para. 68 that “one of the considerations is whether the pleading sought fails to disclose a reasonable cause of action.”

Conclusion on diminution in value

- [129] Having concluded that the appropriate date for assessing diminution in value is April 12, 2011, I accept Atlin’s uncontradicted evidence that the diminution in value of 399 Markham attributable to the damage caused by the fire and explosion is \$100,000.00.

2. Economic Losses

The legal framework

- [130] The Court of Appeal recently stated that “[a] successful plaintiff in a tort action is entitled to be compensated for all reasonably foreseeable losses caused by the tort and to be put into the position they would have occupied but for the injury caused by the defendant, insofar as it is possible to achieve this through a monetary payment”: *Zhang v. Primont Homes (Caledon) Inc.*, 2024 ONCA 622 at para. 21.
- [131] Thus, the plaintiffs may claim additional damages, such as lost profit and expenses they incurred due to the defendants’ negligence, in order to put the plaintiffs in the position they would have been in “but for” the negligent conduct. However, the plaintiffs must prove these damages. As stated by the Supreme Court of Canada in *Clements v Clements*, 2012 SCC 32, [2012] 2 S.C.R. 181, at para. 8: “The test for showing causation is the ‘but for’ test. The plaintiff must show on a balance of probabilities that ‘but for’ the defendant’s negligent act, the injury would not have occurred.” This “but for” test, the Court says, “must be applied in a robust common sense fashion.”: *Clements*, at para. 9.

- [132] In *Resurface Corp. v Hanke*, 2007 SCC 7, [2007] 1 S.C.R. 333, at para. 23, the Supreme Court noted that “the ‘but for’ test recognizes that compensation for negligent conduct should only be made ‘where a substantial connection between the injury and the defendant’s conduct’ is present.”
- [133] The law instructs, therefore, that the court must find a “substantial connection” between the wrong and the injury, and that the injury was, objectively, reasonably foreseeable to a reasonable person in the position of the defendants: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, [2008] 2 S.C.R. 114, at para. 13; *Hemmings v. Peng*, 2024 ONCA 318, at para. 68.
- [134] Possibility of harm is not enough. In *Kienzle v. Stringer* (1981), 35 O.R. (2d) 85 (C.A.), leave to appeal to S.C.C. refused, 38 O.R. (2d) 159, for example, which dealt with solicitor’s negligence in failing to provide marketable title to a farm, loss of profit attributed to the farm operations were reasonably foreseeable. But the Court of Appeal held at p. 90 that loss of profits from “secondary transactions which may be fuelled by funds” that were lost are not reasonably foreseeable. As the Court of Appeal put it, “damages that flow from the loss of profits from a secondary bargain lie on the far side of a Rubicon that should not be crossed; reasonable foreseeability takes us only to the shore.”
- [135] This case involves a claim for consequential economic losses. In effect, the claim is that the plaintiff would have earned more income and had a more valuable asset had the tortious wrongdoing of the defendants not occurred. These are hypothetical losses which, if established, must attempt to measure what might have happened “but for” the wrongful conduct, as opposed to what did happen. Claims of this kind are not required to be proven on a balance of probabilities: *West v. Knowles*, 2021 ONCA 296 at para. 72. Rather, with respect to hypothetical events, the standard of proof is a “real and substantial possibility”: *West*, at para. 75; *MacLeod v. Marshall*, 2019 ONCA 842, 148 O.R. (3d) 727, at para. 18.
- [136] However, it is important to bear in mind that hypothetical losses are still subject to the “but for test” and other requirements. As the Supreme Court held in *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 41, “Future or hypothetical events can be factored into the calculation of damages according to degrees of probability, but causation of the injury must be determined to be proven or not proven.” The economic loss must still flow from or be “consequent upon” the physical damage: *Fatehi*, at p. 134; .
- [137] In *Folland v. Reardon* (2005), 74 O.R. (3d) 688 (C.A.), at para. 73, the Court of Appeal summarized four criteria the plaintiff must meet before a court can award such damages:

First, the plaintiff must establish on the balance of probabilities that but for the defendant’s wrongful conduct, the plaintiff had a chance to obtain a benefit or avoid a loss. Second, the plaintiff must show that the chance lost was sufficiently real and significant to rise above mere speculation. Third, the plaintiff must demonstrate that the outcome, that is, whether the plaintiff would have avoided the loss or made the gain, depended on someone or something other than the plaintiff himself or

herself. Fourth, the plaintiff must show that the lost chance had some practical value.

- [138] Although the above passage concerned contract damages, it was quoted with approval in the context of tort damages in *Berry v. Pulley*, 2015 ONCA 449, 335 O.A.C. 176, at paras. 70 - 71. In *Berry*, the Court of Appeal discussed the second criterion, quoting Doherty J.A. in *Folland*, that “there is no bright line between a real chance and a speculative chance” and that “an empirical review of the case law suggests that chances assessed at less than 15 percent are seldom viewed as real chances.” This was described as a “*de minimis* threshold...requiring the plaintiff to prove ...’some reasonable probability’ of realizing ‘an advantage of some real substantial monetary value’”: *Berry*, at para. 71.
- [139] The case law also recognizes that quantification of hypothetical business losses is difficult and cannot be determined with mathematical precision. It can require the court to make assumptions and accept estimates: *All-Up Consulting Enterprises Inc. v. Dalrymple*, 2013 NSSC 46 at paras. 196-198. As the Court of Appeal stated in *Martin v. Goldfarb* (1998), 41 O.R. (3d) 161 (C.A.) at p. 187, “where damages in a particular case are by their inherent nature difficult to assess, the court must do the best it can in the circumstances.” This does not, however, mean that “a litigant is relieved of his or her duty to prove the facts upon which the damages are estimated.” Nor does it relieve the plaintiffs of their obligation to prove that damages are caused by the negligence of the defendants.
- [140] In deciding whether there is a “substantial connection” between the physical damage and a hypothetical economic loss, therefore, the first and most important question remains whether the losses claimed by the plaintiff meet the “but for” test: see *Athey*; *Folland*. If so, is the claim for hypothetical lost income based on “some reasonable probability” that 1815 would have earned that income. Third, does the loss depend on something other than the plaintiff’s actions? This third criterion deals with mitigation and consideration of intervening steps or decisions made by the plaintiff. Finally, did the lost chance have practical value?

The plaintiffs’ specific claims

Higher vacancies and rent increases

- [141] The plaintiffs assert a claim of \$3,367,111.88 for lost rental income resulting from the explosion. This is based on a series of assumptions, including: (1) that prior to the explosion the building had no vacancies, whereas following the explosion there were vacancies; (2) that guideline increases would be applied to all tenants; (3) that above-guideline increases permitted by the LTB related to balcony and garage repairs would have been implemented; (4) that higher rents would be charged to new tenants, as apartments would be renovated when previous tenants moved out; (5) that once the elevator modernization was completed and other amenities were improved, an above-guideline increase could be approved and applied to recapture some of the capital outlay; and (6) the plaintiffs would have constructed the 17 additional units which would have been ready for occupancy by January 2012.

- [142] The plaintiffs submit that “but for” the explosion and fire in the laundry room, these assumptions would have been realized.
- [143] There are many reasons why these assumptions are not supported. As I have noted, aside from Avedian saying so and Melino writing an email in July 2011 that tenants were upset due to the laundry room, there is no evidence that tenants were upset by the laundry room explosion such that they were leaving, or refusing to pay rent increases or fees, or that the building was somehow stigmatized by the explosion that made it difficult to attract new tenants. Yet Avedian said that because of the upset and the high vacancies he could not raise rents or charge for parking and storage for the next four years.
- [144] Contrary to the plaintiffs’ assertion, there was tenant turnover prior to acquiring the building in 2010. There were even some vacancies between tenancies. There is no evidence that any tenants moved out due to the lack of the laundry room, nor is it likely given that there was a temporary laundry room. Despite this, the plaintiffs seek to lay the cost of every vacancy from 2010 to 2015 at the feet of the defendants because of damage to the laundry room.
- [145] The statistics show that the first time a large number of tenants left the building in one month was in July 2011, when 9 tenants gave their notice. This was after the new and improved laundry room was completed, but while the elevator modernization project was underway. Using the test in *Folland*, it is reasonable to conclude that the decision of tenants to leave in July 2011 would have been more likely due to the ongoing lack of elevators which was caused by a decision the plaintiffs made, rather than to the opening of a new laundry room which would have been a reason to stay in the building.
- [146] The plaintiffs’ own analysis was that its income loss from vacancies only rose significantly after the new laundry room was completed, asserting a cost of \$105,666.09 for the ten months between October 2010 to July 2011, rising to \$323,326.58 for the twelve months ending July 2012 and continuing to rise to an alleged loss of \$822,010.36 for the twelve months ending July 2015. It is not explained why the further away one gets temporally from the explosion, the more the losses increase, but these “losses” would have had nothing to do with the new laundry room, which was an attractive amenity for tenants.
- [147] It is also paradoxical that the plaintiffs complain of higher-than-normal vacancies, and vacancies for longer periods, when their plan when buying the building was to take advantage of vacancies and prolong them in order to renovate units so that they could charge higher rents.
- [148] Ultimately, it is the plaintiffs’ burden to show that vacancies were higher than anticipated, or higher than they wished them to be, and that this was due to the laundry room explosion rather than some other cause, including a cause created by the plaintiffs. The plaintiffs have simply failed to do so.
- [149] There are also problems relating to the plaintiffs’ calculations of these alleged losses. The plaintiffs’ experts used “market rent” comparisons provided by Avedian as opposed to

actual market rents obtained from independent sources. The evidence that the building had higher vacancy rates than other comparable buildings was not persuasive either, given the variations in buildings, the choice by the plaintiffs to renovate units when they were vacated, and the impact of the elevator modernization. It is also uncertain whether the above-guideline increases desired by the plaintiffs could have been achieved.

- [150] Accordingly, the plaintiffs have not proven a connection, let alone a substantial connection, between the fire and explosion in the laundry room in September 2010 and an alleged loss in income from rents in the building over the following five years. Nor are the calculations of losses based on anything more than vague speculation and wishful thinking.

Parking, storage and other alleged revenue shortfalls

- [151] The plaintiffs assert that by July 2015, but for the fire and explosion in the laundry room in September 2010, they would have collected \$624,359.44 for additional parking storage and laundry fees. Broken down, this was comprised of \$465,399.41 for parking, \$97,158.00 for storage, and \$61,798.03 for laundry fees.
- [152] The points I have made about the lack of evidence of tenant unhappiness that supposedly made it impossible to raise rents apply equally to the parking and storage fees. There is no evidence beyond Avedian’s testimony and one email from Melino of tenants being upset over the lack of the permanent laundry room. There is also no evidence of any attempt by 1815 to charge additional fees for parking and storage, or of tenants objecting. On this basis, I find that the lack of revenue from these sources over the five-year period is not connected to the fire and explosion and is a result of decisions made by the plaintiffs.
- [153] The calculations are also unreliable. Melino reviewed the rent rolls and lease agreements in February 2010 and found that there were 40 tenants who had been there more than a year from whom parking fees could be collected but were not. He noted “discrepancies” in 55 leases, or where there was no lease agreement and speculated that fees might be collected from those tenants. However, none of the lease agreements were produced by the plaintiffs, making Melino’s evidence worthy of little weight.
- [154] The rent rolls from the previous owner showed that many tenants were paying for parking, which continued after 1815 bought the building. Others had free parking which Avedian agreed he could not change. Many of those who had the notation “free parking for a year” were recent tenants. Some tenants had a parking space included in the rent. Avedian claimed in his testimony that parking charges were only instituted in 2014, but this was shown to be incorrect. There is also no evidence of how many tenants had cars, needed a parking space, or were willing to pay for one if there was a fee.
- [155] There is also a legal impediment to the plaintiffs’ claim for parking. Under section 121(1) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (the “RTA”), a landlord is only allowed to increase the rent charged – by agreement – “if the landlord has provided or undertakes to provide a new or additional service in exchange for the rent increase.” Based on the evidence, it appears that many leases had free parking, free parking for a year but

without specifying a fee to be charged the following year, or tenants were simply never charged for parking separately. Consequently, introducing a new charge for parking would likely violate s. 121 of the *RTA* as it was not a "new service."

- [156] The claim for storage locker fees is equally flawed. The evidence of a connection between the explosion and fire in the laundry room and revenue from storage lockers is lacking. There was no evidence that locker rental charges were or were not included in leases as the leases were not produced. There was little evidence of the availability of the storage lockers, or of the demand for them, or what tenants might be willing to pay for them. There are no emails, announcements or other documentary records showing a change of policy or an attempt to charge for them. Such a change may not have been legal under s. 121 of the *RTA*. The plaintiffs say they only began to charge for lockers in 2014, but this is inconsistent with evidence of some locker revenue before that date, albeit only a small number of tenants seem to have rented them.
- [157] The plaintiffs also claim for lost revenue from the laundry room during the time the room was under repair. This claim also fails. Losses in revenue during the repair period were included in the compensation provided by Intact. The claim here must only relate to uninsured losses. The payment by Intact to 1815 included business interruption losses, including losses related to laundry revenue.
- [158] The calculation of such losses is also problematic. 1815 received income from the temporary laundry room during the period of the repairs. However, its calculation of losses is based on projections of what it ought to have earned that are found in a proposed contract with the supplier, Coinamatic. The calculations are not based on the existing contract. Perhaps the best evidence of the reduced revenue from the laundry room comes from Coinamatic, which told 1815 that its losses per month during the repair period were \$448.69, a far cry from the \$2,500 asserted at trial or the claim for \$61,798.03 based on unfounded projections.

The proposed construction of additional apartments

- [159] The plaintiffs claim that they were unable to build the 17 additional units on the ground floor and basement because of "explosion-related vacancies." They therefore claim lost rental income for those hypothetical units. Again, the plaintiffs have also failed to prove a connection between the laundry room fire and their decision not to construct the new units.
- [160] Prior to September 15, 2010, the plan to build the 17 additional units this plan was barely more than an idea, based on a preliminary sketch. Preliminary architectural drawings were only completed in 2013 and 2014.
- [161] In my view, the reason why the 17 additional units were not constructed was because they were not financially viable. Building them would have cost over \$75,000 per unit, just in hard costs. As Atlin noted, given the high debt-to-equity ratio on the property due, in part, to the plaintiffs' taking on an expensive second mortgage, it was not financially prudent to proceed with this investment in 2010 or 2011. The plaintiffs had also chosen to spend

hundreds of thousands of dollars on the elevator modernization between 2010 and 2012. Both the second mortgage and investing right away in the elevators had not been contemplated by the plaintiffs in their original calculations when deciding to purchase 399 Markham, but these expenditures also had nothing to do with the explosion and fire in the laundry room.

- [162] Golden Equity, which purchased 1815 in 2015, and which continues to own 399 Markham, has not built out the new units. While there is no evidence why that has not happened, if the project were viable and profitable, it is surprising that after 10 years of ownership an apparently well-funded owner has not built them. The inference is that they are not worth it.

Insurance premiums

- [163] Although not pleaded, the plaintiffs assert that the defendants should be liable for increased insurance premiums charged by Intact in the years following the explosion and fire. They point out that 1815's insurance premium for the period December 2011 to December 2012 increased by just over \$30,000, from \$23,295.00 to \$53,401.00 and continued to increase each year ending in 2014 when the premium was \$64,729.00. The plaintiffs compare these amounts to a "but for" premium of \$30,294.00 to come up with a difference, and claim, for \$113,469.00 over the next few years.
- [164] Again, this claim is not proven.
- [165] In his direct examination, Avedian testified that the insurance premium "skyrocketed" after the laundry room was damaged, asserting that it "doubled and tripled." In support of this he presented the court with the first page of the policy renewal documents he received from Intact each year which showed the higher premiums. These were the only pages produced by the plaintiffs relating to the insurance premiums.
- [166] In cross-examination, Avedian said he was aware of the premium increase in early 2011, by which time counsel was involved. Yet he did not produce the entire policies to support this claim. Avedian had no explanation for this failure and agreed they should have been produced. He acknowledged that the first page did not describe the scope of the policy. Avedian also said he could not recall a discussion with Intact about its concern, following the fire, that the building had not been fully insured when 1815 purchased it in 2010. A notation on an Orion Group ledger for 1815 showing the need for an assessment of replacement cost in November 2010 did not refresh Avedian's memory.
- [167] When confronted with the actual policies, Avedian acknowledged that the replacement cost of the building increased from \$21,200,000 in 2010 to \$55,640,000 the following year. Avedian agreed that this meant that the value of 1815's coverage had increased substantially.
- [168] In responding to questions about the premiums, Avedian deferred to Michael Loeters, the plaintiffs' insurance broker. Loeters testified that there were "challenges" in renewing the policy due to Intact being concerned about the open property loss claim and potential future

claims arising from the explosion and fire. He said in direct examination that “the policy went under intense scrutiny from the underwriter.”

- [169] In an email sent to Avedian in 2018, Loeters stated that the increase in premiums was due to the claims, “in particular, the \$600,000+ claim relating to the gas explosion.” Loeters did not have the policy when he sent that email, some seven or eight years after the explosion and fire. Loeters did not review the full policy or other documents, and only saw an excerpt of the policies containing the increased replacement value about a week before testifying at the trial. When asked about the impact of the increase in replacement value, Loeters testified in direct examination that it would increase the annual premium by about \$7,000.
- [170] In cross-examination, when shown documents from Intact, including emails Loeters wrote at the time, Loeters agreed that the building was underinsured and that in the fall of 2010 Intact had contemplated applying a penalty to 1815 for underinsuring the building. After being taken through the policies and being shown that the only thing which changed in the policies following the explosion and fire was the replacement cost of the building, Loeters agreed that the premium increase was driven by the increase in the replacement cost. His suggestion that other claims might have influenced the increase was purely speculation and was not supported by the claims history.
- [171] Accordingly, there is no evidence to support the plaintiffs’ claim that the insurance premiums went up because of the fire and explosion. This claim was asserted on the basis of limited and misleading disclosure by the plaintiffs, similar to the misleading assertion that the elevators were damaged by the explosion which required their modernization to be advanced – an assertion unsupported by any evidence and contradicted by the modernization contract which was only disclosed when it could no longer be avoided, just prior to trial.
- [172] In these circumstances, it is not necessary for me to address the legal impediment to claiming increases in insurance premiums as foreseeable damages, raised by the defendants, relying on American case law.

Financing costs

- [173] The plaintiffs assert that the impact of the explosion prevented them from paying off the high-interest second mortgage early, claiming a loss of \$459,240.52 in additional interest payments.
- [174] This claim is also unfounded.
- [175] The second mortgage precluded prepayment “in whole or in part.” The agreement also had an “entire agreement” clause. Avedian said, however, that he had discussions with the principals of Terra Firma, the mortgagee, and said that they were open to prepayment and adjustments to the loan to finance the proposed additional units. But those individuals were not called as witnesses and no documents were produced or presented to support these hearsay assertions.

- [176] The second mortgage was required because the closing date was advanced to August 2010, prior to Drainstar (D’Orazio’s company) receiving a large payment which they had intended to use to finance the purchase of 399 Markham. However, Petti confirmed that the money, about \$2,000,000 from a City of Toronto contract, was received in the fall of 2010, and was more than sufficient to pay off the \$500,000 borrowed from Terra Firma. Petti said they used the money to do repairs, but the damage to the building was covered by insurance and there is no evidence that the money was used at 399 Markham at all.
- [177] The plaintiffs produced no evidence that they even asked to repay the mortgage. It is a reasonable inference, therefore, that either the plaintiffs chose not to repay it or they were prohibited from repaying it due to the terms of the mortgage. There is no connection between the damage to the laundry room and the interest payments made by the plaintiffs to Terra Firma.

Staffing costs

- [178] The plaintiffs claim that 1815 had to hire additional custodial staff for the building due to the turmoil following the fire and explosion. Avedian first asserted this loss when examined for discovery several years ago, but at that time could not recall the name of the person he hired. At trial he “just remembered the name” and said they were a couple, “Sandra and Mike.” In fact, there are calendar entries showing that “Sandra and Mike” did cleaning at 399 Markham in the first half of 2011. Melino also confirmed that a second superintendent was eventually hired, but this was after the vacancy rate went up in July 2011, which was after the laundry room had been repaired.
- [179] Although Avedian’s company, Orion Group, would have handled this cost, no documents or T4 slips were produced for these employees. Yet the plaintiff claims \$175,000 in damages based on \$35,000 per year for five years. Further, the financial statements for 1815 are inconsistent with this claim, showing a much smaller increase in salaries and benefits after 2010.
- [180] As with other claims, there is no reliable or credible evidence that the explosion in the laundry room was connected to the hiring of additional custodial staff, nor is there evidence supporting the amounts claimed to have been paid.

Orion Group’s management fees

- [181] The plaintiffs claim \$331,655.00 for unpaid management fees that are said to have arisen from additional services and time spent by Orion Group in managing the building due to the explosion and fire. On July 10, 2015, Orion Group issued an invoice to 1815 for the total amount claimed, broken down as follows: \$7,500 per month from September 2010 to December 2012, \$4,500 per month for 2013, and \$2,500 per month until 1815 was sold in July 2015.
- [182] Melino said he spent considerable time dealing with 399 Markham in 2010 and early 2011 as a result of the explosion, but there is no record of how much time or whether it was ever

expected that 1815 would have to pay for it. At least some of Melino's time was considered in reaching the settlement with Intact.

- [183] Nevertheless, Avedian said, it is "real debt." I do not agree.
- [184] Avedian admitted he never told the principals of Golden Equity of this invoice issued to 1815 just before Golden Equity purchased the company. As the defendants say in their closing submissions, "[i]t will likely come as a huge surprise to 1815 that they currently owe Orion Group \$331,655 for unpaid management fees."
- [185] An invoice created five years after the explosion, and three years after the lawsuit was commenced, is simply self-serving. No documents have been produced to support this invoice, and most of the amounts are for the period after the laundry room was repaired. Avedian was also inconsistent on whether any of the invoice had been paid, asserting on discovery in 2017 that "partly it was paid" but then changed his answer in a written response to undertakings that it had not been paid, and that there was an agreement to pay it from the proceeds of the litigation.

Engineering and architectural fees

- [186] The final category of consulting fees claimed by the plaintiffs are for "engineering and architectural drawings" relating to the proposed additional 17 units. The amount claimed is \$61,962.15.
- [187] I have found above that there is no connection between the damage to the laundry room and the decision by the plaintiffs not to proceed with the buildout of the new units. No invoices or details beyond ledger entries have been provided to support the amount claimed, and the ledger shows the expenses having been incurred in 2012 and later, long after the repairs to the laundry room were completed.

3. Conclusions on asserted losses

- [188] The plaintiffs have failed to prove, on a balance of probabilities, that the asserted, hypothetical losses in income suffered by 1815 until it was sold in July 2015 resulted from or were substantially connected to the explosion and fire in the laundry room. Aside from the immediate economic losses and diminution in value of 399 Markham assessed immediately after the date when the repairs ought to have been completed, the damages claimed by the plaintiffs are not proven.
- [189] The evidence that the cause of higher vacancy rates, beginning in July 2011, was due to the laundry room explosion came almost entirely from Avedian, whose evidence was not credible or reliable. Similarly, the claim that the impact of the laundry room fire prevented 1815 from raising rents as the plaintiffs had hoped, charging for parking and storage, and constructing and renting 17 additional units came from Avedian's testimony and little else.
- [190] This is not to suggest that the plaintiffs must call the best evidence, but the plaintiffs still bear the burden of proving their case. Here the plaintiffs' evidence was often second and

third hand hearsay. It lacked specificity and was not supported by contemporaneous notes or records. To the contrary, on material issues, the contemporaneous documents, once finally produced or obtained, undermined the plaintiffs' assertions. No explanation was provided for the failures in disclosure, or for the failure to call people with direct knowledge of the claims, such as the building superintendent or the elevator technicians, to give just two examples.

- [191] The plaintiffs have had almost 15 years to gather and present evidence supporting Avedian's assertions. One can reasonably infer from the failure to call witnesses with direct knowledge of the situation in the building who could provide evidence, if it exists, of any link between vacancies and other claims of losses allegedly suffered over five years, to the explosion and fire in the laundry room, that there is no such evidence.
- [192] Instead, in this case there is evidence of other explanations for the hypothetical losses or, put another way, the failure of the building to provide the financial benefits hoped for when the plaintiffs decided to buy 399 Markham.
- [193] The elevator modernization project limited the number of elevators available in this high-rise building for a lengthy period of time which upset many tenants, likely much more so than the absence of a full laundry room. And contrary to the evidence Avedian initially gave in this case, the elevator modernization project was due to a decision by the plaintiffs to modernize the elevators at that time. It was not caused by the fire and explosion in the laundry room.
- [194] The plaintiffs have led no independent or compelling evidence that there was resistance to charging fees for parking or storage, or that they even tried to do so. The same may be said of attempting to impose or seek rent increases. The plan to build 17 new units required a significant capital investment when the plaintiffs were already stretched financially and was not seriously explored until 2013 and 2014, long after the fire and the completion of the elevator modernization project.
- [195] Even if there had been a "substantial connection" to the various claims asserted by the plaintiffs, I would deny the plaintiffs' claims based on remoteness. The claims are for secondary damages that are not compensable. The plaintiffs may have planned to increase rents and charge additional fees, and build new units, but none of that was foreseeable to the defendants. Nor was an increase in vacancies after the laundry room was repaired. These are not, in my view, losses that arise "fairly, reasonably, and naturally" as a result of the defendants' negligence, or losses "within the reasonable contemplation of the parties at the time": *De Rita v. 1266078 Ontario Inc.*, 2024 ONCA 460 at para. 6, quoting *Saramia Crescent General Partner Inc. v. Delco Wire and Cable Limited*, [2018 ONCA 519](#), at para. [36](#).

4. Economic losses covered by insurance

- [196] Intact paid 1815 a total of \$162,457.81 for economic losses associated with the explosion. This included business interruption losses of \$125,000.00, \$2,288.05 for lost income from

Coinamatic, \$8,520.00 for lost rental income, \$22,369.78 in compensation for additional management and staffing expenses incurred during remediation, and an additional \$4,279.98 paid directly to 1815 for miscellaneous expenses.

- [197] This resulted from the settlement of Intact's subrogated action against the defendants, which only reserved the plaintiffs' right to sue for "uninsured losses." Accordingly, as the claims put forward by the plaintiffs include compensation for economic losses since the date of the explosion, including losses for which they have been reimbursed through insurance, the amount of \$162,457.81 must be deducted from any damage award in this case.
- [198] The plaintiffs argued that there should be no deduction from damages for their insurance claims. Although there is generally a rule against plaintiffs recovering more than the value of their loss in a tort claim, there is an exception to this rule against double recovery where benefits received by a plaintiff through private insurance are not deductible from damages: *IBM Canada Limited v. Waterman*, 2013 SCC 70, [2013] 3 S.C.R. 985, at paras 41-76; *JDC Ltd. et al. v. CAW Ltd. et al.*, 2022 ONSC 1611 at paras. 95-102; aff'd on other grounds 2024 ONCA 476. The plaintiffs submit that because their insurance was an indemnity benefit toward which they paid premiums, the insurance money received falls into the exception: *JDC*, at para. 99.
- [199] I disagree for two reasons.
- [200] First, the existence of a subrogated claim negates the private insurance exception and distinguishes this case from *JDC*. In *Waterman*, the Supreme Court was explicit at para. 41 that the private insurance exception does not apply where there has been a subrogated claim. The doctrine of subrogation ensures the insured receives a just indemnity and does not profit from insurance: *Somersall v. Friedman*, [2002] 3 S.C.R. 109, 2002 SCC 59, at para. 50. The existence of a subrogated claim also distinguishes this situation from that in *JDC*, where there was no such claim.
- [201] Second, allowing the deduction in this case would be contrary to the policy rationale behind the private insurance exception. The exception exists because it is unfair to let a wrongdoer benefit from an insured's forethought and sacrifice by deducting what the insured received from insurance: *Cunningham v. Wheeler*, [1994] 1 S.C.R. 359; *Krawchuk v. Scherbak*, [2011 ONCA 352](#), 106 O.R. (3d) 598, at paras. 100-103, leave to appeal to S.C.C. refused, [2011] S.C.C.A. No. 319; *JDC*, at para. 98. Here, the defendants have already paid \$162,457.81 for their wrongdoing by settling the subrogated claim. They do not benefit by avoiding liability as they have already paid damages, which they should not have to do again.
- [202] The defendants led expert evidence from Farley Cohen, a forensic accountant and business valuator, that the plaintiffs' economic losses attributable to the fire and explosion up to April 12, 2011, were in fact \$56,631.

- [203] Cohen's opinion was based on his review of the financial statements provided by the plaintiffs, historical operating results as well as calculations made by Atlin. The financial statements prepared by the plaintiffs' accountant several years after the explosion did not break down income into subcategories, but would have included income from rentals, laundry, parking, communications, and other sources. Cohen was not challenged on his methodology in cross-examination, and the plaintiffs presented no evidence to the contrary. Therefore, I accept Cohen's conclusion that the plaintiffs suffered \$56,631 in economic losses.
- [204] I have found that 399 Markham suffered a diminution in value of \$100,000 as a result of the fire and explosion, assessed as of April 12, 2011.
- [205] The plaintiffs' damages from the fire and explosion, therefore, total \$156,631.00. As they have received \$162,457.81 for their losses from Intact, the plaintiffs have been made whole for their consequential damages related to the fire and explosion and are not entitled to any damages from the defendants.

Conclusion

- [206] The action is dismissed.
- [207] If the parties cannot agree on costs, they may arrange a case conference with me through my assistant to discuss a procedure for resolving costs.

Paul B. Schabas J.

Date: October 7, 2025