

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N**

**YVETTE NOLEVAUX, RENE NOLEVAUX AND DEBRA ELAYNE WILLIAMS**

Plaintiffs

and

**KING AND JOHN FESTIVAL CORPORATION, THE DANIELS CORPORATION,  
KPMB DESIGN INC. KUWABARA, PAYNE, MCKENNA, BLUMBERG ARCHITECTS,  
KIRKOR ARCHITECTS AND PLANNERS,  
TORONTO INTERNATIONAL FILM FESTIVAL DEVELOPMENTS INC.  
TORO ALUMINUM RAILINGS INC., AND TORO GLASSWALL INC.**

Defendants

*Proceedings under the Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by and among the Plaintiffs and the Defendants, by and through their respective counsel.

**BACKGROUND**

Whereas:

- A. About June 20, 2011, glass panelling installed on the balcony at Festival Tower fell onto the podium below the balcony.
- B. About July 7 and August 3, 2011, at least two other similar incidents of spontaneous breakage of the balcony guardrail glass panels showered glass fragments on the street below.

- C. On August 19, 2011, the City of Toronto declared that the balconies were unsafe and sealed access to the balconies.
- D. In due course, the City of Toronto rescinded the August 19, 2011 order and allowed use of the balconies.
- E. On March 12, 2012, the class action was commenced at Toronto.
- F. On October 3, 2013, Justice Belobaba issued the Certification Order, defined below.

## **AGREED TERMS**

IT IS HEREBY AGREED, by and among the Parties that, subject to approval of the court, the Released Claims shall be fully and finally compromised, settled and released and the Action and all crossclaims will be dismissed with prejudice upon the terms and conditions described below.

### **I. DEFINITIONS**

- 1.1 In addition to words and terms defined elsewhere in this Settlement Agreement, the following words and terms shall have the definitions stated in this Section:
  - (a) “Abatement” means an amount of money that an Owner of a Unit paid to a Tenant or credited to the Tenant during the Class Period.
  - (b) “Action” means Action CV-12-448294-00CP.
  - (c) “Administrative Expenses” means all of the expenses incurred in the administration of this Settlement. For greater certainty, Administration Expenses do not include Legal Fees.
  - (d) “Agreement” means this Settlement Agreement.

- (e) “Approval Hearing” means the date scheduled to decide whether to approve the Agreement, fixing Legal Fees, approving the method of distribution to the Class Members and any other matters as the court deems appropriate.
- (f) “Approval Order” means the order of the court as a result of the Approval Hearing.
- (g) “Balcony” means an outdoor common element exclusively used by person(s) in a Unit.
- (h) “Certification Order” means Justice Belobaba’s certification order dated October 3, 2013.
- (i) “Charney” means Charney Lawyers PC.
- (j) “Claims Administrator” means a person appointed by the court at the Approval Hearing to administer the Settlement Agreement.
- (k) “Claims Commencement Date” means the date the Approval Order becomes final.
- (l) “Claim Form” means the form available on the Settlement Website authorized by the court.
- (m) “Claims Period” means the period of time that Class Members may submit claims to the Claims Administrator commencing on the date the Approval Order becomes final and ends four (4) months thereafter.
- (n) “Class” and “Class Members” means: those persons, excluding the defendants and their senior officers and directors, who owned, rented and/or ordinarily resided in a Unit during the period commencing on May 1, 2011 to and including November 30, 2012, excluding the Owner(s) of a Unit who signed a Release and a Tenant(s) who signed a Release.

- (o) “Class Counsel” means SSS and Charney.
- (p) “Class Period” means the period from May 1, 2011 to and including November 30, 2012.
- (q) “Condominium Corporation” means 80 John Street, Toronto Standard Condominium Corporation Plan No. 2155.
- (r) “Daniels” means The Daniels Corporation.
- (s) “Defendants” mean King and John Festival Corporation, The Daniels Corporation, KPMB Design Inc., Kuwabara, Payne, McKenna, Blumberg Architects, Kirkor Architects and Planners, Toro Aluminum Railings Inc. and Toro Glasswall Inc.
- (t) “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- (u) “Escrow Account” means the balance from Charney’s trust account transferred to the control of the Claims Administrator within ten (10) days after the Approval Order becomes final.
- (v) “Falling Glass” means Glass Paneling which was installed in balcony guards on Balconies at Festival Tower that shattered during the Class Period.
- (w) “Festival Tower” means the condominium located at 80 John Street, Toronto.
- (x) “Glass Paneling” means the tempered glass installed in the balcony guards for each Balcony at Festival Tower.
- (y) “Kirkor” means Kirkor Architects and Planners.
- (z) “KJFC” means King and John Festival Corporation.

- (aa) “KPMB Architects” means KPMB Design Inc.
- (bb) “Kuwabara” means Kuwabara, Payne, McKenna, Blumberg Architects.
- (cc) “Legal Fees” means Class Counsel fees, disbursements, and any applicable taxes thereon, as approved by the court.
- (dd) “Net Settlement Fund” means the balance of the \$800,000 remaining after the court approves Legal Fees and any other expenses authorized by the Certification Order and the Approval Order.
- (ee) “Notice” means notice of the Approval Order authorized by the court.
- (ff) “Notice Date” means the first date on which Notice is disseminated to Settlement Class Members.
- (gg) “Notice of Information” means a notice of the Agreement, Class Counsel’s request for Legal Fees, date, time and place of the Approval Hearing and the deadline for any objection to the Agreement.
- (hh) “Notice Plan” means the settlement notice program in accordance with the terms of section 5 herein and as approved by the court.
- (ii) “Owner” means each registered owner of a Unit during the Class Period.
- (jj) “Parties” means the Plaintiffs and the Defendants.
- (kk) “Plaintiffs” mean Yvette Nolevaux, Rene Nolevaux and Debra Elayne Williams.
- (ll) “Released Claims” means any and all claims, demands, actions, causes of action, and suits made or which could have been made in the Action.
- (mm) “Released Parties” means the Defendants and their current and former affiliates, parents, related entities, successors and subsidiaries, insurers, directors, officers, agents, and employees.

- (nn) “Release” means any Owner(s) of Units and any Tenant(s) who signed a release releasing any Defendant(s) and/or any other person from damages because of falling glass panels.
- (oo) “Settlement Amount” means Eight Hundred Thousand dollars (\$800,000).
- (pp) “Settlement Trust” means Eight Hundred Thousand dollars (\$800,000) less Legal Fees, less any other expenses and amounts authorized by the court in the Approval Order or by this Agreement.
- (qq) “Settlement Website” means the website to be created by the Claims Administrator for purposes of communicating with Class Members and for otherwise facilitating the administration of this Settlement, including allowing Class Members to register and/or submit a Claim.
- (rr) “SSS” means Strosberg Sasso Sutts LLP.
- (ss) “Tenant” means a person that rented a Unit during the Class Period.
- (tt) “Toro” means Toro Aluminum Railings Inc. and Toro Glasswall Inc.
- (uu) “Unit” means each of the approximately 380 condominium residential units of the Condominium Corporation.
- (vv) “Websites” mean SSS’ website at <https://www.strosbergco.com/class-actions/fallingglass/> and Charney’s website at <https://www.charneylawyers.com/festival-tower-class-action>.

## **II. SETTLEMENT CONSIDERATION**

- 2.1 The Defendants shall pay the Settlement Amount into Charney’s trust account no less than thirty (30) days before the Approval Hearing.
- 2.2 The Defendants will not be required to pay more than the Settlement Amount, all in, under this Agreement and the Settlement Amount is the sole monetary payment that the Defendants will make under this Agreement.

- 2.3 Within ten (10) days after the Approval Order becomes final, Charney shall transfer to the Claims Administrator the Net Settlement Fund.
- 2.4 The Settlement Amount shall be the sole source of monetary funds under this Agreement.
- 2.5 The Settlement Amount shall not be released from Charney's trust account until the Approval Order becomes final.
- 2.6 The Claims Administrator, subject to supervision and direction of the court, shall administer and/or oversee distribution of the Settlement Trust pursuant to this Agreement and the Approval Order.
- 2.7 The Claims Administrator is responsible for communicating with the Class Members regarding the distribution of the Settlement Trust.
- 2.8 All funds held in Charney's trust account shall be deemed to be in the custody of the court until such time as the funds are distributed pursuant to the Approval Order or further order of the court.
- 2.9 Each Class Member shall be solely responsible for the tax consequences, if any, to him, her, or it of the receipt of funds from the Approval Order.
- 2.10 Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; (ii) the management, investment, or distribution of the Settlement Amount; (iii) the formulation, design, or terms of the disbursement of the Settlement Amount; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount; (v) any losses suffered by, or fluctuations in the value of the Settlement Amount; or (vi) the payment or withholding of any taxes and tax-related expenses incurred in connection with the taxation of the Settlement Amount or the filing of any returns. Defendants also shall have no

obligation to communicate with Class Members other than set out in this Agreement.

- 2.11 The Plaintiffs and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Agreement or otherwise; and (ii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Amount.
- 2.12 No action shall lie against the Claims Administrator for any decision made in the administration of this Agreement without an order from the court authorizing such an action.

### **III. INFORMATION SUPPLIED OR TO BE SUPPLIED BY THE DEFENDANTS**

- 3.1 The Defendants have provided evidence that in Festival Tower there are about 380 Units.

### **IV. SETTLEMENT TERMS – OWNER(S) AND TENANTS OF A UNIT DURING THE CLASS PERIOD**

- 4.1 The Agreement is based upon:
- (a) payment per Unit over the Class Period without consideration of the number of persons living in each Unit or the size of a Balcony or any Balcony.
  - (b) the Owner(s) of about 80 Units signed Releases; and
  - (c) a damage award of about \$1,200 per Unit whose Owner(s) did not sign a Release.
- 4.2 Only one Class Member associated with the Unit need apply for payment. If more than one Class Member applies for payment for the same Unit, each Class Member will share equally in the payment per Unit.



- 4.3 If an Owner(s) and/or a Tenant(s) was in possession of the Unit for all or part of the Class Period, the Owner(s) and/or the Tenant(s) will share the payment based upon the month(s) each occupied the Unit during the Class Period.
- 4.4 If during the Class Period, the Owner(s) of the Unit gave the Tenant(s) an Abatement, the Owner(s) will be reimbursed for the Abatement in priority to the Tenant(s).
- 4.5 The Owner(s) and/or Tenant(s) may request a payment by submitting a Claim Form obtained from the Settlement Website during the Claim Period. Class Members who are making a claim must prove she/he/it or the Tenant was the Owner or occupier of the Unit during the Class Period and/or claimed an Abatement. This Claim must be to the satisfaction of the Claims Administrator. She or he must provide a copy of a current driver's licence or other similar federal or provincial government issued documentation which includes a photo identifying her or him.
- 4.6 The Claims Administrator shall, within fifteen (15) days of receipt of each Claim Form, verify that each person who submits a Claim Form is a Class Member.
- 4.7 If the Claims Administrator determines a Claim Form is defective, the Claims Administrator shall, within fifteen (15) days of receipt, notify the person of the defect and give the person thirty (30) days to cure the defect. The Claims Administrator shall have the sole discretion and authority to determine whether the person has cured the defect.
- 4.8 The Administrator's decision is final and there is no appeal from the Administrator's decision.

## **V NOTICE OF APPROVAL HEARING AND OBJECTIONS**

- 5.1 Class Members will be given Notice of Information by:
- (a) Class Counsel posting the Notice of Information on the websites.

- (b) Class Counsel sending Notice of Information to each person who registered with Class Counsel and provided a valid e-mail address.
- (c) Claims Administrator distributing the Notice of Information to each Unit.
- (d) Class Counsel sending Notice of Information to the Condominium Corporation and requesting that it post the Notice Information on its website.
- (e) Claims Administrator will conduct a social media campaign.
- (f) Class Counsel will make a press release.

5.2 Any Class Member who objects to the Agreement must send his, her or its objection to:

Ricepoint Administration Inc.  
Email: [fallingglass@ricepoint.com](mailto:fallingglass@ricepoint.com)

5.3 Ricepoint will report to the court by affidavit before the Approval Hearing.

## **VI. ADMINISTRATION OF SETTLEMENT – CLAIMS PROGRAM**

- 6.1 The court will appoint the Claims Administrator, approve the Claims Administrator's fees and disbursements and approve any other payment(s) out of the Settlement Amount.
- 6.2 After the Approval Order becomes final, the Claims Administrator is responsible for distributing the Notice of the Approval Order.
- 6.3 The claims program shall only be administered through the Settlement Website that the Claims Administrator will establish. The Claims Administrator may pay Class Members by cheque sent by mail or in a method approved by the court.
- 6.4 Class Counsel shall provide the Claims Administrator with Class Counsel's registration data including names and last known email addresses of Class Members within ten (10) business days after the Approval Order.

- 6.5 The Claims Administrator shall perform the functions specified in this Agreement including, but not limited to: overseeing administration of the Net Settlement Fund; establishing and operating the settlement website; administering the Claims Program; and distributing compensation.
- 6.6 The duties of the Claims Administrator, in addition to other responsibilities that are described in this Agreement, include:
- (a) establishing and maintaining the Settlement Website that, among other things, allows Class Members to submit Claims forms electronically;
  - (b) responding to all valid inquiries;
  - (c) reviewing, processing and determining the validity of all Claim Forms;
  - (d) at the close of the Claims Period, paying to the Class Members, either electronically or by mailing a cheque, in the amounts, due in accordance with the Approved Judgment; and
  - (e) provide a final report to the court, Class Counsel and Defendants' Counsel.

## **VII. LEGAL FEES**

- 7.1 Class Counsel will seek approval of Legal Fees in the amount of 30% of the Settlement Amount, plus disbursements plus HST.
- 7.2 The Defendants acknowledge that they take no position on the motion for approval of the Legal Fees. They will have no involvement in the approval process to determine the amount of Legal Fees. They will not make any submissions to the court concerning Legal Fees.
- 7.3 The amounts owing to Class Counsel will be paid from the Settlement Amount, after the Approval Order becomes final.

## VIII. SETTLEMENT APPROVAL PROCESS

### *Approval Hearing*

- 8.1 The Plaintiffs will seek an Approval Order from the court. The Defendants will consent to the Approval Order.

### *Class Members' Claims*

- 8.2 Because of the Approval Order, the Plaintiffs and each Class Member shall be deemed to have, and by operation of the Approval Order shall have, released, waived, and discharged the Released Parties from his, her, or its Released Claims.

### *Total Satisfaction of Released Claims*

- 8.3 All benefits offered or obtained pursuant to the Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who did not opt-out of the Action.
- 8.4 The Release shall be effective with respect to all Class Members regardless of whether those Class Members ultimately filed a Claim Form or receive compensation under this Agreement or under the Approval Order.

### *Class Counsel Acted Independently*

- 8.5 Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Agreement and that they execute this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement.

**IX. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT**

- 9.1 Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement. The persons signing this Agreement on behalf of each Party warrants that he/she is authorized to sign this Agreement on behalf of that Party.
- 9.2 The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of this Agreement and the Approval Order. Class Counsel will seek the Approval Order. The Defendants will assist Class Counsel in preparing court materials for the hearing of the Approval Order.

**X. EFFECTIVE DATE AND TERMINATION**

- 10.1 In the event that the court refuses to approve the Agreement or refuses to issue the Approval Order, the Defendants may, at their sole discretion, terminate this Agreement on five (5) Business Days written notice from counsel for the Defendants to Class Counsel.
- 10.2 In the event this Agreement is terminated, the Settlement Amount, together with any interest or other income earned thereon, if any, less any advertising fees paid or due and/or less any fees owing to the Administrator and/or to Ricepoint and/or less disbursements incurred by Class Counsel notifying the Class and/or other amounts authorized by the Court shall be returned to counsel for Toro, Blaney McMurtry LLP.
- 10.3 Except as otherwise provided herein, in the event the Agreement is terminated or the Approval Order does not become final, the Parties to this Agreement, including all Class Members, shall be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Agreement and the execution of any term sheet between the Parties and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Agreement,

any term sheet, and any related orders had not been entered into. In addition, the Parties agree that in the event the Settlement is terminated:

- (a) Any orders entered pursuant to this Agreement shall be deemed null and void and vacated and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition; and
- (b) this Agreement shall become null and void, and the fact of this Agreement shall not be used or cited by any person or entity, including in any contested proceeding.

## **XI. MODIFICATION OF THE AGREEMENT**

- 11.1 The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the court.

## **XII. MISCELLANEOUS PROVISIONS**

### ***NO ADMISSION***

- 12.1 This Agreement is for settlement purposes only. If the Agreement is terminated, neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Defendants or any admissions by the Defendants of any claim or allegation made in any action or proceeding against the Defendants. If this Agreement is terminated and becomes null and void, any portion of this settlement shall have no further force and effect and shall not be offered in evidence or used in the Action or any other proceeding. This Agreement shall not be offered or be admissible in evidence against the Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce the terms of the Agreement. Information provided by the Defendants to the Plaintiffs and Class Counsel in connection with settlement negotiations is for settlement

purposes only and shall not be used or disclosed for any other purpose whatsoever.

### ***GOVERNING LAW***

- 12.2 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- 12.3 This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Agreement is sought.

### ***COUNTERPARTS***

- 12.4 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

### ***ARM'S-LENGTH NEGOTIATIONS***

- 12.5 The Parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms and conditions in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. All Parties have participated in the drafting of this Agreement and it is not to be construed in favor of or against any of the Parties.

***CONTINUING JURISDICTION***

- 12.6 The court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including all Class Members, for the purpose of the administration, interpretation and enforcement of this Agreement.
- 12.7 This Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement are to be kept confidential and not disclosed until the Agreement is filed with the Court.

***BINDING EFFECT OF SETTLEMENT AGREEMENT***

- 12.8 This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

***NULLIFICATION***

- 12.9 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Defendants and Class Counsel, on behalf of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

***EXTENSION OF TIME***

- 12.10 The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to court approval as to court dates).

***SERVICE OF NOTICE***

- 12.11 Whenever, under the terms of this Agreement, a person is required to provide service or written notice to the Defendants or Class Counsel, such service or



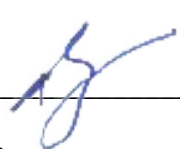
notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing.

***AUTHORITY TO EXECUTE SETTLEMENT AGREEMENT***

12.12 Each counsel or other person executing this Agreement on behalf of any party hereto warrants that such person has the authority to do so.

IN WITNESS HEREOF, the Parties have caused this Settlement Agreement to be executed, by their duly authorized lawyers, as of June , 2023.

ON BEHALF OF KING AND JOHN FESTIVAL  
CORPORATION AND THE DANIELS CORPORATION

  
\_\_\_\_\_  
Michael Tamblyn  
Torkin Manes LLP  
#1500-151 Yonge St.  
Toronto, ON M5C 2W7

ON BEHALF OF KPMB DESIGN INC., KUWABARA  
PAYNE MCKENNA BLUMBERG ARCHITECTS AND  
KIRKOR ARCHITECTS AND PLANNERS

\_\_\_\_\_  
Bernie McGarva  
Aird & Berlis LLP  
1800-181 Bay Street  
Toronto, ON M5J 2T9

ON BEHALF OF TORO ALUMINUM RAILINGS INC.  
and TORO GLASSWALL INC.

\_\_\_\_\_  
Tim Alexander  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, ON M5C 3G5

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Toronto, ON M5C 2W7

ON BEHALF OF KPMB DESIGN INC., KUWABARA  
PAYNE MCKENNA BLUMBERG ARCHITECTS AND  
KIRKOR ARCHITECTS AND PLANNERS



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Bernie McGarva  
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ON BEHALF OF TORO ALUMINUM RAILINGS INC.  
and TORO GLASSWALL INC.

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Tim Alexander  
Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
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Toronto, ON M5C 2W7

ON BEHALF OF KPMB DESIGN INC., KUWABARA  
PAYNE MCKENNA BLUMBERG ARCHITECTS AND  
KIRKOR ARCHITECTS AND PLANNERS

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Toronto, ON M5J 2T9

ON BEHALF OF TORO ALUMINUM RAILINGS INC.  
and TORO GLASSWALL INC.



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Tim Alexander  
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2 Queen Street East, Suite 1500  
Toronto, ON M5C 3G5

ON BEHALF OF THE PLAINTIFFS

*Harvey T. Strosberg*

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Harvey T. Strosberg KC  
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*Theodore Charney*

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