

## **COOLING COMPRESSORS CLASS ACTION LITIGATION NOTICE OF SETTLEMENT APPROVAL HEARING**

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.**

**TO: All persons in Canada who between January 1, 2004 and December 31, 2008 purchased hermetically sealed cooling compressors of less than one horsepower, excluding those used in air conditioners (“Cooling Compressors”) and products containing Cooling Compressors, excluding air conditioners (“Cooling Compressor Products”) in Canada, except the Defendants and certain parties related to the Defendants (the “Settlement Class”).**

### **I. BACKGROUND**

Class action lawsuits have been commenced in Ontario, British Columbia, and Quebec alleging that the Defendants conspired to fix prices in the market for Cooling Compressors (collectively, the “Class Actions”)

Cooling Compressors means hermetically sealed cooling compressors of less than one horsepower. Cooling Compressor Products means products containing Cooling Compressors. A Cooling Compressor is the component in many household and some light commercial refrigerators and freezers that provides the cooling function. Air conditioners, as well as cooling compressors used in them, are excluded.

The following entities were named as Defendants in one or more provinces in the Class Actions: Tecumseh Products of Canada Limited, Tecumseh Products Co., Tecumseh Compressors Company, Danfoss A/S, Danfoss Inc., Danfoss Commercial Compressors Ltd., Danfoss Scroll Technologies, LLC, Danfoss Turbocor Compressors, Inc., Danfoss Compressors LLC, Appliances Components Companies S.p.A., ACC USA LLC, Panasonic Corporation, Panasonic Canada Inc., Whirlpool Canada LP, Embraco North America Inc. and Whirlpool Corporation. The Defendants are manufacturers of Cooling Compressors or Cooling Compressor Products.

### **II. PREVIOUS SETTLEMENT**

A previous settlement was reached with Appliances Components Companies S.p.A. and ACC USA LLC (collectively “ACC”). Under the terms of the ACC settlement agreement, ACC agreed to pay \$50,000 for the benefit of the settlement class in Canada and up to \$50,000 towards the cost of notice. Settlement funds were used to fund out-of-pocket costs incurred by class counsel in the litigation. Under the terms of the settlement agreement, ACC agreed to provide cooperation to the Plaintiffs in pursuing their claims against the remaining Defendants. The Class Actions were certified against ACC for settlement purposes and the ACC settlement was approved by the Ontario, British Columbia and Quebec Courts.

### **III. PROPOSED SETTLEMENTS**

Settlements have been reached with Danfoss Flensburg GmbH (“Danfoss Flensburg”) (who at the time of settlement was not a party to the proceedings), Embraco North America, Inc. (“Embraco”), Panasonic Corporation and Panasonic Canada Inc. (collectively “Panasonic”), and Tecumseh Products of Canada Limited, Tecumseh Products Co., and Tecumseh Compressor Company

(collectively “Tecumseh”). The settlements will result in dismissal or discontinuance of proceedings against all Danfoss, Embraco, Panasonic, and Tecumseh defendants.

The Settling Defendants have agreed to pay the following amounts for the benefit of Settlement Class Members, in exchange for a full release of claims against them and their related entities:

- Danfoss Flensburg - \$300,000, plus \$100,000 towards the cost of notice and administration
- Embraco - \$1,400,000
- Panasonic - \$2,350,000
- Tecumseh - \$620,000

The settlements represent a resolution of disputed claims. The Settling Defendants do not admit, and expressly deny, any wrongdoing or liability.

A joint motion to approve the settlements and certify/authorize the Class Actions as against Danfoss Flensburg, Embraco, Panasonic and Tecumseh for settlement purposes will be heard before the Ontario, British Columbia and Quebec courts on January 22, 2016 at 10:30 a.m. PST / 1:30 EST. At the joint hearing, the courts will determine whether the settlements are fair, reasonable, and in the best interests of the Settlement Class.

Settlement Class Members who do not oppose the proposed settlements need not appear at the joint hearing or take any other action at this time.

Settlement Class Members are entitled to file written submissions and/or appear and make submissions at the joint hearing. Settlement Class Members who wish to exercise either of these rights should submit written submissions to the appropriate class counsel at the addresses listed below postmarked no later than January 15, 2016. The written submissions should state the nature of any comments or objections, and whether the settlement class member intends to appear at the joint hearing. Class counsel will forward all such submissions to the courts. All timely written submissions will be considered by the courts. If you do not file a written submission by the relevant deadline, you might not be entitled to participate, through oral submissions or otherwise, in the joint hearing.

#### **IV. PROPOSED DISTRIBUTION OF THE SETTLEMENT FUNDS**

At the joint hearing, the Courts will be asked to approve a protocol for distributing the aggregate settlement funds, plus accrued interest, less court approved legal fees and other expenses. A copy of the proposed distribution protocol is available at [www.classaction.ca/compressors](http://www.classaction.ca/compressors) or from Class Counsel.

The protocol is designed to compensate direct and indirect purchasers of Cooling Compressors and Cooling Compressor Products in a manner that generally reflects the anticipated impact of the alleged price-fixing.

For the purposes of the distribution protocol, where the Settlement Class Member is able to provide documentation establishing the price of the compressor (whether as a standalone product or a component of another product), the compressor will be valued at that price. In all other

circumstances, the compressor will be valued at \$50 as a default unless the Settlement Class Member can otherwise demonstrate an acceptable basis for a higher value.

After the value of the compressor is established, settlement benefits will be distributed based on a percentage of that value. The applicable percentage varies between 0.5% to 3%. The applicable percentages are set out on page 9 of the distribution protocol and depend on the following factors:

1. whether the Settlement Class Members:
  - a. purchased directly from a Defendant or an entity related to a Defendant; or
  - b. purchased from some other entity
2. the purpose of the purchase:
  - a. purchased for a Settlement Class Member's own use and not for commercial resale;
  - b. purchased for straight resale;
  - c. purchased for use in providing repair services; or
  - d. purchased to build into another product.

Notwithstanding the foregoing, subject to further order of the Ontario Court, all claims will be assigned a minimum value of \$20. This includes end consumers who submit a claim for the purchase of a household refrigerator or freezer.

If there is not sufficient funds to pay eligible Settlement Class Members the percentages specified on page 9 of the distribution protocol, the settlement benefits payable to eligible Settlement Class Members shall be reduced pro-rata (i.e. proportionally) based on the value of the Settlement Class Member's claim as a proportion of the value of all valid claims.

Similarly, if there are surplus funds available after all eligible Settlement Class Members have been paid the percentages specified on page 9 of the distribution protocol, the settlement benefits payable to eligible Settlement Class Members shall be increased pro-rata (i.e. proportionally) based on the value of the Settlement Class Member's claim as a proportion of the value of all valid claims.

Payments to Quebec Settlement Class Members are subject to deductions payable to the Fonds d'aide aux recours collectifs, calculated in accordance with the governing regulations.

If the distribution would result in an unfair result to some or all settlement class members, further directions will be sought from the Ontario Court.

## **V. APPLYING FOR SETTLEMENT FUNDS**

Information about how to apply for settlement funds under the distribution protocol will be available in a future notice and will be posted online at [www.classaction.ca/compressors](http://www.classaction.ca/compressors) after the joint hearing. If you did not receive this notice by mail or email, please register online at [www.classaction.ca/compressors](http://www.classaction.ca/compressors) or by telephone at 1-800-461-6166 ext 2446 to ensure that further notices will be sent to you directly, by mail or email.

The deadline and procedure for applying for settlement funds will also be reviewed at the joint hearing and will be made public in a further notice regarding the claims process.

## **VI. CLASS COUNSEL**

The law firms of HARRISON PENSA <sup>LLP</sup> and SISKINDS <sup>LLP</sup> represent Settlement Class Members in Ontario and in all provinces other than British Columbia and Quebec, as well as corporations of more than 50 employees in Quebec.

Siskinds <sup>LLP</sup> can be reached at 1-800-461-6166 ext. 2446, [coolingcompressors@siskinds.com](mailto:coolingcompressors@siskinds.com) or 680 Waterloo Street, London, Ontario N6A 3V8, Attention: Charles Wright. Harrison Pensa <sup>LLP</sup> can be reached at 1-800-263-0489 ext.775, [jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com) or 450 Talbot Street, London, Ontario N6A 4K3, Attention: Jonathan Foreman.

The law firm of Camp Fiorante Matthews Mogerman (“CFM”) represents Settlement Class Members in British Columbia. CFM can be reached at 1-800-689-2322, [compressors@cfmlawyers.ca](mailto:compressors@cfmlawyers.ca) or #400 – 856 Homer Street, Vancouver, BC V6B 2W5, Attention: Reidar Mogerman.

The law firm of Bouchard Pagé Tremblay Avocats represents individuals and corporations of 50 or less employees who are Settlement Class Members in Quebec. Quebec class counsel can be reached at 1-855-768-6667, [brianagarneau@bptavocats.com](mailto:brianagarneau@bptavocats.com) or 825, boul. Lebourgneuf, bureau 510, Québec, QC G2J 0B9, Attention: Brian Garneau.

Class counsel legal fees and disbursements must be approved by the courts. Class counsel will collectively be requesting legal fees of up to 25% of the Danfoss Flensburg, Embraco, Panasonic and Tecumseh settlement funds, plus disbursements and applicable taxes to be approved by the courts and paid out of the settlement funds.

## **VII. QUESTIONS**

Settlement Class Members are encouraged to review the complete settlement agreements and distribution protocol online at [www.classaction.ca/compressors](http://www.classaction.ca/compressors). If you have questions that are not answered online at [www.classaction.ca/compressors](http://www.classaction.ca/compressors), please contact the appropriate class counsel based on your province of residence.

## **VIII. INTERPRETATION**

This notice contains a summary of some of the terms of the settlement agreements. If there is a conflict between the provisions of this notice and the settlement agreements, the terms of the settlement agreements shall prevail.

This notice has been authorized by the Ontario, British Columbia, and Quebec courts.