

No. S106877
Vancouver Registry

In the Supreme Court of British Columbia

Between:

DAMON GREEN

Plaintiff

and:

**TECUMSEH PRODUCTS OF CANADA LIMITED;
TECUMSEH PRODUCTS CO.; TECUMSEH
COMPRESSOR COMPANY; DANFOSS A/S; DANFOSS,
INC.; DANFOSS COMMERCIAL COMPRESSORS LTD.;
DANFOSS SCROLL TECHNOLOGIES, LLC.; DANFOSS
TURBOCOR COMPRESSORS, INC.; DANFOSS
COMPRESSOR, LLC; DANFOSS FLENSBURG GMBH;
ACC USA LLC; APPLIANCES COMPONENTS
COMPANIES Sp.A.; PANASONIC CORPORATION,
PANASONIC CANADA INC.; WHIRLPOOL CANADA LP;
EMBRACO NORTH AMERICA; and WHIRLPOOL
CORPORATION**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE MADAM JUSTICE GROPPER) 22/Jan/2016)

ON THE APPLICATION of the plaintiff, Damon Green coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 22/Jan/2016 and on hearing David G.A. Jones and Julie Facchin counsel for the BC plaintiff, Damon Green, Jonathan Foreman, Kerry McGladdery Dent and Michela Gregory for the Ontario Plaintiff, 1355741 Ontario Inc. operating as Zero Zone Mechanical, Brian A. Garneau and Maxime Blanchard for the Quebec Plaintiff, Emilien Chasse, William McNamara and Genevieve Bertrand for the defendants Tecumseh Products of Canada Limited, Tecumseh Products Co. and Tecumseh Compressor Company, Chris Naudie and

Elizabeth Meloche for the defendants Danfoss A/S, Danfoss Inc., Danfoss Commercial Compressors Ltd., Danfoss Scroll Technologies, LLC, Danfoss Turbocor Compressors, Inc., Danfoss Compressor, LLC, and Danfoss Flensburg GmbH, Emrys Davis and Vincent de l'Etoile for the defendants Panasonic Corporation and Panasonic Canada Inc., and Sandra Forbes and Nick Rodrigo for the defendants Whirlpool Canada LP, Embraco North America and Whirlpool Corporation and on reading the materials filed including the settlement agreement dated August 19, 2015 attached to this Order as **Schedule "A"**; and on judgement being reserved to February 12, 2016.

THIS COURT ORDERS that:

1. In addition to the definitions used elsewhere in this order, for the purposes of this order, the definitions set out in the Settlement Agreement apply to and are incorporated into this order;

2. the BC Action is certified as a class proceeding as against the Settling Defendants for settlement purposes only;

3. the "BC Settlement Class" is certified as follows:

All Persons in British Columbia who purchased Cooling Compressor Products in Canada during the Class Period, except the Excluded Persons;

4. Damon Green is appointed as the representative plaintiff for the BC Settlement Class;

5. the following issue is common to the BC Settlement Class:

Did the Settling Defendants conspire to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Cooling Compressors directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

6. paragraphs 2-5 of this order, including the certification of the BC Action as against the Settling Defendants for settlement purposes and the definition of BC Settlement Class and Common Issue, and any reasons given by the Court in connection with paragraphs 2-5 of this order, are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing BC Action and, without restricting the generality of the foregoing, may not be relied on by any person to establish jurisdiction, the criteria for certification (including class definition) or the existence or elements of the causes of action asserted in the BC Action, as against the Non-Settling Defendants;

7. the Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class;

8. the Settlement Agreement is hereby approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented and enforced in accordance with its terms;

9. this order, including the Settlement Agreement, is binding upon each member of the BC Settlement Class including those Persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Action;

10. upon the Effective Date, each member of the BC Settlement Class shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice;

11. upon the Effective Date, each Other Action commenced in British Columbia by any member of the BC Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice;

12. the use of the terms "Releasers", "Releasees" and "Released Claims" in this order does not constitute a release of claims by the members of the BC Settlement Class;

13. upon the Effective Date, each member of the BC Settlement Class covenants and undertakes not to make any claim in any way nor to threaten, commence or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims;

14. upon the Effective Date, each Releaser shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any proceeding, action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief from any Releasee, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N. 1 or other legislation or at common law or equity in respect of any Released Claim, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed alleged co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendants or named or unnamed co-conspirator that is not a Releasee;

15. if this Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise by any Non-Settling Defendants, any named or unnamed co-conspirator that is not a Releasee, or any other Person or party against a Releasee, or by a

Releasee against any Non-Settling Defendants, excepting a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against any Non-Settling Defendants, or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this order;

- (b) the BC Plaintiff and members of the BC Settlement Class shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (c) the BC Plaintiff and members of the BC Settlement Class shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee to the BC Plaintiff and members of the BC Settlement Class, if any, and, for greater certainty, the members of the BC Settlement Class shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or any other Person or party that is not a Releasee, to the extent provided by law; and
- (d) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Action, whether or not the Releasees remain in the BC Action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Action and shall not be binding on the Releasees in any other proceeding;

16. if, in the absence of paragraph 15 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of

damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the BC Settlement Class in the BC Action;

17. a Non-Settling Defendant may, on application to this Court determined as if the Settling Defendant remained party to the BC Action and brought on at least ten (10) days' notice to Counsel for the Settling Defendants and to be determined as if the Settling Defendants remained parties to the BC Action, and not to be brought unless and until the BC Action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and an affidavit of documents from the Settling Defendants in accordance with the *Supreme Court Civil Rules*;
- (b) oral discovery of a representative of the Settling Defendants the transcript of which may be read in at trial;
- (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of a representative of the Settling Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;

18. the Settling Defendants retain all rights to oppose such application(s) brought under paragraph 17. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 17. Notwithstanding any provision in this order, on any application brought pursuant to paragraph 17, the Court may make such orders as to costs and other terms as it considers appropriate;

19. a Non-Settling Defendant may serve the application(s) referred to in paragraph 17 above on the Settling Defendants by service on counsel for the Settling Defendants in the BC Action;


20. for purposes of administration and enforcement of the Settlement Agreement and this order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge and attorn to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this order, and subject to the terms and conditions set out in the Settlement Agreement and this order;

21. except as provided herein, this order does not affect any claims or causes of action that any members of the BC Settlement Class has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees;

22. no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to administration, investment, or distribution of the Trust Account; or to the Distribution Protocol;
23. Ontario Counsel shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class pending further orders of the Courts;
24. any funds remaining in the Trust Account after payment of approved Administration Expenses and Class Counsel Fees shall be distributed to Settlement Class Members in accordance with the Distribution Protocol;
25. the approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court, and the terms of this order shall not be effective unless and until the Settlement Agreement is approved by the Ontario Court and the Quebec Court, and the Ontario Action has been dismissed with prejudice and without costs as against the Settling Defendants and the Quebec Action has been declared settled out of court as against the Settling Defendants. If such orders are not secured in Quebec and Ontario, this order shall be null and void and without prejudice to the rights of the Parties to proceed with the BC Action and any agreement between the parties incorporated in this order shall be deemed in any subsequent proceedings to have been made without prejudice;
26. in the event that the Settlement Agreement is terminated in accordance with its terms, this order shall be declared null and void on subsequent application made on notice;
27. the BC Action is hereby dismissed as against the Settling Defendants , without costs and with prejudice; and


28. endorsement of this order by counsel for all defendants other than the Settling Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of lawyer for the Plaintiff
Damon Green

for David G.A. Jones



Signature of lawyer for Tecumseh
Products of Canada Limited, Tecumseh
Products Co. and Tecumseh
Compressor Company

William McNamara

By the Court 



Registrar

