

**DISTRIBUTION PROTOCOL  
IN THE MATTER OF THE COMPRESSOR AND COMPRESSOR PRODUCTS  
CLASS ACTION SETTLEMENTS**

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## **GENERAL PRINCIPLES OF THE ADMINISTRATION**

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into with the following Defendants:
  - (a) Danfoss Flensburg GmbH on its behalf and on behalf of Danfoss A/S, Danfoss, Inc., Danfoss Commercial Compressors Ltd., Danfoss Scroll Technologies, LLC, Danfoss Turbocor Compressors, Inc., and Danfoss Compressor, LLC, dated January 22, 2015;
  - (b) Tecumseh Products of Canada Limited, Tecumseh Products Co., and Tecumseh Compressor Company, dated August 19, 2015;
  - (c) Panasonic Corporation and Panasonic Canada Inc., dated July 29, 2015; and,
  - (d) Embraco North America, Inc. dated August 19, 2015 (collectively, the “Settlement Agreements”).
2. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.
3. The administration shall:
  - (a) implement and conform to the Settlement Agreements, orders of the Court and this Distribution Protocol;
  - (b) include the establishment and maintenance of the Settlement Website;

- (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible;
  - (d) rely on the Compressor and Compressor Products sales information provided by the Defendants wherever possible; and
  - (e) be bilingual in all respects.
4. Excluded Persons as defined in the Settlement Agreements are not entitled to the payment of settlement benefits under this Distribution Protocol.
5. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to their Compressor and Compressor Product Purchases, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

## **DEFINITIONS**

6. For the purpose of this Distribution Protocol:
- (a) ***Claim*** means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
  - (b) ***Claims Filing Deadline*** means, subject to further order of the Court, the date by which Claims (and any required supporting documentation) must be postmarked

or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol.

- (c) ***Compressors and Compressor Product Purchases*** means the aggregate amount actually paid by Settlement Class Members for Compressors and Compressor Products purchased in Canada between January 1, 2004 and December 31, 2008.
- (d) ***Court*** means the Ontario Superior Court of Justice which shall have ongoing authority and supervision with respect to the Distribution Protocol.
- (e) ***Eligible Compressor Unit Purchases*** shall have the meaning attributed to it in paragraph 35(c).
- (f) ***Fonds Levy*** means the amounts payable to the Fonds d'aide aux recours collectifs pursuant to section 42 of *An Act respecting the Class Action*, R.S.Q., c. R-2.1 and calculated in accordance with the governing regulations.
- (g) ***Net Settlement Amounts*** mean the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements and accrued interest after payment of court-approved Class Counsel Fees and after deduction of the Administration Expenses and all taxes (including interest and penalties) accruable with respect to the income earned by the Settlement Agreements.
- (h) ***Online Claim Portal*** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs 21 to 24 of this Distribution Protocol.
- (i) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.

- (j) ***Settlement Website*** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreements, the Distribution Protocol, and the claims process, and access to the Online Claim Portal.

#### **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

7. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Court.
8. The Settlement Amounts shall be held in an interest bearing trust account at a Canadian Schedule 1 bank in Canada and all payments from the Settlement Amounts shall be made from that account.
9. The Claims Administrator's duties and responsibilities shall include the following:
- (a) providing notices to the Settlement Class Members as required pursuant to this Distribution Protocol;
  - (b) receiving the Defendants' customer information, including names, addresses and sales information;
  - (c) developing, implementing and operating electronic web-based systems and procedures for receiving and adjudicating Claims. The Claims Administrator shall encourage Settlement Class Members to claim via the Online Claim Portal where possible and shall facilitate this process;

- (d) developing and implementing processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address, and using the same serial number;
- (e) making timely decisions in respect of Claims and notifying the Settlement Class Members of the decision promptly thereafter;
- (f) arranging payment to Settlement Class Members in a timely fashion after the Claims Filing Deadline;
- (g) dedicating sufficient personnel to respond to Settlement Class Members inquiries in English or French, as the Settlement Class Member elects;
- (h) submitting required materials for appeals;
- (i) remitting the Fonds Levy to the Fonds d'aide aux recours collectifs;
- (j) arranging payments of Administration Expenses;
- (k) maintaining, in an easy to understand format, the information being recorded pursuant to paragraph 24 as well as information about Settlement Class Members' Eligible Compressor Unit Purchases and proposed distribution, so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;
- (l) reporting to Class Counsel respecting Claims received and administered, and Administration Expenses;
- (m) cash management and audit control;

- (n) preparing and submitting such financial statements, reports and records as directed by Class Counsel and/or the Court; and
- (o) fulfilling any tax reporting and arranging payments required arising from the Settlement Amounts, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amounts shall be paid from the Settlement Amounts.

#### **SETTLEMENT BENEFITS AVAILABLE TO SETTLEMENT CLASS MEMBERS**

- 10. The Net Settlement Amounts will be available to provide settlement benefits to eligible Settlement Class Members pursuant to this Distribution Protocol. Settlement benefits payable to members of the Quebec Settlement Class will be subject to deductions in respect of the Fonds Levy.
- 11. Class Members shall prove their Compressors and/or Compressor Product Purchases in the following manner:
  - (a) With reference to documentation in connection with their purchases of Compressors and/or Compressor Products:
    - (i) sales information as provided by the Defendants where applicable;
    - (ii) invoices;
    - (iii) receipts;
    - (iv) purchase records;
    - (v) historical accounting records; or

- (vi) comparable verification that is acceptable to the Claims Administrator;
- (b) By alternative proof, including a declaration together with documentation that evidences their purchases of Compressors and/or Compressor Products:
- (i) delivery or packing slips;
  - (ii) credit card statements;
  - (iii) bank statements;
  - (iv) cancelled cheques;
  - (v) wire transfer confirmations;
  - (vi) proof of product registration;
  - (vii) rebate documents;
  - (viii) warranty documents;
  - (ix) serial numbers;
  - (x) repair invoices; or
  - (xi) comparable verification that is acceptable to the Claims Administrator.
12. For the purpose of calculating payment of settlement benefits, each Compressor will be deemed to be one “Compressor Unit” and each Compressor Product will be deemed, unless a Settlement Class Member provides documentation to prove otherwise, to contain one Compressor Unit.



13. Eligible Compressors Unit Purchases will be valued as follows:
- (a) 100% of the price of the Compressors where the Settlement Class Member provides proof of purchase in accordance with paragraph 11(a);
  - (b) 100% of the price of the Compressor component of the Compressor Product where the Settlement Class Member provides proof of purchase in accordance with paragraph 11(a) and the value of the Compressor component is specified in the documentation provided; and
  - (c) \$50 as a default unless the Settlement Class Member can otherwise demonstrate an acceptable basis for a higher value, where:
    - (i) the Settlement Class Member provides proof of purchase in accordance with paragraph 11(a) and the value of the Compressor component is not specified; or
    - (ii) where the Settlement Class Member provides proof of purchase in accordance with paragraph 11(b).
14. Subject to paragraphs 10-13 and 15-19, qualifying Settlement Class Members shall be entitled to a distribution calculated in the following manner:

		Compressors	Compressor Products
<b>Direct Purchasers (purchased directly from a Defendant or an entity related to a Defendant)</b>			
1.	Purchased for own use and not for commercial resale	Calculated by multiplying Eligible Compressor Unit Purchases by 3%	Calculated by multiplying Eligible Compressor Unit Purchases by 2.5%
2.	Purchased for straight resale	Calculated by multiplying Eligible Compressor Unit Purchases by 0.8%	Calculated by multiplying Eligible Compressor Unit Purchases by 0.6%
3.	Purchased for use in providing repair services	Calculated by multiplying Eligible Compressor Unit Purchases by 0.8%	Calculated by multiplying Eligible Compressor Unit Purchases by 0.6%
4.	Purchased to build into another product	Calculated by multiplying Eligible Compressor Unit Purchases by 2.75%	Calculated by multiplying Eligible Compressor Unit Purchases by 2.25%
<b>Indirect Purchasers (purchased from an entity other than a Defendant or an entity related to a Defendant)</b>			
5.	Purchased for own use and not for commercial resale	Calculated by multiplying Eligible Compressor Unit Purchases by 2.75%	Calculated by multiplying Eligible Compressor Unit Purchases by 2.25%
6.	Purchased for straight resale	Calculated by multiplying Eligible Compressor Unit Purchases by 0.7%	Calculated by multiplying Eligible Compressor Unit Purchases by 0.5%
7.	Purchased for use in providing repair services	Calculated by multiplying Eligible Compressor Unit Purchases by 0.7%	Calculated by multiplying Eligible Compressor Unit Purchases by 0.5%
8.	Purchased to build into another product	Calculated by multiplying Eligible Compressor Unit Purchases by 2.5%	Calculated by multiplying Eligible Compressor Unit Purchases by 2.1%

15. Should a Settlement Class Member's purchases of Compressors or Compressor Products not fit within one of the categories set out in paragraph 14, the Settlement Class Member shall be permitted to explain their Compressor and Compressor Product purchases and the Claims Administrator shall have the necessary discretion to evaluate and adjudicate compensation with respect to such potential claims.
16. If there is not sufficient Net Settlement Funds available to pay eligible Settlement Class Members in the percentages specified in paragraph 14, 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.
17. If there are surplus Net Settlement Funds available after all eligible Settlement Class Members have been assigned the percentages specified in paragraph 14, 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.
18. Notwithstanding any other provision in this distribution protocol, subject to further order of the Court following the adjudication of all claims, all valid Settlement Class Member Claims will be assigned a minimum value of \$20. The \$20 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.

19. Notwithstanding any other provision in this distribution protocol, if the distribution would result in eligible Settlement Class Members receiving an amount that is beyond any reasonable estimate of expected damages or would otherwise result in an unjust distribution, Class Counsel will seek further directions from the Court with respect to the distribution of the Net Settlement Funds.

## **THE CLAIMS PROCESS**

### **The Claim**

20. The Claim shall require the following:
  - (a) information regarding the value of the Settlement Class Member's Compressor and Compressor Products Purchases. The Settlement Class Member can rely on defendant data (where available) or rely on its own purchase records;
  - (b) information that will allow the Claims Administrator to determine the categorization of Compressor and Compressor Products Purchases pursuant to paragraph 14;
  - (c) disclosure of whether the Settlement Class Member or any entity related to the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements and/or provided a release in respect of any of the Settlement Class Member's Compressor and Compressor Product Purchases, and provide details of the compensation received and the claims released;
  - (d) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate for more information and/or to audit the Claim;

- (e) a declaration that the information submitted in the Claim is true and correct; and
- (f) such further and other information as the Claims Administrator may require to process Claims.

### **The Online Claim Portal**

- 21. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administrative support to enable Settlement Class Members to do so.
- 22. The Online Claim Portal shall be accessible from the Settlement Website.
- 23. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraph 20 above.
- 24. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is entered into the Online Claim Portal or provided by Settlement Class Members who file hardcopy Claims in accordance with paragraph 27 below:
  - (a) names, addresses, and purchase data of the Settlement Class Members;
  - (b) names and addresses, purchase data and supporting documents provided by Settlement Class Members as part of the claims and/or audit process; and
  - (c) any other information that might be useful in the claims administration process.

### **The Claims Filing Process**

25. Settlement Class Member will be encouraged to complete and submit a Claim (together with any required supporting documents) electronically using the Online Claim Portal. Subject to further order of the Court, Claims must be submitted on the Online Claim Portal on or before the Claim Filing Deadline.
26. Where a Settlement Class Member has been identified by the Defendants, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or by regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the Online Claim Portal. Where the Defendants have also provided sales information in respect of the Settlement Class Member, the fields in the Online Claim Portal requiring the Settlement Class Member to provide the value of the Settlement Class Member's Compressor or Compressor Product Purchases shall be automatically populated with the sales information provided by the Defendants.
27. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to further order of the Court, the completed and executed hardcopy Claim (together with any required supporting proof of purchase) must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.
28. At its sole discretion, the Claims Administrator can elect to audit any Claim and can reject a Claim, in whole or in part, where, in the Claims Administrator's view, the

Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

**Audits**

29. The Claims Administrator shall audit all Claims where the Settlement Class Member has relied in whole or in part on its own purchase records, and the value of that portion of the Settlement Class Member's Eligible Compressor Unit Purchases exceeds \$5,000.
30. The Claims Administrator shall conduct a random audit of at least 10% of Claims where the Settlement Class Member has relied in whole or in part on its own purchase records and where the value of that portion of the Eligible Compressor Unit Purchases is less than \$5,000. At its sole discretion, the Claims Administrator can elect to audit additional Claims.
31. If a Settlement Class Member's Claim is audited, the Settlement Class Member must provide documentary proof of the Settlement Class Member's Compressor Unit Purchases, in accordance with paragraph 11.
32. The Claims Administrator shall notify the Settlement Class Member, by email or by regular mail, that the Settlement Class Member's Claim is the subject of an audit and the requirement to provide documentary proof in accordance with paragraph 11. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to provide documentary proof. If documentary proof is not provided within the thirty (30) day period, the Claims Administrator shall reject the Claim, subject to the deficiency process identified in paragraph 33.

## **Deficiencies**

33. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other required information, the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the Claim without prejudice to the right of the Settlement Class Member to cure the deficiencies, provided the Settlement Class Member is able to meet the Claims Filing Deadline and other requirements set forth herein. The Online Claim Portal shall be designed so as to minimize the possibility of deficient claims.
34. A deficiency shall not include missing the Claims Filing Deadline. Subject to further order of the Court, the Claims Administrator shall not accept Claims postmarked or electronically submitted after the Claims Filing Deadline.

## **Claims Administrator's Decision**

35. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:
- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amounts in accordance with the Settlement Agreements, orders of the Court and this Distribution Protocol;
  - (b) verify the Settlement Class Member's Compressor or Compressor Product Purchases;



- (c) make a determination of the value of the Settlement Class Member's Compressor Units in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Court and this Distribution Protocol ("Eligible Compressor Unit Purchases"); and
  - (d) make a determination of the appropriate categorization of the Eligible Compressor Unit Purchases pursuant to paragraph 14.
36. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Eligible Compressor Unit Purchases and their categorization. Where the Claims Administrator has rejected all or part of the Claim of the Settlement Class Member, the Claims Administrator shall include its grounds for rejecting all or part of the Claim.
37. The Claims Administrator's decision shall be final and binding upon the Settlement Class Member.

#### **THE CLAIMS DISTRIBUTION PROCESS**

38. As soon as practicable after the claims evaluations, the Claims Administrator shall make arrangements to pay approved Claims as expeditiously as possible. Payments of settlement benefits to Settlement Class Members will be made by cheque.
39. To the extent that the full Net Settlement Amounts is not paid out due to uncashed cheques, residual interest or otherwise, such monies shall be paid to the Homestart Foundation for the general benefit of Settlement Class Members if the amount is equal to or less than \$10,000. For distribution of any amount above \$10,000, further direction of the Court shall be sought.

## **CONFIDENTIALITY**

40. All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 and may be used by the Claims Administrator for the sole purpose of administering the Settlement Agreements, including evaluating a Settlement Class Member's eligibility status under the Settlement Agreements and this distribution protocol. The sales information provided by Defendants and the information provided by Settlement Class Members is strictly private and confidential. Any identifying information about Settlement Class Members will be kept confidential and redacted from any materials filed with the Court as part of the settlement administration process, unless otherwise directed by the Court. Within a year of settlement benefits being paid to Settlement Class Members pursuant to this distribution protocol, the Claims Administrator will return or destroy the information received from Defendants or Settlement Class Members. Prior to being appointed as Claims Administrator, the Claims Administrator will execute an undertaking to abide by the obligations set out in this paragraph.