

Court File No. 18784/94

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROBERT C. CAMPBELL and  
ETHYL PRYCE

Plaintiffs

-and-

W.C.I. CANADA INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

No. du dossier de la Cour: 500-06-000009-940

PROVINCE DE QUEBEC  
COUR SUPERIEURE  
DISTRICT DE MONTREAL  
(Recours collectifs)

E N T R E:

OPTION CONSOMMATEURS

Demanderesse

-et-

GILBERT GAGNON

Personne Designee

-c-

W.C.I. CANADA INC.

Défenderesse

Court File No.: A-980452  
Vancouver Registry

IN THE SUPREME COURT OF  
BRITISH COLUMBIA

B E T W E E N:

JACK UHRYNIUK

Plaintiff

-and-

W.C.I. CANADA INC.

Defendant

**SETTLEMENT AGREEMENT**  
**(the “Plan”)**

**INTRODUCTION**

**WHEREAS** the representative Plaintiffs have commenced the three class actions noted above, in the provinces of Ontario, Québec and British Columbia (the “Class Actions”) against the Defendant, W.C.I. Canada Inc., on behalf of Class Members as defined below; and

**WHEREAS** the Ontario and Québec Actions have been certified; and

**WHEREAS** Class Members are current and former owners of the Dryers in Ontario, Québec and British Columbia (the “Class Members”); and

**WHEREAS** in the Class Actions the Class Members allege that the Defendant manufactured defective, unsafe and dangerous clothes dryers at its Cambridge, Ontario facility between January 1987 and October 1990 under the brand names White-Westinghouse, Kelvinator and Frigidaire, bearing ten-digit serial numbers beginning with 87, 88 FD9 or FDO (the “Dryer or Dryers”) and instituted deficient and misleading Programs, as defined below, with respect to the Dryers; and

**WHEREAS** the Defendant has denied the Class Members allegations; and

**WHEREAS** the Defendant initiated a number of programs which are still ongoing, including an information program directed to all Dryer owners, operators, dealers, distributors, field supervisors and service depots, an exchange program whereby the Dryers are replaced at or below the Defendant’s cost, and a modification program whereby the Dryers are modified free of charge to address the safety hazard alleged in the Actions and an inspection program whereby service inspection is provided free of charge (collectively, the “Programs”); and

**WHEREAS** the Defendant and its counsel and class counsel namely, Siskind, Cromarty, Ivey & Dowler (“Siskinds”) on behalf of Ontario Class Members, Sylvestre Charbonneau Fafard (“Sylvestre”) on behalf of Québec Class Members, and Poyner Baxter Poyner (“Poyner”) on behalf of British Columbia Class Members (collectively, the “Class Counsel”), attended at a national mediation on February 25, 2002, under the auspices of Mr. Justice Warren K. Winkler of the Ontario Superior Court of Justice; and

**WHEREAS** Class Counsel on behalf of the Class Members and past and present owners of the Dryers resident in the remaining provinces and territories of Canada, that is, those resident in provinces and territories other than Quebec, Ontario or British Columbia (the “National Class Members”) and the Defendant wish to finally settle and resolve the Class Actions and any and all matters, claims or things whatsoever covered by, and or arising out of, or relating to the Class Actions and any similar actions, individual or otherwise, in the remaining provinces and territories of Canada (the “Actions”); and

**WHEREAS** the Class Counsel believe that the Plan is fair, reasonable, adequate and in the best interests of the Class Members and National Class Members (collectively, the “Current and Former Canadian Dryer Owners”),

**NOW THEREFORE** the Defendant and Class Counsel agree to submit the following Plan for approval by the Ontario Superior Court of Justice, the Québec Superior Court - District of Montreal and the Superior Court of British Columbia (collectively the “Courts”):

**Purpose**

1. The purpose of the Plan is to provide compensation to the Current and Former Canadian Dryer Owners.
2. The Plan is without any admission of liability of the part of the Defendant.
3. In the event that the Plan is not approved by the Courts it shall, at the option of the defendant, be deemed to be null and void and of no effect. Costs that may have been incurred by the Defendant with respect to any of the notices referenced herein will remain the responsibility of the Defendant.

**Binding Effect**

4. This Plan is to be binding on all Current and Former Canadian Dryer Owners, save for those who can and do opt out in accordance with the provisions herein.

**Amendment to Ontario Certification**

5. Siskinds and the Defendant will seek an amendment to the certification of the Ontario class to include the National Class Members as members. The National Class Members will have thirty (30) days from the date of the first notice of the Plan, as set out in paragraph 18, to opt out of the class by sending a written election to opt out along with a statement and documentation outlining their alleged net loss by prepaid mail, courier or facsimile to the Defendant at the address set out below.

**British Columbia Certification**

6. The Defendant will consent to certification of the class action in British Columbia, on mutually agreeable language, for the sole purpose of obtaining approval of the Plan. In the event that the Plan is not approved, the Defendant reserves all of its rights and grounds to contest certification.

**Notice of Proposed British Columbia Class Action Certification, Amendment to Ontario Certification and Plan Approval Hearing**

7. Class Counsel and the Defendant will submit the notice of hearing for the amendment to the Ontario Certification set out in paragraph 5, the proposed certification of the class action in British Columbia, as set out in paragraph 6, and the Plan approval hearings to be held in Ontario, Québec and British Columbia, attached as Appendix “A” hereto (the

“Plan Approval Hearings Notice”) to the Honourable Justices Winkler of Ontario’s Superior Court of Justice, Rayle of the Superior Court of the Province of Quebec, District of Montreal, and Neilson of the Supreme Court of British Columbia, for approval.

8. The Plan Approval Hearings Notice will be distributed as follows:
  - (a) by publishing one (1) notice in the national edition of the Globe & Mail, Vancouver Sun and The Province within fifteen (15) days of the approval of the Plan Approval Hearings Notice by the last of Justices Winkler, Rayle and Neilson;
  - (b) by publishing one (1) notice in La Presse, within fifteen (15) days of the approval of the Plan Approval Hearings Notice by the last of Justices Winkler, Rayle and Neilson; and
  - (c) by submitting one (1) press release to Canada NewsWire, within fifteen (15) days of the approval of the Plan Approval Hearings Notice by the last of Justices Winkler, Rayle, and Neilson; and
  - (d) there will be a minimum fifteen (15) day period between the date of publication referenced above and any Plan Approval Hearing.

### **Plan Administration**

9. The Plan is to be administered by the Defendant. Class Counsel shall have the right to audit the process, at their own expense, in a reasonable fashion and upon reasonable notice.

**Settlement Funds and Claimant Categories**

10. The Defendant agrees to pay the all inclusive sum of \$4,200,000, (exclusive of the administration costs referenced in paragraph 9 and the cost of the notices referenced in paragraphs 8 and 18, which are to be the responsibility of the Defendant) subject to paragraph 12(d), in satisfaction of legal fees, disbursements, applicable taxes and any and all Authenticated Claims, as defined in paragraph 23, by:
- (a) Current and Former Canadian Dryer Owners who have unproven damages or modest claims such as burnt clothes (collectively “Category C Claimants” and “Category C Claims”); and
  - (b) all other non-subrogated, Authenticated Claims, as defined in paragraph 23, in which Current and Former Canadian Dryer Owners have suffered significant damage to tangible property beyond the contents of the Dryers (“Category B Claimants” and “Category B Claims”).
11. The entitlement of Category B and Category C Claimants will be calculated in three stages as follows.

**Stage One Entitlement- Categories B and C**

- (a) The aggregate amount available to satisfy Category B and C Claims under the Plan will be \$4.2 million minus all Class Counsel fees, disbursements and applicable taxes (the “Settlement Funds”). The stage one entitlement of Category B and C Claimants shall be calculated as follows: the Settlement Funds divided by the total number of Category B and C Claims submitted by the Claim

Deadline, as defined in paragraph 17, and thereafter Authenticated up to a maximum of \$150.00 per claimant (the “Stage One Entitlement”).

**Category B Stage Two Entitlement**

- (b) if additional funds remain after the calculation of the Stage One Entitlement (“Surplus Category B Funds”), those Surplus Category B Funds will be used to pay that portion of the Category B Claims that exceed the Stage One Entitlement (the “Category B Stage Two Entitlement”);
- (c) for greater certainty, the Category B Stage Two Entitlement shall be calculated without regard to the Stage One Entitlement to Category B Claimants, however, a credit equal to the Stage One Entitlement to Category B Claimants (the “Credit”) shall be applied against their Category B Stage Two Entitlement;
- (d) to the extent that there is a shortfall of available funds to pay the Category B Stage Two Entitlement, less any Credit, in full, the Defendant will contribute, on an as needed basis, a maximum of an additional \$300,000 to the Plan (the “Additional Settlement Funds”), which amount shall be inclusive of any additional legal fees and disbursements;
- (e) in the event that the aggregate value of the Category B Claims exceeds the aggregate of the Surplus Category B Funds plus the Additional Settlement Funds, Category B Claimants will be paid-out on a pro-rata basis from what funds are available;

- (f) if the Category B Stage Two Entitlement can be paid in full without recourse to any of the Additional Settlement Funds, Category B Claimants will receive interest on the full amount of their Category B Claims at the rate of 5.6% per annum calculated from the later of the date of loss, or the date on which a statement of claim was issued to the Claim Deadline (the “Interest Component”). If any portion of the Additional Settlement Funds is called upon, Category B Claimants will not receive any Interest Component;
- (g) if the aggregate of the Interest Components of all Category B Claims exceeds the surplus referred to in subparagraph 11(f) Category B Claimants will receive a pro-rata share of their respective Interest Components; and
- (h) if the Defendant is required to contribute any Additional Settlement Funds, it shall have the right to challenge any Category B Claims, which challenge shall be made in writing and determined in a summary fashion by Mr. Justice Winkler for non-Québec claimants and Madame Justice Rayle for Québec claimants.

### **Category C Stage Two Entitlement**

- 12. The stage two entitlement of Category C Claimants will be calculated as follows:
  - (a) if, after the payment of all Category B Claims, including the Interest Component, and the calculation of the Stage One Entitlement of Category C Claimants, there is a surplus of funds (“Surplus Category C Funds”), Category C Claimants shall each be entitled to an amount equal to the aggregate of the Surplus Category C Funds divided by the number of Category C Claimants (the “Category C Stage Two Entitlement”). The Category C Stage Two Entitlement shall be added to the

Category C Stage One Entitlement, and thereafter payment of both entitlements shall be made to Category C Claimants;

- (b) if, after the calculation of all Category B Claims including the Interest Component, and the calculation of the Category C Stage One Entitlement, no Surplus Category C Funds exist, the Stage One Category C Entitlement shall be paid and Category C Claimants shall, for greater certainty, have no further entitlement under the Plan;
- (c) for greater certainty, Category C Claimants will not be paid a Category C Stage One Entitlement until all Category B Claims (inclusive of the Interest Component) have been paid in full, and it is determined whether any Surplus Category C Funds are available to make a Category C Stage Two Entitlement; and

### **Category C Stage Three Entitlement**

- (d) if, after the payment of the Category C Stage Two Entitlement, surplus funds exist (“Excess Funds”), for example, as a result of returned or uncashed cheques, an amount equal to the aggregate of the Excess Funds (less the costs of the further distribution thereof) divided by the number of Category C Claimants (the “Category C Stage Three Entitlement”) shall be paid to each Category C Claimant. In the event that it is impractical to make a Category C Stage Three Entitlement having regard to, without limitation, the costs associated with the administration and distribution of the Excess Funds, the Excess Funds will be paid to the United Way of Canada - Centraide Canada. For greater certainty,

W.C.I. shall bear no responsibility for the costs associated with the distribution of any Category C Stage Three Entitlement, which costs shall be satisfied exclusively from the Excess Funds.

### **Category A Claims**

13. Category A Claims, as defined below, consist of all subrogated claims outside of Québec known as of the date of the mediation, February 25, 2002, along with one non-subrogated Québec claim (the “Quebec Category A Claim”), all of which are listed in Appendix “B” hereto (collectively “Category A Claimants” and “Category A Claims”). Category A Claims will be the subject of separate settlement negotiations between Class Counsel and the Defendant. In the event that the Category A Claims are not settled within twelve (12) months from the date on which the Plan is approved, they will be referred to binding arbitration:

- (a) all non-Québec Category A Claims will be heard in Toronto, Ontario by an arbitrator mutually agreed to by Siskinds and the Defendant;
- (b) the Quebec Category A Claim will be heard in Montreal, Quebec by an arbitrator mutually agreed to by Sylvestre and the Defendant;
- (c) if an arbitrator cannot be agreed upon, one will be appointed by Justice Winkler for non-Québec claimants and by Justice Rayle for Québec claimants; and
- (d) the costs and disbursements associated with retaining arbitrators will, in the first instance, be borne by the defendant. For greater certainty, in the first instance, each party will bear its own legal costs. The parties will be at liberty to make

submissions on costs, and the arbitrators will be empowered to make awards of costs.

14. The Funds will be placed into an interest-bearing account by the Defendant with a national Canadian bank (the “Bank”) and will be used to satisfy its obligations arising from the Plan and Class Counsel’s fees, taxes and disbursements as approved by the Courts. All interest that accrues on these Funds shall be for the sole benefit and account of the Defendant and can be withdrawn by the Defendant when paid by the Bank.
15. The Additional Settlement Funds referenced in paragraph 11(d) shall be secured by way of a bond which shall be posted the day after the last of the Courts approves the Plan.
16. Two percent (2%) of the Funds, or any Additional Settlement Funds as referenced in paragraph 11(d), payable to Québec claimants will be paid to Québec Class Counsel, to be held in trust for the Fonds D’Aide Aux Recours Collectifs (the “Fonds”).

### **The Claims and Distribution Process**

17. Claimants must file their claims in the manner hereinafter described by a date to be fixed no later than 6 months after the last publication of the notices described in paragraphs 18(a) and 18(b) below (the “Claim Deadline”).
18. With the advice of Class Counsel, the Defendant will provide notice of the Plan, in a form acceptable to it and subject to Court approval, in the following fashion:
  - (a) by publishing two (2) notices in the national edition of The Globe & Mail, Vancouver Sun, and The Province, one within seven (7) days of the last of the Court orders approving the Plan, and the second fourteen (14) days thereafter;

- (b) by publishing two (2) notices in La Presse, one within seven (7) days of the last of the Court orders approving the Plan, and the second fourteen (14) days thereafter;
  - (c) a direct mailing to all Class Members and National Class Members whose names are contained in the database maintained by the Defendant for use in the administration of the Programs along with the claims form found at Appendix “C” hereto within fourteen (14) days of the last of the Court orders approving the plan; and,
  - (d) by submitting two (2) press releases to Canada NewsWire, one within seven (7) days of the last of the Court orders approving the Plan, and the second fourteen (14) days thereafter.
19. After publication and delivery of the notices and press releases required in paragraph 18, Defendant’s counsel shall file with Justices Winkler, Rayle and Neilson, a report confirming publication and delivery of the notices and press releases contemplated in paragraph 18.
20. All Category B Claimants under the Plan will be required to attest that they own or owned a Dryer by completing the claim form annexed hereto as Appendix “C” (the “Claim Form”), by having the Claim Form sworn or affirmed before a notary public, commissioner of oaths, lawyer, judge or magistrate. Category B Claimants will also be required to outline the nature and extent of their damages, and provide supporting documents indicating the repair and/or replacement of damaged items (“Proof of Loss”). Category B Claimants will be asked to provide, where possible, supplementary proof of

ownership such as a sales receipt, serial number or work/repair orders (“Proof of Ownership”).

21. All Category C Claimants under the Plan will be required to complete the Claim Form, and where possible, provide Proof of Ownership. Category C Claimants will not be required to have the Claim Form sworn or notarized.
22. Each Current and Former Canadian Dryer Owner shall submit his, her or its Claim Form to the Defendant at the address set out below in accordance with the Plan by the Claim Deadline and if he, she or it fails to do so, he, she or it shall not share in any distribution made in accordance with the Plan unless one of Justices Winkler, Rayle or Neilson order otherwise.
23. Within two (2) months of the Claim Deadline, the Defendant will review all Category B and C Claims received as of that date for accuracy and compliance with the claims process (“Authentication” or “Authenticated” or “Authenticated Claims”).
24. Siskinds is to be notified of all Authenticated Claims, other than those in the Province of Québec, with respect to which notice shall be provided to Sylvestre. Non-Québec claims that are rejected by the Defendant will be submitted to Siskinds, and rejected Québec claims to Sylvestre, for review.
25. Siskinds and Sylvestre shall, acting reasonably, have the right to overturn the Defendant’s decision denying a Category B or C Claim and Authenticate the claim, except as provided for in paragraph 11(h). Siskinds and Sylvestre shall have the right to request that the claimant cure non-material deficiencies.

26. There shall be no right of appeal or challenge by the Defendant, or any Category B or C Claimant, from the decisions of Siskinds and Sylvestre, except for as provided in paragraph 11(h).
27. All payments pursuant to the Plan for Authenticated Category B and C Claims will be made within three (3) months of the Claims Deadline, except as provided for in paragraph 28.
28. In the event that any Category B Claims are challenged pursuant to paragraph 11(h), there shall be no pay-out to Category B Claimants or Category C Claimants until thirty (30) days after the final challenge is judicially determined so as to permit the calculation of the funds available for distribution.
29. Category A Claimants will receive their pay-out within thirty (30) days of any settlement or arbitral award pursuant to paragraph 13, subject to any appeal.
30. Each person receiving a payment under this Plan shall acknowledge in their claims form, in words similar or identical to those set out in paragraph 35, that their payment pursuant to this Plan is in full and final satisfaction of their claim or any potential claim relating to or arising from, indirectly or directly, the Dryers.
31. Subject to paragraph 12(b) and in accordance with paragraph 10, the fees, disbursements and other costs of administering the Plan, other than those that may be incurred by Class Counsel or other counsel that may be retained by the Current and Former Canadian Dryer Owners shall be the responsibility of the Defendant.

**Programs**

32. The Programs will come to an end on the first publication of notice of approval of the Plan as required by paragraph 18.

**Necessary Orders & Direction**

33. The parties agree to submit any questions or disputes arising from the interpretation and administration of this Plan to Mr. Justice Winkler.
34. Mr. Justice Winkler shall supervise the implementation of the Plan as may be needed. Without limiting the generality of the foregoing, Mr. Justice Winkler may issue orders, in such forms as are necessary, to implement and enforce the provisions of the Plan and any judgments thereunder.

**Release**

35. Upon approval of the Plan by the Courts each Current and Former Canadian Dryer Owner (save for those who can and do opt out in accordance with the provisions herein) and his, her or its heirs, legal representatives and assigns or their past or present parent and/or subsidiary and/or affiliated corporations, employees, agents, officers, directors, shareholders, insurers, representatives, executors, administrators, successors and assigns shall be deemed to have released the Defendant and its respective past or present parent and/or subsidiary and/or affiliated corporations, employees, agents, officers, directors, shareholders, insurers, representatives, executors, administrators, successors and assigns from any and all actions, causes of action, liabilities, claims and demands of every nature and/or kind including for damages, contribution, indemnity, costs, expenses and interest which they ever had, now have or may hereafter have, directly or indirectly, or in any

way relating to or arising, directly or indirectly, from any and all matters set out, or that could have been set out in the Class Action and Actions, or any similar actions that could have been commenced in other provinces and/or territories in Canada.

36. The release referred to in paragraph 35 binds each Current and Former Canadian Dryer Owner (save for those who can and do opt out in accordance with the provisions herein) whether or not he, she or it submits a claim under this Plan, and whether or not the claim is accepted in whole or in part.

### **Dismissal**

37. The Class Action, Actions and any counterclaims and cross-claims shall be dismissed, on consent, without costs and with prejudice.

### **Right to Opt Out**

38. Current and Former Canadian Dryer Owners who have a right to opt out (that is, current and former Dryer Owners resident in provinces and territories other than Quebec and Ontario) shall have until thirty (30) days from the publication of the first notice set out in paragraph 18 (the “Opt Out Deadline”) to opt out of the class by sending a written election to opt out along with documentation evidencing the net loss that they claim to have suffered as a result of owning a Dryer, by prepaid mail, courier or facsimile, to the Defendant (the “Opt Out Notice”);
39. An election by Current and Former Canadian Dryer Owners to opt out of the class is of no force or effect unless the person seeking to opt out delivers to the Defendant a

statement and documentation evidencing his, her or its alleged loss as a result of owning the Dryer.

40. This Plan shall, at the option of the defendant, be null and void and of no force or effect if greater than 5,000 Dryer Owners resident in Canadian provinces and territories other than Québec and Ontario opt out of the class.

41. No Current and Former Canadian Dryer Owner may opt out of the class after thirty (30) days from the publication of the first notice set out in paragraph 18.

#### **Class Counsel Fees and Disbursements**

42. Class Counsel's fees, disbursements and any applicable taxes shall be paid out of the Fund within 14 (fourteen) days of the expiration of any appeal period with respect to the last trial court order approving the Plan.

#### **Notices**

43. All notices required or related to this Plan, unless otherwise noted, shall be made by regular mail, courier or facsimile to the following:

TO THE DEFENDANT:

W.C.I. Canada Inc.  
c/o Heenan Blaikie LLP  
Royal Bank Plaza, South Tower  
Suite 2600  
Toronto, ON M5J 2J4

Attention: Mr. George J. Karayannides  
Facsimile: (416) 360-8425

TO NON-QUEBEC CLASS MEMBERS AND NATIONAL CLASS MEMBERS:

c/o Siskind, Cromarty, Ivey & Dowler  
Barristers and Solicitors  
680 Waterloo Street  
P.O. Box 2520, Stn. B  
London, ON N6A 3V8

Attention: Ms. Dawn Sullivan  
Facsimile: (519) 672-2121

TO QUEBEC CLASS MEMBERS AND OTHER DRYER OWNERS:

Sylvestre Charbonneau Fafard  
Barristers and Solicitors  
740 Avenue Atwater  
Montreal, PQ H4C 2G9

Attention: Mr. Jean-Pierre Fafard  
Facsimile: (514) 937-6529

**Interpretation**

44. As this Plan was negotiated between the Parties in English, in the event of any dispute between the English and the French translated version of this Plan, the English version shall govern.

**SIGNED, SEALED AND DELIVERED** )  
(in the presence of) )  
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Witness )  
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Date )  
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\_\_\_\_\_)  
W.C.I. CANADA INC.  
Per:  
I have authority to bind the corporation  
\_\_\_\_\_)  
SISKIND, CROMARTY, IVEY & DOWLER  
On behalf of Ontario Class Members and National  
Class Members  
Per:

