

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-000162-020

DONATO SCAROLA

Plaintiff

v.

SHELL CANADA LIMITÉE

Defendant

SETTLEMENT AGREEMENT

WHEREAS:

- Donato Scarola (the "Plaintiff") on his own behalf and as representative of all owners and lessors for vehicles in which was put Shell branded gasoline manufactured, distributed and sold between March 1, 2001 and October 31, 2002, and the Defendants Shell Canada Limited and Shell Canada Products, an Alberta Partnership (Shell Canada Limited and Shell Canada Products are collectively referred to as "Shell" and the Plaintiff and Shell are collectively referred to as the "Parties") enter into this Settlement Agreement providing for the settlement of the action described in and pursuant to the terms and conditions set out in this Settlement Agreement, subject to the approval of the Quebec Superior Court.
- On October 3, 2003, the Plaintiff filed an action in the Province of Quebec (the "Class Action") against Shell Canada Limited in relation to his use of Shell branded gasoline as defined therein (the "Fuel").
- Shell branded gasoline is distributed and sold in Canada by Shell Canada Products. Shell has denied and continues to deny the Plaintiff's claim in the Class Action and has no reason to believe that Class members have any reason for concern about the current condition of their vehicles.

- Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, as well as the fair, cost effective, and assured method of resolving claims of Class members, the Plaintiff has concluded that this Settlement Agreement provides substantial benefits to Class members and is fair, reasonable, adequate and in the best interests of Class members.
- Shell has also concluded that this Settlement Agreement is desirable to resolve in a final and complete manner the pending and potential claims related to Shell's manufacture, distribution, and sale of the Fuel.
- Shell and the Plaintiff have agreed upon a process to provide for the settlement of all claims made in the Province of Quebec.
- Subject to the approval of the Court, the Parties agree that the Class Action and in particular, all claims contemplated, asserted, and unasserted, and raised, directly or indirectly, pertaining or relating in any way to the conduct of Shell in connection with the Fuel, shall be resolved as set forth in this Settlement Agreement as follows:

Definitions

[1] The following definitions apply to this Settlement Agreement:

- (a) "Class Counsel" means the law firm of Kugler Kandestin of Montreal;
- (b) "Court" means the Superior Court of the Province of Quebec;
- (c) "Fuel System Problems" means:
 - i) fuel sensor problems which began between March 1, 2001 and October 31, 2002 and continued up until the repair of the fuel sensor, and/or
 - ii) fuel pump problems causing a vehicle's failure to start following a period of inactivity;
- (d) "Expenses" means repair costs, towing, alternative transportation costs, lodging and meal costs, which were reasonable and necessary, incurred in respect of Fuel System Problems and proven by receipts and incurred within the following period:
 - i) for fuel sensor problems as defined in (c) i) above, between March 1, 2001 and 90 days of the date of publication of the Notice provided in Section 9;
 - ii) for fuel pump problems as defined in (c) ii) above, between March 1, 2001 and October 31, 2002.

- (e) “Inspection Costs” means the amount charged for inspecting the fuel system and, if required, for removing from fuel system parts a sticky brown residue.
- (f) “Purchase Threshold” means proof, by providing receipts, Air Miles statements or an affidavit from the Member of the Class attesting that the Class member purchased between March 1, 2001 and October 31, 2002 inclusive:
 - i) for a claim for reimbursement of Expenses, a minimum of \$100 of Shell branded gasoline;
 - ii) for a claim for reimbursement of Inspection Costs, a minimum of \$200 of Shell branded gasoline; and
 - iii) for a claim under Section 6 c), 7 c) or 8 c), a minimum of \$1,500 of Shell branded gasoline.
- (g) “Residue Requirement” means proof, either by providing a Residue Solemn Declaration by a person having first hand knowledge, or by an affidavit of the Class member, or by providing contemporaneous repair records, that a sticky brown residue (or like language) not usually present was found on a fuel sensor or fuel pump in a vehicle experiencing Fuel System Problems;
- (h) “Shell branded gasoline” means gasoline sold at retail outlets bearing the Shell trademark;
- (i) “Voluntary Compensation” means the voluntary compensation by which Shell has compensated Class members since 2002 in relation to the Fuel;
- (j) “Vouchers” means vouchers issued by Shell bearing an expiry date of not less than 90 days from issue and redeemable for products and services at Shell branded retail outlets;

Class Definition

- [2] The “Class” is defined as all physical persons resident in the Province of Quebec who purchased Shell branded gasoline between March 1, 2001 and October 31, 2002 and were, at any given time during that period, owners or lessors of vehicles.

General Provisions

- [3] All Voluntary Compensation paid to a Class member addressing the same head of compensation as provided by the present Settlement Agreement shall be

deducted from any compensation to be paid to that Class member under the terms of this Settlement Agreement.

- [4] Class members who claim compensation as set out below will be required to demonstrate that they have met the relevant Purchase Threshold.
- [5] This Settlement Agreement is subject to approval by the Court failing which it shall be null and void and the Parties will only be bound by the terms of this Section. If it is not approved by the Court, this Settlement Agreement and all of its provisions and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights and recourses of the Parties and shall not be used against either of the Parties in the Class Action or any other legal proceedings.

Compensation

Category 1 compensation

- [6] Shell will compensate Class members who owned or leased Dodge, Plymouth and Chrysler vehicles, except for Jeeps, of the model years from 1996 to 2003 inclusive, as follows:
- (a) by reimbursing Expenses incurred and further, in that event, by providing Vouchers of a value of \$100 for trouble and inconvenience relating to Fuel System Problems;
 - or, in the alternative
 - (b) subject to not having claimed under Section 6 a) above and to not having received Voluntary Compensation specifically for Expenses, by paying up to a maximum of \$300 in reimbursement of Inspection Costs;
 - or, in the alternative
 - (c) subject to not having received compensation under Section 6 a) or b) above and to not having received Voluntary Compensation specifically for Expenses, Vouchers of a value of \$70.

Category 2 compensation

- [7] Shell will compensate Class members, other than Category 1 Class members, who owned or leased vehicles of the model years from 1996 to 2003 inclusive:
- (a) as regards Expenses:
 - i) for Class members having experienced a fuel pump problem or a combination of fuel pump and fuel sensor problems, by reimbursing 75% up to a maximum of \$500 of Expenses incurred on proof that the Residue Requirement has been satisfied; and in that event by

providing Vouchers of a value of \$50 for trouble and inconvenience relating to Fuel System Problems;

- ii) for Class members having experienced only a fuel sensor problem, by reimbursing 75% up to a maximum of \$250 of Expenses incurred on proof that the Residue Requirement has been satisfied; and in that event by providing Vouchers of a value of \$50 for trouble and inconvenience relating to Fuel System Problems.

or, in the alternative

- (b) subject to not having claimed under Section 7 a) above and to not having received Voluntary Compensation specifically for Expenses, by providing Vouchers of a value of \$200 in reimbursement of Inspection Costs;

or, in the alternative

- (c) subject to not having received compensation under Section 7 a) or b) above and to not having received Voluntary Compensation specifically for Expenses, Vouchers of a value of \$20.

Category 3 compensation

[8] Shell will compensate Class members who owned or leased vehicles of model years prior to 1996:

- (a) as regards Expenses:

- i) for Class members having experienced a pump problem or a combination of a pump and fuel sensor problems, by reimbursing 50% up to a maximum of \$500 of Expenses incurred on proof that the Residue Requirement has been satisfied; and in that event by providing Vouchers of a value of 50\$ for the trouble and inconvenience relating to Fuel System Problems.
- ii) for Class members having experienced only a fuel sensor problem, by reimbursing 50% up to a maximum of \$250 of Expenses incurred on proof that the Residue Requirement has been satisfied; and in that event by providing Vouchers of a value of \$50 for trouble and inconvenience relating to Fuel System Problems.

or, in the alternative

- (b) subject to not having claimed under Section 8 a) above and to not having received Voluntary Compensation specifically for Expenses, by providing Vouchers of a value of \$200 in reimbursement of Inspection Costs;

or, in the alternative

- (c) subject to not having received compensation under Section 8 a) or b) above and to not having received Voluntary Compensation specifically for Expenses,, Vouchers of a value of \$20.

Notice to the Class and Opting Out

- [9] Shell at its sole expense will give notice of the Settlement and the compensation scheme (the “Notice”) by legal notice published in newspapers to be agreed upon by the Parties, on two consecutive weekends within four weeks following approval of this Settlement Agreement by the Court. Attached as Schedule “A” are the proposed Notice, Opt Out Form and Registration Form which are subject to approval by the Court. For purposes of this Agreement, the date of publication of the Notice will be the date of its last publication (the “Date of Publication”).
- [10] Class members shall have until 90 days from the Date of Publication to opt out of the Class Action by postmarking or delivering a signed Opt Out Form on or before 90 days from the Date of Publication, failing which they will be bound by the terms of this Settlement Agreement.
- [11] Any Class member who opts out of the Settlement will not be entitled to any of the benefits or relief set out in this Settlement Agreement.

Administration of Settlement

- [12] Shell will administer the Settlement at its sole expense. Administration of the Settlement will include toll-free telephone access to the designated Claims Administrator. Class members will obtain claim forms by using the toll-free line or via the website of Shell or of Class Counsel.
- [13] To participate in the Settlement,
 - (a) a Class member claiming for reimbursement of Expenses must postmark or deliver to the Claims Administrator a signed Expenses Claim Form in the form approved by the Court and the other documents specified in this Settlement Agreement on or before 90 days from the Date of Publication;
 - (b) a Class member claiming for reimbursement of Inspection Costs:
 - i) must postmark or deliver to the Claims Administrator on or before 30 days from the Date of Publication a sworn Registration Form affirming his concern about the presence of sticky brown residue and registering his intention to have the inspection carried out;
 - ii) no later than 60 days after the period in Section 13 (b) i) above, Shell shall decide whether Class members having so registered

may have the inspection carried out at a location of the Class member's choice or at locations Shell may determine for any given city or region at its discretion and given that the location so chosen by Shell:

- does not exceed 50 km from the residence of the Class member;
 - where possible, is an authorized dealer for the vehicle model on which the inspection is to be performed;
- iii) Within the same delay provided for in Section 13 b) ii) above, Shell will send a notice by registered mail to each and every registered Class member of its decision, and each such Class member will have up to 60 days from the date of that notice to have the inspection carried out as per Shell's decision and to postmark or deliver a signed Inspection Claim Form to the Claims Administrator;
- iv) If the authorized dealer so chosen by Shell asks for a price that the Class member considers exaggerated compared to the quote he or she obtained from another duly authorized dealer, the Class member will have the right to submit that quote to Shell for acceptance within thirty (30) days of the receipt of Shell's notice of decision or decision provided in Section 13 b) (iii). If the quote is not accepted by Shell within the delay provided for in Section 13 b) ii), the Class member will have the right to have the dispute decided by a Small Claims Court judge in conformity with Section 17 of the present Settlement Agreement. The judge will decide on the criteria of the reasonableness of Shell's choice, everything being considered. The Class member will have up to 60 days from the date of Shell's decision accepting the quote or of the judgment of the Small Claims Court to have the inspection carried out, and to postmark or deliver a completed Inspection Claim Form;
- v) If Shell decides to have the inspection carried out at a location other than the Class member's choice or, as the case may be, maintains its decision after submission of the quote provided for at Section 13 b) iv) above, the Class member will then have the possibility to opt for any other type of compensation provided in the present Settlement Agreement (if he so qualifies) by post marking or delivering to the Claims Administrator the appropriate claim form and all of the requested documentation on or before thirty (30) days of the receipt of Shell's notice or decision provided for in Section 13 b) iii) or iv) above.
- (c) a Class member claiming Vouchers under Section 6 c), 7 c) or 8 c) must postmark or deliver to the Claims Administrator a completed Vouchers Claim Form in the form approved by the Court and the other documents

specified in this Settlement Agreement on or before 90 days from the Date of Publication or within the delay provided for under Section 13 b) v) above.

Attached as Schedule "B" are the proposed Claim Form Packages. The content and form of the Claim Form Packages are subject to approval by the Court.

- [14] To prove ownership of the vehicle during the relevant period, the Class member must provide a copy of the purchase contract. To prove that the Class member is the lessee of the vehicle, the Class member must provide a copy of the lease.
- [15] Class members claiming compensation for Expenses must provide receipts showing the cost and nature of Expenses incurred and claimed. Class members claiming compensation for Inspection Costs must provide receipts showing that such an inspection was carried out and that it was done to verify the presence of sticky brown residue.
- [16] Within 30 days of receipt of a claim or of the additional information or documentation required pursuant to paragraph (d) below, Shell will send written notification by registered mail to the claimant that:
- (a) The claim has been accepted in the amount of Expenses, Inspection Costs or Vouchers submitted. Payment of the claim will be included with the notification;
 - or
 - (b) The claim has been accepted in an amount of Expenses, Inspection Costs or Vouchers that is different from the amount submitted. Payment of the accepted amount will be included with the notification;
 - or
 - (c) The claim has been refused and the reason for the refusal;
 - or
 - (d) Additional information or documentation is required to support the claim. Details of the information or documentation required will be included with the notice. The claimant will have 60 days from the date of the notice to provide the additional information or documentation, postmarked or delivered. Shell will then send a further notification as per the above paragraphs a), b) or c).
- [17] If Shell rejects a claim under Section 16 c) above or disputes any amount being claimed under Section 16 b), Shell shall within the time period mentioned under Section 16 above provide written notice by registered mail to the Class member. If Shell and the Class member are unable to resolve a dispute under those provisions or under Section 13 b) iv), Shell agrees that the Class member may,

within 60 days of receipt of the notice or of the decision, commence an action before the Small Claims Court of the Province of Quebec solely for enforcement of the Class member's entitlement to his choice of inspection site or compensation under the terms of this Settlement Agreement. The issues adjudicated by the Small Claims Court will be limited to the Class member's entitlement to the choice of the inspection site or compensation pursuant to the terms of this Settlement Agreement and the related Orders of the Court.

- [18] Class Counsel and Shell may jointly or separately apply to the Court at any time for directions and further Orders regarding any aspect of the administration of the Settlement.

Class Counsel Fees

- [19] Shell will pay Class Counsel fees in the amount of \$4,175,000 for all services rendered through to and including the approval of the Settlement. Shell will also pay all disbursements incurred (Class Counsels' current estimate of disbursements is \$184,552.32) and applicable PST and GST on fees. The Class Counsel fees are subject to approval by the Court. Shell will pay the fees and disbursements plus PST and GST to Class Counsel within 30 days of the approval by the Court. Shell will not be liable to make any other payments on account of services rendered by Class Counsel.

Court Approval Hearing

- [20] Promptly after the execution of this Settlement Agreement, the Parties shall jointly advise the Court of this Settlement Agreement and shall institute the appropriate proceedings in order to obtain judgment from the Court which:
- (a) Approves this Settlement Agreement;
 - (b) Declares that this Settlement Agreement is fair and reasonable and in the best interest of the Class;
 - (c) Authorizes the amendment of the definition of the Class and defines the Class as set out above;
 - (d) Approves the Notice to the Members of the Class, the Opt Out Form, the inspection Registration Form, the Claim Form Packages and other related documents;
 - (e) Approves the deadline to opt out of the Class Action;
 - (f) Approves the deadlines for filing claims under the Settlement Agreement; and
 - (g) Declares that Shell is released from all claims by the Members of the Class in accordance with the terms of the release set out in Section 21 below.

Release & Miscellaneous

- [21] Upon Court approval of this Settlement Agreement, Class members (other than those who validly opt out of the Class Action) shall be deemed to have accepted the terms of this Settlement Agreement and to have:
- (a) Released Shell Canada Limited, Shell Canada Products, and any of their successors, parents, partners, subsidiaries, assigns, affiliates, and past, present, future directors, officers, lawyers, employees, agents, consultants, advisors, and other representatives of any type (collectively the "Released Parties") from any and all claims, lawsuits, demands and causes of action that were asserted or could have been asserted by or on behalf of or through the Plaintiffs or any Class member individually, collectively or otherwise, arising out of or resulting from their use of Shell branded gasoline including, but not limited to, any conduct of Shell or the Released Parties in respect of the matters that were asserted in the Class Action;
 - (b) With the exception of any step taken pursuant to Section 17 above, undertaken not to commence any claim or proceeding arising out of or resulting from their use of Shell branded gasoline which may result in a claim or proceeding being brought against any Released Party.
- [22] Nothing in this Settlement Agreement shall constitute or shall be deemed to constitute a waiver by Shell of defences based on prescription periods or any other limitation or prescription defences with respect to any Class member who opts out of the Class Action, or in the event this Settlement Agreement fails to be approved by the Court.
- [23] All amounts payable under this Settlement Agreement are paid without admission of liability. The Parties agree that this Settlement Agreement and any approval of this Settlement Agreement by the Courts, will not constitute an admission or be used as evidence against Shell. Nothing in this Settlement Agreement will be used for any purpose in the Class Action or in any proceeding or matter, except as is expressly contemplated in the Settlement Agreement.
- [24] The paragraphs of the preamble form an integral part of this Settlement Agreement.
- [25] The Parties acknowledge that they have required that this Settlement Agreement and all related documents be prepared in English and that a French version will be made available to Class members. Les Parties reconnaissent qu'elles ont requis que la présente entente et tout document qui y est relié soient rédigés en anglais et qu'une version française sera mise à la disposition des membres du groupe.

Signed in Montreal, this • day of •, 2004.

Kugler Kandestin
Class Counsel

McCarthy Tétrault LLP
Counsel for Shell Canada Ltd.
and Shell Canada Products

Schedule A
to Shell Canada's Settlement Agreement

Notice of Settlement, Opt out Form and Registration Form

SHELL CANADA LTD.
SCHEDULE "B"

- Expenses Claim form
- Inspection Claim form
- Vouchers Claim form