

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000507-109

DATE: September 25, 2013

IN THE PRESENCE OF: THE HONOURABLE DANIELE MAYRAND, J.S.C.

ERIC LIVERMAN

and

SIDNEY VADISH

Petitioners

v.

DEERE & COMPANY

and

JOHN DEERE LIMITED

and

TECUMSEH PRODUCTS COMPANY

and

TECUMSEH PRODUCTS OF CANADA LIMITED

and

BRIGGS & STRATTON CORPORATION

and

BRIGGS & STRATTON CANADA INC.

and

KAWASAKI MOTORS CORP. USA,

and

CANADIAN KAWASAKI MOTORS INC.

and

MTD PRODUCTS INC.

and

MTD PRODUCTS LTD.

and

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THE TORO COMPANY
and
THE TORO COMPANY (CANADA), INC.
and
AMERICAN HONDA MOTOR COMPANY, INC.
and
HONDA CANADA INC.
and
ELECTROLUX HOME PRODUCTS, INC.
and
ELECTROLUX CANADA CORP.
and
HUSQVARNA OUTDOOR PRODUCTS, INC.
and
HUSQVARNA CANADA CORP.
and
KOHLER CO.
and
KOHLER CANADA CO.
and
SEARS, ROEBUCK AND CO.
and
SEARS CANADA INC.
and
PLATINUM EQUITY, LLC
Respondents

JUDGMENT

INTRODUCTION

[1] On May 3, 2010, the Petitioners filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the "Motion to Authorize") against the Respondents on behalf of the following class:

"All residents in Canada who purchased a lawn mower containing a gas combustible engine up to 30 horsepower ("Lawn Mower"), where the Lawn Mower and/or engine of the Lawn Mower was manufactured or sold by the Respondents, since January 1, 1994 through to the present, or any other group to be determined by the Court;

Alternately (or as a subclass)

all residents in Quebec who purchased a lawn mower containing a gas combustible engine up to 30 horsepower ("Lawn Mower"), where the Lawn Mower and/or engine of the Lawn Mower was manufactured or sold by the Respondents, since January 1, 1994 through to the present, or any other group to be determined by the Court".

[2] The Motion to Authorize alleged, *inter alia*, that the Respondents made misrepresentations and overstatements about the horsepower of their Lawn Mowers and Lawn Mower engines to class members and that the Respondents consorted so as to be able to advertise and sell their Lawn Mowers and Lawn Mower engines as having a higher horsepower than the true horsepower of said products.

[3] On September 29, 2010, following arm's length negotiations between counsel for the Parties, the Petitioners and two (2) Respondents – MTD Products Limited and MTD Products Inc. ("MTD") – reached a settlement agreement (the "MTD Settlement Agreement"¹) to fully and finally settle all claims asserted against themselves and as against Respondents Sears Canada Inc., Sears, Roebuck and Co. and Sears Holdings Corporation ("Sears") in or related to the present Class Action;

[4] On or about June 26, 2013, following arm's length negotiations between counsel for the Parties, the Petitioners and twelve (12) Respondents – Briggs & Stratton Canada Inc. and Briggs & Stratton Corporation ("Briggs"), Electrolux Canada Corp. and Electrolux Home Products, Inc. ("Electrolux"), John Deere Canada ULC and Deere & Company ("Deere"), Husqvarna Canada Corp. and Husqvarna Consumer Outdoor Products N.A., Inc. ("Husqvarna"), Kohler Canada Co. and Kohler Co. ("Kohler"), The Toro Company (Canada), Inc. and The Toro Company ("Toro") – reached a settlement agreement (the "Briggs & Stratton et al. Settlement Agreement"²) to fully and finally settle all claims asserted against them in or related to the present Class Action.

[5] The MTD Settlement Agreement and the Briggs & Stratton et al. Settlement Agreement will be referred to collectively as the "Settlement Agreements" and all Respondents who are parties to the Settlement Agreements will be referred to as the "Settling Respondents" for the purposes hereof.³

[6] The Settlement Agreements apply to persons who are members of the following class:

"All persons in Quebec who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons" (the "Settlement Class").

Excluded Person(s) means each Respondent, any entity in which a Respondent has a controlling interest or which has a controlling interest in any Respondent

¹ Exhibit R-1.

² Exhibit R-2.

³ Note: The term Plaintiff(s) and the term Defendant(s) have been replaced for the purposes of the Quebec Class Action with the term Petitioner(s) and the term Respondent(s).

and Respondents' legal representatives, predecessors, successors and assigns; and (ii) Respondents' employees, officers, directors, agents and representatives and their family members.⁴

Also excluded from the Class are all Persons who timely and validly request exclusion from the Class pursuant to the Notice of Certification and Settlement Approval Hearing (hereinafter referred to as the "Pre-Approval Notice") disseminated and published in accordance with the Judgment Approving Notice of a Hearing.

The "Class Period" is from January 1, 1994 until December 31, 2012 and the "Excluded Persons" include the Respondents and certain parties related to the Respondents.

"Lawn Mowers" means a lawn mower designed, manufactured or labeled by any Respondent for ultimate sale, including retail sale, in Canada containing a gas combustible engine labeled at 30 horsepower or less.

SETTLEMENT

[7] The Petitioners and the Settling Respondents have agreed to the terms of the respective Settlement Agreements by which they are covered, subject to the approval of this Court and the Ontario Superior Court of Justice, and without any admission of liability whatsoever by the Settling Respondents and for the sole purpose of resolving the dispute between the parties.

[8] The following is a summary of the key terms of the Settlement Agreements:

A. The MTD Settlement Agreement:

- I. On the Effective Date (i.e. the date when Final Orders have been issued by the Courts approving this Settlement Agreement), the MTD Respondents have agreed to pay the Settlement Amount of \$300,000 to Class Counsel for deposit into an interest bearing trust account for the benefit of the Settlement Class Members;
- II. The MTD Respondents have also agreed to cooperate with Petitioners and with Class Counsel by performing the following within fifteen (15) days of the Effective Date or at a time that is mutually agreed upon by the parties:

⁴ Note: this definition of "Excluded Persons" derives from the Briggs & Stratton et al. Settlement Agreement. "Excluded Persons" has a slightly different definition in the MTD Settlement Agreement where it is defined as: "each Respondent, the directors and officers of each Respondent, the subsidiaries or affiliates of each Respondent, the entities in which each Respondent or any of that Respondent's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing."

- a. Provide an account to Class Counsel of the facts known to them that are relevant to the Class Action including, but not limited to, their knowledge of whether and/or how any alleged conspiracy was formed, implemented, and enforced;
- b. Provide summary data for sales by MTD of Lawn Mowers delivered in Canada, if any, during the Class Period, to the extent that such data has not previously been provided;
- c. Produce relevant non-privileged documents contained in MTD's existing non-privileged document database developed in connection with the U.S. Litigation;
- d. Produce all transcripts and/or other sworn statements given by the U.S. witnesses;
- e. Provide complete and unrestricted access to the analysis and results of expert testing undertaken by or on behalf of MTD in respect of the veracity of certain of the horsepower labeling practices of the Non-Settling Respondents; and
- f. Advise Class Counsel if there are any current or former Canadian employee(s) of MTD who have knowledge of the issues raised in the Proceedings and, if so, to make them available on the same terms as U.S. witnesses;

III. Following the Effective Date, the MTD Respondents have agreed to make the U.S. witnesses available for a personal interview to provide information regarding the allegations raised in the action;

IV. The MTD Respondents have also agree to produce the U.S. witnesses for both the authorization hearing and the trial and at any other motion or step where it is agreed upon to be necessary;

B. The Briggs & Stratton et al. Settlement Agreement:

The Briggs & Stratton et al. Respondents have agreed to pay the Settlement Amount of \$4,200,000 to Class Counsel for deposit into an interest bearing trust account for the benefit of the Settlement Class Members;

C. In addition, the following amounts will be paid out of the Settlement Amounts:

- (i) All notice and publication costs;
- (ii) All Claims Administration costs;
- (iii) Fees and disbursements of Class Counsel; and

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- (iv) Any amount owing to the *Fonds d'aide aux recours collectifs* with regard to the Quebec proceeding;
- D. Class Counsel agrees to distribute the Settlement Amounts and accrued interest to the Class Members at some point after the Effective Date with court approval and following notice to the Settling Respondents;
- E. The Settlement Agreements include a process to submit to this Court any dispute arising out of the claims process, if it becomes necessary;
- F. The Briggs & Stratton et al. Settlement Agreement provides that with respect to Quebec residents only, the *Fonds d'aide aux recours collectifs* the amount owing pursuant to the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*, R.R.Q., c. R-2.1, r. 2.;
- G. In order to receive more information, eligible class members can visit the claim website www.lawnmowersettlement.ca, call the toll-free number at 1-800-263-0489, ext. 709 or contact Class Counsel directly;
- H. The Opt-Out Deadline expired 60 days after the deadline for the publication of the Pre-Approval Notice, which in this case was on September 17, 2013.

CLASS NOTICE

[9] In accordance with the Settlement Agreements and this Court's judgment approving the publication of the Pre-Approval Notice, notice was effected on July 19, 2013 in fourteen (14) newspapers across Canada consisting of: *The Globe and Mail (National Edition)*, *The National Post (National Edition)*, *La Presse*, *The Montreal Gazette*, *The Toronto Star*, *The Vancouver Sun*, *The Calgary Herald*, *The Edmonton Journal*, *The Saskatoon Star Phoenix*, *The Winnipeg Free Press*, *The St. John's Telegram*, *The Halifax Chronicle Herald*, *The Moncton Times & Transcript* and *The Charlottetown Guardian*, as well as by Press Release on Canada Newswire, by distribution to the memberships of The Consumers' Association of Canada and The Consumers' Council of Canada, by digital notice campaign using Facebook, Twitter, LinkedIn and by posting the link to the notice on various social media vehicles and consumer product message boards, by direct mail, fax and/or e-mail to all persons who have contacted Class Counsel about the litigation and other potentially interested parties identified by Class Counsel, on the Petitioners' attorneys' websites and on the website www.lawnmowersettlement.ca.

[10] All of the materials disseminated and made available to Class Members on July 19, 2013 appeared in French and English.

AUTHORIZATION

[11] On September 20, 2013, the Petitioners filed a Motion for the Authorization and Approval of Class Action Settlements with Respect to the Settling Respondents and Motion to Approve Class Counsel Fees.

[12] The Settling Respondents consent to the authorization of this Motion as a class proceeding for settlement purposes only, which consent is subject to the Settlement Agreement being approved by the Court.

[13] Where the Settling Respondents consent to the authorization of a class action for settlement purposes only, the criteria set forth at article 1003 C.C.P. are attenuated;⁵

[14] In light of this relaxed standard and, under reserve of the rights of the Settling Respondents as well as those of the Non-Settling Respondents, the Motion to Authorize dated May 3, 2010, the Exhibits in support thereof and the Affidavits of the Petitioners dated September 19, 2013 justify granting the present Motion in accordance with the criteria set forth at article 1003 C.C.P.

APPROVAL

[15] The Court approves the Settlement Agreements as fair, reasonable and in the best interests of the Settlement Class Members based on its analysis of the following factors as set out by the relevant case law, namely:

- « • les probabilités de succès du recours;
- l'importance et la nature de la preuve administrée;
- les termes et les conditions de la transaction;
- la recommandation des procureurs et leur expérience;
- le coût des dépenses futures et la durée probable du litige;
- la recommandation d'une tierce personne neutre, le cas échéant;
- le nombre et la nature des objections à la transaction;
- la bonne foi des parties;
- l'absence de collusion. »⁶

[16] In particular, the Court finds that:

- i. No Settlement Class Member has objected;
- ii. The negotiations occurred at arm's-length;

⁵ *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534.

⁶ *Bouchard c. Abitibi-Consolidated Inc.*, (C.S.) Chicoutimi, dossier 150-06-000001-966, 15 juin 2004.

- iii. The risk, expense, complexity and duration of further litigation weighs in favour of approval;
- iv. The amount offered in settlement is fair and adequate and worthy of approval;
- v. Class Counsel has significant expertise in the area of class actions and is recommending the Settlements.

FEES

[17] The Court approves Class Counsel fees and disbursements as fair and reasonable based on its analysis the following factors as set out in sections 3.08.01 to 3.08.03 of the Code of ethics of advocates,⁷ particularly with a view to the objectives of class proceedings (i.e. access to justice, judicial economy, behaviour modification) and the risks assumed by Class Counsel.⁸

[18] Section 3.08.02 of the Code of ethics of advocates states:

“3.08.02. The fees are fair and reasonable if they are warranted by the circumstances and correspond to the professional services rendered. In determining his fees, the advocate must in particular take the following factors into account:

- (a) experience;
- (b) the time devoted to the matter;
- (c) the difficulty of the question involved;
- (d) the importance of the matter;
- (e) the responsibility assumed;
- (f) the performance of unusual professional services or professional services requiring exceptional competence or celerity;
- (g) the result obtained;
- (h) the judicial and extrajudicial fees fixed in the tariffs.”

[19] In particular, the Court finds that:

- i) No Settlement Class Member has objected. The Pre-Approval Notice disseminated to Class Members on July 19, 2013 stated that Class Counsel would be collectively requesting Class Counsel fees and costs in the amount of 25% of the Settlement Amounts plus applicable taxes and disbursements. Consumer Law Group Inc., Class Counsel for Quebec sought approval of a contingent legal fee which amounts to 5% of the Settlement Amounts plus applicable taxes and disbursements, while Harrison Pensa LLP, as Class Counsel for all Canadian provinces excluding Quebec, is separately seeking approval from the Ontario Court of a contingent legal fee of 20% of the Settlement Amounts plus applicable taxes and disbursements;

⁷ RRQ, c. B-1, r. 1.

⁸ *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866.

- ii) The Mandate Agreements with the Petitioners provides that Class Counsel will receive the higher of 30% of the total value of the settlement or a multiplier of 3.5 times the total number of hours worked, plus disbursements and taxes. The fees and disbursements sought are less than those under the Mandate Agreement since Counsel fees represent a 1.87 multiplier on the actual time and costs incurred, which is appropriate.⁹
- iii) The action involves complex legal issues and, in the absence of a settlement, would involve lengthy proceedings with an uncertain resolution and possible appeals;
- iv) Class Counsel assumed all of the financial risks associated with initiating, financing and maintaining the litigation;

WHEREFORE, THE COURT:

[20] **GRANTS** the present motion;

[21] **AUTHORIZES** the bringing of a class action only against the Settling Respondents for the purposes of settlement only;

[22] **ASCRIBES** to the Petitioners the status of representatives of the group herein described as:

"All persons in Quebec who purchased Lawn Mowers in Canada during the Class Period, except the Excluded Persons."

[23] **DECLARES** that the Settlement Agreement R-1 (including its Preamble and its Schedules) constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Class Members who have not excluded themselves in a timely manner;

[24] **DECLARES** that the Settlement Agreement R-2 (including its Preamble and its Schedules) constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Class Members who have not excluded themselves in a timely manner;

[25] **ORDERS** and **DECLARES** that for the purposes of this Judgment, the definitions set out in the Settlement Agreements apply to and are incorporated herein;

[26] **DECLARES** that the Settlement Agreement R-1, is valid, fair, reasonable and in the best interest of the Settlement Class Members, the Petitioners and the Settling Respondents;

[27] **ORDERS** that MTD shall produce the documents referred to in sections 3.3(c)(iii) and 3.3(c)(iv) of the MTD Settlement Agreement to Class Counsel within the timelines contemplated by the MTD Settlement Agreement or as otherwise agreed upon between Class Counsel and MTD. Subject to this Judgment, Class Counsel shall produce such documents to the Non-Settling

⁹ *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432; *Sony BMG Musique (Canada) inc. c. Guilbert*, 2009 QCCA 231.

Respondents within 90 days of receipt from MTD;

[28] **ORDERS** that any document or information produced to Class Counsel under section 3.3 of the MTD Settlement Agreement shall be, and is, subject to the implied undertaking of confidentiality rule;

[29] **ORDERS** that any document or information produced to Class Counsel pursuant to section 3.3 of the MTD Settlement Agreement shall be designated as "Confidential" by MTD if it contains or reveals confidential business planning or strategic information, pricing information, technical or trade secret design information, personal records, income tax returns, including any report, summary, analysis, or other paper derived from such documents or other information ("Confidential Information"). Class Counsel, at the request of MTD, may designate a document or information that qualifies as Confidential Information as "Counsel Eyes Only" if MTD has a good faith belief that disclosure would create a substantial likelihood of serious, competitive or legal harm if information were disclosed to another Party ("Counsel Eyes Only Information");

[30] **ORDERS** that notwithstanding a designation of documentation or information as Confidential Information by MTD or by Class Counsel at the request of MTD, no documentation or information shall be considered Confidential Information if it:

- (a) was lawfully and without legal restriction in the possession of a party other than through disclosure in this proceeding pursuant to this Judgment;
- (b) was derived independently of disclosure hereunder;
- (c) was lawfully and without legal restriction obtained from a person having a right to disclose such information; or
- (d) was or becomes part of the public domain not as a result of any unauthorized act or omission on the part of a recipient of information pursuant to this Judgment;

[31] **ORDERS** that all documents or information that are designated as Confidential Information or Counsel Eyes Only Information by MTD shall be marked by Class Counsel in consultation with MTD as "Confidential" and, where applicable, "Counsel Eyes Only" on each page or prominent visible surface;

¹⁰ The definition of "Released Claims" is provided for in the Settlement Agreements which both refer to it as "any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct anywhere, from the beginning of time to the Effective Date, in respect of the purchase, sale, pricing, labelling, discounting, advertising, marketing or distribution of Lawn Mowers or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Lawn Mowers. However, nothing herein shall be construed to release any claims that are not related to the allegations made in the Proceedings or Other Actions, or could have been made in the Proceedings or Other Actions, including any claims arising from personal injury or bodily harm, any alleged product defect, breach of warranty, or similar claim between the Parties or between the Settling Defendants and Settlement Class Members relating to Lawn Mowers".

[32] **ORDERS** that any document or information designated as Confidential Information or Counsel Eyes Only Information by MTD or by Class Counsel in consultation with MTD shall be considered to be Confidential Information or Counsel Eyes Only Information unless MTD agrees, or the Court orders upon a motion by any party, that such document or information is not Confidential Information or Counsel Eyes Only Information;

[33] **ORDERS** that any Confidential Information that a party seeks to submit to this Court in this Proceeding for any reason shall be segregated from other information and documentation being submitted and shall be submitted to the Court in sealed envelopes identifying the Confidential Information and clearly and prominently marked:

CONFIDENTIAL INFORMATION

Pursuant to the Judgment dated _____ in Court File No. 500-06-000507-109, this envelope shall remain sealed in the Court files and shall not be opened except in accordance with the terms of said Judgment or upon order of the Court and all such sealed envelopes shall not be opened except by the Court and its staff;

[34] **ORDERS** that Counsel Eyes Only Information shall be kept confidential in the custody of outside counsel for the Parties and the Non-Settling Respondents, as appropriate, and shall not be disclosed by outside counsel for the Parties or the Non-Settling Respondents and shall not be disclosed to anyone except:

- (a) the Parties' respective litigation service providers, experts and consultants;
- (b) in accordance with the terms of this Judgment or a further Judgment of the Court; and
- (c) such other persons as MTD may agree to in writing.

[35] **ORDERS** that prior to the disclosure of Counsel Eyes Only Information to the persons referred to in paragraph [34](c), the intended recipient shall be provided with a copy of this Judgment and shall provide an acknowledgement in writing that it has read this Judgment, understands it, agrees to be bound by it and expressly consents to the jurisdiction of the Court in connection with any proceeding or hearing relating to the Counsel Eyes Only Information and the terms of this Order. The written acknowledgment need not be provided to other counsel except upon order of the Court;

[36] **ORDERS** that Confidential Information shall be used solely for the purpose of the proceeding and may not be used for any purpose whatsoever other than for the purpose of the within proceeding, except as required by law;

[37] **ORDERS** that upon termination of this proceeding and all appeals related to this proceeding (or upon expiry of the time for commencing an appeal, or seeking leave to appeal), all copies of Confidential Information in the possession of the Parties shall be destroyed within 30 days and a certificate of destruction shall be sent to counsel for MTD;

[38] **ORDERS** that nothing in this Judgment shall:

- (a) limit a Party from asserting that any documentation or information designated Confidential Information pursuant to this Judgment, or that any documentation or information designated as

Counsel Eyes Only Information pursuant to this Judgment, should not be designated as such ("Challenged Information");

(b) foreclose or limit a Party from seeking an adjudication of the confidential character of any Challenged Information; or

(c) prevent any Party from applying to the Court for any modification or variation of the restrictions on disclosure imposed by any term of this Judgment as applied to any specific item or items of Confidential Information or Counsel Eyes Only Information;

[39] **ORDERS** that the termination of this proceeding, and all appeals related to this proceeding, shall not relieve any person to whom Confidential Information was disclosed pursuant to this Judgment from the obligation of maintaining the confidentiality of such information in accordance with the provisions of this Judgment. The provisions of this Judgment shall continue after the final disposition of these proceedings and this Court shall retain jurisdiction to deal with any issues relating to this Judgment, including, without limitation, its enforcement;

[40] **ORDERS** that nothing in the Judgment shall prevent MTD from using or disclosing their own documents or information as they deem appropriate without impairing the obligation of confidentiality imposed upon all other parties and persons subject to this Judgment;

[41] **DECLARES** that the Settlement Agreement R-2, is valid, fair, reasonable and in the best interest of the Settlement Class Members, the Petitioners, and the Settling Respondents;

[42] **APPROVES** the Settlement Agreement R-1;

[43] **APPROVES** the Settlement Agreement R-2;

[44] **DECLARES** that the Settlement Agreement R-1 is incorporated by reference and forms part of this Judgment and is binding upon the Petitioners and all Settlement Class Members;

[45] **DECLARES** that the Settlement Agreement R-2 is incorporated by reference and forms part of this Judgment and is binding upon the Petitioners and all Settlement Class Members;

[46] **ORDERS** the parties and the Class Members, with the exception of those who have opted-out in accordance with the terms and conditions of the Settlement Agreement to abide by the terms and conditions of the Settlement Agreement R-1;

[47] **ORDERS** the parties and the Class Members, with the exception of those who have opted-out in accordance with the terms and conditions of the Settlement Agreement to abide by the terms and conditions of the Settlement Agreement R-2;

[48] **ORDERS** and **DETERMINES** that the deadline for opting out of the Settlement Agreements was on September 17, 2013;

[49] **DECLARES** that Class Members who have not opted-out of the Settlement Agreements by September 17, 2013 are bound by their terms and cannot opt-out of the class in the future;

[50] **ORDERS** that the levies by the *Fonds d'aide aux recours collectifs* be collected in accordance with the *Loi sur le recours collectifs* and with the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*;

[51] **APPROVES** the payment to Class Counsel of its legal fees and disbursements in the amount of \$226,752.00 plus applicable taxes;

[52] **ORDERS** that Class Counsel fees and disbursements plus applicable taxes shall be paid from the MTD Settlement Amount and the Briggs & Stratton et al. Settlement Amount (collectively, the "Settlement Amounts");

[53] **DECLARES** that, by the Settlement Agreements, the Petitioners and the Settlement Class Members expressly waive and renounce the benefits of solidarity against the Non-Settling Respondents as provided for in the Settlement Agreements;

[54] **DECLARES** that the Petitioners and the Members of the Settlement Class will now limit their claim as to only the Non-Settling Respondents for damages that may be caused by or attributed to their liability, including punitive damages, if any, and, for greater certainty, the Petitioners and the Members of the Settlement Class cannot claim any compensatory, punitive or other damages caused by or attributable to the liability of the Settling Respondents in any way whatsoever;

[55] **DECLARES** that the Releasees will be considered as having completely, forever and absolutely been released by the Releasors and by the Non-Settling Respondents from the Released Claims¹⁰;

[56] **DECLARES** that all actions in warranty or otherwise, inclusive of interest, taxes and costs, to obtain a contribution or indemnity from the Settling Respondents, or relating to the Released Claims, is inadmissible and void in the context of the present case;

[57] **DECLARES** that the Non-Settling Respondents shall have the right to seek discovery from the Settling Respondents as will be determined according to the provisions of the *Code of Civil Procedure* and the Settling Respondents shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*;

[58] **ORDERS** that the Settlement Amounts be held in trust by Class Counsel for the benefit of the Settlement Class pending further order of the Court, which shall be sought by the Petitioners on a motion brought on notice to the Settling Respondents;

[59] **DECLARES** that the Settling Respondents have no responsibility for and no liability whatsoever for or involvement in the administration of the Settlement Agreements;

[60] **RESERVES** the right of parties to ask the Court to settle any dispute arising from the Settlement Agreements;

[61] **ORDERS** that, except as provided herein, this Judgment does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Respondents in the present case;

[62] **THE WHOLE**, without costs.


THE HONOURABLE DANIELE MAYRAND, J.S.C.

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Me Andrea Grass
Serena Trifiro, stagiaire
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Date of hearing: September 25, 2013

COPIE CERTIFIÉE CONFORME
AU DOCUMENT DÉTENU PAR LA COUR

E. Lupan
Personne désignée par le greffier (Art. 44 C.p.c.)