

**DISTRIBUTION PROTOCOL  
IN THE MATTER OF THE LAWN MOWER CLASS ACTION SETTLEMENTS**

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**I. 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. MTD Products Limited and MTD Products Inc., dated September 29, 2010;
  - b. Briggs & Stratton Canada Inc., Briggs & Stratton Corporation, Electrolux Canada Corp., Electrolux Home Products, Inc., John Deere Canada ULC, Deere & Company, Husqvarna Canada Corp., Husqvarna Consumer Outdoor Products N.A., Inc., Kohler Canada Co., Kohler Co., The Toro Company (Canada), Inc., and The Toro Company, dated June 26, 2013;
  - c. Honda Canada Inc. and American Honda Motor Co., Inc., dated February 25, 2015;
  - d. Kawasaki Motors Corp., U.S.A., dated June 4, 2018; and
  - e. Tecumseh Products of Canada, Limited, Tecumseh Products Company, and Platinum Equity, LLC, dated August 10, 2018 (collectively, the "Settlement Agreements").
2. The definitions in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in the Distribution Protocol, the definition in the Distribution Protocol shall govern.
3. The administration shall:
  - a. implement and conform to the Settlement Agreements, orders of the Courts, 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; and
  - d. be bilingual in all respects.
- 4. Any released party, specifically including Excluded Persons and Releasees, shall be ineligible to receive 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 Lawn Mower 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.
  - 6. The Claims Administrator, in concert with Class Counsel, shall have the discretion to interpret this Distribution Protocol in such a fashion as to ensure the facilitation of the goals of the Settlement Agreements for the benefit of Settlement Class Members.

## II. DEFINITIONS

- 7. 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 May 22, 2019, being 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. **Claims Period** means the time period during which Settlement Class Members may make a claim, being from January 21, 2019 to May 22, 2019.
- d. **Court(s)** means the Ontario Superior Court of Justice and the Superior Court of Québec which shall have ongoing authority and supervision with respect to the Distribution Protocol.
- e. **End Users** means Settlement Class Members who purchased Lawn Mowers for their own actual use, including consumers and businesses such as landscapers, golf courses, municipalities, universities, etc.
- f. **Fonds Levy** means the amounts payable to the Fonds d'aide aux actions collectives pursuant to section 42 of the *Act respecting the Fonds d'aide aux action collectives*, CQLR, c. F-3.2.0.1.1 and calculated in accordance with the governing regulations.
- g. **Lawn Mower Purchases** means the purchase of finished Lawn Mower(s) designed, manufactured, and labelled by the Defendants which includes a gas-combustible engine of 30 horsepower or less between January 1, 1994 and December 31, 2012 in Canada.
- h. **Net Settlement Amount** means the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements and accrued interest after the 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.
- i. **Online Claim Portal** means a web-based portal created and maintained by the Claims Administrator in accordance with this Distribution Protocol.

- j. **Settlement Agreements** has the meaning attributed to it in paragraph 1.
- k. **Settlement Class Members** means all eligible purchasers of Lawn Mowers, including both End Users and Upstream Purchasers, but excluding Releasees and Excluded Persons.
- l. **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, the claims process, and access to the Online Claim Portal.
- m. **Upstream Purchasers** means Settlement Class Members who purchased Lawn Mowers for resale purposes and not for actual use, including but not limited to retailers and distributors.

### III. THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

- 8. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Court.
- 9. The Net Settlement Amount shall be held in an interest-bearing trust account at a Canadian Schedule I bank in Canada.
- 10. 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 and/or by Order of the Courts;
  - b. 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;

- c. 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;
- d. making timely decisions in respect of Claims and notifying the Settlement Class Members of the decision promptly thereafter;
- e. arranging payment to Settlement Class Members in a timely fashion after the Claims Filing Deadline;
- f. dedicating sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects;
- g. remitting the Fonds Levy to the Fonds d'aide aux actions collectives;
- h. arranging payments of Administration Expenses;
- i. maintaining, in an easy to understand format, the information being recorded pursuant to paragraphs 34 and 37 as well as information about Settlement Class Members' Lawn Mower Purchases and proposed distribution, so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if so ordered by the Court;
- j. reporting to Class Counsel respecting Claims received and administered, and Administration Expenses;
- k. cash management and audit control;
- l. preparing and submitting such financial statements, reports, and records as directed by Class Counsel and/or the Court; and

- m. fulfilling any tax reporting and arranging payments required arising from the Net Settlement Amount, 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 Net Settlement Amount shall be paid from the Net Settlement Amount.

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

11. The Net Settlement Amount will be available to provide settlement benefits to eligible Settlement Class Members pursuant to this Distribution Protocol.
12. The Net Settlement Amount is to be allocated as follows:
  - a. 80% to End Users; and
  - b. 20% to Upstream Purchasers.

#### **End Users**

13. End Users shall prove their Lawn Mower Purchases by providing a declaration containing their name, date of birth and current address as well as particulars with respect to their Lawn Mower Purchases including Lawn Mower make/brand, engine make, year of purchase, address at the time the Lawn Mower was purchased, and retailer where the Lawn Mower was purchased as well as the End User's best information regarding the purchase date, the price paid, the model number and the serial number.

#### **End Users Providing a Declaration without Further Proof:**

14. Eligible End Users who provide a declaration without further proof of purchase or proof of horsepower will receive \$15 *per claimant* subject to the terms of paragraphs 21 and 22.

**End Users Providing Proof:**

15. Eligible End Users who provide valid *proof of purchase*, without proof of horsepower, will receive a minimum of \$15 *per qualifying Lawn Mower*, subject to the terms as set out in paragraphs 21 and 22.
  
16. Proof of purchase for the purposes of paragraph 15 may include but is not limited to:
  - a. receipts;
  - b. invoices;
  - c. purchase records;
  - d. manuals;
  - e. warranty documents;
  - f. product registration documents;
  - g. rebate documents;
  - h. repair invoices;
  - i. geotagged photographs; or
  - j. comparable verification that is acceptable to the Claims Administrator.
  
17. If an Eligible End User is able to provide *proof of the horsepower* rating of their Lawn Mower Purchases, they will be provided compensation for their Lawn Mower Purchases as follows, subject to the terms as set out in paragraphs 21 and 22:
  - a. walk-behind Lawn Mowers with engines under 5 horsepower – \$20;
  - b. walk-behind Lawn Mowers with engines 5 horsepower or more – \$35;
  - c. riding Lawn Mowers with engines under 18 horsepower – \$45; and



- d. riding Lawn Mowers with engines 18 horsepower or more – \$55.
18. Proof of horsepower rating for the purposes of paragraph 17 may include but is not limited to:
- a. receipts;
  - b. invoices;
  - c. purchase records;
  - d. manuals;
  - e. warranty documents;
  - f. product registration documents;
  - g. rebate documents;
  - h. repair invoices;
  - i. geotagged photographs; or
  - j. comparable verification that is acceptable to the Claims Administrator.
19. The Claims Administrator shall adjudicate proof of purchase and proof of horsepower rating by End Users with a view to facilitating credible, valid claims while reasonably detecting and deterring any non-meritorious claims.
20. Should an End User's purchase(s) of Lawn Mowers reflect an exceptional consideration such that the Claims Administrator may conclude that the categories set out in paragraphs 14, 15, and 17 do not adequately capture the circumstances of their Lawn Mower purchase(s), the End User shall be permitted to submit proof to support their position and explain their Lawn Mower purchases. The Claims Administrator shall have the necessary discretion to evaluate and adjudicate compensation with respect to such potential claims.

21. If the Net Settlement Amount is insufficient to pay eligible End Users in the amounts specified in paragraphs 14, 15, and 17, the settlement benefits payable to eligible End Users shall be reduced pro-rata (i.e. proportionally) based on the value of each Settlement Class Member's Claim as a proportion of the value of all valid Claims. However, claims which are supported by proof of purchase or proof of horsepower as outlined in paragraphs 15 and 17 may be given priority in respect of proration and payment amount depending on claims volumes and claims experience.
22. If there are surplus funds remaining from the Net Settlement Amount after all eligible End Users have been assigned the amounts specified in paragraphs 14, 15, and 17, the settlement benefits payable to eligible End Users shall be increased pro-rata (i.e. proportionally) based on the value of each End User's Claim as a proportion of the value of all valid Claims. However, claims which are supported by proof of purchase or proof of horsepower as outlined in paragraphs 15 and 17 may be given priority in respect of proration and payment amount depending on claims volumes and claims experience.
23. Notwithstanding any other provision in this Distribution Protocol, subject to further order of the Court following the adjudication of all claims, no eligible End User will be paid less than \$10. The \$10 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. If, for any reason, the \$10 minimum payment cannot be feasibly made due to proration or other factors, Class Counsel will seek direction from the Court.
24. Notwithstanding any other provision in this Distribution Protocol, if the distribution would result in eligible End Users 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 Amount.

**Upstream Purchasers**

25. Upstream Purchasers shall prove their Lawn Mower Purchases in the following manner:

a. With reference to documentation in connection with their purchases of Lawn Mowers:

- i. invoices;
- ii. receipts;
- iii. purchase records;
- iv. historical accounting records; or
- v. comparable verification that is acceptable to the Claims Administrator.

b. By alternative proof, including a declaration together with documentation that evidences their purchases of Lawn Mowers:

- 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.
26. The Claims Administrator shall adjudicate the documentation provided pursuant to paragraph 25 by Upstream Purchasers with a view to facilitating credible, valid Claims while reasonably detecting and deterring any non-meritorious Claims.
27. Eligible Upstream Purchasers' compensation shall be calculated by weighting Lawn Mower Purchases according to the horsepower contained in each Lawn Mower's engine. A point value shall be assigned to each Lawn Mower Purchase as follows:
- a. walk-behind Lawn Mowers with engines under 5 horsepower – 4 points;
  - b. walk-behind Lawn Mowers with engines 5 horsepower or more – 7 points;
  - c. riding Lawn Mowers with engines under 18 horsepower – 9 points; and
  - d. riding Lawn Mowers with engines 18 horsepower or more – 11 points.
28. Should an eligible Upstream Purchaser be unable to provide information regarding horsepower contained within a qualifying Lawn Mower Purchase, a value of 3 points shall be assigned to each qualifying Lawn Mower.
29. Should an Upstream Purchaser's purchases of Lawn Mowers not fit within one of the categories set out in paragraphs 27 and 28, the Upstream Purchaser shall be permitted to explain their Lawn Mower purchases and the Claims Administrator shall have the necessary discretion to evaluate and adjudicate compensation with respect to such potential Claims.

30. Upstream Purchasers will be paid proportionally according to the number and type of Lawn Mowers purchased. Each Upstream Purchaser's actual compensation shall be the portion of the Net Settlement Amount allocated to Upstream Purchasers equivalent to the ratio of his, her, or its points to the total points value of all Upstream Purchasers multiplied by the value of the Net Settlement Amount allocated to Upstream Purchasers.
31. The following hypothetical situation is an illustration of how a proportional distribution will be implemented:
- If the Net Settlement Amount is valued at \$1,000,000 and 20% will be allocated to Upstream Purchasers, then a total of \$200,000 will be shared among Upstream Purchasers;
  - Assume that the cumulative total point value of all Upstream Purchasers' claims is 50,000 points;
  - Upstream Purchaser A claimed lawn mower purchases worth 400 points – 400 points is .8% of the total points, therefore Upstream Purchaser A is entitled to .8% of the \$200,000 which is \$1,600;
  - Upstream Purchaser B claimed lawn mower purchases worth 2,000 points – 2,000 points is 4% of the total points, therefore Upstream Purchaser B is entitled to 4% of the \$200,000 which is \$8,000.
32. This hypothetical example is for illustration purposes only and should not be used to predict any actual recovery by any Upstream Purchaser making a Claim. Actual recoveries will depend on the total of the Net Settlement Amount and the number of Claims made by Upstream Purchasers and will not be calculated until all claims have been verified after the close of the Claims Period.

33. Notwithstanding any other provision in this Distribution Protocol, if the distribution would result in eligible Upstream Purchasers 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 Amount.

**V. THE CLAIMS PROCESS**

**a. The Claim**

34. In addition to any basic proof of purchase required by the claims form, Settlement Class Members shall also provide the following:
- a. 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 Lawn Mower Purchases, and provide details of the compensation received and the claims released;
  - b. 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;
  - c. a declaration that the information submitted in the Claim is true and correct; and
  - d. such further and other information as the Claims Administrator may require to process Claims.

**b. The Online Claim Portal**

35. 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.
36. The Online Claim Portal shall be accessible from the Settlement Website.
37. The Online Claim Portal shall contain fields that facilitate the Settlement Class Member to provide all applicable information required as part of the Claim.
38. 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 40 below:
  - a. names, addresses, and purchase data of the Settlement Class Members;
  - b. names, 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.

**c. The Claims Filing Process**

39. Settlement Class Members will be encouraged to complete and submit a Claim (together with the required supporting documents) electronically using the Online Claim Portal. Claims are to be submitted on the Online Claim Portal on or before the Claims Filing Deadline, namely, by May 22, 2019.
40. 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 by telephone with the Claims Administrator and the Claims Administrator shall send the

Settlement Class Member a hardcopy claim form by mail. The completed and executed hardcopy Claim (together with any required supporting proof of purchase) are to be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.

**d. Audits**

41. 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.
42. If a Settlement Class Member's claim is audited, the Settlement Class Member must respond reasonably to the questions asked by the Claims Administrator and provide reasonable responses to any information requests made within the timeframe requested by the Claims Administrator.
43. The Claims Administrator shall notify the Settlement Class Member that the Settlement Class Member's Claim is the subject of an audit. The Claims Administrator shall state any questions or requests for documentary proof as may be required. The Claims Administrator shall allow a Settlement Class Member thirty (30) days from the date of such notice in order to provide a satisfactory response to the audit request. If the Settlement Class Member does not answer the questions posed or provide reasonable responses to the documents and information requested the Claims Administrator shall reject the Claim subject to the deficiency process outlined in paragraph 44.

**e. Deficiencies**

44. 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 e-mail 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 either reject the Claim or deem the Claim eligible for only the minimum payment amount as applicable 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.

**f. Claims Administrator's Decision**

45. 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 Amount in accordance with the Settlement Agreements, orders of the Court, and this Distribution Protocol;
  - b. verify the Settlement Class Member's Lawn Mower Purchases and horsepower rating; and
  - c. make a determination of the value of the Settlement Class Member's Claim in accordance with the Settlement Agreements, orders of the Court, and this Distribution Protocol.
  
46. The Claims Administrator shall send to the Settlement Class Member, by e-mail or regular mail, a decision as to the approval or rejection of the Claim. 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.

47. The Claims Administrator's decision shall be final and binding upon the Settlement Class Member.

## **VI. THE CLAIMS DISTRIBUTION PROCESS**

48. 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 e-transfer, cheque, or any other method deemed appropriate by the Claims Administrator.
49. To the extent that the full Net Settlement Amount is not paid out due to uncashed cheques, expired e-transfers, residual interest, or analogous circumstances, such monies shall be paid in equal shares to the Retail Council of Canada and to the Consumers' Council of Canada (collectively the "Consumer Organizations") 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.
50. The payment to the Consumer Organizations shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1.(1<sup>o</sup>) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2 (the "Fund Levy"). For the purposes of calculating the Fund Levy payable to the Fonds d'aide aux actions collectives, 22.9%<sup>1</sup> of the payment to the Consumer Organizations will be notionally allocated to Québec.

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<sup>1</sup> 22.9% represents that portion of the Canadian population that resides in Québec based on information from Statistics Canada's website.

## **VII. CONFIDENTIALITY**

51. All information received from the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, S.C. 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 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.