

No. L021060  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between:

DOROTHY YOUNG

Plaintiff

And:

SHELL CANADA LIMITED

Defendant

Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50

Court file no.02-CV-234988 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

TODD PINKSEN

Plaintiff

AND

SHELL CANADA LIMITED

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**SETTLEMENT AGREEMENT**

**WHEREAS:**

- A. Dorothy Young and Todd Pinksen (the “Plaintiffs”) on their own behalf and as representatives of all Canadian consumers of Shell branded gasoline who reside outside of Quebec, and the Defendant Shell Canada Limited and Shell Canada Products, an Alberta Partnership (Shell Canada Limited and Shell Canada Products are collectively termed “Shell” and the Plaintiffs and Shell are collectively termed the “Parties”) enter into this Settlement Agreement providing for the settlement of the actions described in this Settlement Agreement, pursuant to the terms and conditions set out in this Settlement Agreement, subject to the approval of the Supreme Court of British Columbia and the Ontario Superior Court.

- B. On April 8, 2002 Dorothy Young filed an action in British Columbia and on August 23, 2002 Todd Pinksen filed an action in Ontario (collectively the “Class Actions”) against Shell Canada Limited. In the Class Actions, the Plaintiffs alleged that they had suffered loss and damage resulting from their use of Shell branded gasoline (the “Fuel”).
- C. Shell branded gasoline is distributed and sold in Canada by Shell Canada Products.
- D. 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 Plaintiffs have concluded that this Settlement Agreement provides substantial benefits to class members and is fair, reasonable, adequate and in the best interest of class members.
- E. Shell has also concluded that this Settlement Agreement is desirable to resolve finally and completely the pending and potential claims related to Shell’s manufacture, distribution, and sale of the Fuel.
- F. Shell intends by this Settlement Agreement to resolve all of the present and future claims of class members against it for or relating in any way to the conduct of Shell in connection with the Fuel.
- G. Shell and the Plaintiffs have agreed upon a process to provide for the settlement of all claims made across Canada, excluding Quebec.
- H. Subject to the approval of the Courts, the Parties agree that the Class Actions and in particular, all claims contemplated, asserted, and unasserted, and raised, directly or indirectly, shall be resolved as set forth in this Settlement Agreement as follows:

### **Definitions**

- 1. The following definitions apply to this Settlement Agreement:
  - (a) “Claim Period” means the period from March 1, 2001 through July 31, 2002 inclusive;
  - (b) “Class Counsel” means the law firms of Klein Lyons and Hanson Wirsig Matheos;
  - (c) “Courts” means the Supreme Court of British Columbia and the Ontario Superior Court;

- (d) “Crawford Plan” means the voluntary compensation program under which Shell has compensated class members for Fuel Systems Problems;
- (e) “Fuel System Problems” means
  - (i) fuel sensor problems, or
  - (ii) fuel pump problems causing a vehicle’s failure to start following a period of inactivity
- (f) “Expenses” means repair costs, towing and reasonable alternate transportation costs incurred in respect of Fuel System Problems;
- (g) “Proof of Expenses” means proof of Expenses by providing receipts;
- (h) “Purchase Period” means the period from March 1, 2001 through April 15, 2002 inclusive;
- (i) “Purchase Threshold” means proof, by providing receipts or an affidavit, that the class member purchased a minimum of \$100 of Shell branded gasoline from retail outlets in Canada; and
- (j) “Residue Requirement” means proof, either by providing an affidavit sworn by a person having first hand knowledge, 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.

### **Class Definition**

2. The “Class” is defined as all persons resident in Canada, other than in Quebec, who purchased Shell branded gasoline anywhere in Canada during the Purchase Period.

### **General Provisions**

3. All compensation previously provided to a class member pursuant to the Crawford Plan 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 satisfy the following requirements:

- (a) that they have met the Purchase Threshold within the Purchase Period; and
  - (b) that they have experienced Fuel System Problems within the Claim Period.
5. This Settlement Agreement is subject to approval by the Courts.
6. Subject only to the terms of this Settlement Agreement, Shell will be released from all claims that were or could have been advanced in the Class Actions. For greater certainty, the class members will be deemed to have given Shell the release and undertaking set out in paragraph 24 below.

### **Court Approval Hearing**

7. Promptly after the execution of this Settlement Agreement, the Parties shall jointly advise the Courts of this Settlement Agreement and shall initiate motions for Orders that:
- (a) certify the actions as class actions;
  - (b) approve this Settlement Agreement;
  - (c) declare that this Settlement Agreement is fair and reasonable and in the best interest of the class;
  - (d) define the class as set out above;
  - (e) approve the notice to class, the opt out form, the claim form package and other documents specified in it;
  - (f) provide a deadline to opt out of the class actions;
  - (g) provide a deadline for filing a claim under the settlement; and
  - (h) declare that Shell is released from all claims by class members on the terms of the release set out in paragraph 24 below.
8. If approval of the settlement by the Courts is not obtained, this Settlement Agreement will be null and void.

## **Compensation**

### ***Category 1 compensation***

9. Shell will compensate class members who owned or leased Chrysler vehicles, except for Jeeps, of the model years from 1996 to 2002, for the Expenses incurred in respect of Fuel System Problems that occurred within the Claim Period.

### ***Category 2 compensation***

10. Shell will compensate class members, other than Category 1 class members, who owned or leased vehicles of the model years from 1996 to 2002 for the Expenses incurred in respect of Fuel System Problems to a maximum of \$175 on proof that the Residue Requirement has been satisfied.

### ***Category 3 compensation***

11. Shell will compensate class members who owned or leased vehicles of model years prior to 1996 for the Expenses incurred in respect of Fuel System Problems to a maximum of \$100 on proof that the Residue Requirement has been satisfied.

## **Notice to the Class and Opting Out**

12. Shell will give notice of the settlement and the compensation scheme by advertisements published in newspapers to be agreed upon, on two consecutive weekends within four weeks following approval of this Settlement Agreement by the Courts. Attached as Schedule "A" are the proposed Notice and Opt Out Form. The content and form of the Notice and Opt Out Form are subject to approval by the Courts.
13. Class members shall have until a date set by the Courts to opt out of the Class Actions, or to file a claim under the settlement, failing which any further claims against Shell by class members will be barred. The parties will request that the opt out and filing deadline be set for 90 days from the second publication of the notice of the settlement.
14. 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**

15. Shell will administer the settlement at its expense. Administration of the settlement will include toll-free telephone access to the claims administrator.
16. To participate in the settlement, a class member must deliver to the claims administrator a signed Claim Form in the form approved by the Courts and the other documents specified in this Settlement Agreement on or before the claim deadline set by the Courts. Attached as Schedule "B" is the proposed Claim Form Package. The content and form of the Claim Form Package are subject to approval by the Courts.
17. To prove ownership of the vehicle, the class member must provide a copy of the vehicle registration. To prove that the class member is the lessee of the vehicle, the class member must provide a copy of the lease.
18. Class members eligible for compensation for Expenses must provide receipts showing the cost and nature of the Expenses claimed.
19. Within 30 days of receipt of a claim, Shell will send written notification by mail to the claimant that:
  - (a) The claim has been accepted in the amount submitted. Payment of the claim will be included with the notification.  
  
or
  - (b) The claim has been accepted in an amount that is different from the amount submitted. Payment of the accepted amount will be included with the notification.  
  
or
  - (c) The claim has been rejected and the reason for rejection.  
  
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 30 days from the date of the notice to provide the additional information or documentation. If a portion of the claim has been accepted, the notice will include partial payment as set in paragraph 19(b) of this Settlement Agreement.

20. If Shell rejects a claim under paragraph 19(c) above or disputes any amount being claimed under paragraph 19(b), Shell shall promptly provide written notice by registered mail to the class member. If Shell and the class member are unable to resolve the dispute, Shell agrees that the class member may, within 60 days of receipt of the notice, commence an action in a provincial Small Claims Court for enforcement of the class member's entitlement to 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 compensation pursuant to the terms of this Settlement Agreement and the related Orders of the Courts.
21. Within 21 days of completion of the settlement distribution, Shell will provide a written report to Class Counsel setting out the number of claims falling into each category described in paragraph 19 above and the total amount claimed and paid under each category, which information shall not be publicly divulged without Shell's written permission or leave of the court, in which case the report may be disclosed to the court for the purpose of the application in which leave is sought.
22. Class Counsel and Shell may jointly or separately apply to the Courts at any time for directions and further Orders regarding any aspect of the administration of the settlement.

### **Class Counsel Fees**

23. Shell will pay Class Counsel fees in the amount of \$300,000 for all services rendered through to and including the approval of the settlement and certification of the actions as class proceedings in British Columbia and Ontario. Shell will also pay disbursements incurred (Class Counsels' current estimate of disbursements is \$7,156) and applicable PST and GST on fees and disbursements. The Class Counsel fees are subject to approval by the Courts. Shell will pay the fees and disbursements plus PST and GST to Class Counsel within 30 days of the approval by both Courts. Shell will not be liable to make any other payments on account of services rendered by Class Counsel.

### **Release & Miscellaneous**

24. Upon Court approval of this Settlement Agreement, class members (other than those who validly opt out of the Class Actions) 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 during the Claim Period including, but not limited to, any conduct of Shell or the Released Parties in respect of the matters that were asserted in the Class Actions;

- (b) with the exception of any step taken pursuant to paragraph 20 above, undertaken not to commence any claim or proceeding which may result in a claim or proceeding being brought against any Released Party; and if a class member takes any step by way of any claim or proceeding that results in a subsequent claim or proceeding against a Released Party, then that class member shall indemnify and save harmless the Released Parties and each of them from any and all resulting liabilities, obligations, legal fees, costs and disbursements.
25. Nothing in this Settlement Agreement shall constitute or shall be deemed to constitute a waiver by Shell of defences based on statutes of limitation or repose, prescription periods, or any other limitation or prescription defences with respect to any class member who opts out of the Class Actions, or in the event this Settlement Agreement fails to be approved by the Courts.
26. All amounts payable under this Settlement Agreement are paid without admission of liability. The Parties agree that this Settlement Agreement, any certification or authorization of the Actions as class proceedings, 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 these Actions or in any proceeding or matter, except as is expressly contemplated in the Agreement.
27. This Settlement Agreement may be executed in counterparts.
28. The Parties acknowledge that they have required that this Settlement Agreement and all related documents be prepared in English.

Dated at Vancouver, this 2nd day of December, 2003.

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David A. Klein  
Counsel for Dorothy Young  
and Todd Pinksen

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Stephen R. Schachter, Q.C.  
Counsel for Shell Canada Ltd.  
and Shell Canada Products