

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Court File No. 42665 CP

BETWEEN:

GARY KELMAN and JANIS KELMAN  
Plaintiffs

- and -

THE GOODYEAR TIRE & RUBBER COMPANY  
and GOODYEAR CANADA INC.  
Defendants

**Proceeding under the *Class Proceedings Act, 1992***

**AMENDED PLAN OF DISTRIBUTION AND ALLOCATION<sup>1</sup>**

Pursuant to the Amended Agreement, Class Counsel, having consulted with the Special Master and other counsel, submit to the members of the Settlement Classes this proposed Amended Plan of Distribution and Allocation. This Amended Plan of Distribution and Allocation applies to both the Canadian Class and the U.S. Class, as defined in the Amended Agreement.

**I. THE SETTLEMENT FUND**

Pursuant to the Amended Agreement, Class Counsel and Defendant Goodyear have established a Settlement Fund into which will be deposited certain cash payments and insurance proceeds. Assuming Final Approval in 2004, it is anticipated that the Settlement Fund will have \$210 million (U.S.) in 2004. This amount anticipates a total payment of \$60 million (U.S.) by Goodyear and \$150 (U.S.) million from the Insurance Proceeds. In 2005, a payment of \$40 million (U.S.) will be paid by Goodyear into the Settlement Fund. In 2006 and 2007, Goodyear will pay into the Settlement Fund a payment of \$15 million (U.S.) per year. In 2008, Goodyear will pay into the Settlement Fund a payment of \$20 million (U.S.). Accordingly, the Settlement Fund will ultimately receive payments of \$300 million (U.S.).

This Plan assumes that the Settlement Fund shall receive \$300 million (U.S.). As set forth below, attorneys' fees, expenses and costs, the costs of Notice and claims administration, inspections and incentive payments to the Class Representatives, shall all be paid from the Settlement Fund. The amount available for payment to members of the Settlement Classes is estimated to be no less than \$190 million (U.S.), the amount of the Settlement Fund after deduction of these payments.

All claims from members of either the U.S. Class or the Canadian Class ("Claimants") will be paid from the Settlement Fund pursuant to this Plan.

**A. Notice and Claims Administration**

Class Counsel estimate that the Notice Program and claims administration during the five-year Claims Period will cost approximately \$9.5 million (U.S.). Pursuant to the Amended Agreement and applicable law, these costs will be paid from the Settlement Fund.

**B. Inspections**

The Settlement Fund will, as necessary, pay for inspections and investigation costs to determine the category for which the claim of any member of the Settlement Classes qualifies. Class Counsel estimate that these costs will total approximately \$1.5 million (U.S.).

<sup>1</sup> Capitalized terms shall have the meanings they have in the Amended Settlement Agreement.

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### **C. Attorneys' Fees, Expenses and Costs**

Pursuant to the Amended Agreement and applicable law, Lead Class Counsel intends to seek from the Settlement Fund reimbursement for the expenses and costs advanced in the prosecution of this litigation. It is anticipated such expenses and costs will be approximately \$7 million (U.S.). In addition, pursuant to the Amended Agreement Lead Class Counsel shall file a single fee petition for thirty percent (30%) of the Settlement Fund, or \$90 million (U.S.).

### **D. Incentive Awards to Class Representatives**

Pursuant to the Amended Agreement and applicable law, Class Counsel intend to seek from the Settlement Fund modest incentive awards for all class representatives.

### **E. Awards to Class Members**

Awards to Class Members shall be made from the net amount of the Settlement Fund, estimated to be no less than \$190 million (U.S.). All Claimants will be required to submit appropriate documentation as set forth in the Claim/ Registration Form. All claims will be subject to verification by the Claims Administrator which may include, but not be limited to, inspections of the heating system.

## **II. THE PLAN OF DISTRIBUTION**

Each qualified Claimant shall receive an Award comprised of two payments: a first payment in the year in which their claim is qualified for payment (the "First Payment"). A second and final payment shall be made at the end of the five-year Claims Period (the "Final Payment"). The amount of the First Payment shall be determined by assuming all Class Members will file claims. The Final Payment will be a distribution from the Settlement Fund at the end of the five-year Claims Period such that all qualified Claimants in each Category (as described below) will receive the same percentage recovery relative to the value of their Claim, as other Claimants in the same category.

Class Counsel reserves the right to petition the Court to modify this Plan of Distribution (except with respect to the aggregate Awards to Category III Claimants) if the actual claims rate, the amount of remaining funds, or other factors, support modifying this Amended Plan of Distribution and Allocation prior to the end of the Claims Period. The terms of the Amended Agreement as they relate to the Settlement Fund are not affected by this Plan.

## **III. THE PLAN OF ALLOCATION**

For purposes of allocation of payments, Claims shall be divided into three categories: Categories I, II and III. Category I Claimants are Persons who have or had less severe property damage, including leaks at connections, corrosion, damage to the boiler, or other parts, elements or components of the heating system, damage to the surrounding structure including resulting loss of use of their homes, heating systems or other tangible property. Category II Claimants are: (1) Persons who have or had serious or catastrophic failures of their heating system, including major water damage, in-line breaks causing property damage, including resulting loss of use of their homes, heating systems or other tangible property; and (2) Persons who replaced their system, in whole or in part, prior to the Notice Date and who would have qualified as a Category I or II Claimant prior to replacement. Category III Claimants are Persons who have not yet qualified for Category I or II. Persons who initially file claims as Category III Claimants may later file claims as a Category I or II Claimants, if they so qualify within the Claims Period. Persons who initially file claims as Category I Claimants may later file claims as a Category II Claimant if they so qualify within the Claims Period. Awards to Category III Claimants shall total no more than \$10 million in the aggregate. No Category III Claimant shall receive a greater percentage of that Person's Maximum Claim than the percentages awarded to Category I and II Claimants, nor shall a Category I Claimant receive a greater percentage of that Person's Maximum Claim than the percentages awarded to Category II Claimants. In the event a Category III Claimant subsequently qualifies under Category II or Category I, then all payments

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previously received by such Claimant shall be set off against any and all subsequent payments. Likewise, in the event a Category I Claimant subsequently qualifies under Category II, all payments previously received by that Claimant shall be set off against any and all subsequent payments. Claimants may request the Claims Administrator to provide an inspection of the heating system with Entran II.

The Amended Plan of Distribution and Allocation recognizes that Entran II was installed using several different methods, including: (1) installation of hose in foundational concrete ("in-slab"); (2) installation below flooring attached to sub-floor, floor joists or other sub-floor structure with staples or similar fasteners ("staple up"); (3) installation of hose using "staple up" method above an unfinished ceiling, in a crawlspace or unfinished basement, or above an acoustic tile or "drop" ceiling ("exposed staple-up"); (4) installation in light-weight concrete, gypcrete, or similar materials ("thin-set"); (5) installation of Entran II as a conduit between baseboard heating elements and the heat source ("baseboard"); and (6) installation for purposes of melting snow and ice ("snow melt"). The maximum amount payable to any Claimant (the "Maximum Claim") will be determined by multiplying the square footage of floor area heated by a particular application by the predetermined cost per square foot of remediating the system. Payments made on claims filed after the first year of the Claims Period will include an adjustment for interest at a rate allowed by law. No payments will be made to Claimants from the Settlement Fund in excess of the Maximum Claim. No payments will be made to Claimants who previously replaced their system in excess of their actual remediation costs. Except for former owners who, by assignment, agreement or other documents have the right to pursue Claims or otherwise recover on behalf of the current owner, no payment shall be made to a Claimant who is a former owner in excess of their un-reimbursed out-of-pocket expense resulting from property damage Claims qualifying under Category I or II. There shall be only one Award under this Plan of Distribution for each Property although there may be multiple Claimants entitled to portions of such award. If more than one person files a claim relating to a single Property, apportionment of the Award, if any, between or among those Class Members, will be made by agreement of the Class Members (subject to review by the Special Master) or, absent such agreement, by the Special Master. The Special Master's decision regarding any apportionment shall be final, binding and not appealable.

The Claims Administrator will determine the Category for which each Claimant initially or subsequently qualifies. Any disputes between Claimants and the Claims Administrator regarding the Category in which Claimants are placed will be subject to review by the Special Master. The Special Master's decision regarding any such disputes shall be final, binding and not appealable.

The following cost figures shall apply to each Category in establishing each Claimant's Award:

In-Slab	\$75.10(U.S.)/square foot
Staple Up	\$38.40(U.S.)/square foot
Staple Up Exposed	\$17.50(U.S.)/square foot
Thin-Set	\$56.00(U.S.)/square foot
Baseboard	\$6.40(U.S.)/square foot
Snowmelt	\$38.40(U.S.)/square foot

Each Claimant shall have the right to dispute the amount of that Person's own Award. Any disputes between Claimants and the Claims Administrator regarding a Claimant's Award will be subject to review by the Special Master. The Special Master's decision regarding any such disputes shall be final, binding and not appealable.

Class Counsel estimate that Category I Claimants could receive a First Payment of approximately 10.2% of their Maximum Claim and a Final Payment of approximately 23.9% of their Maximum Claim. Accordingly, Category I Claimants can expect a total payment of approximately 34.1% of their Maximum Claim.

Class Counsel estimate that Category II Claimants could receive a First Payment of approximately 26.3% of their Maximum Claim and a Final Payment of approximately 26.3% of their Maximum Claim. Accordingly, Category II Claimants can expect a total payment of approximately 52.6% of their Maximum Claim.

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Class Counsel estimate that Category III Claimants could receive a First Payment of approximately 5.1% of their Maximum Claim and a Final Payment of approximately 11.8% of their Maximum Claim. Accordingly, Category III Claimants can expect a total payment of approximately 16.9% of their Maximum Claim.

These estimates are based upon a number of assumptions, including:

(1) claims will be filed in roughly the same proportion as types of installations; (2) approximately 25 million linear feet of hose was manufactured by Goodyear; (3) hose manufactured by Goodyear was installed in properties owned by class members, serving approximately 21 million square feet of heated space or snowmelt surface area; (4) not all members of the Settlement Classes will make claims against the Settlement Fund; and (5) many systems with Entran II have not had a Category II failure.

#### **IV. POTENTIAL INDIVIDUAL AWARDS**

The following examples are illustrative of the awards Class Counsel anticipate will be made to class members (all examples in U.S. funds). Actual payments may differ depending upon actual number of claims received, the types of failures claimed, the types of installation, and other factors:

Example 1: Claimant has an in-slab system installed below a finished area of 2,500 square feet. The Maximum Claim value would be \$187,750 ( $\$75.10 \times 2,500$ ). Claimant has experienced an in-line failure. Claimant could receive a First Payment of about 26.3% of the Maximum Claim or \$49,378. After the close of the Claims Period, Claimant could receive a final payment of 26.3% of the Maximum Claim or \$49,378 for total payments of \$98,756, or 52.6% of the Maximum Claim.

Example 2: Claimant has an in-slab system installed below a finished area of 2,500 square feet. The Maximum Claim value would be \$187,750 ( $\$75.10 \times 2,500$ ). Claimant has experienced a leak at only a connection. Claimant could receive a First Payment of about 10.2% of their Maximum Claim or \$19,150. After the close of the Claims Period, Claimant could receive a final payment of 23.9% of the Maximum Claim or \$44,872 for total payments of \$64,022, or 34.1% of the Maximum Claim.

Example 3: Claimant has a staple-up system installed below a finished area of 1,500 square feet; a thin-set system installed below a finished area of 1,000 square feet; and a snowmelt system serving 700 square feet. The Maximum Claim value would be \$140,480 ( $(\$38.40 \times 1,500) + (\$56.00 \times 1,000) + (\$38.40 \times 700)$ ). Claimant has experienced an in-line failure. Claimants could receive a First Payment of about 26.3% of the Maximum Claim or \$36,946. After the close of the Claims Period, Claimants could receive a Final Payment of \$36,946 of the Maximum Claim or approximately 26.3% of the Maximum Claim for total payments of \$73,892, or 52.6% of the Maximum Claim.

Example 4: Claimant has an in-slab system installed below a finished area of 2,500 square feet. The Maximum Claim value would be \$187,750 ( $\$75.10 \times 2,500$ ). Claimant has not experienced any qualifying damage in Category I or II. Claimant could receive, under Category III, a first payment of about 5.1% of their Maximum Claim or \$9,575. After the close of the Claims Period Claimant could receive a final payment of approximately 11.8% of their Maximum Claim or \$22,154 of their Maximum Claim for total payments of \$31,729 or 16.9% of their Maximum Claim.

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