

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable Mr.
Justice Winkler

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Monday, the 17th day
of November, 2003

BETWEEN:

GARY KELMAN and JANIS KELMAN

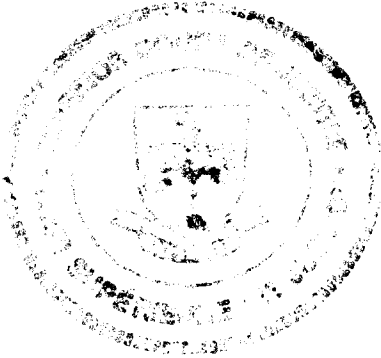
Plaintiffs

and

THE GOODYEAR TIRE & RUBBER COMPANY
and GOODYEAR CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*



ORDER

THIS MOTION, made by the Plaintiffs, Gary Kelman and Janis Kelman, for an Order that

the within proceeding be certified as a class proceeding was heard this day.

and on being advised by counsel for the plaintiffs that counsel in Alberta and British Columbia have undertaken to move to stay the proceedings in those jurisdictions and on being advised the
ON READING the materials filed and on hearing the submissions of counsel: *that counsel in the Ford et al v. Goodyear action consent to this order*

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding

pursuant to the *Class Proceedings Act, 1992, c.6, ss. 2 and 5*, provided however, that

should final approval of a settlement not be granted within a time period acceptable to the Defendants, *if the Settlement Agreement is terminated in accordance with its terms* the Plaintiffs shall consent to the decertification of the Class proceeding,

and the certification and this Order shall not be used as evidence nor shall it prejudice

the Defendants in any way should they choose to contest the certification of this

proceeding;

2. **THIS COURT FURTHER ORDERS** that the Class shall be defined as:

All Persons who own or owned Property in Canada in which Entran II hose (also known as Twintran, Nytrace, Entran II Trace, Entran II Wire, Entran 2, Entran 2 Trace, or Entran 2 Wire), manufactured and sold by Goodyear, was or is used as a conduit for hydronic heating and/or snow melting. Excluded from the Class are the Defendants, any entity in which the Defendants have a controlling interest or which have a controlling interest in the Defendants, and the Defendants legal representatives, assigns and successors. Also excluded are the Judges to whom this case is assigned and any member of the Judges' immediate family. In addition, excluded from the Class are (1) all Persons who, in accordance with the terms of the Settlement Agreement, properly execute and timely file a Request for Exclusion with the Claims Administrator under Section IX of the Settlement Agreement; and (2) any Persons who have obtained a Judgment against the Defendants on or before the date of the Approval of the Settlement by the Court;

3. **THIS COURT FURTHER ORDERS** that Gary Kelman and Janis Kelman be ascribed the status of Representative Plaintiffs for the Class;

4. **THIS COURT FURTHER ORDERS** that Allen May be ascribed the status of Representative Plaintiff for a Subclass which will consist of Class members whose properties are located in British Columbia, and that Alexander Holburn Beaudin & Lang shall be appointed as Counsel for that Subclass;

5. **THIS COURT FURTHER ORDERS** that Mike Myshak Management Ltd. and Mona LaHaie be ascribed the status of Representative Plaintiffs for a Subclass which will consist of Class members whose properties are located in Alberta and that Docken & Company shall be appointed as Counsel for that Subclass;

6. **THIS COURT FURTHER ORDERS** that the within proceeding is certified on the basis of the following common issues:

(a) Was the Entran II hose designed, manufactured and sold by Goodyear fit for its known and foreseeable use?

(b) Was Goodyear negligent in the design, manufacture or sale of Entran II hose?;

~~7. THIS COURT FURTHER ORDERS that the Defendants will provide the Plaintiffs with disclosure of all reasonably available information relevant to settlement approval; and~~

17. THIS COURT FURTHER ORDERS all other proceedings brought ^{up to the present time} by Class members in Ontario against the Defendants in relation to Entran II hose are stayed ^{on consent.}

Date: Nov 17/03



(Signature of judge, officer or registrar)

WINKLER J.

