

*Ontario*

SUPERIOR COURT OF JUSTICE  
B E T W E E N:  
MICHAEL GARIEPY, LYNN MARION,  
WAYNE McGOWAN, PAUL BERTHELOT  
and DALE ELLIOTT

Plaintiffs

- and -

SHELL OIL COMPANY,  
E.I. DU PONT DE NEMOURS AND COMPANY,  
HOECHST CELANESE CORPORATION

Defendants

Proceeding under the *Class Proceedings Act*, 1992

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NO. C967236  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N:

JEAN-MICHEL FURLAN et al

PLAINTIFFS

AND:

SHELL OIL COMPANY  
E.I. DU PONT DE NEMOURS AND COMPANY  
HOECHST CELANESE CORPORATION

DEFENDANTS

*Brought Under the Class Proceedings Act*

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Court File No.: 200 06-000001-985

*Quebec*

SUPERIOR COURT OF JUSTICE

B E T W E E N:

RICHARD COUTURE et al

Plaintiffs

- and -

SHELL OIL COMPANY D/B/A SHELL CHEMICAL COMPANY,  
HOECHST CELANESE CORPORATION,  
AND E.I. DUPONT DE NEMOURS & COMPANY

## SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs Michael Gariepy, Lynn Marion, Wayne McGowan, Paul Berthelot, and Dale Elliott have commenced No. 307981/99 as a class proceeding against Shell Oil Company (“Shell”), E.I. Du Pont de Nemours & Company (“Du Pont”) and Hoechst Celanese Corporation (“Celanese”) in the Superior Court of Justice of the Province of Ontario (“*Gariepy*”);

WHEREAS, Plaintiff Jean-Michel Furlan has commenced No. C967236 as a class proceeding against Shell, Du Pont, and Celanese in the Supreme Court of British Columbia (“*Furlan*”);

WHEREAS, Plaintiff Richard Couture has commenced No. 200 06-000001-985 as a class action against Shell, Du Pont, and Celanese in the Superior Court of Justice of the Province of Quebec (“*Couture*”);

WHEREAS, the Ontario Superior Court of Justice denied the motion of the *Gariepy* Plaintiffs to certify a class, and the *Gariepy* Plaintiffs have appealed the denial of class certification;

WHEREAS, no motion for class certification has as yet been presented in either *Furlan* or *Couture*;

WHEREAS, the Plaintiffs allege that polybutylene plumbing systems and hot water heating systems are defective and seek to recover money damages for the cost of repairing or replacing such systems and repairing property damage associated with leaks;

WHEREAS, Shell has denied that polybutylene plumbing systems and hot water heating systems are defective, that Shell has any legal responsibility for the alleged defects, and that Plaintiffs or any class member are entitled to recover any money damages from Shell;

WHEREAS, the Plaintiffs and Shell wish to finally settle and resolve those cases and any and all similar claims against Shell arising in the remaining provinces and territories of Canada;

WHEREAS, this Agreement was reached after arms-length negotiations between Class Counsel and Shell, taking into account the expense of further proceedings, the strengths and weaknesses of Plaintiffs' claims and Shell's defenses thereto, and other relevant and appropriate factors; and

WHEREAS, Class Counsel believe that the Settlement is fair, reasonable, and adequate and in the best interest of the Settlement Class members;

NOW, THEREFORE, subject to the approval of the Courts, the Plaintiffs and Shell agree to compromise and settle the Class Actions on the following terms:

**1. Definitions**

Unless the specific context of a particular section of this Agreement calls for another interpretation, the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and vice versa. Feminine pronouns and female references shall be deemed to include the masculine, and vice versa, where appropriate:

- a. "Agreement" shall mean this Settlement Agreement, including any exhibits hereto, except as modified by further written agreement among the parties.
- b. "Claimants" shall mean all Settlement Class members who make a claim in accordance with the procedures set forth in Section 8 of this Agreement. The word "Claimants" includes a Claimant's personal representative or a Claimant's estate.

- c. “Claims Administrator” shall mean the person retained by Class Counsel subject to court approval to administer the processing and payment of claims as provided in Section 7 of this Agreement.
- d. “Class Actions” shall mean the class proceedings filed in Ontario in *Gariepy*, in British Columbia in *Furlan*, and in Quebec in *Couture*.
- e. “Class Counsel” shall mean: for all matters relevant to the *Gariepy* Class Action, the law firm of Siskind, Cromarty, Ivey & Dowler LLP; for all matters relative to the *Furlan* Class Action, the law firm of Poyner Baxter; and for all matters relative to the *Couture* Class Action, the law firm of Siskinds, Desmeules, all of whom act on behalf of the representative Plaintiffs and who conducted negotiations with Shell and Shell’s counsel and who shall continue acting on behalf of the representative Plaintiffs and the Settlement Class.
- f. “Courts” shall mean the respective Ontario, British Columbia, and Quebec courts that have jurisdiction over the Class Actions.
- g. “Court Approval Date” shall mean the latest of the dates on which the orders of the Courts approving this Agreement becomes final. For purposes of this Agreement, an order becomes final when the time for appealing or seeking leave to appeal the order has expired without an appeal being taken or leave to appeal being sought or, in the event an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

- h. “Eligible Claimants” shall mean those Claimants whose claims have been approved for payment by the Claims Administrator.
- i. “PB Hot Water Heating System” shall mean a hydronic heating system in a Unit that utilizes pipe made from Shell polybutylene resin to distribute hot water through baseboards or under the floor for the purpose of heating space in the Unit and that was installed between January 1, 1978 and December 31, 2002.
- j. A “PB Hot Water Heating System Replacement” shall mean the complete replacement or bypassing of all polybutylene pipe in a Unit’s PB Hot Water Heating System with pipe made from a material other than polybutylene.
- k. “PB Plumbing System” shall mean that portion of any potable water distribution system within a Unit that has pipe made from Shell polybutylene resin and that was installed between January 1, 1978 and December 31, 2002. A PB Plumbing System does not include hydronic heating systems, waste, vent or sewer lines, fixtures (such as shower heads, faucets, toilets, washing machines, and hot water heaters), or piping servicing pools or exterior spas.
- l. A “PB-Related Failure” shall mean, with respect to a PB Hot Water Heating System, either (i) a Qualified Leak in the polybutylene pipe or the fittings or (ii) the repair or replacement of any ferrous parts of the PB Hot Water Heating System (including the boiler, heat exchanger, expansion tank, and circulators) due to corrosion. A PB-Related Failure does not include any maintenance of the PB Hot Water Heating System as recommended by the system designer or the components manufacturers or any repairs undertaken to upgrade the PB Hot

Water Heating System or to increase the heating efficiency or water flow capacity.

- m. "PB Yard Service Line" shall mean that portion of any Unit's potable water distribution system that extends from the water company cut-off valve to the transition to the inside plumbing system in or at the structure that has pipe made from Shell polybutylene resin and that was constructed between January 1, 1978 and December 31, 2002. A PB Yard Service Line does not include meters, sewer lines, ground coupled heating systems, irrigation lines, or yard sprinkler lines.
- n. "Plaintiffs" shall mean the named Plaintiffs and proposed class representatives in the Class Actions.
- o. A "Qualified Leak" shall mean the verifiable failure in a portion of a PB Plumbing System, PB Yard Service Line, or PB Hot Water Heating System that results in an unwanted discharge of water. A Qualified Leak does not include water discharges from ice maker lines, valves, or fixtures (such as sinks, toilets, faucets, showers, hot water heaters, or washing machines).
- p. "Released Parties" shall mean Shell, its parent companies, subsidiaries, divisions, and affiliated entities, and all of their respective administrators, successors, assigns, servants, agents, employees, officers, and directors.
- q. "Replumb" shall mean the complete replacement or bypassing of all polybutylene pipe used in a Unit's PB Plumbing System with pipe made from a material other than polybutylene.

r. "Settlement" shall mean the settlement transaction the terms of which are set forth in this Agreement.

s. In each of the Class Actions, "Settlement Class" shall mean the following:

All persons and entities as of \_\_\_\_\_ [date of first publication of notice of approval of this Settlement] who own or previously owned a Unit in [the provinces in question] constructed between January 1, 1978, and December 31, 2002, in which there is or was during the time of such class member's ownership any of the following:

1. A PB Plumbing System;
2. A PB Hot Water Heating System; or
3. A PB Yard Service Line.

The Settlement Class in *Gariepy* will include all class members in Ontario and any of the other Canadian provinces or territories other than British Columbia or Quebec. The Settlement Class in *Furlan* will include class members in British Columbia, and the Settlement Class in *Couture* will include class members in Quebec.

Excluded from the Settlement Class are:

1. All persons who, in accordance with the procedures established by the respective Courts, execute a timely request for exclusion from the Settlement Class;
  2. Shell, Celanese, and Du Pont, the parents, subsidiaries and affiliates of any of them, and the officers and directors of each of them;
  3. All persons who have previously executed a release in favor of Shell of their claims with respect to their PB Plumbing Systems, PB Hot Water Heating Systems, or PB Yard Service Lines; and
  4. All persons who have previously executed a release with, or received relief from, the Consumer Plumbing Recovery Center or the Plumbing Claims Group, Inc.
  5. All builders, manufacturers, dealers, retailers, or other commercial resellers of Units unless such person actually occupies the Unit himself or rents out the Unit to another person.
- t. A "Type I Unit" is a single family, site-built residence or a single family dwelling unit in a duplex, triplex or quadraplex.
- u. A "Type II Unit" is a single family dwelling unit in any multi-unit residence not included in Type I and each part of a commercial or other structure occupied by a single tenant or tenant group.



- v. A "Type III Unit" is a mobile home.
- w. "Unit" shall mean a mobile home, a single family site-built house, a single family unit within a multi-unit structure such as a duplex, condominium or apartment building, or each part of a commercial or other structure occupied by a single tenant, constructed between January 1, 1978, and December 31, 2002. A "Unit" does not include portable restrooms, temporary buildings, airplanes, boats, recreational vehicles, travel trailers, or other motorized vehicles or vehicles intended for regular use on public roads.
- x. "Unreimbursed Expenses" shall mean the documented actual cost paid for reasonable and necessary repairs to a PB Plumbing System, PB Yard Service Line, or PB Hot Water Heating System or to damage to tangible property due to a Qualified Leak or PB-Related Failure to the extent not reimbursed or paid by another person (including insurance companies) other than the Settlement Class member himself.
- y. "Yard Service Line Replacement" shall mean the complete replacement or bypassing of all polybutylene pipe in a PB Yard Service Line with pipe made from a material other than polybutylene.

All dollar amounts set forth in this Agreement are expressed in Canadian dollars.

## 2. **Agreement to Settlement Class**

- 2.1 For the purpose of implementing this Settlement, the parties agree to present to the Courts joint motions to certify the Settlement Class.

2.2 Shell's agreement to certification of a class is solely for the purpose of settlement and shall not constitute an admission that a class can be certified for the purpose of trial in the Class Actions or any other proceeding. To the contrary, Shell retains the right to oppose certification of a trial class in the Class Actions if this Agreement is not approved or implemented for any reason and in any other proceeding.

**3. Waiver of Limitation Defenses**

3.1 Only for the purpose of making a claim under this Agreement, no Settlement Class member shall be considered ineligible to receive any compensation set forth in this Agreement on the basis of any statute of limitation, prescription, or any other limitation or prescription defense.

3.2 Nothing in this Agreement shall constitute a waiver by any of the Released Parties of defenses based on statutes of limitations or repose, prescription periods, any other limitation or prescription defense, or any other defense with respect to any member of the Settlement Class who opts out of this Settlement.

**4. Entitlement to Compensation**

All Settlement Class members are eligible for compensation under this Agreement. To be entitled to receive compensation, however, a Settlement Class member must make a claim in accordance with the procedures set forth in Section 8 of this Agreement. The rights of Settlement Class members under this Agreement are personal and may not be

assigned to any other person. This Agreement is solely for the benefit of Settlement Class members; there are no third party beneficiaries.

**5. Settlement Fund**

5.1 In satisfaction of all claims arising out of or relating to Settlement Class members' PB Plumbing Systems, PB Yard Service Lines, and PB Hot Water Heating Systems, Shell agrees to pay, subject to the provisions of Section 6.8, the amount of \$20 million, which is inclusive of prejudgment interest, costs of notice, and costs of administration ("the Settlement Amount"). Shell shall pay the Settlement Amount to the Claims Administrator as elsewhere provided in this Agreement, which payment shall create and constitute the Settlement Fund. The Settlement Fund will be established and maintained as a Qualified Settlement Fund ("QSF") in accordance with § 468B of the US Internal Revenue Code of 1986, as amended, and the regulations thereunder. The parties agree to negotiate in good faith, subject to court approval, any amendment to this Agreement necessary to obtain IRS approval of the Settlement Fund as a QSF. The Claims Administrator will take whatever actions and make whatever filings are required of the Settlement Fund as a QSF.

5.2 The Claims Administrator shall maintain the Settlement Fund in an interest bearing account or instrument in a Canadian chartered bank pending payment to Eligible Claimants. The Settlement Fund shall be administered by the Claims Administrator under the supervision of the Courts. After providing for the reasonable and necessary costs of notice and administration, the Settlement Fund,

including any accrued interest thereon, shall be paid in accordance with the provisions of Section 6 of this Agreement to Eligible Claimants in as expeditious and efficient a manner as possible in order to minimize transactional costs and maximize payments to Eligible Claimants.

**6. Settlement Fund Allocation**

6.1 The Settlement Fund (less the reasonable and necessary costs of notice and claims administration) shall be allocated among Eligible Claimants based on a point system, which is intended to reflect as closely as possible the relative merit and extent of each Eligible Claimant's claim. Upon the expiration of the Claim Period, the Settlement Fund will be distributed to Eligible Claimants in relation to the points allocated to each Eligible Claimant, subject to certain maximum limits as follows:

**6.2 PB Plumbing System Claims.**

6.2.1 Claimants with PB Plumbing Systems that have not had a Qualified Leak will be allocated 2.5 points. The maximum settlement amount payable to a Claimant in this category shall be \$250.

6.2.2 Claimants with PB Plumbing Systems that have had one or more Qualified Leaks but who have incurred aggregate Unreimbursed Expenses of less than \$500 shall be allocated 5 points. The maximum amount payable to a Claimant in this category shall be \$500.

6.2.3 Claimants with PB Plumbing Systems that have had one or more Qualified Leaks and who have incurred aggregate Unreimbursed Expenses of more than \$500 shall be allocated 1 point for each \$100 of such Unreimbursed Expenses up to a maximum of 25 points. The maximum amount payable to a Claimant in this category shall be \$2,500.

6.2.4 Claimants who own Type I Units with PB Plumbing Systems who have incurred the Unreimbursed Expense of a Replumb shall be allocated 70 points. The maximum amount payable to a Claimant in this category shall be \$7,000.

6.2.5 Claimants who own Type II Units with PB Plumbing Systems who have incurred the Unreimbursed Expense of a Replumb shall be allocated 40 points. The maximum amount payable to a Claimant in this category shall be \$4,000.

6.2.6 Claimants who own Type III Units with PB Plumbing Systems who have incurred the Unreimbursed Expense of a Replumb shall be allocated 30 points. The maximum amount payable to a Claimant in this category shall be \$3,000.

6.3 PB Yard Service Claims.

6.3.1 Claimants with PB Yard Service Lines that have not had a Qualified Leak shall be allocated 1 point. The maximum amount payable to a Claimant in this category shall be \$100.

6.3.2 Claimants with PB Yard Service Lines that have had either a Qualified Leak or a Yard Service Line Replacement shall be allocated 2.5 points. The maximum amount payable to a Claimant in this category shall be \$250.

6.4 PB Hot Water Heating Claims.

6.4.1 Claimants with PB Hot Water Heating Systems that have not had a PB-Related Failure shall be allocated 2.5 points. The maximum amount payable to a Claimant in this category shall be \$250.

6.4.2 Claimants with PB Hot Water Heating Systems that have had one or more PB-Related Failures but who have incurred aggregate Unreimbursed Expenses of less than \$500 shall be allocated 5 points. The maximum amount payable to a Claimant in this category shall be \$500.

6.4.3 Claimants with PB Hot Water Heating Systems that have had one or more PB-Related Failures and who have incurred aggregate Unreimbursed Expenses of more than \$500 shall be allocated 1 point for each \$100 of such Unreimbursed Expenses up to a maximum of 25 points. The maximum amount payable to a Claimant in this category shall be \$2,500.

6.4.4 Claimants with PB Hot Water Heating Systems that have had a PB-Related Failure and who have incurred the Unreimbursed Expense of a PB Hot Water Heating System Replacement shall be allocated fifty 50 points.

The maximum amount payable to a Claimant in this category shall be \$5,000.

6.5 Points Not Cumulative.

A Claimant shall be allocated the most points to which his claim shows him to be entitled under any one of the various subsections of sections 6.2, 6.3, and 6.4. In no event will a Claimant be allocated multiple or cumulative points under the various subsections of sections 6.2, 6.3, or 6.4 with respect to the same Unit. (*E.g.*, a Claimant with a PB Plumbing System in his Unit may not be allocated points both under Section 6.2.3 for having Unreimbursed Expenses associated with repairing a Qualifying Leak and under Section 6.2.4 for having incurred the Unreimbursed Expense of a Replumb; rather, he will be allocated only the points under Section 6.2.4, which are the most points to which he is entitled under this example.)

6.6 Hardship Fund.

The Claims Administrator shall have the discretion to exceed the maximum limits set forth above in unusual cases where the Claims Administrator concludes that the application of these maximum limits would burden the Claimant with a substantial economic hardship. In no event, however, is a Claimant eligible for additional relief under this section unless the Claimant has experienced a Qualified Leak or a PB-Related Failure or has obtained a Replumb. The maximum aggregate amount of the Settlement Fund the Claims Administrator may spend on hardship cases is \$250,000.

6.7 Overall Maximum Limit.

6.7.1 If a Claimant owns a Unit with a PB Plumbing System, a PB Yard Service Line, and/or a PB Hot Water Heating System, he may submit a claim with respect to any or all of such systems in his Unit, and a Claimant may submit a claim for each Unit he owns. Once a Claimant submits a claim with respect to a Unit, he may not thereafter submit multiple or successive claims with respect to that same Unit.

6.7.2 Notwithstanding any other provision herein, the maximum amount payable to any single Claimant under this Agreement, no matter how many Units the Claimant owns, shall be \$100,000. For the purpose of this section, if a Claimant is a corporation, partnership, or other legal entity, then the term "Claimant" shall include the Claimant's controlling person or entity (such as a parent corporation or a general partner) and any commonly controlled entities (such as corporate subsidiaries and affiliates or other commonly controlled partnerships) related to such Claimant.

6.8 Surplus Funds.

If the application of the foregoing maximum limits on amounts payable to individual Claimants and the number of claims made results in any portion of the \$20 million settlement amount remaining unspent on the payment of claims and the reasonable and necessary costs of notice and claims administration, the unspent amount shall revert to and belong to Shell.



**7. Appointment of Claims Administrator**

7.1 Subject to approval by the Courts, Class Counsel will retain a Claims Administrator acceptable to Shell for the purpose of processing and paying claims as provided in this Agreement. The reasonable and necessary expenses of claims administration, including the fees of the Claims Administrator, shall be paid from the Settlement Fund in such amounts as may be approved by Class Counsel from time to time. Such expenses of claims administration shall not include any amounts for attorney's fees or expenses of Class Counsel. The costs of notice and claims administration together shall not exceed \$1 million. Notwithstanding any other provision relating to the timing of payment of the Settlement Fund, Shell will advance funds to the Settlement Fund to pay the costs of claims administration as they are incurred.

7.2 The Claims Administrator and any employees engaged to assist in the processing of claims must sign a confidentiality statement by which they shall agree to keep confidential any information concerning Settlement Class members, and shall institute procedures to ensure that the identity of all Settlement Class members and all information regarding their claims will be kept confidential and not be provided to any person except as may otherwise be provided in this Agreement.

**8. Claim Procedures**

8.1 Procedures and Deadlines for Claims.

In order to be entitled to compensation from the Settlement Fund, a Settlement Class member must mail to the Claims Administrator, postmarked no later than twelve (12) months after the date of last publication of the notice advising Settlement Class members of the Courts' approval of this Agreement (such twelve-month period being the "Claim Period"), a completed, executed, and verified Claim Form together with the supporting documentation required by the Claim Form. Settlement Class members who do not submit a properly completed Claim Form by the end of the Claim Period shall forever forfeit their rights to compensation from the Settlement Fund, and will be precluded from ever bringing an action against any of the Released Parties unless they have previously opted out of this Settlement in accordance with Section 10.6.

8.2 Claim Form.

Claims shall be submitted on a form to be agreed upon by Class Counsel and Shell ("Claim Form") that will require the Claimant to provide sufficient information and supporting documentation to establish his right to compensation from the Settlement Fund and to enable the Claims Administrator to determine the number of points to be allocated to the claim.

8.3 Notice to Subsequent Purchasers

In consideration for the right to submit a claim and receive compensation, each Claimant will agree to affirmatively disclose to any subsequent purchaser of his Unit the fact that the Unit contains a PB Plumbing System, PB Yard Service Line, and/or PB Hot Water Heating System (unless the Claimant has previously

obtained a Replumb or replacement of the system), that the Claimant has had a Qualified Leak or PB-Related Failure, as the case may be, and that the Claimant has made a claim for compensation from the Shell Settlement Fund.

9. **Claims Administration**

- 9.1 The Claims Administrator shall process the claims in a cost effective and timely manner.
- 9.2 The Claims Administrator shall review claims as they are submitted and reject or approve them and assign to all approved claims the points to which they are entitled under Section 6 of this Agreement. The Claims Administrator may approve only valid claims in accordance with the terms of this Agreement. The Claims Administrator shall have no authority to modify or disregard the terms of this Agreement or to waive any of the requirements for submitting a claim. To assist the Claims Administrator in approving and classifying claims and interpreting this Agreement, the parties shall agree upon further guidelines to be furnished to the Claims Administrator.
- 9.3 If the documentation submitted with the claim shows that a Claimant is not entitled to compensation or a Claimant fails to submit documentation necessary to establish that he is entitled to compensation, the Claims Administrator shall reject the claim and notify the Claimant in writing of the rejection of his claim.
- 9.4 If a Claimant provides documentation establishing that he is entitled to compensation, but fails to provide sufficient documentation to determine the

number of points to be allocated to his claim, the Claims Administrator shall notify the Claimant in writing of the deficiencies in his claim and give him 30 days to correct the deficiencies, failing which his claim shall be assigned the minimum number of points for which his claim qualifies in the absence of additional information.

9.5 The Claims Administrator, Class Counsel, and Shell shall have the right, but not the obligation, to inspect the Unit of any Claimant for the purpose of verifying the Claimant's claim.

9.6 Within 30 days after the first six months of the Claim Period have elapsed, the Claims Administrator shall provide Class Counsel and Shell an interim report identifying all Eligible Claimants and the points allocated to each Eligible Claimant to date. Within 30 days after the expiration of the Claim Period, the Claims Administrator shall provide Class Counsel and Shell a final report identifying all Eligible Claimants, the points allocated to each Eligible Claimant, and the estimated amount of the Settlement Fund to which each Eligible Claimant is entitled under the terms of this Agreement ("Final Report"). In addition, the Claims Administrator shall notify each Eligible Claimant whose claim has been rejected in whole or in part of the reason for such rejection, and such Claimant shall have 30 days from the mailing of the notice within which to appeal such rejection by submitting to the Claims Administrator a written statement of the grounds for his appeal. No further documentation may be submitted in connection with an appeal. Class Counsel and Shell shall have 60 days within which to review the Final Report and any appeals and to make any objections. Any

appeals and/or objections will be resolved either by agreement of Class Counsel and Shell or by reference to a third-party neutral pursuant to procedures to be agreed upon by Class Counsel and Shell.

- 9.7 Promptly following the expiration of the 60-day period within which Class Counsel and Shell may review the Final Report or the resolution of any appeals and/or objections to the Final Report, whichever is later, Shell shall pay to the Claims Administrator the Settlement Amount (less (i) any funds previously advanced for costs of notice and claims administration and (ii) any reversion to which Shell is entitled under Section 6.8), and the Claims Administrator shall pay all Eligible Claimants the compensation to which they are entitled under the terms of this Agreement by mailing checks to Eligible Claimants at the addresses shown on their Claim Forms (or such other addressees as Eligible Claimants may have subsequently provided to the Claims Administrator).
- 9.8 Within 30 days after paying all Eligible Claimants, the Claims Administrator shall provide to the Courts, Class Counsel, and Shell a final accounting of the claims administration process, including the total number of claims made, the total number of claims approved, the total amount paid out to Eligible Claimants, the administration and notice costs incurred, the portion of the Settlement Amount remaining unspent, if any, and such other information as the Courts may require.
- 9.9 The Claims Administrator shall provide Class Counsel and Shell such other reports as they may reasonably request from time to time.

9.10 The Claims Administrator shall retain all records relating to the processing and payment of claims. Class Counsel and Shell may, at their expense, inspect and audit the Claims Administrator's records at any time upon reasonable notice to the Claims Administrator.

9.11 Other than to pay the Settlement Amount to the Claims Administrator to establish the Settlement Fund, Shell will have no responsibility for the processing and payment of claims or the maintenance of the Settlement Fund. No Settlement Class member shall have any claim against Shell that his claim was rejected or he was allocated an inappropriate or insufficient share of the Settlement Fund.

**10. Notices to Settlement Class Members and Opt Out**

10.1 The parties agree to present to the Courts a joint motion for an order approving notice to Settlement Class members of (i) the date and place of the hearings to be held by the Courts on whether to approve the Settlement and (ii) Settlement Class members' right to object to the Settlement.

10.2 The form and the content of the notice advising Settlement Class members of the settlement approval hearings ("Notice of Settlement Approval Hearings") shall be as set forth in Exhibit "A" to this Agreement.

10.3 Promptly upon receiving the last of the orders of the Courts approving the notice, Class Counsel will cause the Notice of Settlement Approval Hearings to be sent by ordinary mail to Settlement Class members whose identity is known to Class Counsel and/or Shell. Shell shall provide to Class Counsel its list of any

Settlement Class members whose identity and last known address is known to Shell.

- 10.4 Class Counsel shall also cause the Notice of Settlement Approval Hearings to be published in the publications set forth in Exhibit “B” to this Agreement, as well as on the websites of Class Counsel. Class Counsel shall establish a toll-free telephone number through which Settlement Class members can obtain additional information about the Settlement.
- 10.5 If the Courts approve the Settlement, the form and content of the further notice advising the Settlement Class members of the Courts’ approval of this Settlement, the procedure and deadline for opting out of the Settlement, and the procedure and deadline for submitting claims (“Notice of Settlement Approval”) shall be as set forth in Exhibit “C” to this Agreement. Class Counsel will cause the Notice of Settlement Approval to be provided to Settlement Class members in the same manner as described in Sections 10.3 and 10.4 above.
- 10.6 Settlement Class members who wish to exclude themselves from this Settlement must do so by the deadline specified in the Notice of Settlement Approval (which deadline shall be approximately 60 days after mailing and publication of the notice) by completing the Opt Out Form attached as Exhibit “D” and returning the Opt Out Form to Class Counsel. A request for exclusion will be timely if it is post-marked on or before the opt out deadline. A Settlement Class member who timely submits a completed Opt Out Form will be deemed to have opted out, and

to have waived any claim to share in the Settlement Fund, with respect to any and all Units he owns.

- 10.7 Neither Plaintiffs, Class Counsel, nor Shell will encourage any Settlement Class members to opt out. Class Counsel will recommend to all class members they represent individually that they accept the settlement.
- 10.8 Within 15 days following the deadline for opting out of the Settlement Class, Class Counsel shall provide to Shell a report identifying all Settlement Class members who have opted out, together with a copy of their completed Opt Out Forms.
- 10.9 If the total number of Settlement Class members who elect to opt out of the Settlement is, in Shell's sole opinion, excessive, Shell shall have the right to withdraw from this Agreement by giving written notice to Class Counsel within 30 days after receipt from Class Counsel of the report on opt outs.
- 10.10 The costs of notifying Settlement Class members of this Settlement shall be paid out of the Settlement Fund. Notwithstanding any other provision relating to the timing of payment of the Settlement Fund, Shell shall pay the costs of notice as those costs are incurred. If the Settlement is not approved by the Courts or not implemented for any reason, the costs already incurred in giving notice shall remain the responsibility of Shell.



**11. Legal Fees**

Within 30 days after the later of the Court Approval Date or the expiration of the time within which Shell may exercise its right under Section 10.9 to withdraw from the Settlement, Shell agrees to pay to Class Counsel solicitors' costs (including attorneys' fees, disbursements, and applicable taxes) of \$3,000,000, subject to prior court approval. Such amount will also be inclusive of any attorneys' fees or disbursements Class Counsel may incur in connection with the administration of claims. Solicitors' costs will not be payable from or reduce in any way the Settlement Fund.

**12. Releases/Third Party Claims**

12.1 Releases of Claims.

Upon the entry of the orders of the Courts approving this Settlement, and subject to the terms of this Agreement, each Settlement Class member, unless he timely opts out of the Settlement Class, on behalf of himself or any person claiming by or through him, shall be deemed to and does hereby release and forever discharge the Released Parties from any and all claims, known or unknown, that the Settlement Class member ever had, now has, or which later appear or accrue, for any loss, damage, or expense arising out of or relating to the Settlement Class member's PB Plumbing System, PB Hot Water Heating System, or PB Yard Service Line, including, without limitation, all claims that were or could have been asserted on behalf of the Settlement Class member in any of the Class Actions, and all subrogation claims of the Settlement Class member's insurance carriers or other subrogees not protected from waiver by the provisions of the Settlement Class

member's applicable insurance policies (or previously assigned or subrogated and not subject to compromise or settlement by the policyholder).

12.2 Reservation of Rights/Third-Party Claims.

Except as otherwise provided herein, nothing in this Agreement shall prejudice or any way interfere with the rights of Settlement Class members to pursue all of their other rights and remedies against persons and/or entities other than the Released Parties. In the event any Settlement Class member commences or continues litigation or makes or pursues a claim against any other person or entity arising out of or relating to the Settlement Class member's PB Plumbing System, PB Hot Water Heating System, or PB Yard Service Line, that Settlement Class member agrees to indemnify and hold harmless the Released Parties against all cross-claims, third-party claims, and claims for contribution and indemnity.

**13. Court Approval**

13.1 The performance of this Agreement is subject to and conditional upon its approval by all of the respective Courts and the expiration of the time for appeals or the exhaustion of all appeals.

13.2 The parties agree to prepare and file motions for approval of the Settlement as soon as practicable. The parties agree to use their best efforts to obtain the approvals of the Courts in accordance with applicable rules, although this does not require any party to agree to amend this Agreement. The parties agree that

any proposed order, findings, or judgment submitted to the Courts in connection with this Settlement shall be in a form satisfactory to Shell.

13.3 If approved by the Courts, the Settlement will be binding on all Settlement Class members, except those who timely opt out in accordance with the provisions of Section 10.6 of this Agreement, whether or not the Settlement Class member submits a claim and whether or not the claim is approved.

**14. Effect of Non-Approval**

14.1 If this Agreement is not approved as set out in Section 13:

- (a) this Agreement shall terminate and shall thereafter have no force or effect, except as provided in this section and section 2.2, and no party to the Agreement shall have any obligation to consummate the Settlement.
- (b) this Agreement, and all of its provisions, and all negotiations, statements and proceedings relating to it, shall be without prejudice to the rights of Settlement Class members and Shell, all of whom shall be restored to their respective positions existing immediately before this Agreement; and
- (c) this Agreement, and the fact of its negotiation and execution, shall not constitute any admission by Shell or be used as evidence against Shell of liability or damages or otherwise be referred to for any other purpose in any action, claim, hearing, or proceeding brought by any person.

**15. The Orders Approving This Agreement**

Each of the orders of the Courts approving this Agreement shall:

- (i) provide that the respective Court has jurisdiction;
- (ii) certify for the purpose of settlement only the Settlement Class as defined herein;
- (iii) find that reasonable notice of the Settlement and an opportunity to object has been provided to Settlement Class members;
- (iv) declare that this Settlement is reasonable, fair, and adequate and in the best interests of the Settlement Class;
- (v) approve the Settlement and order the parties and all Settlement Class members to comply with it;
- (vi) bar Settlement Class members who do not opt out from initiating any actions in any courts or from asserting claims in any existing actions against the Released Parties arising out of or relating to Settlement Class members' PB Plumbing Systems, PB Yard Service Lines, or PB Hot Water Heating Systems;
- (vii) provide that Settlement Class members will be deemed to have released all claims against the Released Parties (including claims for subrogation to the extent allowed by applicable insurance policies) arising out of or relating to their PB Plumbing Systems, PB Hot Water Heating Systems, or PB Yard Service Lines in accordance with Section 12.1 above;

- (viii) bar cross-claims, third-party claims, and all claims for contribution and indemnity against the Released Parties;
- (ix) order that notice of the approval of this Settlement be provided to the Settlement Class in accordance with Section 10 of this Agreement;
- (x) dismiss the Class Actions against Shell with prejudice; and
- (xi) provide that, except as set forth in this Agreement, each party shall bear its own costs in respect of the Class Actions.

**16. Miscellaneous Provisions**

- 16.1 The parties shall cooperate, assist, and undertake all reasonable actions in order to accomplish the above on a timely basis.
- 16.2 The Courts shall retain exclusive and continuing jurisdiction over the Class Actions and all parties named or described therein, including all Settlement Class members and Shell, and over this Agreement to ensure that all disbursements are properly made and to interpret and enforce this Agreement's terms, conditions and obligations.
- 16.3 This Agreement, including all Exhibits attached hereto, constitutes the entire agreement by and among the parties with regard to the subject of this Agreement and shall supersede any previous Agreements and understandings between the parties with respect to the subject matter of this Agreement. This Agreement may

not be modified or amended except in writing signed by all parties and subject to the Court's approval.

16.4 This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute one and the same instrument.

16.5 This Agreement is a compromise of disputed claims and it may not be construed or deemed to be an admission of any claim or allegation or any liability or wrongdoing of any kind by any party hereto, such claims and liability being expressly denied.

16.6 The parties acknowledge that they have required that this Settlement Agreement and all related documents be prepared in English. Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

Dated this 15<sup>th</sup> day of October, 2003.

**MICHAEL GARIEPY, LYNN MARION,  
WAYNE MCGOWAN, PAUL BERTHELOT,  
and DALE ELLIOTT**

By: \_\_\_\_\_

*[Handwritten Signature]*  
Siskind, Cromarty, Ivey & Dowler LLP

**JEAN-MICHEL FURLAN et al**

By: \_\_\_\_\_

Poyner Baxter

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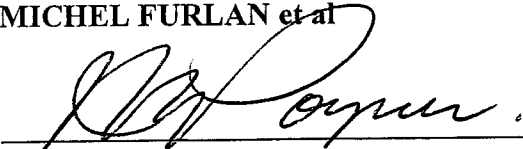
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Dated this 15 day of October, 2003.

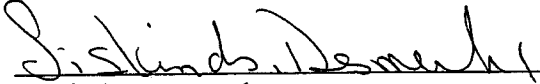
**MICHAEL GARIEPY, LYNN MARION,  
WAYNE MCGOWAN, PAUL BERTHELOT,  
and DALE ELLIOTT**

By: \_\_\_\_\_  
Siskind, Cromarty, Ivey & Dowler LLP

**JEAN-MICHEL FURLAN et al**

By:   
Poyner Baxter

**RICHARD COUTURE et al**

By:   
Siskinds, Desmeules

**SHELL OIL COMPANY**

By: \_\_\_\_\_  
Hugh H. Saum, III



**RICHARD COUTURE et al**

By: \_\_\_\_\_  
Siskinds, Desmeules

**SHELL OIL COMPANY**  
By its agent, Shell Chemical Company

By:           *F. Keeth*            
F. Keeth, President