

**NOTICE IN THE CERTIFICATION/AUTHORIZATION AND  
SETTLEMENT APPROVAL HEARINGS IN THE MATTER OF THE  
LAWN MOWER HORSEPOWER LABELLING CLASS ACTION**

**TO: All persons in Canada who purchased certain walk-behind or riding lawn mowers manufactured by the defendants or containing a gas combustible engine manufactured by the defendants labeled at 30 horsepower or less between January 1, 1994 and December 31, 2012.**

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS**

**I. WHAT IS A CLASS ACTION?**

A class action is a lawsuit filed by one person on behalf of a large group of people affected by the same issue.

**II. WHAT ARE THESE CLASS ACTIONS ABOUT?**

In 2010, class proceedings were initiated in Ontario by Harrison Pensa<sup>LLP</sup> and in Québec by Consumer Law Group Inc. (collectively, “Class Counsel”) against various lawn mower and lawn mower engine manufacturers (the “Class Actions”). The Class Actions claim that the companies who manufactured the engines and the lawn mowers containing them mislabeled the products to show a higher horsepower than what was actually contained in the lawn mower.

**III. WHO ARE THE DEFENDANT LAWN MOWER AND LAWN MOWER ENGINE MANUFACTURERS?**

The defendants are the following companies:

- “Briggs & Stratton” – Briggs & Stratton Canada Inc. and Briggs & Stratton Corporation
- “Electrolux” – Electrolux Canada Corp. and Electrolux Home Products, Inc.
- “Honda” – Honda Canada Inc. and American Honda Motor Co., Inc.
- “Husqvarna” – Husqvarna Canada Corp. and Husqvarna Consumer Outdoor Products N.A., Inc.
- “John Deere” – John Deere Canada ULC and Deere & Company
- “Kawasaki” – Kawasaki Motors Corp., U.S.A.
- “Kohler” – Kohler Canada Co. and Kohler Co.
- “MTD” – MTD Products Limited and MTD Products Inc.
- “Tecumseh” – Tecumseh Products of Canada, Limited, Tecumseh Products Company, and Platinum Equity, LLC
- “Toro” – The Toro Company (Canada), Inc. and The Toro Company

#### IV. HOW DO I KNOW IF I AM A CLASS MEMBER?

You are automatically a Class Member if you have not previously opted out and you:

- purchased a gas-powered walk-behind or riding lawn mower labeled at 30 horsepower or less that was manufactured by one of the defendants and contains an engine manufactured by one of the defendants;
- purchased it between January 1, 1994 and December 31, 2012; AND
- purchased it in Canada.

#### V. WHAT IS A SETTLEMENT AND WHAT SETTLEMENTS HAVE BEEN REACHED IN THESE CLASS ACTIONS?

A settlement is when a defendant agrees to pay money to the Class Members in exchange for being released from the case.

In the Class Actions, several settlements were reached at various times during the case totalling \$7,535,000 (the "Settlement Amount"). The settlements are not an admission of liability, fault, or wrongdoing by the defendants, but are a compromise of disputed claims. The settlements reached in the Class Actions are outlined below:

<b>SETTLEMENTS APPROVED BY PREVIOUS ORDERS OF THE COURT</b>			
<b>SETTLING DEFENDANTS</b>	<b>DATE OF SETTLEMENT AGREEMENT</b>	<b>DATE OF COURT APPROVAL</b>	<b>AMOUNT</b>
MTD	September 29, 2010	September 20, 2013	\$300,000 + extensive cooperation to the plaintiffs
Briggs & Stratton, Electrolux, John Deere, Husqvarna, Kohler, and Toro	June 26, 2013	September 20, 2013	\$4,200,000
Honda	February 25, 2015	July 13, 2015	\$700,000
<b>TOTAL:</b>			<b>\$5,200,000</b>
<b>SETTLEMENTS BEFORE THE COURT FOR APPROVAL</b>			
<b>SETTLING DEFENDANTS</b>	<b>DATE OF SETTLEMENT AGREEMENT</b>	<b>AMOUNT</b>	
Kawasaki	June 4, 2018	\$785,000	
Tecumseh	August 10, 2018	\$1,550,000	
<b>TOTAL:</b>			<b>\$2,335,000</b>
<b>GRAND TOTAL OF ALL SETTLEMENTS:</b>			<b>\$7,535,000</b>

The following common issue of law and/or fact has been certified/authorized by the Ontario Superior Court of Justice and by the Superior Court of Justice of Quebec:

“Did the Settling Defendants conspire to fix, maintain, raise or stabilize the prices of Lawn Mowers in Canada, to lessen unduly competition in the production, manufacture, sale and/or supply of lawn mowers and lawn mower engines in Canada, and/or to conduct business contrary to Part VI of the Competition Act, section 7 of the Consumer Packaging and Labelling Act and the common law during the Class Period?”

The settlements with Kawasaki and Tecumseh are subject to court approval (the “Kawasaki Settlement” and “Tecumseh Settlement”). There will be settlement approval hearings in Ontario and Québec. These hearings will be held on October 25, 2018 at 10 a.m. at 4 Wellington Street, St. Thomas, Ontario and on October 31, 2018 at 2:15 p.m. in room 15.07 at 1, rue Notre-Dame Est, Montréal, Québec. The Courts will decide whether the Kawasaki Settlement and Tecumseh Settlement are fair, reasonable, and in the best interests of the Class Members.

The Kawasaki and Tecumseh Settlement Agreements are available for you to review at [www.lawnmowersettlement.ca](http://www.lawnmowersettlement.ca).

## **VI. WHEN WILL THE SETTLEMENT AMOUNTS BE PAID TO CLASS MEMBERS?**

The Settlement Amount, minus court-approved Class Counsel fees, disbursements, and applicable taxes, is held in an interest bearing trust account for the benefit of the Class Members (the “Settlement Funds”).

A plan for how the Settlement Funds will be allocated and paid to Class Members (the “Distribution Protocol”) must be approved by the Courts. Once the Distribution Protocol is approved, an online claim portal will open and all Class Members can make a claim for compensation for the increased price paid for their eligible lawn mower. Once the time period for making a claim has passed, the court-approved Claims Administrator will review all claims and determine the amount to be paid to each Class Member.

The Distribution Protocol is available for you to review at [www.lawnmowersettlement.ca](http://www.lawnmowersettlement.ca).

## **VII. WHAT INFORMATION DO I NEED TO MAKE A CLAIM?**

If you are an “End User” (i.e. a consumer or a business that purchased a lawn mower for personal/professional use), you will need to complete a short claim form containing some basic particulars of your lawn mower purchase(s). This information may include the make, engine, and horsepower rating plus any additional information about the date and location of the purchase(s). A claim form may be supported by receipts, invoices, purchase records, serial numbers, warranty documents, product registration documents, rebate documents, repair invoices, or any other comparable verification that is acceptable to the Claims Administrator. Proof of purchase will be reasonably and flexibly administered by the Claims Administrator with a view to enabling claims and with reasonable deterrence against non-meritorious claims.

If you are an “Upstream Purchaser” (i.e. a retailer or wholesaler who purchased lawn mowers for resale and not for actual use), you will need to provide invoices, receipts, purchase records, or

historical accounting records. Alternatively, a declaration can be provided along with other documents that prove the lawn mower purchases such as delivery or packing slips, credit card statements, bank statements, cancelled cheques, wire transfer confirmations, proof of product registration, rebate documents, warranty documents, serial numbers, repair invoices, or any other comparable verification that is acceptable to the Claims Administrator.

## **VIII. HOW MUCH MONEY WILL I BE PAID?**

The proposed Distribution Protocol is posted in draft form and is subject to approval by the Courts. As described below, under the heading “What Do I Need To Do At This Time”, you have the right to comment on the proposed Distribution Protocol.

### **The Proposed Distribution Protocol**

The Settlement Funds are proposed to be divided with 80% of the total being allocated to End Users and 20% being allocated to Upstream Purchasers.

End Users who are unable to provide any documentary proof regarding their lawn mower purchase(s) will be entitled to \$15 per claimant.

End Users who provide valid proof of purchase will receive a minimum of \$15 per qualifying lawn mower.

End Users who provide valid proof of the horsepower rating of their qualifying lawn mower will be compensated for their lawn mower(s) as follows:

- a. Walk-behind lawn mowers with engines under 5 horsepower – \$20;
- b. Walk-behind lawn mowers with engines 5 horsepower or more – \$25;
- c. Riding lawn mowers with engines under 18 horsepower – \$40; and
- d. Riding lawn mowers with engines 18 horsepower or more – \$50.

This amount could be either increased or decreased on a prorated basis depending on the number of eligible claims made by Class Members.

Upstream Purchasers will be compensated for their eligible lawn mowers on a proportional basis out of the Upstream Purchasers portion of the Settlement Funds according to the volume and type of lawn mowers purchased. They will each receive a percentage of the Settlement Funds allocated to Upstream Purchasers in proportion to their actual purchases compared to the total number of lawn mowers purchased. Consult the full Distribution Protocol at [www.lawnmowersettlement.ca](http://www.lawnmowersettlement.ca) for more details.

## **IX. WHAT DO I NEED TO DO AT THIS TIME?**

The Kawasaki Settlement and the Tecumseh Settlement as well as the proposed Distribution Protocol are subject to court approval. If you wish to review the Kawasaki Settlement, the Tecumseh Settlement, or the proposed Distribution Protocol, they can be found at [www.lawnmowersettlement.ca](http://www.lawnmowersettlement.ca).

**You have the right to object** or comment in respect of the Kawasaki Settlement, the Tecumseh Settlement, and/or the proposed Distribution Protocol. The Courts will consider any comments from Class Members in deciding whether to approve them. If you want to tell the Courts what you think, you must send your written submissions to Class Counsel by October 22, 2018 at the contact information found below. Class Counsel will file all submissions with the appropriate court. **Please do not submit your comments directly to the Courts – they cannot process them.**

If you do not oppose to the Kawasaki Settlement, the Tecumseh Settlement, or the Distribution Protocol, you do not need to take any action at this time.

The dates for making claims will be published as soon as possible after the Courts approve the Kawasaki Settlement, the Tecumseh Settlement, and the Distribution Protocol. Continue to check back to [www.lawnmowersettlement.ca](http://www.lawnmowersettlement.ca) for continued updates regarding the Class Actions and how to make your claim.

#### **X. WHAT DO I HAVE TO PAY?**

You do not have to pay the lawyers working on these Class Actions any money. Class Counsel will be paid from the total amounts of the settlements. Fees have already been approved and paid from some settlements, but the fees to be paid from the Kawasaki and Tecumseh settlements must be approved by the Courts. At the settlement approval hearings, Class Counsel will collectively ask the Courts to approve legal fees of 30% of the Settlement Amount, plus out-of-pocket expenses incurred in support of the litigation and applicable taxes. Any approved Class Counsel fees, disbursements, and taxes will be paid out of the Settlement Funds.

If you wish to comment on or make an objection to Class Counsel fees, a written submission must be delivered to the appropriate Class Counsel by October 22, 2018. Contact information for Class Counsel can be found below. Class Counsel will file all submissions with the appropriate court. **Please do not submit your comments directly to the Courts – they cannot process them.**

#### **XI. WHAT IF I DON'T WANT TO BE IN THE CLASS ACTIONS?**

The court-approved deadline to opt out of the Class Actions was September 17, 2013. If you did not previously opt out, you are legally bound by the result of the Class Actions, including all settlements and the Distribution Protocol.

#### **XII. WHO ARE THE LAWYERS WORKING ON THESE CLASS ACTIONS?**

Harrison Pensa <sup>LLP</sup> represents the Class Representatives, Mr. Foster and Mr. Davenport as well as all Class Members in all Canadian provinces and territories, excluding Québec. Harrison Pensa <sup>LLP</sup> can be reached:

- By telephone at 1-800-263-0489, ext. 759
- By fax at 1-519-667-3362
- By e-mail at [lawnmowersettlement@harrisonpensa.com](mailto:lawnmowersettlement@harrisonpensa.com)
- By mail at 450 Talbot Street, London, Ontario, N6A 5J6, Attn: Jonathan Foreman

Consumer Law Group Inc. represents the Class Representatives, Mr. Liverman and Mr. Vadish as well as all Class Members in Québec. Consumer Law Group Inc. can be reached:

- By telephone at 1-514-266-7863, ext. 2
- By fax at 1-514-868-9690
- By e-mail at [info@clg.org](mailto:info@clg.org)
- By mail at 1030 rue Berri, Suite 102, Montréal, Québec, H2L 4C3, Attn: Jeff Orenstein

### **XIII. WHERE CAN I ASK MORE QUESTIONS?**

This notice contains only a summary of the settlements and proposed Distribution Protocol. Class Members are encouraged to review the complete settlement agreements and Distribution Protocol. Copies of these documents can be accessed from the settlement website at [www.lawnmowersettlement.ca](http://www.lawnmowersettlement.ca). If you would like a copy of any document or have questions that are not answered online, please contact the appropriate Class Counsel identified above. Inquiries should not be directed to the Courts.

### **XIV. INTERPRETATION**

This notice contains a summary of some of the terms of the various settlement agreements and Distribution Protocol in the Class Actions. If there is a conflict between the provisions of this notice and the settlement agreements or Distribution Protocol, the terms of the settlement agreements or Distribution Protocol shall prevail.