

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: MOTOR FUEL TEMPERATURE)
SALES PRACTICES LITIGATION)
(This Document Relates to All Cases)) MDL No: 1840
)
) No: 07-md-1840-KHV-JPO**

**MOTION OF PLAINTIFFS FOR ORDER CONDITIONALLY CERTIFYING
SETTLEMENT CLASSES, PRELIMINARILY APPROVING EIGHTEEN (18) CLASS
ACTION SETTLEMENTS, DIRECTING AND APPROVING DISTRIBUTION OF
CLASS NOTICE, SETTING HEARING FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENTS AND APPOINTING CLASS COUNSEL**

Exhibit B 15

WHEREAS, Plaintiffs filed their Second Consolidated Amended Complaint (“Consolidated Amended Complaint”) on December 1, 2008;

WHEREAS, during the relevant time period, the Settling Defendant sold motor fuel at the retail level in Kentucky:

WHEREAS, in the Consolidated Amended Complaint and the operative complaints filed in the Underlying Actions, Plaintiffs allege that the Settling Defendant engaged in conduct that violated various state consumer protection statutes and also gave rise to common law causes of action for breach of contract, breach of warranty, breach of the duty of good faith and fair dealing, unjust enrichment, civil conspiracy, or under other laws, including but not limited to claims based on the Settling Defendant’s alleged marketing and sale of motor fuel that did not have a uniform energy content and without disclosing or adjusting for the effect of temperature on energy content, and claims based on the Settling Defendant’s purported over-collection of state and federal motor fuel taxes from consumers based on the number of volumetric gallons dispensed;

WHEREAS, Plaintiffs have sought relief, including but not limited to damages, restitution, disgorgement, penalties, injunctive relief, declaratory relief, attorneys’ fees and costs, and pre- and post-judgment interest, for the alleged conduct of the Settling Defendant;

WHEREAS, the Court designated Robert A. Horn, Thomas V. Girardi and George A. Zelcs to serve as Plaintiffs’ Lead Counsel in the Action, and appointed Thomas V. Bender to serve as Plaintiffs’ Liaison Counsel;

WHEREAS, the defendants in the Action, including the Settling Defendant, filed an Answer to the Consolidated Amended Complaint on January 12, 2009, and the Settling Defendant filed an Answer to the Complaint in the Underlying Action in which it was named,

which asserted a number of defenses to Plaintiffs' claims, denied that the Settling Defendant has violated any law or other duty, and denied each of the Plaintiffs' claims of liability, wrongdoing, injuries, damages, and entitlement to any relief;

WHEREAS, as a result of extensive arm's-length negotiations, Plaintiffs and the Settling Defendant reached an agreement in principle to settle and resolve the claims asserted in the Action, based on the terms and conditions set forth below and subject to the approval of the Court;

WHEREAS, Plaintiffs and numerous other defendants, including but not limited to BP Products North America Inc. and BP West Coast Products LLC, CITGO Petroleum Corporation, ConocoPhillips Company, Exxon Mobil Corporation, Motiva Enterprises LLC and Equilon Enterprises LLC d/b/a Shell Oil Products US, and Sinclair Oil Corporation (these six settling defendants are the "Refiner Settling Defendants") reached agreements, subject to final approval of the Court, to settle and resolve the claims asserted in the Action, based on terms and conditions similar to those set forth below;

WHEREAS, Plaintiffs' Lead Counsel and Liaison Counsel have investigated the facts relating to the claims in the Action and the underlying events and transactions forming the subject matter of the Action, have analyzed the applicable legal principles, and have concluded, based upon their investigation, taking into account the sharply contested issues involved, the unsettled state of the applicable law, and the inherent problems of proof and legal defenses which may be an impediment to prevailing in whole or in part on the claims asserted, and taking into account the risks, uncertainties, burdens, and costs of further prosecution of the Action, and taking into account the substantial benefits to be received pursuant to this Settlement Agreement,

that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Classes;

WHEREAS, Plaintiffs' Lead Counsel and Liaison Counsel represent and warrant that they are fully authorized to enter into this Settlement Agreement by all counsel for all plaintiffs in the Action; and

WHEREAS, the Settling Defendant, solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Action, and for the purpose of putting to rest all controversies engendered by the Action, and without any admission of liability or wrongdoing whatsoever, desires to settle the Action and all claims asserted in or subsumed by the Action, including unasserted claims related to the subject matter of the Action that Plaintiffs could have asserted in the Action, on the terms and conditions set forth in this Settlement Agreement;

NOW, THEREFORE, without any admission or concession by Plaintiffs of any lack of merit to their allegations and claims, and without any admission or concession by the Settling Defendant of any liability or wrongdoing or lack of merit in its defenses, in consideration of the mutual covenants and terms contained herein, and subject to the final approval of the Court, Plaintiffs and the Settling Defendant agree as follows:

Definitions

1. As used in this Settlement Agreement, the terms set forth in this section will have the following meanings:

(a) "Automatic Temperature Compensation Equipment" or "ATC Equipment" means equipment capable of producing "Automatic Temperature or Density Compensation" as defined in Appendix D to NIST Handbook 44, Specifications, Tolerances, and Other Technical

Requirements for Weighing and Measuring Devices (2012 edition), in the context of the retail sale of motor fuel.

(b) “Class Representative” means Lisa McBride.

(c) “Court” means the Honorable Kathryn H. Vratil, United States District Judge, District of Kansas, or such other judge to whom the Action may hereafter be assigned.

(d) “State at Issue” means Kentucky.

Settlement Classes

2. For the purposes of this Settlement Agreement only, Plaintiffs will seek, and the Settling Defendant will not oppose, certification of a settlement class consisting of the subclasses described below, to which the Settling Defendant will provide settlement consideration and from which the Settling Defendant will obtain a release of claims, subject to the Court’s preliminary approval of this Settlement Agreement, the provision of notice to members of the settlement class, and the Court’s final approval of the notice provided and this Settlement Agreement, under the terms and conditions stated below.

3. For the purposes of this settlement only, Plaintiffs will seek, and the Settling Defendant will not oppose, the Court’s certification of a state-wide class (the “Settlement Class”), for the State at Issue, and for all the claims and forms of relief asserted in the Underlying Action in the State at Issue. The Settlement Class is defined as follows:

(a) Kentucky Purchasers Class: All persons and entities who, at any time during the period from January 1, 2001 to the date of preliminary approval of the settlement agreement in this action, purchased motor fuel in the State of Kentucky from a retail motor fuel station owned, operated, or controlled by Thorntons Inc.. Excluded from the class is any judicial officer presiding over this action and the members of his/her immediate family. The class representative is Lisa McBride.

4. The Parties stipulate and agree that, with respect to the Settling Defendant only, the definitions of the proposed classes in the Underlying Action are amended to be the same as

the Settlement Class for the State at Issue, and that the Court's orders preliminarily and finally approving this Settlement Agreement shall so amend the operative complaint in the Underlying Action.

5. Plaintiffs will seek, and the Settling Defendant will not oppose, the Court's appointment of Robert A. Horn, Thomas V. Girardi, George A. Zelcs, and Thomas V. Bender as counsel for the Settlement Class ("Class Counsel"), and the appointment of the Class Representative as a representative of the Settlement Class as indicated above.

Settlement Consideration

6. Subject to the provisions hereof, the Settling Defendant will pay or cause to be paid Sixty Thousand Dollars (\$60,000) (the "Settlement Amount") for the benefit of the members of the Settlement Class, the payment of which shall fully satisfy any and all of the Settling Defendant's payment obligations pursuant to this Settlement Agreement.

7. The Settling Defendant shall pay the Settlement Amount into an interest-bearing escrow account, to be administered in accordance with the provisions of paragraphs 18-24 of this Settlement Agreement (the "Escrow Account"), within ten business days after the date of preliminary approval of this Settlement Agreement. The Parties will cooperate to execute an appropriate escrow agreement within fifteen days after execution of this Agreement. As used in this Settlement Agreement, the "Settlement Fund" is, with respect to the Settling Defendant, the Settlement Amount defined above, paid by the Settling Defendant, plus any accrued interest or income on said deposits once in escrow as set forth in this paragraph.

8. The payments of the Settling Defendant described above shall exhaust and fully satisfy any and all of its payment obligations under this Settlement Agreement, and shall extinguish entirely any further obligation, responsibility, or liability to pay any settlement sums,

attorneys' fees, litigation costs, expenses incurred in administering this Settlement Agreement, including the cost of class notice, taxes, or sums of any kind to Plaintiffs, the Settlement Class, Class Counsel, and their other counsel, experts, advisors, agents, and representatives. In no circumstances shall this Settlement Agreement be construed to require the Settling Defendant to pay more than the Settlement Amount.

9. The Settlement Amount includes all attorneys' fees, expenses and costs that may be awarded by the Court. Plaintiffs' request for attorneys' fees is subject to a cap of 30% of the Settlement Amount, and Defendant will not object to a request for fees up to that amount.

10. This Settlement Agreement shall become final ten business days after all of the following conditions have occurred and been satisfied:

(a) The Court has entered both: (i) a final order approving this Settlement Agreement under Federal Rule of Civil Procedure 23(e); and (ii) a final judgment granting the relief described in this Settlement Agreement, including the relief described in paragraph 41 and dismissal of the Underlying Action with prejudice as to the Settling Defendant; and

(b) The time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement and entry of final judgment as to the Settling Defendant described in subsection (a) of this paragraph has expired or, if appealed, approvals of this Settlement Agreement and any final judgment as to the Settling Defendant have been affirmed by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

11. The Settlement Fund shall remain in the Escrow Account and accrue interest until this Settlement Agreement becomes final within the meaning of the preceding paragraph. After

the Settlement Agreement becomes final, Class Counsel will apply and distribute the Settlement Fund in the manner provided herein, subject to the approval of the Court.

12. The net proceeds of the Settlement Fund, after deducting litigation costs and costs of settlement or claims administration, of this Settlement Agreement (the “Net Settlement Fund”), shall be allocated to the State at Issue defined above, in accordance with the plan summarized below.

13. The amount of the Net Settlement Fund allocated to the State at Issue shall be used for contributions to the departments of weights and measures, or other agencies responsible for regulating retail motor fuel dispensers in the State at Issue, for purposes of defraying some of the State’s costs of implementing the use of ATC Equipment (should such implementation be approved):

(a) To receive a payment from the Net Settlement Fund, an eligible state agency must provide to the Settlement Administrator a written statement that: (i) explains that the State at Issue has adopted the use of ATC Equipment for retail sales of motor fuel; and (ii) describes how the State would use a portion of the Settlement Fund to assist in that implementation.

(b) Upon receipt of a written statement containing the information set forth in subparagraph (a) above, and provided that the portion of the Net Settlement Fund to be distributed has not been exhausted, the Settlement Administrator will pay the amount (or at his discretion, a portion of the amount) requested to the state agency.

(c) If, after three years from the date this Settlement Agreement has become final as described herein, any portion of the Net Settlement Fund remains, such remaining portion shall be contributed to the general fund of the State at Issue.

14. Semi-annually after the Settlement Amount is paid into the Escrow Account, Class Counsel shall file with the Court and serve on the Settling Defendant a report accounting for each deposit into the Escrow Account, any interest accrued on the Settlement Amount, and each payment from the Settlement Fund, including the date on which each such payment was made and to whom, and confirming that amounts in the Settlement Fund were distributed in the manner provided in this Settlement Agreement and approved by the Court. Class Counsel will continue to file and serve such reports until such time as the Settlement Fund is exhausted and no sums remain in the Settlement Fund.

15. All administration of the Settlement Fund shall be concluded within three years from the date this Settlement Agreement has become final.

16. In no event shall the Settling Defendant have any obligation, responsibility, or liability, including liability for costs and expenses, arising from or relating to the administration, maintenance, distribution, or disposition of its payments, the Escrow Account, or the Settlement Fund, other than payments specifically referenced in this Agreement.

17. The Settling Defendant shall not have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among counsel for the Settlement Classes, and/or any other person who may assert some claim thereto, of any fee and expense award that the Court may make in the Action.

Escrow Account

18. The Escrow Account will be established at a bank or such other financial institution agreed upon by the Parties, with such bank or such other agreed-upon financial institution serving as escrow agent (“Escrow Agent”) subject to escrow instructions mutually acceptable to Class Counsel and counsel for the Settling Defendant, which Escrow Account shall

be administered under the Court's continuing supervision and control. Any fees for services rendered by the Escrow Agent in connection with the Escrow Account, and any expenses incurred in the creation, administration, and disbursement of the Escrow Account, shall be paid from the Settlement Fund.

19. The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government, and shall reinvest any income from these instruments and the proceeds from these instruments as they mature in similar instruments at their then current market rates. Any accrued interest shall remain with the balance of the Settlement Fund.

20. All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and further order(s) of the Court.

21. The Parties agree to treat the Settlement Fund as being at all times "qualified settlement funds" within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

22. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The

Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in paragraph 21) shall be consistent with paragraph 24, and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 23 hereof.

23. All of the following shall be paid out of the Settlement Fund: (i) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Settling Defendant with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as “qualified settlement funds” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of paragraphs 18-24 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph (“Tax Expenses”)).

24. Neither the Settling Defendant nor its counsel shall have any liability or responsibility for the Taxes or Tax Expenses, or for maintaining or securing any desired tax status for the Settlement Fund, nor for any negligence, fraud, or malfeasance regarding the Settlement Fund. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any

Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Settling Defendant is not responsible, nor shall it have any liability for, any Taxes. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of paragraphs 18-24.

Release of Claims

25. The Parties stipulate and agree that the period for any damages, restitution, or other relief sought against the Settling Defendant in the Action is amended to include the period up to and including the date of preliminary approval of this Settlement Agreement.

26. The “Releasing Parties” in this Settlement Agreement are all members of the Settlement Class and their respective heirs, executors, administrators, trustees, successors, assigns, and representatives, who have not timely opted out and excluded themselves from this Action and this Settlement Agreement as provided below.

27. The “Released Parties” in this Settlement Agreement are Thorntons Inc. and all of its past, present, and future officers, directors, stockholders, employees, agents, legal representatives, insurers, trustees and administrators.

(a) For the avoidance of doubt, “Released Parties” does not include any person or entity, if any, that operated or is operating a retail motor fuel station selling motor fuel under any of the Settling Defendant’s brands pursuant to a trademark license agreement with the Settling Defendant, or any agreement with the Settling Defendant that is subject to the provisions of the Petroleum Marketing Practices Act, 15 U.S.C. § 2801 et seq., provided that, where such person or entity is or was a subsidiary of the Settling Defendant, “Released Parties” includes

such person or entity for the time period during which such person or entity is or was a subsidiary of the Settling Defendant.

28. In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, including but not limited to any preclusive effect, and in consideration of payment of the Settlement Amount and for other good and valuable consideration, the Releasing Parties hereby expressly and irrevocably waive and fully, finally, and forever settle, discharge, and release the Released Parties from any and all manner of claims, demands, judgments, actions, suits, obligations, promises and causes of action, whether individual, class, or otherwise in nature, for damages whenever incurred, and for liabilities of any nature whatsoever, including for penalties, fines, charges, costs, expenses, injunctive relief, declaratory relief, attorneys' fees, claims for contribution or indemnification, or the like, whether known or unknown, suspected or unsuspected, in law or equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have, arising out of or relating in any way to: (i) any conduct or failure to act of any Released Party alleged and causes of action asserted in the Action or Underlying Actions, or that could have been alleged or asserted in the Action and that relate to the temperature or energy content of motor fuel sold at retail; (ii) any act, representation, or omission of any Released Party concerning the temperature or energy content of motor fuel; (iii) any conduct or failure to act of any person or entity, other than the Released Parties, selling motor fuel under any of the Settling Defendant's brands, which was alleged or could have been alleged or asserted in the Action or Underlying Action and that relate to the temperature or energy content of motor fuel sold at retail; (iv) the purported over-collection of state and federal motor fuel excise taxes from consumers based on the number of gallons dispensed without adjustment for the effect of

temperature; and/or (v) the alleged participation in a conspiracy to preclude the use of ATC Equipment in the States at Issue.

29. For the avoidance of doubt, the types of claims released in the preceding paragraph are released regardless of the type of cause of action, common law principle, or statute under which they are asserted; for example, and without limitation, such claims are released whether asserted under any federal, state, or local unfair competition, unfair practices, deceptive practices, antitrust, common law breach of contract, breach of warranty, breach of the duty of good faith and fair dealing, unjust enrichment, or civil conspiracy law, or similar law or regulation of any jurisdiction within the United States.

30. Each Releasing Party further expressly and irrevocably waives and fully, finally, and forever settles and releases, upon the Court's final approval of this Settlement Agreement, any and all defenses, rights, and benefits that the Releasing Party may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in paragraphs 25-29.

31. The Releasing Parties hereby covenant and agree that they shall not, hereafter, seek to establish liability against any of the Released Parties based, in whole or in part, upon any of the released claims.

Preliminary Court Approval

32. Plaintiffs and the Settling Defendant shall recommend approval of this Settlement Agreement by the Court and all reviewing courts. Plaintiffs and the Settling Defendant shall use their best efforts to effectuate this Settlement Agreement, including cooperating in seeking amendments to the underlying complaints as necessary, and obtaining judicial approval for the

establishment of procedures to secure the prompt, complete, and final dismissals with prejudice of the Action, and the Underlying Action.

33. The following are conditions precedent to this Settlement Agreement:

(a) Plaintiffs agree not to seek the attendance of officers and/or employees of the Settling Defendant to testify at the trial in any Underlying Action. Settling Defendant agrees that its officers and/or employees will not testify at the trial any Underlying Action unless pursuant to subpoena or other process validly served (for avoidance of doubt, a subpoena is not validly served under this provision if the Settling Defendant, its officers and/or employees agree to accept service of a subpoena that would not be validly served without their consent).

(b) Plaintiffs agree that they will not seek to obtain discovery, documents, or testimony from the Settling Defendant, via discovery requests, subpoenas, or otherwise, in connection with the Underlying Actions. Notwithstanding the foregoing, Plaintiffs are not precluded by this Settlement Agreement from seeking to obtain additional discovery, documents, and testimony from the Settling Defendant in the future, for purposes of prosecuting Plaintiffs' claims against other defendants in the Underlying Actions, solely to the extent that future mergers, acquisitions, or employee transfers result in the Settling Defendant having in its possession in the future relevant discoverable information that relates to other defendants in the Underlying Actions.

34. Provided that all of the conditions precedent set forth in the preceding paragraph are satisfied, Class Counsel shall submit to the Court as soon as practicable a Motion for Preliminary Approval of this Settlement Agreement. Plaintiffs and the Settling Defendant shall jointly seek the Court's entry of an order(s) (the "Preliminary Approval Order"), to:

(a) Preliminarily approve this Settlement Agreement.

(b) Approve the provisional certification of the Settlement Class for settlement purposes only, and declare that in the event of termination of this Settlement Agreement as provided below, certification of the Settlement Class shall automatically be vacated and the Settling Defendant may fully contest certification of any class as if no Settlement Class had been certified.

(c) Appoint Robert A. Horn, Thomas V. Girardi, George A. Zelcs, and Thomas V. Bender as Class Counsel.

(d) Appoint Dahl Administration, LLC (“Notice Administrator”) to assist Class Counsel in effectuating the Notice Plan and exclusion procedures defined below and perform such related duties as may be necessary.

(e) Appoint a settlement administrator (“Settlement Administrator”) to process any requests for payment from the Net Settlement Fund and perform such related duties as may be necessary.

(f) Determine that notice and exclusion rights should be provided to members of the Settlement Class.

(g) Approve the method of notice to be provided to the Settlement Class that will be submitted by Class Counsel (the “Notice Plan”), and find that it complies with the requirements of Federal Rule of Civil Procedure 23.

(h) Approve the procedures described in the Notice Plan below for members of the Settlement Class to opt out and exclude themselves from the Class, the Action, and this Settlement Agreement, or to object to this Settlement Agreement.

(i) Stay all proceedings in the Action as between Plaintiffs and the Settling Defendant, except those related to effectuating and complying with the Settlement Agreement,

pending the Court's determination of whether the Settlement Agreement should be finally approved.

Notice and Exclusion Procedures

35. Class Counsel and the Notice Administrator approved by the Court shall provide notice to the Settlement Class and exclusion procedures in the form and manner approved by the Court, and shall perform such related duties as may be necessary to provide the notice and exclusion procedures. The Settling Defendant will not object to the Notice Plan, provided that the Court finds that it complies with the requirements of Federal Rule of Civil Procedure 23.

36. The Parties will request that the Preliminary Approval Order provide for a period of no more than thirty days after completion of the notice described in the Notice Plan, for any member of the Settlement Class that does not wish to participate in this Settlement Agreement to opt out and be excluded from the Settlement Class. Such exclusion may be effected in the form and manner approved by the Court.

37. Within ten days after the conclusion of the period for exclusion, Class Counsel shall provide counsel for the Settling Defendant with a list of each member of the Settlement Class that sought to opt out and be excluded from this Settlement Agreement, stating whether the request for exclusion was properly and timely made, and attaching a copy of all documentation concerning each request for exclusion submitted.

38. The Parties will request that the Preliminary Approval Order provide for a period of no more than thirty days after completion of the notice described in the Notice Plan, for any member of the Settlement Class that does not submit a request for exclusion to object to this Settlement Agreement. Such objection may be effected in the form and manner approved by the Court.

39. The Notice Administrator's expenses for the foregoing activities, including those of any third-party vendors it uses to perform tasks necessary for the implementation or effectuation of its duties, shall be paid from the Settlement Fund. Should the Notice Administrator perform the foregoing activities for settlement agreements for the Refiner Settling Defendants and other settling defendants, expenses incurred for such activities will be paid from the settlement funds of the settling defendants in proportion to a respective settlement fund's percentage of the total amount of all settlement funds combined (by way of illustration only, if the combined total of settlement funds for all settling defendants is \$20 Million and the Settlement Fund is \$1 Million, 5% of the Notice Administrator's expenses will be paid by the Settlement Fund), and taking also into account the amounts agreed to be used to cover or reimburse expenses incurred in administering those settlement agreements that do not provide for monetary payments for the benefit of the members of the settlement classes. In no event shall the Settling Defendant or any of the Released Parties have any obligation, responsibility, or liability with respect to the Notice Administrator, the Notice Plan, or the exclusion procedures, including with respect to the costs, administration expenses, or any other charges for any notice and exclusion procedures, except as provided herein.

40. If the Court does not allow this Settlement to be included in the currently approved joint settlement notice plan, or requires direct notice to any Class member in this Settlement, the parties agree to revisit the issue of notice costs. If the parties are unable to resolve the issue of notice costs after revisiting the issue, this Agreement shall be voidable at Plaintiffs' sole discretion, shall thereafter have no legal effect and the parties will revert to their positions existing on the date immediately prior to the date of execution of this Agreement.

Final Court Approval

41. As soon as practicable after expiration of the period to opt out or object, Class Counsel will make a motion for the Court to enter an order (the “Order Granting Final Approval”) and a judgment (“Judgment”) which will:

(a) Determine that the Court has personal jurisdiction over the Settling Defendant and all members of the Settlement Class, and jurisdiction to finally approve this Settlement Agreement.

(b) Finally approve this Settlement Agreement as being fair, reasonable, and adequate for the members of the Settlement Class within the meaning of Federal Rule of Civil Procedure 23 and any other applicable rules, and direct its consummation according to its terms.

(c) Approve the releases set forth above in this Settlement Agreement, and enjoin the members of the Settlement Class and anyone acting on their behalf from asserting any of the released claims.

(d) Define the Settlement Class and finally certify it for settlement purposes only, and declare that in the event of termination of this Settlement Agreement, certification of the Settlement Class shall automatically be vacated and the Settling Defendant may fully contest certification of any class as if no Settlement Class had been certified.

(e) Approve the notice provided to the Settlement Class as due, adequate, and sufficient, as the best practicable notice under the circumstances, and as fully satisfying the requirements of due process, the Federal Rules of Civil Procedure, and any other applicable laws or rules.

(f) Find that the Settling Defendant has served upon the appropriate State official(s) in Kentucky, and the appropriate Federal official(s), a notice of proposed settlement that complies with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715.

(g) Direct that, as to the Settling Defendant, the Action and the Underlying Action be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs.

(h) Provide that the Court retains continuing jurisdiction over the Settlement Class and the Settling Defendant to implement, administer, consummate, and enforce this Settlement Agreement and the Judgment and the Order Granting Final Approval.

(i) Determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the judgment of dismissal with prejudice as to the Settling Defendant shall be final and appealable.

42. Upon entry of the Order Granting Final Approval, and after all appeals or potential appeals of the same have been exhausted and the Order Granting Final Approval is affirmed, or the time for all appeals of the same have expired, Class Counsel shall fully comply with the terms of the Protective Order entered on April 21, 2008 in the Action and shall return to the Released Parties or destroy all documents, material, and deposition transcripts produced by the Released Parties, and all copies of same.

Representations and Warranties

43. Plaintiffs and Class Counsel represent and warrant that there are no pending personal injury claims in the Action or any of the Underlying Actions, and that they are unaware of any such claims. Plaintiffs and Class Counsel further represent that they are unaware of any insurance, hospital, medical, Medicaid, Medicare, ERISA, Social Security, SSI, attorney liens, or

any other type of lien of any kind whatsoever for any claims alleged in the Action or any of the Underlying Action, and that no parties other than those named in this Settlement Agreement have any interest in or right to the settlement proceeds being paid.

Termination

44. Plaintiffs and the Settling Defendant each may terminate this Settlement Agreement by providing written notice to counsel for the other parties and the Court within ten business days after any of the following occurrences:

(a) The Court does not enter a Preliminary Approval Order containing the provisions set forth above in this Settlement Agreement, or subsequently seeks to significantly modify any of its terms.

(b) The Court does not enter a Judgment and an Order Granting Final Approval containing the provisions set forth as detailed above in this Settlement Agreement, or subsequently seeks to significantly modify any of its terms. For the avoidance of doubt, any order of the Court that purports to impose additional material obligations on the Parties (financial or otherwise), or any order on review or appeal that would have the foregoing effect, constitutes a basis for termination of this Settlement Agreement.

(c) The Court does not provisionally or finally certify for settlement purposes only the Settlement Class as defined above, or significantly limits or changes the composition of that Class.

(d) Any material term of this Settlement Agreement, the Court's Preliminary Approval Order, the Court's Judgment, or the Court's Order Granting Final Approval are not substantially affirmed or are significantly modified on any appeal or otherwise.

(e) Any court issues an order affecting in whole or in part the settlement class definition, the settlement consideration, the release of claims or any other material terms or conditions of this Settlement Agreement, as set forth above.

45. In the event that the number of members of the Settlement Class who timely and validly request exclusion from such class exceeds one percent (1%) of the total number of members of the Settlement Class, the Settling Defendant may terminate this Settlement Agreement by providing written notice to Class Counsel and the Court within ten business days after Class Counsel provides to counsel for the Settling Defendant the list of requests for exclusion described above. In order to establish the 1% threshold contemplated by this paragraph, the size of the Settlement Class will be determined using the total estimated number of adult drivers (population 18 years and over) in the State at Issue, as reported in the most recent data available from the U.S. Census Bureau at the time Class Counsel serves the above-mentioned list of requests for exclusion.

46. In the event of an occurrence giving rise to a basis for termination of this Settlement Agreement, Plaintiffs and the Settling Defendant agree to negotiate reasonably and in good faith an appropriate amended Settlement Agreement.

47. In the event of termination of this Settlement Agreement:

(a) This Settlement Agreement shall be null and void, and of no force and effect, except as provided in subparagraphs (b)-(f) below.

(b) The Settling Defendant shall not be required to make any further payments to the Settlement Fund or the Escrow Account, and all sums that the Settling Defendant paid that are in the Escrow Account, plus any accrued interest less taxes and administrative costs with

respect to those sums, shall be immediately paid to an account designated by the Settling Defendant.

(c) Any certification of the Settlement Class by the Court, and any amendments to the operative complaints in the Underlying Action made pursuant to this Settlement Agreement, will automatically be vacated. The Settling Defendant will retain all defenses to certification and their non-opposition to the Settlement Classes for settlement purposes only shall not be used as evidence, and shall not be admissible as such, in support of class certification in the Action, any of the Underlying Action, or any other civil action or proceeding.

(d) Plaintiffs and the Settling Defendant shall revert to their positions prior to the execution of this Settlement Agreement, including with respect to the appropriateness of class certification, as if the Settlement Agreement had not been reached or executed.

(e) Plaintiffs and the Settling Defendant will propose to the Court, or as appropriate, the court in the appropriate Underlying Action, a reasonable schedule by which the Settling Defendant would rejoin the other Underlying Action.

(f) The terms and conditions of this Settlement Agreement, the facts and circumstances surrounding this settlement, any publicly disseminated information regarding the Settlement Agreement, and any orders or motion filings or objections concerning the Settlement Agreement (including without limitation the Court's Preliminary Approval Order, the Order Granting Final Approval, the Judgment, and all motion papers concerning those Orders), may not thereafter be used as evidence, and shall not be admissible as such, in the Action, any of the Underlying Action, or any other civil action or proceeding.

Communications

48. Plaintiffs, the Settling Defendant, and their respective counsel, including Class Counsel, shall not engage in any conduct or make any statements, directly or indirectly, to encourage, promote, or solicit members of the Settlement Class or their counsel to request exclusion from the Settlement Class or to object to this Settlement Agreement, or to facilitate, induce, or cause the non-fulfillment of a condition or the occurrence of an event giving rise to a right to terminate this Settlement Agreement.

49. No Plaintiff, the Settling Defendant, their respective counsel, or Class Counsel, or anyone else acting on behalf of them may make any negative or derogatory comments concerning the Action, the Underlying Action or this Settlement Agreement; except that in response to inquiries by members of the Settlement Class, the press or otherwise, Plaintiffs, the Settling Defendant, their respective counsel, or Class Counsel may make statements consistent with those set forth in Appendix A to this Settlement Agreement.

Continuing Jurisdiction

50. The Court will retain continuing jurisdiction over the Plaintiffs, the Settlement Class, and the Settling Defendant to implement, administer, consummate, and enforce the Settlement Agreement and the Judgment and the Order Granting Final Approval.

51. Plaintiffs, the Settlement Class, and the Settling Defendant hereby submit to the exclusive jurisdiction of the United States District Court for the District of Kansas for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the Judgment and the Order Granting Final Approval, or to the applicability of this Settlement Agreement or the Judgment and the Order Granting Final Approval, which cannot be resolved by negotiation and agreement by Plaintiffs and the Settling Defendant. Without limiting the

generality of the foregoing, it is hereby agreed that any dispute, including but not limited to any suit, action, or proceeding by a Plaintiff or member of the Settlement Class, in which the provisions of this Settlement Agreement or the Judgment and the Order Granting Final Approval are asserted as a defense in whole or in part to any claim or cause of action, or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement or the Judgment and the Order Granting Final Approval.

52. In the event that the provisions of this Settlement Agreement or the Judgment and the Order Granting Final Approval are asserted by the Settling Defendant as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any other suit, action, or proceeding by a Plaintiff or member of the Settlement Classes, it is hereby agreed that the Settling Defendant may seek, and that Plaintiffs and Settlement Class members will not oppose, a stay of that suit, action, or proceeding until the Court has entered an order or judgment determining any issues relating to the defense or objections based on such provisions.

Additional Terms and Conditions

53. Plaintiffs, the Settling Defendant, their respective counsel, and Class Counsel shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Settlement Agreement and to obtain the benefit of this Settlement Agreement for Plaintiffs, the Settlement Class, and the Settling Defendant.

54. The Settling Defendant specifically denies any and all liability in the Action and Underlying Action. By entering into this Settlement, it is expressly understood and agreed that the Settling Defendant is not admitting any liability or wrongdoing whatsoever to Plaintiffs, any member of the Settlement Class, or any other person or entity, and is not admitting the truth of

any allegations or circumstances, nor is the Settling Defendant waiving any defense or affirmative defense.

55. This Settlement Agreement, and all negotiations, documents, and discussions associated with it, shall not be construed as, or deemed to be, evidence of any admission of any liability or wrongdoing on the part of the Settling Defendant or any of the Released Parties, or of the truth or merit of any allegations or claims in the Action, or evidence of any admission on the part of Plaintiffs and the Settlement Class that their potential claims lack merit, or the propriety of the certification of a damages or liability class in the Action or Underlying Action; and shall not be offered or accepted as evidence of such in any litigation, arbitration, or other proceeding between or among Plaintiffs or members of the Settlement Class and the Settling Defendant or any Released Party, and shall have no precedential value; provided, however, that nothing contained herein shall preclude use of this Settlement Agreement in any proceeding to enforce the Settlement Agreement. This paragraph shall survive any termination or rescission of the Settlement Agreement.

56. This Settlement Agreement constitutes the entire, complete, and integrated agreement between and among Plaintiffs, on behalf of themselves and the Settlement Class, and the Settling Defendant with respect to the settlement of the Action, and is not subject to any condition not provided for in this Settlement Agreement. All of the appendices to this Settlement Agreement are material and integral parts of it and are incorporated by reference as if fully set forth herein. This Settlement Agreement supersedes all prior and contemporaneous negotiations and agreements and may not be modified or amended except by a writing signed by Plaintiffs and the Settling Defendant or their respective counsel.

57. This Settlement Agreement shall not be construed more strictly against any party to it merely because it may have been prepared by counsel for one of them, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all parties to this Settlement Agreement have contributed substantially and materially to the preparation of it. All headings used in this Settlement Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Settlement Agreement.

58. The waiver by Plaintiffs, the Settlement Class, or the Settling Defendant of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous.

59. This Settlement Agreement shall be construed, enforced, and administered in accordance with the substantive laws of the State of Kansas without reference to its conflict of laws principles.

60. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs shall be binding upon all members of the Settlement Class and the Releasing Parties.

61. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any member of the Settlement Class asserted in the Action against any defendant other than the Released Parties. All rights against such other defendants are specifically reserved by Plaintiffs and the Settlement Class.

62. Any notice or materials to be provided to Plaintiffs or the Settlement Class pursuant to this Settlement Agreement shall be sent by e-mail and overnight delivery to:

Robert A. Horn
Horn Aylward & Bandy, LLC
2600 Grand Blvd., Suite 1100

Kansas City, MO 64108
Telephone: (816) 421-0700
Facsimile: (816) 421-0899
rhorn@hab-law.com

or such other persons or addresses as Class Counsel may designate by giving notice to the other Parties.

63. Any notice or materials to be provided to the Settling Defendant pursuant to this Settlement Agreement shall be sent by e-mail and overnight delivery to:

Shelly S. Gibson
Chief Legal Officer/General Counsel
Thorntons Inc.
10101 Linn Station Rd., Suite 200
Louisville, KY 40223
Telephone: (502) 425-8022
Facsimile: (502) 425-9664
Gibson@thorntonsinc.com

and

Daniel B. Hodes
Rouse Hendricks German May PC
1201 Walnut Street, Suite 2000
Kansas City, MO 64106
Telephone: (816) 471-7700
Facsimile: (816) 471-2221
danh@rhgm.com

or such other persons or addresses as the Settling Defendant may designate by giving notice to the other Parties.

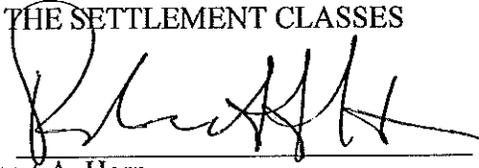
64. In entering into and executing this Settlement Agreement, Plaintiffs and the Settling Defendant warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person or entity, other than the warranties and representations expressly made in this Settlement Agreement.

65. This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. A signature by facsimile or in PDF format will constitute sufficient execution of this Settlement Agreement.

IN WITNESS WHEREOF, the signatories have read and understood this Settlement Agreement, have executed it, represent that the undersigned are authorized to execute this Settlement Agreement on behalf of their respectively represented parties, have agreed to be bound by its terms, and have duly executed this Settlement Agreement.

FOR ALL PLAINTIFFS AND ON BEHALF OF THE SETTLEMENT CLASSES

Dated: Mar. 11, 2014

By: 
Robert A. Horn
HORN AYLWARD & BANDY, LLC
2600 Grand Blvd., Suite 1100
Kansas City, MO 64108
Telephone: (816) 421-0700
Facsimile: (816) 421-0899
rhorn@hab-law.com

Dated: _____

By: _____
Thomas V. Girardi
GIRARDI & KEESE
1126 Wilshire Boulevard
Los Angeles, CA 90017
Telephone: (213) 977-0211
Facsimile: (213) 481-1554
tgirardi@girardikeese.com

Dated: 3-11-14

By: 
George A. Zelcs
KOREIN TILLERY LLC
205 North Michigan Plaza, Suite 1950
Chicago, IL 60601
Telephone: (312) 641-9750
Facsimile: (312) 641-9751
gzelcs@koreintillery.com

Dated: _____

By: _____
Thomas V. Bender
WALTERS BENDER STROHBEHN &
VAUGHAN, P.C.
1100 Main Street, Suite 2500
Kansas City, MO 64196
Telephone: (816) 421-6620
Facsimile: (816) 421-4747
tbender@wbsvlaw.com

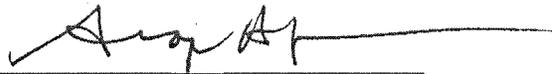
Class Counsel

FOR DEFENDANT THORNTONS INC.

Dated: _____

By: _____
Shelly S. Gibson
Chief Legal Officer/General Counsel

Dated: 3-11-14

By: 
George A. Zelcs
KOREIN TILLERY LLC
205 North Michigan Plaza, Suite 1950
Chicago, IL 60601
Telephone: (312) 641-9750
Facsimile: (312) 641-9751
gzelcs@koreintillery.com

Dated: 3/14/14

By: 
Thomas V. Bender
WALTERS BENDER STROHBEHN &
VAUGHAN, P.C.
1100 Main Street, Suite 2500
Kansas City, MO 64196
Telephone: (816) 421-6620
Facsimile: (816) 421-4747
tbender@wbsvlaw.com

Class Counsel

FOR DEFENDANT THORNTONS INC.

Dated: _____

By: _____

Shelly S. Gibson
Chief Legal Officer/General Counsel

Dated: _____

By: _____
George A. Zelcs
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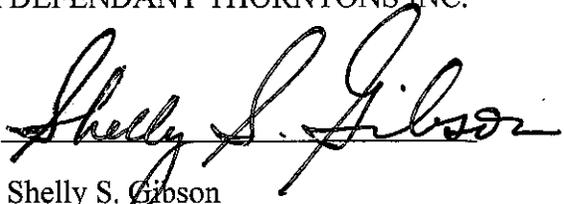
Dated: _____

By: _____
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VAUGHAN, P.C.
1100 Main Street, Suite 2500
Kansas City, MO 64196
Telephone: (816) 421-6620
Facsimile: (816) 421-4747
tbender@wbsvlaw.com

Class Counsel

FOR DEFENDANT THORNTONS INC.

Dated: _____

By: 
Shelly S. Gibson
Chief Legal Officer/General Counsel

APPENDIX A

Statement for Press Inquiries

“I can verify that a preliminary settlement has been reached in the temperature correction cases around the country. The settlement agreement is designed to fully resolve the cases against the parties to the settlement. Thorntons Inc. denies any liability or wrongdoing in this matter, and has entered into this settlement agreement solely for the purpose of avoiding the burden and expense of continued litigation. The settlement agreement is subject to review and approval by the court as well as by the members of the settlement class. I cannot comment on the terms or provisions of the settlement agreement. The terms and provisions of the settlement agreement will be made public through the court process for the approval of the settlement.”