

CANADA

SUPERIOR COURT  
(Class action)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-06-000994-190

**FRÉDÉRIC MORIER**

Plaintiff

v.

**OUELLET CANADA INC.**

and

**STELPRO DESIGN INC.**

and

**GLEN DIMPLEX AMERICAS LTD.**

Defendants

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**MOTION OF DEFENDANT GLEN DIMPLEX AMERICAS LTD.  
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE  
(art. 574 al. 3 of the *Code of Civil Procedure*)**

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**TO THE HONOURABLE JUSTICE SYLVAIN LUSSIER OF THE SUPERIOR COURT  
ASSIGNED TO THE CASE MANAGEMENT AND HEARING OF THE MOTION TO AUTHORIZE  
THE BRINGING OF A CLASS ACTION, DEFENDANT GLEN DIMPLEX AMERICAS LTD.  
RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. CONTEXT**

1. Plaintiff Frédéric Morier ("**Plaintiff**") has filed a *Demande d'autorisation amendée et corrigée pour exercer une action collective et pour être désigné (...) représentant* (the "**Motion**") against Defendants Ouellet Canada Inc., Stelpro Design Inc. and Glen Dimplex Americas Ltd. ("**Dimplex**"), the whole as more fully appears from the Court record herein;
2. On the basis of public notices published by Defendants in March 2019 and callback notices published by the Government of Canada in April 2019, Plaintiff alleges that a hidden defect, which poses a risk of electric arcing and fire, affects several models of heaters sold, distributed and/or manufactured by the Defendants between 1989 and 2016 ("**Heaters**" or "**Heater**");
3. Plaintiff wishes to institute a class action on behalf of all persons, natural or legal, domiciled or residing in Canada who are or have been the owners of one of the Heaters identified below:

Fabricants	Marques	Numéro de modèle / description	Territoire de vente	Période de la vente
OUELLET (291 375)	Ouellet	OCC4800 OAE5000T OCH4800WB OCH4800RF	Canada	Entre 1989 et 2016
	Electrimart	CH48 ECH48		
	Global Commander	CHG4800 CCG4800		
STELPRO (199 660)	Stelpro Design	PCH48T PCH4800T	Canada	Entre 2000 et 2009
	Uniwatt	UCH48 UCH48T UCH4800T		
GLEN DIMPLEX AMERICAS (420 000)	Chromalox Centurion Electromode Westcan Dimplex	GCH4800 GCH4800B GCH4831 CCONS4800 ECH-48 ECH4800B BCH4800 DCH-4831 DCH4831A DCH4831R	Canada	Entre 1992 et 2006

4. The damages claimed by Plaintiff on behalf of each of the class members are as follows:
- a. The selling price of the Heaters, less 2% depreciation per year of use;
  - b. \$150.00 per member of the group representing the moral prejudice resulting from the risk of fire;
  - c. \$100.00 per member of the group representing punitive damages for having deliberately continued to manufacture and sell the Heaters;

## II. MOTION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE

5. Dimplex requests leave from this Honourable Court to adduce evidence with the purpose of presenting a complete contestation with respect to the criteria of Article 575 Code of Civil Procedure (“CCP”), and, as such, allow this Honourable Court to have at its disposal all the necessary information to evaluate whether the Motion meets said criteria and whether it has jurisdiction over the certain members of purported class;
6. Dimplex contends that the evidence that it wishes to adduce is essential for an appropriate comprehension of the facts that Plaintiff will want this Honorable Court to consider for the analysis provided for by the criteria of article 575 CCP and the jurisdiction of this Court;
7. The criteria that this Honorable Court must consider in deciding whether or not to grant the Motion are set out at article 575 CCP:

*“575. The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that*

*(1) the claims of the members of the class raise identical, similar or related issues of law or fact;*

*(2) the facts alleged appear to justify the conclusions sought;*

*(3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and*

*(4) the class member appointed as representative plaintiff is in a position to properly represent the class members.”*

8. Article 574, paragraph 3 CCP provides that the judge hearing an application for the bringing of a class action and to ascribe the status of representative may allow relevant evidence to be submitted;
9. As it has been clearly stated by the Court of Appeal in the *Pharmascience* matter (Court number 500-09-014659-049), this Honorable Court has the discretion to authorize that the relevant evidence be filed in the context of the Motion;
10. In fact, the purpose of the criteria provided at article 575 CCP is to verify the legal *rationale* and to allow this Honourable Court to verify the grounds on which the allegations of the Motion are based:

*“[35] En l'espèce, l'audition ne vise pas la détermination des droits et obligations de Pharmascience puisque l'action n'est pas encore formée, mais l'octroi à une personne d'un mandat lui permettant de représenter un groupe et la vérification du syllogisme juridique qui prend appui dans les allégations de la demande en justice. Ce contrôle, qui s'exerce à l'occasion d'une audition publique, est réalisé après la contestation, orale certes, mais indubitablement réelle, vigoureuse et sans contrainte. À cet égard, rien n'interdit à toute partie, et au premier chef à l'intimée, de requérir du juge la présentation d'une preuve dans la mesure où elle le convainc qu'elle est appropriée. [...]”*

11. In order to allow this Honorable Court to determine whether Plaintiff's Motion meets the criteria of article 575 CCP and whether this Court has jurisdiction over certain members of the purported class, it is essential to grant the present motion;

III. **NATURE OF RELEVANT EVIDENCE**

12. Dimplex requests leave to adduce relevant evidence relating to two different topics:
- i) the fact that Dimplex does not have its domicile or residence or any establishment in the province of Québec;
  - ii) the fact that the Dimplex heaters in dispute were between 27 and 13 years old in March/April 2019 and that only a small portion of these heaters were likely still in service in March/April 2019;
13. The above-mentioned evidence will be adduced by way of the Sworn Statement of Carmen Salvatore, Executive Vice President at Dimplex, copy of which is attached;

**Lack of presence in the province of Québec**

14. Carmen Salvatore's Sworn Statement will first demonstrate that since Dimplex does not have its domicile or residence or any establishment in the province of Québec, the Court does not have jurisdiction to hear the Motion with respect to class members who purchased a Heater outside the province of Québec;
15. Pursuant to article 3148 of the Civil Code of Québec, the evidence that Dimplex wishes to adduce clearly limits the jurisdiction of the Court:

*"3148. In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:*

- (1) the defendant has his domicile or his residence in Québec;*
- (2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;*
- (3) a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;*
- (4) the parties have by agreement submitted to them the present or future disputes between themselves arising out of a specific legal relationship;*
- (5) the defendant has submitted to their jurisdiction.*

*However, Québec authorities have no jurisdiction where the parties have chosen by agreement to submit the present or future disputes between themselves relating to a specific legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authorities"*

16. Consequently, this evidence is essential to demonstrate that the facts alleged do not appear to justify the conclusions sought with respect to all class members who purchased

a Dimplex Heater outside the province of Québec given the Court does not have jurisdiction over these class members;

**Age/useful economical life of the heaters in dispute**

17. Carmen Salvatore's Sworn Statement will also demonstrate that the Dimplex heaters in dispute were manufactured between 1991 or 1992 and week 25 of 2006 at the latest, and that under the circumstances, only a small portion of the Dimplex heaters in dispute were likely still in service in Quebec in March/April 2019 given the age of the heaters;
18. This evidence is essential to demonstrate that the facts alleged do not appear to justify the conclusions sought given no prejudice was likely suffered by the class members and to demonstrate that there is no class of persons;

**IV. CONCLUSION**

19. The evidence that Dimplex wishes to adduce is relevant and necessary for the Court in considering and applying the criteria for authorization of article 575 CCP and determine whether it has jurisdiction over certain members of the purported class;
20. Moreover, the above-mentioned evidence complies with the criteria of relevance, proportionality and reasonability provided for at articles 18 and 19 of the CCP;
21. The present motion is well founded in fact and in law.

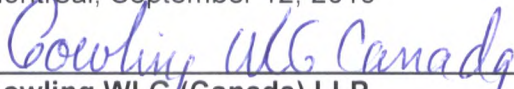
**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present motion;

**AUTHORIZE** Defendant Glen Dimplex Americas Ltd. to file the Sworn Statement of Carmen Salvatore attached herewith, for the purpose of the authorization hearing;

**THE WHOLE** without costs, except in case of contestation.

Montréal, September 12, 2019

  
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**Gowling WLG (Canada) LLP**

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Lawyers for Defendant **Glen Dimplex Americas Ltd.**

**NOTICE OF PRESENTATION**

Me Martin André Roy  
Roy Bastien avocats  
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Lawyers for Plaintiff

Me Marie-Claude Cantin, Me Louis Charrette,  
Me Myriam Brix  
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Lawyers for Defendant Stelpro Design inc.

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Lawyers for Defendant Ouellet Canada inc.

**PLEASE BE ADVISED** that the foregoing *Motion for leave to adduce relevant evidence* will be presented for adjudication before the Honourable Justice Sylvain Lussier of the Superior Court assigned to the case management and hearing of the *Motion to authorize the bringing of a class action*, in and for the district of Montréal, on November 8, 2019 at a time and a room to be determined, at the Courthouse situated at 1 Notre-Dame Street East, Montréal, Québec H2Y 1B6, or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, September 12, 2019

  
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**Gowling WLG (Canada) LLP**

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CANADA

SUPERIOR COURT  
(Class action)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-06-000994-190

**FRÉDÉRIC MORIER**

Plaintiff

v.

**OUELLET CANADA INC.**

and

**STELPRO DESIGN INC.**

and

**GLEN DIMPLEX AMERICAS LTD.**

Defendants

**AFFIDAVIT**

I, the undersigned, Carmen Salvatore, Executive Vice President at Glen Dimplex Americas Limited whose registered office is situated at 1367 Industrial Rd, Cambridge, Ontario, N3H 4W3, solemnly declare and make oath as follows:

1. I am Executive Vice President at Glen Dimplex Americas Limited.;
2. I swear this affidavit in the context of Plaintiff's *DEMANDE D'AUTORISATION AMENDÉE ET CORRIGÉE POUR EXERCER UNE ACTION COLLECTIVE ET POUR ÊTRE DÉSIGNÉ (...)* *REPRÉSENTANT* and in support of Glen Dimplex Americas Ltd.'s *MOTION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE*;
3. I have been employed by Glen Dimplex Americas Limited (formerly Dimplex North America Limited) since July 2005;

Lack of Presence in the province of Québec

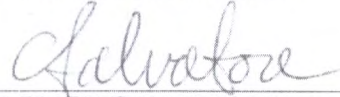
4. Glen Dimplex Americas Limited has no domicile in the province of Québec;
5. Glen Dimplex Americas Limited has no residence in the province of Québec;
6. Glen Dimplex Americas Limited has no establishment in the province of Québec;

Age/useful economical life of the heaters in dispute

7. To the best of my knowledge, the Dimplex heaters in dispute were manufactured between 1991 or 1992 and week 25 of 2006 at the latest;
8. The heaters in dispute are at the very least close to 13 years old while the oldest ones, if they still exist, could be 27 years old;
9. These heaters are designed as temporary use heaters. They are most often used on construction sites and in garages, sheds and workshops;

10. Given that the production of the heaters in dispute occurred between 27 and 13 years ago (last production prior to week 26 of 2006), it is highly likely that only a small portion of the Dimplex heaters in dispute were still in service in Quebec in March/April 2019;
11. All the facts alleged herein are true.

AND I HAVE SIGNED:

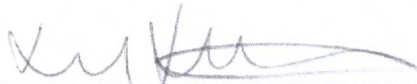


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CARMEN SALVATORE

Solemnly declared before me  
at the City of Kitchener, Province of Ontario

this 12 day of September, 2019



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Commissioner of Oaths

*manuel Marinus*



N° : 500-06-000994-190

DISTRICT DE MONTRÉAL  
COUR SUPÉRIEURE  
(Action collective)

**FRÉDÉRIC MORIER**

Demandeur

c.  
**OUELLET CANADA INC.**  
et  
**STELPRO DESIGN INC.**  
et  
**GLEN DIMPLEX AMERICAS LTD.**

Défenderesses

**MOTION OF DEFENDANT GLEN DIMPLEX  
AMERICAS LTD. FOR LEAVE TO ADDUCE  
RELEVANT EVIDENCE (art. 574 al. 3 of the  
Code of Civil Procedure, NOTICE OF  
PRESENTATION AND AFFIDAVIT**

**ORIGINAL**



**GOWLING WLG**

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