

Amended pursuant to the Order of Mr. Justice Bowden,
pronounced on April 7, 2015 and pursuant to Supreme Court
Civil Rule 6-1,
Original filed on September 15, 2010

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

No. S106213
Vancouver Registry

JUN 16 2015

In the Supreme Court of British Columbia

Between



Trillum Project Management Ltd.

Plaintiff

and

**Hickory Springs Manufacturing Company,
~~Valle Foam Industries, Inc., Domfoam International, Inc.,~~
Carpenter Co., Carpenter Canada Co.,
The Woodbridge Group,
Foam Corporation, Flexible Foam Products, Inc.,
Scottdel Inc.,
Foamex Innovations, Inc., Foamex Innovations Canada,
Inc., Vincenzo Bonaddio, Michael Calderoni, Donald
Phillips, Future Foam, Inc.,
Leggett & Platt Inc., Mohawk Industries Inc., Vitafoam
Products Canada Limited and Vitafoam, Incorporated,**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff~~(s)~~_r.

- (a) if you ~~reside~~ were served with the notice of civil claim anywhere in Canada, within 21 days after ~~the date on which a copy of the filed notice of civil claim was served on you~~ that service,
- (b) if you ~~reside~~ were served the notice of civil claim anywhere in the United States of America, within 35 days after ~~the date on which a copy of the filed notice of civil claim was served on you~~ that service,
- (c) ~~if you reside elsewhere~~ if you were served with the notice of civil claim anywhere else, within 49 days after ~~the date on which a copy of the filed notice of civil claim was served on you~~ that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

PART 1: PART 1: STATEMENT OF FACTS

1. This case arises out of a conspiracy among the defendants to fix the ~~prices~~price of Carpet Underlay (as defined in paragraph 28 below), a flexible polyurethane foam and/or product.

~~polyurethane foam products ("Polyurethane Foam").~~

The Representative Plaintiff

2. The ~~Plaintiff~~plaintiff is a corporation incorporated pursuant to the laws of British Columbia and has an address for service c/o Camp Fiorante Matthews Mogerman, Suite 400, 856 Homer Street, Vancouver, British Columbia V6B 2W5. During the Class Period as described in paragraph 23 below, the ~~Plaintiff~~plaintiff purchased ~~Polyurethane Foam~~ directly from one or more of the ~~defendants~~Carpet Underlay.

The Class and Class Period

3. This action is brought on behalf of the plaintiff and all persons in British Columbia who purchased ~~Polyurethane Foam~~ directly from one or more of Carpet Underlay, excluding the defendants, and their present and former directors, officers, parents, subsidiaries and affiliates (collectively the "Class Members") from January 1, 1999 to August 3, 2010 (the present "Class Period"), or such other class definition or class period as the court may ultimately decide on the motion for certification.

The Defendants

4. Hickory Springs Manufacturing Company ("Hickory Springs") is a corporation with its headquarters at 235 2nd Avenue NW in Hickory, North Carolina, 28601. ~~It is one of the largest integrated components manufacturers and suppliers for the furniture and bedding industries with more than 60 operating facilities in the~~

~~United States and throughout the world. The furniture industry is the largest segment of Hickory Springs' customer base. With more than 160 flexible formulations, Hickory Springs is one of the United States' largest producers of foam. During the Class Period, Hickory Springs sold Polyurethane Foam. During the Class Period, Hickory Springs sold Carpet Underlay throughout Canada and the United States.~~

~~Valle Foam Industries, Inc. ("Valle") is a privately owned and operated corporation with its headquarters located at 4 West Drive, Brampton, Ontario L6T 2H7. Valle manufactures slab stock Polyurethane Foams for the furniture, bedding, packaging, carpet and children's toy industries. During the Class Period, Valle directly and/or through its control of its affiliates sold Polyurethane Foam throughout Canada including British Columbia and the United States.~~

~~Demfoam International, Inc. ("Demfoam") is a subsidiary of Valle Foam Industries, with its headquarters at 8785 Langelier Blvd. Saint Leonard, Quebec, H1P 2C0. During the Class Period Demfoam sold Polyurethane Foam throughout Canada including British Columbia and the United States.~~

- ~~1. Demfoam is a manufacturer/wholesaler of sponge and Polyurethane Foam.~~
- ~~2. Since its incorporation in 1963, Demfoam has grown to be Canada's leading and most diversified manufacturer of ether, ester, rebounded flexible Polyurethane Foams and visco-elastic foam. Demfoam provides foam for the following purposes: mattresses, sponge foam blocks, carpet cushion, pillows, bolsters, convolute, furniture foam, toppers, anti-static foam, anti-microbial foam, visco-elastic foam, camping foam, and sporting goods.~~

~~3. The business of Valle and Domfoam is inextricably interwoven with that of the other and each is the agent of the other for the purpose of the manufacture and sale of Polyurethane Foam and for the purposes of the conspiracy described below.~~

5. Carpenter Co. ("Carpenter") is a privately owned and operated ~~company~~corporation with its headquarters located at 5016 Monument Avenue, Richmond, Virginia, 23230 in the United States. Carpenter operates from around 30 locations in the United States and five in Canada including one in Surrey, British Columbia. During the Class Period, Carpenter ~~directly sold Polyurethane Foam~~Carpet Underlay throughout Canada and the United States.

~~4. Carpenter is the largest manufacturer of Polyurethane Foam cushioning in the world. It has divisions on the following areas: air filter media, bedding, carpet cushion, chemicals, chemical systems, consumer products, expanded polystyrene systems, flexible foam packaging furniture, molded manufacturing, polyester fiber, and tire products.~~

6. Carpenter Canada Co., ("Carpenter Canada") is a subsidiary of Carpenter with its head office located at 800-1959 Upper Water Street, Halifax, Nova Scotia, B3J 3N2. Carpenter Canada is extra-provincially registered in British Columbia with an address for service at Suite 104, 19052 26th Avenue, Surrey, B.C. V3S 3V7. During the Class Period, Carpenter Canada sold ~~Polyurethane Foam~~Carpet Underlay throughout Canada and in British Columbia.

7. The business of Carpenter and Carpenter Canada is inextricably interwoven with that of the other and each is the agent of the other for the purpose of the manufacture and sale of ~~Polyurethane Foam~~Carpet Underlay and for the purposes of the conspiracy described below.

8. ~~The Woodbridge Group~~Foam Corporation ("Woodbridge") is a Canadian corporation with its headquarters located at 4240 Sherwoodtowne Blvd.

Mississauga, Ontario, L4Z 2G6. ~~Woodbridge's primary business is supplying foam for automotive components, but also supplies other sectors including commercial and recreational transportation, building products, construction, packaging and several consumer and industrial markets. During the Class Period, Woodbridge directly sold Polyurethane Foam~~During the Class Period, Woodbridge sold Carpet Underlay throughout Canada and the United States.

9. Flexible Foam Products, Inc. ("Flexible Foam") is a ~~privately owned and operated~~an Ohio company~~corporation~~ with its headquarters located at 12575 Bailey Road, Spencerville, Ohio, 45887. ~~Flexible Foam has operations in Texas, Indiana, Florida and Wisconsin and is a subsidiary of Ohio Decorative Products, Inc.~~ During the Class Period, Flexible Foam directly sold ~~Polyurethane Foam~~Carpet Underlay throughout Canada and the United States.

10. Scottdel Inc. ("Scottdel") is a ~~privately held~~ corporation with its headquarters located at 400 Church Street, Swanton, Ohio, 43558. During the Class Period, Scottdel directly sold ~~Polyurethane Foam~~Carpet Underlay throughout Canada and the United States.

11. Foamex Innovations, Inc., formerly known as Foamex International, Inc. ("Foamex"), is a private company~~corporation~~ with its headquarters located at Suite 2000, 1400 Providence Road, Media, PA, 19063-2076. During the Class Period, Foamex sold ~~Polyurethane Foam~~Carpet Underlay throughout Canada and the United States.

~~4-12. On or about June 12, 2009, Foamex International, Inc. was liquidated and its assets were acquired by outside investors doing business as Foamex Innovations, Inc. Many of the senior officers and employees who worked for Foamex International, Inc. prior to the liquidation continued to work for Foamex Innovations, Inc. and/or its subsidiaries.~~

~~5. Foamex provides foam for the home, healthcare, electronics, industrial, personal care and transportation markets. Its foam is used in automotive cushioning, shipping~~

~~packages, beds and furniture, as well as personal electronics. Foamex also provides components for filters, dispensers, gaskets and seals in everything from blood oxygenators to computer disk drives.~~

13. Foamex Innovations Canada, Inc. ("Foamex Canada") a subsidiary of Foamex, is a company incorporated in the province of British Columbia with address for service at Suite 2600, Three Bentall Centre, P.O. Box 49314, 595 Burrard Street, Vancouver, B.C. V7X 1L3. During the Class Period, Foamex Canada sold ~~Polyurethane Foam~~Carpet Underlay throughout Canada including British Columbia.

14. The business of Foamex and Foamex Canada is inextricably interwoven with that of the other and each is the agent of the other for the purpose of the manufacture and sale of ~~Polyurethane Foam~~Carpet Underlay and for the purposes of the conspiracy described below.

15. During the Class Period, Vincenzo Bonaddio ("Bonaddio") was a senior level employee of Foamex or Foamex Canada or their subsidiaries. During the Class Period, he communicated about future price increases of Carpet Underlay with employees from competitors in the Carpet Underlay industry both before and after June 2009.

16. During the Class Period, Michael Calderoni ("Calderoni") was a senior level employee of Foamex or Foamex Canada or their subsidiaries. During the Class Period, he communicated about future price increases of Carpet Underlay with employees from competitors in the Carpet Underlay industry both before and after June 2009.

17. During the Class Period, Donald Phillips ("Phillips") was a senior level employee of Foamex or Foamex Canada or their subsidiaries. During the Class Period, he communicated about future price increases of Carpet Underlay with employees from competitors in the Carpet Underlay industry both before and after June

2009 (Bonaddio, Calderoni and Phillips are collectively referred to as the "Individual Defendants").

18. ~~Future Foam, Inc. ("Future Foam") is a privately owned and operated company~~corporation with its headquarters located in Council Bluffs, IA. ~~Future Foam produces foam products for bedding, foam blocks, carpet cushion, furniture, and packaging. During the Class Period, Future Foam~~Feamex sold ~~Polyurethane Foam~~Carpet Underlay throughout Canada and the United States.

19. Leggett & Platt, Inc. ("Leggett & Platt") is a publicly traded company with its headquarters at 1 Leggett Rd., Carthage, Missouri. During the Class Period, Leggett & Platt sold Carpet Underlay throughout the United States and Canada.

20. Mohawk Industries, Inc. ("Mohawk") is a publicly traded company with its headquarters at 160 S. Industrial Blvd., Calhoun, Georgia. During the Class Period, Mohawk sold Carpet Underlay throughout the United States and Canada.

21. ~~Vitafoam, Incorporated. ("Vitafoam") is a privately owned and operated company with its headquarters located in High Point, NC. During the Class Period, Vitafoam Inc. sold Polyurethane Foam, either directly or through its affiliates, sold~~Carpet Underlay throughout the United States and Canada.

~~6. Vitafoam, Inc. manufactures plastic netting, automotive products, general trade, and nonwoven products. It produces mattresses and pads, convoluted pads, wheelchair components, and protective packaging for medical supplies, as well as positioning and support wedges, and immobilizing devices, such as neck bracing pillows for the home and commercial healthcare industries. The company offers Polyurethane Foam products for packaging, furniture, and upholstery industries; marine industry products, such as fenders, drainable boat seats, waterproof cushions, air circulation pads, and filtration devices; and foam for fabric producers, laminators, trim companies, and original equipment manufacturers in the automotive industry. It also provides laminating~~

~~materials, such as fabrics, flexible Polyurethane Foam, nonwoven webs, films, and other substrates, as well as carpet underlay for residential and commercial sectors. Vitafoam, Inc. also serves medical, marine, technical, bedding, lamination, and carpet underlay industries.~~

22. Vitafoam Products Canada Limited ("Vitafoam Canada"), a subsidiary of Vitafoam, is a company headquartered in North York, Ontario. Vitafoam Canada is extraprovincially registered in British Columbia and has an address for service at Suite 1200, 200 Burrard Street, P.O. Box 48600, Vancouver, B.C. V7X 1T2. During the Class Period, Vitafoam Canada sold ~~Polyurethane Foam~~, either directly or through its affiliates, Carpet Underlay throughout Canada including British Columbia. (Vitafoam Canada, Hickory Springs, Carpenter, Carpenter Canada, Woodbridge, Flexible Foam, Scottdel, Foamex, Foamex Canada, Future Foam, Leggett & Platt, Mohawk and Vitafoam are collectively referred to as the "Corporate Defendants".)

~~7. Vitafoam Canada manufactures a variety of flexible Polyurethane Foam for use in furniture, bedding and automotive applications, including packaging, medical, industrial and a full range of memory foams. It also produces latex mattresses and toppers.~~

23. The business of Vitafoam and Vitafoam Canada is inextricably interwoven with that of the other and each is the agent of the other for the purpose of the manufacture and sale of ~~Polyurethane Foam~~ Carpet Underlay and for the purposes of the conspiracy described below.

The Former Defendants

24. Valle Foam Industries (1995) Inc. ("Valle") is a corporation with its headquarters located at 4 West Drive, Brampton, Ontario L6T 2H7. During the Class Period,

Valle sold Carpet Underlay throughout Canada including British Columbia and the United States.

25. Domfoam International, Inc. ("Domfoam") is a subsidiary of Valle, with its headquarters at 8785 Langelier Blvd. Saint-Leonard, Quebec, H1P 2C9. During the Class Period, Domfoam sold Carpet Underlay throughout Canada including British Columbia and the United States (Valle and Domfoam are collectively referred to as the "Former Defendants").

26. The business of Valle and Domfoam is inextricably interwoven with that of the other and each is the agent of the other for the purpose of the manufacture and sale of Carpet Underlay and for the purposes of the conspiracy described below.

27. The plaintiff has entered into a settlement agreement with the Former Defendants, which agreement has been approved by the Court. As a consequence all claims against the Former Defendants have been stayed.

Carpet Underlay

28. Carpet Underlay ("Carpet Underlay") is a product created by bonding together scrap polyurethane foam with chemicals into a padding material that is placed beneath carpet. Polyurethane foam itself is a material produced by combining several chemicals, including polyol, diisocyanate, and water.

Polyurethane Foam

~~8. Polyurethane Foams are used to insulate objects or reduce shock. Specifically, Polyurethane Foams are used in bedding, packaging, seat cushioning, carpet cushioning, shipping pads and shipping cushioning, care interiors, fluid filtration systems, anti-noise and vibration systems in aircraft, medical devices, and in a number of consumer applications.~~

29. ~~Polyurethane Foam consists of polymers made of molecular chains bound together by urethane links. It Carpet Underlay can be flexible or rigid. Flexible Polyurethane Foam is most often used in bedding and upholstery, while is placed beneath carpet to give a softer feel to the more rigid variety is used for products such as thermal carpet, extend the carpet's durability, and provide sound and heat insulation and automobile dashboards.~~
30. There are few no acceptable economic alternatives for Polyurethane Foam. In furniture and bedding applications, short staple polyester fibre or cotton may be used, but both alternative materials have poor height recovery characteristics after compression. Carpet Underlay,

Vitafoam Inc. Admission of a Conspiracy

31. In February 2010, Vitafoam voluntarily approached the U.S. Department of Justice, Antitrust Division to self-report evidence of illegal antitrust activities among itself and other companies in the industry and to seek acceptance into the Antitrust Division's Corporate Leniency Program. Since then Vitafoam has been cooperating with the investigation by the Department of Justice.
32. In January 2012, Domfoam and Valle pleaded guilty to conspiracy under the Competition Act, R.S.C. 1985, c. C-34 and to participation in a cartel to fix the prices of Carpet Underlay and polyurethane foam between January 1, 1999 and July 27, 2010.

The Conspiracy and Tortious Interference with Economic Interests

33. During the Class Period, the Individual Defendants and other senior executives and employees of the Corporate dDefendants, acting in their capacities as agents for the Corporate dDefendants conspired with each other, the Former Defendants and other unnamed co-conspirators (the "Other Conspirators") to unlawfully fix, raise, maintain and/or stabilize the price of Polyurethane Foam Carpet Underlay sold in Canada including in British Columbia. Such

persons engaged in communications, conversations and attended meetings with each other in which these persons unlawfully agreed to:

- (a) fix, increase and maintain at artificially high levels the prices at which the Corporate Defendants, the Former Defendants and the Other Conspirators would sell Polyurethane Foam Carpet Underlay in Canada including in British Columbia;
- (b) exchange information in order to monitor and enforce adherence to the agreed prices for Polyurethane Foam Carpet Underlay;
- (c) allocate customers for or set specific volumes of Polyurethane Foam Carpet Underlay that each defendant would manufacture and supply in British Columbia, Canada and elsewhere; and
- (d) conceal their agreements from customers, the authorities and the public.

34. The Canadian subsidiaries, ~~Domfoam International, Inc., Carpenter Canada Inc., Foamex Innovations Canada, Inc. and Vitafoam Products Canada Limited~~ participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies thereby acting as agents in carrying out the conspiracy and are liable for such acts.

35. During the Class Period, at times and places some of which are unknown to the ~~Plaintiff~~ plaintiff, the Corporate Defendants, the Former Defendants and the Other Conspirators wrongfully, unlawfully, maliciously and lacking bona fides conspired and agreed together, and with their servants and agents, including the Individual Defendants:

- (a) to suppress and eliminate competition in the sale of Polyurethane Foam Carpet Underlay in British Columbia, Canada, and the United States, by fixing the price of Polyurethane Foam Carpet Underlay at artificially high

levels and allocating the market share of ~~Polyurethane Foam~~Carpet Underlay;

- (b) to prevent or lessen, unduly, competition in the manufacture, sale and distribution of ~~Polyurethane Foam~~Carpet Underlay in British Columbia, Canada and the United States by reducing the supply of ~~Polyurethane Foam~~Carpet Underlay;
- (c) to allocate among themselves the customers for ~~Polyurethane Foam~~Carpet Underlay in British Columbia and in Canada;
- (d) to allocate among themselves and others all or part of certain contracts to supply ~~Polyurethane Foam~~Carpet Underlay in British Columbia and in Canada;
- (e) to refrain from submitting truly competitive bids for ~~Polyurethane Foam~~Carpet Underlay to customers in British Columbia and in Canada; and
- (f) to submit collusive, non-competitive and rigged bids for ~~Polyurethane Foam~~Carpet Underlay to customers in British Columbia and in Canada.

36. The Corporate Defendants, Individual Defendants, the Former Defendants and the Other Conspirators were motivated to conspire and their predominant purpose and concerns were:

- (a) to harm the ~~Plaintiff~~plaintiff and other Class Members by requiring them to pay artificially high prices for ~~Polyurethane Foam~~Carpet Underlay; and
- (b) to illegally increase their profits on the sale of ~~Polyurethane Foam~~Carpet Underlay.

37. In furtherance of the conspiracy, during the Class Period, the following acts were done by the Corporate Defendants, the Former Defendants, the Other Conspirators and their servants and agents, including the Individual Defendants:

- (a) they agreed to fix, increase and maintain at artificially high levels the price of ~~Polyurethane-Foam~~Carpet Underlay and to coordinate price increases for the sale of ~~Polyurethane-Foam~~Carpet Underlay;
 - (b) they agreed to allocate the volumes of sales of, and customers and markets for ~~Polyurethane-Foam~~Carpet Underlay among themselves;
 - (c) they met secretly or discussed by telephone or email to coordinate price increases, the amount, effective dates and the manner in which the price increases were to be announced;
 - (d) they exchanged information regarding the prices and volumes of sales of ~~Polyurethane-Foam~~Carpet Underlay for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets; and
 - (e) they took steps to avoid detection of the price fixing conspiracy.
38. The acts alleged in this claim to have been done by each ~~corporate~~Corporate defendant~~Defendant~~ were authorized, ordered and carried out by each corporate defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

The Resulting Damages of the Plaintiff and Other Class Members

39. The plaintiff and other Class Members have suffered damages as a result of the foregoing conspiracy, which had the effect of raising, maintaining and stabilizing the prices of ~~Polyurethane-Foam~~Carpet Underlay at artificial and non-competitive levels.
40. During the Class Period, the plaintiff and other Class Members have directly or indirectly purchased millions of dollars of ~~Polyurethane-Foam~~Carpet Underlay manufactured and distributed by the Corporate ~~d~~Defendants, the Former Defendants and the Other Conspirators. By reason of the alleged violations of

the *Competition Act* and the common law, the plaintiffs and the other Class Members paid more for ~~Polyurethane Foam~~ Carpet Underlay than they would have paid in the absence of the illegal conspiracy. As a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

41. The plaintiff asserts that the combined damages suffered by it and by the other Class Members are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the Corporate Defendants, the Former Defendants and the Other Conspirators ~~see conspirators~~ for ~~Polyurethane Foam~~ Carpet Underlay and the prices which would have been obtained in the absence of the unlawful price fixing agreements.

Punitive Damages

42. The plaintiff pleads that the ~~defendants'~~ conduct of the Corporate Defendants and the Individual Defendants was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of each Class Member, and indifferent to the consequences. ~~such~~ Such conduct renders the Corporate Defendants and the Individual Defendants liable to pay punitive damages.

Jurisdiction

43. The plaintiff and other Class Members who reside in British Columbia have suffered the above damages in British Columbia.

PART 2: PART 2: RELIEF SOUGHT

44. The plaintiff, on its own behalf, and on behalf of the Class Members, claims against ~~all of the defendants:~~ the Corporate Defendants and the Individual Defendants for:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;

- (b) general damages for conspiracy, ~~tortious interference with economic interests~~, and conduct that is contrary to Part VI of the *Competition Act*, R.S. ~~Act, 1985, c. 19 (2nd Suppl.)~~,
- (c) a declaration that the Corporate Defendants, the Individual Defendants, the Former Defendants and the Other Conspirators have been unjustly enriched at the expense of the plaintiff and the other Class Members by their receipt of the illegal overcharge;
- ~~(a) a declaration that the defendants hold the illegal overcharge in a constructive trust for the benefit of the plaintiff and the other Class Members;~~
- (d) an order directing the defendants to disgorge their illegal overcharge;
- (e) punitive damages;
- (f) costs of the investigation and prosecution of this action pursuant to s. 36(1) of the *Competition Act*;
- (g) alternatively, damages, in the aggregate, for unjust enrichment, payable to the plaintiff and the other Class Members in an amount equal to the overcharges which were paid to the Corporate Defendants, the Former Defendants and the Other Conspirators in connection with the sale of Carpet Underlay in British Columbia during the Class Period;
- (h) alternatively, an accounting or restitution to the plaintiff and the other Class Members of all overcharges received by the Corporate Defendants, the Former Defendants and the Other Conspirators in connection with the sale of Carpet Underlay in British Columbia;
- (i) costs of this action on a substantial indemnity basis plus the costs of distribution of an award under the *Class Proceedings Act*, including the

costs of the notice associated with the distribution and the fees payable to a person administering the distribution;

- (j) prejudgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 78, s. 128; and
- (k) such further and other relief as to this Honourable Court may seem just.

PART 3: PART 3: LEGAL BASIS

- 45. The plaintiff pleads and relies on the:
 - (a) *Class Proceedings Act*, R.S.B.C., 1996 c. 50;²
 - (b) *Competition Act*, R.S. 1985, c19 (2nd Suppl) including all amendments thereto;³ and sections 36, 45, 46, and 61; and
 - (c) *Court Order Interest Act*, R.S.B.C. 1996, c. 78,⁴
- 46. The plaintiff claims that the acts particularized in paragraphs 15-17 and 31-3735 were in breach of Part VI of the *Competition Act*, RS 1985 c. C-34 and render the Corporate Defendants and the Individual Defendants liable to pay the damages which resulted pursuant to s. 36 of the *Competition Act*.
- 47. Further, or alternatively, the defendants Corporate Defendants and the Individual Defendants are liable to the plaintiff and the other class members pursuant to s. 36 of the *Competition Act* for acts in contravention of s.46(1) of the *Competition Act*.
- 48. Further, or alternatively, the acts particularized in paragraphs 15-17 and 3130-3735 were unlawful acts directed towards to the plaintiff and other purchasers of Polyurethane Foam Carpet Underlay in British Columbia and in Canada which unlawful acts the Corporate Defendants, the Individual Defendants, the Former Defendants and the Other Conspirators knew in the circumstances would likely cause injury to the plaintiff and other Class Members by requiring them to pay artificially inflated prices for Polyurethane Foam Carpet Underlay, and render the

Corporate eDefendants and the Individual Defendants liable for the tort of civil conspiracy.

~~Further, or alternatively, the acts particularized in paragraphs 30-35 were unlawful acts intended to cause the plaintiff and the other Class Members economic loss and constituted tortious interference with the economic interests of the plaintiff and the other Class Members and render the defendants liable to pay the resulting damages.~~

49. In the alternative, the plaintiff waives the tort and pleads that it and the other Class Members are entitled to recover under restitutionary principles.

50. The Corporate eDefendants, the Individual Defendants, the Former Defendants and the Other Conspirators have each been unjustly enriched by the receipt of the artificially induced overcharge on the sale of Polyurethane Foam Carpet Underlay. The plaintiff and other Class Members have suffered a deprivation in the amount of such overcharge attributable to the sale of Polyurethane Foam Carpet Underlay in British Columbia.

51. Since the artificially induced overcharge received by the Corporate eDefendants, the Individual Defendants, the Former Defendants and the Other Conspirators from the plaintiff and each Class Member resulted from the defendants' wrongful or unlawful acts of the Corporate Defendants, the Individual Defendants, the Former Defendants and the Other Conspirators, there is and can be no juridical reason justifying the Corporate eDefendants', the Individual Defendants or the Former Defendants retaining any part of such overcharge. In particular, the contracts by which the Corporate Defendants, the Former Defendants and the Other Conspirators purport to have received the artificially induced overcharge are illegal and void because:

(a) they violate and are prohibited by Part VI of the Competition Act in that the defendants combined or agreed with each other to prevent or lessen, unduly, competition and to restrain or injure competition unduly, as

particularized above. The Corporate Defendants, the Individual Defendants, the Former Defendants and the Other Conspirators were aware or ought to have been aware that the effect of the agreements would be to prevent or lessen competition unduly; and

- (b) they violate public policy and are an unlawful restraint of trade at common law and equity.

~~1. The defendants are constituted as constructive trustees in favour of the Class Members for all of the artificially induced overcharge from the sale of Polyurethane Foam because, among other reasons:~~

~~(a) the defendants were unjustly enriched by the artificially induced overcharge;~~

~~(b) the Class Members suffered a deprivation because of the artificially induced overcharge;~~

~~(c) the defendants engaged in inappropriate conduct and committed a wrongful act in conspiring to fix the price of Polyurethane Foam and allocate market share and volume of Polyurethane Foam;~~

~~(d) the artificially induced overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;~~

~~(e) justice and good conscience require the imposition of a constructive trust;~~

~~(f) the integrity of the marketplace would be undermined if the court did not impose a constructive trust; and~~

~~(g) there are no factors that would, in respect of the artificially induced overcharge, render the imposition of a constructive trust unjust.~~

52. The plaintiff pleads that equity and good conscience requires the Corporate Defendants and the Individual Defendants to disgorge and/or account for held in trust for the plaintiff and the other Class Members all of the artificially induced overcharge from the sale of Polyurethane Foam Carpet Underlay and to disgorge this overcharge to the plaintiff and the other Class Members.

53. The Corporate Defendants and the Individual Defendants are jointly and severally liable for the acts and omissions of each other.

54. The acts alleged in this amended notice of civil claim to have been done by the Corporate Defendants were authorized, ordered and done by their officers, directors and senior employees, wherever situated, for which the Corporate Defendants are vicariously liable.

Plaintiff's address for service:

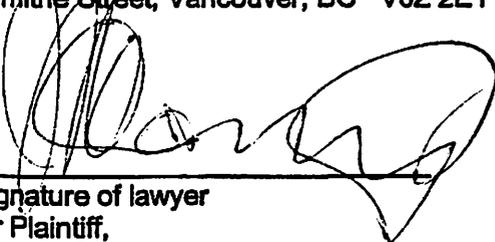
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Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: 604) 689-7554
E-mail: jjcampservice@cfmlawyers.ca

Place of trial: Vancouver Law Courts

The address Address of the registry: 800 Smith Street, Vancouver, BC V6Z 2E1

Date: 14/Sep/2010


Signature of lawyer
for Plaintiff,
J.J. Camp, Q.C.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The plaintiff, Trillium Project Management Ltd. claim(s) the right to serve this pleading/petition on the defendants, Hickory Springs Manufacturing Company, Valle Foam Industries, Inc. Carpenter Co., Woodbridge Foam Corporation, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc., Vincenzo Bonaddio, Michael Calderoni, Donald Phillips, Future Foam, Inc., and Vitafoam, Incorporated, Leggett & Platt, Inc. and Mohawk Industries, Inc., outside British Columbia on the ground that

(a) — this matter concerns a tort committed in British Columbia, pursuant to section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This is a class action claim against the defendants for recovery of damages due to price-fixing of polyurethane foam and products containing carpet underlay, a product made from flexible polyurethane foam.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites

- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Class Proceedings Act*, R.S.B.C., 1996 c. 50;
2. *Competition Act*, R.S.C. 1985, c.49 (2nd Suppl) including all amendments thereto c. C-34; and sections 36, 45, 46, and 61; and
3. *Court Order Interest Act*, R.S.B.C. 1996, c. 7.