

SEP 15 2010



S-106213

No.
Vancouver Registry

In the Supreme Court of British Columbia

Between

Trillium Project Management Ltd.

Plaintiff

and

Hickory Springs Manufacturing Company,
Valle Foam Industries, Inc., Domfoam International, Inc.,
Carpenter Co., Carpenter Canada Co.,
The Woodbridge Group,
Flexible Foam Products, Inc., Scottdel Inc.,
Foamex Innovations, Inc., Foamex Innovations Canada, Inc.,
Future Foam, Inc.,
Vitafoam Products Canada Limited and Vitafoam, Inc.

Defendants

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

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

- (a) 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

- (b) 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),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside 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,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, 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: STATEMENT OF FACTS

1. This case arises out of a conspiracy among the defendants to fix the prices of polyurethane foam and/or polyurethane foam products (“Polyurethane Foam”).

The Representative Plaintiff

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

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 the defendants (collectively the "Class Members") from January 1, 1999 to the present, 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 throughout Canada and the United States.

5. 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.

6. Domfoam International, Inc. ("Domfoam") is a subsidiary of Valle Foam Industries, with its headquarters at 8785 Langelier Blvd. Saint-Leonard, Quebec, H1P 2C9. During the Class

Period Domfoam sold Polyurethane Foam throughout Canada including British Columbia and the United States.

7. Domfoam is a manufacturer/wholesaler of sponge and Polyurethane Foam.

8. Since its incorporation in 1963, Domfoam has grown to be Canada's leading and most diversified manufacturer of ether, ester, rebounded flexible Polyurethane Foams and visco elastic foam. Domfoam provides foam for the following purposes: mattresses, sponge foam blocks, carpet cushion, pillows, bolsters, convolute, furniture foam, toppers, antistatic foam, anti-microbial foam, visco-elastic foam, camping foam, and sporting goods.

9. 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.

10. Carpenter Co. ("Carpenter") is a privately owned and operated company 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 throughout Canada and the United States.

11. 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.

12. 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 throughout Canada and in British Columbia.

13. 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 and for the purposes of the conspiracy described below.

14. The Woodbridge Group ("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 throughout Canada and the United States.

15. Flexible Foam Products, Inc. ("Flexible Foam") is a privately owned and operated Ohio company 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 throughout Canada and the United States.

16. 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 throughout Canada and the United States.

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

18. 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.

19. 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 throughout Canada including British Columbia.

20. 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 and for the purposes of the conspiracy described below.

21. Future Foam, Inc. ("Future Foam") is a privately owned and operated company 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, Foamex sold Polyurethane Foam throughout Canada and the United States.

22. Vitafoam, Inc. ("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, throughout the United States and Canada.

23. 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.

24. 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, throughout Canada including British Columbia.

25. 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.

26. 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 and for the purposes of the conspiracy described below.

Polyurethane Foam

27. 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.

28. Polyurethane Foam consists of polymers made of molecular chains bound together by urethane links. It can be flexible or rigid. Flexible Polyurethane Foam is most often used in bedding and upholstery, while the more rigid variety is used for products such as thermal insulation and automobile dashboards.

29. There are few acceptable 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.

Vitafoam Inc. Admission of a Conspiracy

30. 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.

The Conspiracy and Tortious Interference with Economic Interests

31. During the Class Period, senior executives and employees of the defendants, acting in their capacities as agents for the defendants conspired with each other to unlawfully fix, raise, maintain and/or stabilize the price of Polyurethane Foam 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 defendants would sell Polyurethane Foam in Canada including in British Columbia;
- (b) exchange information in order to monitor and enforce adherence to the agreed prices for Polyurethane Foam;
- (c) allocate customers for or set specific volumes of Polyurethane Foam 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.

32. 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.

33. During the Class Period, at times and places some of which are unknown to the Plaintiff, the defendants wrongfully, unlawfully, maliciously and lacking *bona fides* conspired and agreed together, and with their servants and agents:

- (a) to suppress and eliminate competition in the sale of Polyurethane Foam in British Columbia, Canada, and the United States, by fixing the price of Polyurethane Foam at artificially high levels and allocating the market share of Polyurethane Foam;
- (b) to prevent or lessen, unduly, competition in the manufacture, sale and distribution of Polyurethane Foam in British Columbia, Canada and the United States by reducing the supply of Polyurethane Foam;
- (c) to allocate among themselves the customers for Polyurethane Foam in British Columbia and in Canada;
- (d) to allocate among themselves and others all or part of certain contracts to supply Polyurethane Foam in British Columbia and in Canada;

- (e) to refrain from submitting truly competitive bids for Polyurethane Foam to customers in British Columbia and in Canada; and
- (f) to submit collusive, non-competitive and rigged bids for Polyurethane Foam to customers in British Columbia and in Canada.

34. The defendants were motivated to conspire and their predominant purpose and concerns were:

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

35. In furtherance of the conspiracy, during the Class Period, the following acts were done by the defendants, their servants and agents:

- (a) they agreed to fix, increase and maintain at artificially high levels the price of Polyurethane Foam and to coordinate price increases for the sale of Polyurethane Foam;
- (b) they agreed to allocate the volumes of sales of, and customers and markets for Polyurethane Foam 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 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.

36. The acts alleged in this claim to have been done by each corporate 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

37. 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 at artificial and non-competitive levels.

38. During the Class Period, the plaintiff and other Class Members have directly or indirectly purchased millions of dollars of Polyurethane Foam manufactured and distributed by the defendants. 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 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.

39. 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 defendants and the co-conspirators for Polyurethane Foam and

the prices which would have been obtained in the absence of the unlawful price fixing agreements.

Punitive Damages

40. The plaintiff pleads that the defendants' conduct 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 conduct renders the defendants liable to pay punitive damages.

Jurisdiction

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

PART 2: RELIEF SOUGHT

The plaintiff, on its own behalf, and on behalf of the Class Members, claims against all of the defendants:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;
- (a) general damages for conspiracy, tortious interference with economic interests, and conduct that is contrary to Part VI of the *Competition Act*, R.S. 1985, c. 19 (2nd Suppl.),
- (b) a declaration that the defendants have been unjustly enriched at the expense of the plaintiff and the other Class Members by their receipt of the illegal overcharge;

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

PART 3: LEGAL BASIS

1. The plaintiff pleads and relies on the
 - (a) *Class Proceedings Act*, R.S.B.C., 1996 c. 50;
 - (b) *Competition Act*, R.S. 1985,c19 (2nd Suppl) including all amendments thereto and sections 36, 45, 46, and 61; and

(c) *Court Order Interest Act*, R.S.B.C. 1996, c. 78

2. The plaintiff claims that the acts particularized in paragraphs 30-35 were in breach of Part VI of the *Competition Act*, RS 1985 c. C-34 and render the defendants liable to pay the damages which resulted pursuant to s. 36 of the *Competition Act*.

3. Further, or alternatively, the 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*.

4. Further, or alternatively, the acts particularized in paragraph 30-35 were unlawful acts directed towards to the plaintiff and other purchasers of Polyurethane Foam in British Columbia and in Canada which unlawful acts the defendants 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, and render the defendants liable for the tort of civil conspiracy.

5. 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.

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

7. The defendants have each been unjustly enriched by the receipt of the artificially induced overcharge on the sale of Polyurethane Foam. The plaintiff and other Class Members have

suffered a deprivation in the amount of such overcharge attributable to the sale of Polyurethane Foam in British Columbia.

8. Since the artificially induced overcharge received by the defendants from the plaintiff and each Class Member resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants' retaining any part of such overcharge.

9. 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.

10. The plaintiff pleads that equity and good conscience requires the defendants to hold in trust for the plaintiff and the other Class Members all of the artificially induced overcharge from the sale of Polyurethane Foam and to disgorge this overcharge to the plaintiff and the other Class Members.

Plaintiff's(s') address for service:

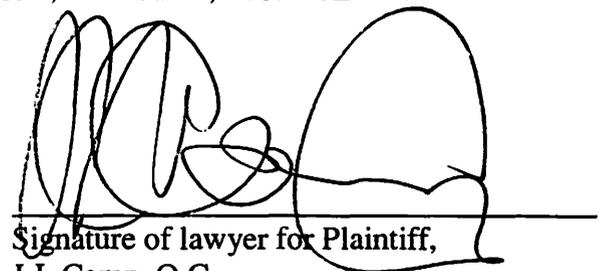
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Place of trial: Vancouver Law Courts

The address of the registry is: 800 Smithe Street, Vancouver, B.C. 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., Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc., Future Foam, Inc., and Vitafoam, 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

[The following information is provided for data collection purposes only and is of no legal effect.]

PART 1: 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 polyurethane foam.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

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
- X a matter not listed here

PART 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case.]

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

PART 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

1. *Class Proceedings Act*, R.S.B.C., 1996 c. 50;
2. *Competition Act*, R.S. 1985,c19 (2nd Suppl) including all amendments thereto and sections 36, 45, 46, and 61; and
3. *Court Order Interest Act*, R.S.B.C. 1996, c. 7