

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

The Honourable Madam  
Justice Leitch

) Wednesday, the 24<sup>th</sup> day  
) of July, 2013  
)

**BETWEEN:**

**"HII NEIGHBOR" FLOOR COVERING CO. LIMITED**

**Plaintiff**

- and -

**HICKORY SPRINGS MANUFACTURING COMPANY,  
VALLE FOAM INDUSTRIES (1995), INC., DOMFOAM INTERNATIONAL, INC.,  
THE CARPENTER CO., CARPENTER CANADA CO.,  
WOODBRIIDGE FOAM CORPORATION, FLEXIBLE FOAM PRODUCTS, INC.,  
FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC.,  
LEGGETT & PLATT, INC., VITAFOAM PRODUCTS CANADA LIMITED,  
VITAFOAM, INC., DEAN BRAYIANNIS, BRUCE SCHNEIDER,  
ROBERT MACGEE and MICHAEL LAJAMBE**

**Defendants**

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Partial Certification and Notice Approval - General Foam)**

**THIS MOTION** made by the Plaintiff for an Order certifying this action for settlement purposes only as against the defendants Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd. (collectively, the "Domfoam Defendants") and Dean Brayianis (collectively, the "Settling Defendants"), and for an Order approving the form of Notice of Certification or Authorization and Settlement Approval Hearings (the "Pre-Approval Notice") and the means by which the Pre-Approval Notice will be disseminated (the "Plan of Dissemination"), was heard on June 28, 2013 at the Woodstock Courthouse at 415 Hunter Street, in Woodstock, Ontario, by way of teleconference.

**ON READING** the materials filed and on hearing the submissions of counsel for the Plaintiff and the Settling Defendants;

**AND ON BEING ADVISED** that the Plaintiff has entered into a settlement agreement with the Settling Defendants and other Individual Settling Parties (collectively, the "Parties") dated January 10, 2012 (the "Settlement Agreement");

**AND ON BEING ADVISED** that the Parties consent to this Order;

**AND ON BEING ADVISED** that the Non-Settling Defendants take no position on this Order;

1. **THIS COURT ORDERS** that except to the extent that they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order;
2. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions apply:
  - (a) "Foam Products" shall mean polyurethane foam and any and all products that contain polyurethane foam;
  - (b) "Carpet Underlay Products" shall mean the subset of Foam Products that are scrap polyurethane foam that is bonded together by various chemicals into a padding material and products containing scrap polyurethane foam that is bonded together by various chemicals into a padding material; and
  - (c) "Polyurethane Foam Products" shall mean the subset of Foam Products that are not Carpet Underlay Products;
3. **THIS COURT ORDERS** that this action is certified as a class proceeding only as against the Settling Defendants for settlement purposes only;
4. **THIS COURT ORDERS** that the Ontario General Foam Settlement Class is defined as:

All Persons resident in Canada who purchased Polyurethane Foam Products in Canada during the Settlement Class

Period, except the members of the BC Settlement Class and Quebec Settlement Class, and Excluded Persons;

5. **THIS COURT ORDERS** that "Hi! Neighbor" Floor Covering Co. Limited is appointed as representative plaintiff for the Ontario General Foam Settlement Class;
6. **THIS COURT ORDERS** that the following issue is common to the Ontario General Foam Settlement Class:

Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?
7. **THIS COURT ORDERS** that National Class Action Services is appointed as the Opt Out Administrator;
8. **THIS COURT ORDERS** that Ontario General Foam Settlement Class members who wish to opt-out of the Ontario General Foam Action must do so by sending a written election to opt-out, together with the information required in the Settlement Agreement, to the Opt Out Administrator, appointed in this Order, postmarked on or before the Opt Out Deadline;
9. **THIS COURT ORDERS** that any Ontario General Foam Settlement Class member who has not validly opted-out of this action is bound by the Settlement Agreement and may not opt-out of this action in the future;
10. **THIS COURT ORDERS** that the Pre-Approval Notice is hereby approved substantially in the form attached hereto as **Schedule "A"**;
11. **THIS COURT ORDERS** that the Plan of Dissemination is hereby approved in the form attached hereto as **Schedule "B"**;
12. **THIS COURT ORDERS** that the Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order; and

13. **THIS COURT ORDERS** that this Order, including without limiting the generality of the foregoing, the certification of the Ontario General Foam Action against the Settling Defendants and the definitions of Ontario General Foam Settlement Class, Settlement Class Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in this or any other proceeding on any issue, including any issue of appropriate forum or abuse of process, the issue of whether the Settlement Agreement should be approved and the issue of whether the Ontario General Foam Action should be certified as a class proceeding as against the Non-Settling Defendants. Except as set out below, no person may rely, cite or refer to all or any part of this Order or any reasons given by the Court in support of the Order as authority against any of the Non-Settling Defendants in this or any other proceeding. For greater certainty, this Order, the Court's reasons in support of this Order and the certification of the Ontario General Foam Action against the Settling Defendants for settlement purposes only are not binding on and shall have no effect on this Court's ruling in this or any other proceeding as against the Non-Settling Defendants. Notwithstanding the foregoing, the Non-Settling Defendants may not rely, cite or refer to all or any part of this Order or any reasons given by the Court in support of the Order, and may not assert a deficiency in the notice plan and/or opt-out process set out in the Order, as a basis for opposition to approval of the Settlement Agreement, including without limitation as a basis for opposition to approval of the proposed bar order contained in the Settlement Agreement.

Date:

July 24, 2013



The Honourable Madam Justice Leitch

## SCHEDULE "A"

### **POLYURETHANE FOAM PRODUCTS CLASS ACTION** **To Canadian Resident Purchasers of Polyurethane Foam and Polyurethane Foam Products** **Notice of Certification/Authorization and Proposed Canadian Settlement** **with Domfoam, Valle Foam, A-Z Sponge and Certain Individuals**

#### **THE LAWSUITS**

Class action lawsuits were commenced in Ontario, British Columbia and Quebec ("Actions") against manufacturers or suppliers of polyurethane foam or products containing polyurethane foam, including without limitation foam and products relating to furniture and bedding as well as carpet underlay ("Foam Products"), alleging they conspired to raise, fix, maintain or stabilize the price of Foam Products in Canada, and/or to allocate markets and customers for the sale of those products in Canada. The settling parties include **Domfoam International Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd.** (the "Domfoam Defendants"), as well as Dean Brayiannis ("Brayiannis") and certain additional current and former officers, employees and agents of the Domfoam Defendants (collectively, the "Settling Individuals").

#### **THE PROPOSED SETTLEMENT**

A settlement was reached with the Domfoam Defendants and the Settling Individuals. Settlement benefits include payment of \$1.226 million (the "Settlement Proceeds"), assignment of rights in other lawsuits and cooperation in prosecuting the Actions against others. The settlement must be approved by the British Columbia, Ontario and Quebec Courts ("Courts") to be effective.

#### **CERTIFICATION / AUTHORIZATION**

The Actions were certified/authorized as class actions for settlement purposes by the Courts in relation only to the Domfoam Defendants and the Settling Individuals that were parties to the Actions. It will be set aside if the settlement is not approved by all the Courts.

#### **THE SETTLEMENT AFFECTS YOUR RIGHTS**

If the settlement is approved, it will affect residents in Canada who purchased Foam Products in Canada **between January 1, 1999 and January 10, 2012** ("Settlement Class Period"), except those who opt out of the Actions, the Defendants and certain related parties ("Settlement Class Members").

Under the settlement, Settlement Class Members **RELEASE** the Settling Individuals (including Brayiannis) and other related parties from claims regarding the purchase of Foam Products in Canada in the Settlement Class Period, and commit to discontinue or dismiss certain proceedings as against the Domfoam Defendants and Brayiannis.

The way in which the net Settlement Proceeds will be distributed will be determined at a later date following further settlements with the non-settling defendants in the Actions or the complete resolution of the Actions. The Settlement Proceeds are being held in trust for the benefit of the Settlement Class Members for the time being. Once the Courts have approved the method for distributing the net Settlement Proceeds, another notice will be provided and posted online at <> explaining which Settlement Class Members are eligible for direct payment and how Settlement Class Members can apply to receive payment. Settlement Class Members should keep all purchase documents.

#### **SETTLEMENT APPROVAL HEARINGS**

The requests to approve the settlement will take place in hearings on <date> at <BC time> (British Columbia), <date> at <ON time> (Ontario) and <date> at <QC time> (Quebec).

#### **THE CCAA PROCEEDING**

The Domfoam Defendants were previously granted protection under the *Companies' Creditors Arrangement Act* ("CCAA"). The claims deadline has now passed. All claims against the Domfoam Defendants and certain of the Settling Individuals which were not filed in the CCAA Proceeding have been barred and extinguished. Under the settlement, the Plaintiffs reserved their right to file a claim on behalf of Settlement Class Members in the CCAA Proceeding. The Plaintiffs filed a claim on behalf of Settlement Class Members in the CCAA Proceeding in advance of the claims deadline. The outcome of this claim has not yet been determined.

#### **YOUR OPTIONS**

If you do not want to participate in the Actions, you must complete and send an Opt Out Form to <> by <date> (the "Opt Out Deadline"). Opt Out Forms are available at <website> or from the Plaintiff Lawyers. You will keep any right to sue individually (except against the Domfoam Defendants and certain of the Settling Individuals) but will not receive the benefit of this or future settlements or judgments in the Actions.

If you do not opt out of the Actions by the Opt Out Deadline, you will be bound by the settlement and will not be able to opt out of the Actions in the future.

If you have no objection to the settlement and want to continue to participate in the Actions, you do not need to do anything at this time.

To comment on or object to the settlement, you must write to one of the Plaintiff Lawyers by <7 days before the settlement approval hearings>. Comments and objections will be provided to the Courts.

**THE PLAINTIFF LAWYERS**

- For British Columbia residents: Branch MacMaster LLP at lbrasil@branmac.com, and Camp Fiorante Mathews Mogerman at polyfoam@cfmlawyers.ca;
- For Quebec residents: Belleau Lapointe at membres@recourscollectif.info; and
- For all others: Sutts Strosberg LLP at polyclassaction@strosbergco.com.

The Plaintiffs entered into contingency agreements with the Plaintiff Lawyers providing for payment of up to 1/3 of amounts recovered in the Actions. The Courts will determine the amount to be paid to Plaintiff Lawyers.

**This Notice is a summary.** For more information about the settlement, including a list of the Settling Individuals, or to read the settlement agreement, please visit [www.FoamClassAction.ca](http://www.FoamClassAction.ca) or contact the Plaintiff Lawyers.

## SCHEDULE "B"

### PLAN OF DISSEMINATION

#### Notice of Certification/Authorization and Settlement Approval Hearing in the Matter of Polyurethane Products Class Action Litigation

#### Domfoam Settlement – Round 1

For the purposes of this Plan of Dissemination, the following definitions shall apply:

1. **Class Counsel** means Branch MacMaster LLP, Camp Fiorante Matthews Mogerman, Sutts Strosberg LLP, Morganti Legal PC and Belleau Lapointe;
2. **Domfoam Defendants** means Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd.;
3. **Foam Products** means polyurethane foam and any and all products that contain polyurethane foam;
4. **Pre-Approval Notice** means the Notice of Certification/Authorization and Settlement Approval Hearing, in the form attached as Schedule "A" to this Plan of Dissemination; and
5. **Settlement Class Period** means the period from January 1, 1999 to January 10, 2012.

The Plaintiffs propose that the Pre-Approval Notice shall be distributed in the following manner:

1. A copy of the Pre-Approval Notice will be published once in the following national and regional newspapers:
  - (a) The Globe and Mail (in English – Report on Business, National Edition), in a size not smaller than 1/6 of a page;
  - (b) Le Journal de Montréal (in French), in a size not smaller than 1/3 of a page; and
  - (c) Le Journal de Québec (in French), in a size not smaller than 1/3 of a page.
2. A copy of the Pre-Approval Notice will be forwarded to the Editor's Desk for hard copy and electronic publication in the following trade publications (subject to publication deadlines):

- (a) Furniture Today;
  - (b) Bed Times;
  - (c) Automotive News; and
  - (d) Canadian Home Builder.
3. A copy of the Pre-Approval Notice will be sent to the following organizations with a request that they distribute to their membership and/or post on their website:
- (a) Canadian Urethane Foam Contractors Association;
  - (b) Construction Specifications Canada;
  - (c) Council of Construction Trade Associations (BC);
  - (d) Canadian Home Furnishings Alliance;
  - (e) Canadian Carpet Institute;
  - (f) International Sleep Products Association;
  - (g) Automotive Parts Manufacturers' Association;
  - (h) The Packaging Association; and
  - (i) The Quebec Furniture Manufacturers Association.
4. A copy of the Pre-Approval Notice will be posted in electronic format in English and in French on the websites of Class Counsel, as well as on [www.NationalClassActions.ca](http://www.NationalClassActions.ca).
5. A copy of the Pre-Approval Notice will be provided to the CBA National Class Action Registry with a request that it be posted online.
6. A copy of the Pre-Approval Notice will be distributed to the Business Wire News Service.
7. A copy of the Pre-Approval Notice will be sent by direct mail by Class Counsel to those direct purchasers of the Domfoam Defendants who purchased Foam Products from the Domfoam Defendants in Canada during the Settlement Class Period, and whose particulars are provided to Class Counsel by the Domfoam



Defendants, subject to the ability of the Domfoam Defendants to locate a list of direct purchasers after making reasonable efforts.

8. A copy of the Pre-Approval Notice will be sent to all persons who have contacted Class Counsel and identified themselves as being potential class members.
9. A link to the Pre-Approval Notice will be posted by one or more Class Counsel on Twitter.
10. A website will be established in both French and English at [www.FoamClassAction.ca](http://www.FoamClassAction.ca) to provide important information on the case. The website will be easy to use and the information available will be in easy print format or downloadable in PDF format. The website will employ search engine optimization to raise its visibility to internet search engines.

"HII NEIGHBOR" FLOOR COVERING  
CO. LIMITED

Plaintiff

v. HICKORY SPRINGS MANUFACTURING  
COMPANY, et al

Defendants

Court File No. CV-11-15164

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**PROCEEDINGS COMMENCED AT WINDSOR**

Proceedings under the *Class Proceedings Act*,  
1992

**ORDER**  
(Partial Certification and Notice Approval -  
General Foam)

**SUTTS, STROSBURG LLP**

Lawyers  
600 - 251 Goyeau Street  
Windsor, ON N9A 6VA

**HEATHER RUMBLE PETERSON**

LSUC #: 24671V

Tel: 519 561-6216

Fax: 519 561-6203

**ANDREW J. MORGANTI**

LSUC #: 57895E

119 Spadina Avenue, Suite 604  
Toronto, ON M5V 2L1

Tel: 416 800-2171

Fax: 416 800-2171

**LAWYERS FOR THE PLAINTIFF**

FILE: 76-189-000