

CERTIFIED
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Court File No. 534/15 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE R. RAIKES

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)
)

Friday , THE 18th DAY
OF December , 2020

BETWEEN:

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL
SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE
CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER
GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO
THERMO AND COMFORT NORTH AMERICA INC.; ~~MARINE CANADA ACQUISITION
INC. (O/A SEASTAR SOLUTIONS)~~; VOLKER HOHENSEE; WEBASTO SE; and WEBASTO
THERMO & COMFORT SE

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT*, 1992, S.O. 1992, c.6

ORDER

(Motion for Certification for Settlement Purposes and Notice Approval)

THIS MOTION made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against Volker Hohensee (the "Settling Defendant") and approving the notices of certification and settlement approval hearing and the method of dissemination of said notices was heard this day at the Court House, 80 Dundas Street, London Ontario.

ON READING the materials filed, including the settlement agreement dated December 6, 2017, attached to this Order as **Schedule "A"** and the Amending Letter Agreement dated October 20, 2020, attached to this Order as **Schedule "B"** (collectively, the "Settlement

Agreement”), and on hearing the submissions of Class Counsel, counsel for the Settling Defendant, and counsel for the Non-Settling Defendants in the Action;

AND ON BEING ADVISED that RicePoint Administration Inc. has consented to being appointed as the notice provider in accordance with the terms of this Order;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Action is certified as a class proceeding as against the Settling Defendant for settlement purposes only.
3. **THIS COURT ORDERS** that the “Settlement Class” is certified as follows:

All Direct Purchasers and/or Indirect Purchasers of a Parking Heater other than all Direct Purchasers and Indirect Purchasers of a Parking Heater in Québec.

“Parking Heater” means a parking heater, including the heater itself, accessories and parts sold for use with heaters, packages containing heaters, and accessories and/or parts for parking heaters (parking heater ‘kits’), which was manufactured or sold by the Defendants for use in a commercial vehicle between September 13, 2001 and December 31, 2012.

“Direct Purchasers” means all persons or entities in Canada who purchased a Parking Heater directly.


“Indirect Purchasers” means all persons or entities in Canada who purchased a Parking Heater from someone other than a Defendant including any person or entity who purchased, leased and sub-leased a commercial vehicle containing a Parking Heater.

4. **THIS COURT ORDERS** that the Action is certified on the basis of the following Common Issue:

Did the Settling Defendant conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Parking Heaters, directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?

5. **THIS COURT ORDERS** that the Plaintiff, John Devries, is appointed as the representative plaintiff for the Settlement Class.
6. **THIS COURT ORDERS** that the newspaper publication, short-form, long-form, press release and banner ad notices of certification and settlement approval hearing (the "Notices") are hereby approved substantially in the form attached hereto as **Schedules "C" – "G"** respectively.
7. **THIS COURT ORDERS** that the plan of dissemination of the Notices (the "Plan of Dissemination") is hereby approved in the form attached hereto as **Schedule "H"** and that the Notices shall be disseminated in accordance with the Plan of Dissemination.
8. **THIS COURT ORDERS** that RicePoint Administration Inc. is appointed to disseminate the Notices in accordance with the terms of this Order.
9. **THIS COURT ORDERS** that the opt-out process proposed in the Motion for Consent Certification as a Class Proceeding satisfies the requirements of the *Class Proceedings Act* and that no further or additional opt-out period is required.

Date: December 18, 2020



The Honourable Justice Russell Raikes

ORDER ENTERED

DEC 24 2020

2058

Schedule "A"

PARKING HEATERS CLASS ACTION NATIONAL SETTLEMENT AGREEMENT

Between:

JOHN DEVRIES, AND DUMAS TRUCKING LTD.
(the "Plaintiffs")

- and -

VOLKER HOHENSEE
("Hohensee")

Executed on the 6th day of December, 2017

**PARKING HEATERS CLASS ACTION
SETTLEMENT AGREEMENT**

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**PARKING HEATERS CLASS ACTION
SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Actions were commenced by the Ontario Plaintiff in London, Ontario and the BC Plaintiff in Vancouver, British Columbia;
- B. AND WHEREAS in the Actions the Plaintiffs allege that certain companies participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Parking Heaters in Canada between September 13, 2001 and December 31, 2012 contrary to Part VI of the *Competition Act* and the common and/or civil law;
- C. WHEREAS the Intervener has initiated the Quebec Action in which it alleges facts similar to the facts alleged in the Actions;
- D. WHEREAS the Settling Defendant is named as Defendant in the Ontario and BC Actions, but not in the Québec Action;
- E. WHEREAS the Settling Defendant does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Actions, or otherwise;
- F. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendant or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendant, which allegations are expressly denied by the Settling Defendant;
- G. WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to obtain the release afforded by this agreement from the Ontario and BC Plaintiffs and the Settlement Classes in the Ontario and BC Actions, and to obtain the agreement of the Intervener not to initiate proceedings against him in Québec, all in order to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

- H. WHEREAS the Settling Defendant does not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Actions;
- I. WHEREAS counsel for the Settling Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;
- J. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendant and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between them and on behalf of the Ontario and BC Settlement Classes, subject to approval of the Courts;
- K. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Actions, including the risks and uncertainties associated with trials and appeals, and having regard to the benefits of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the class they seek to represent;
- L. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Ontario and BC Actions;
- M. WHEREAS for the purposes of settlement only, the Parties now consent to certification of the Ontario and BC Actions as class proceedings and to the Settlement Classes and a Common Issue in respect of the Ontario and BC Actions solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner and contingent upon all required approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights

of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

- N. WHEREAS the Ontario and BC Plaintiffs assert that they are adequate class representatives for the classes they seek to represent and will seek to be appointed as the representative plaintiffs in their respective Actions.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Ontario and BC Actions be settled and dismissed with prejudice as against the Releasee, without costs as to the Plaintiffs, the classes they represent or seek to represent, or the Releasee, subject to the approval of the Courts :

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Actions** means the Ontario Action and the BC Action identified in **Schedule "A"** to this Settlement Agreement.
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel fees.
- (3) **Approval Hearing** means the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (4) **BC Action** means the action commenced by the BC Plaintiff before the BC Court that is identified in Schedule "A" to this Settlement Agreement.
- (5) **BC Counsel** means Camp Fiorante Matthews Mogerman.
- (6) **BC Court** means the Supreme Court of British Columbia.

- (7) **BC Plaintiff** means Dumas Trucking Ltd.
- (8) **BC Settlement Class** means the settlement class in respect of the BC Action that is defined in Schedule "A" to this Settlement Agreement.
- (9) **Class Counsel** means Ontario Counsel and BC Counsel.
- (10) **Class Period** means September 13, 2001 to December 31, 2012.
- (11) **Common Issue** means: Did the Settling Defendant conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Parking Heaters, directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
- (12) **Courts** means the Ontario Court and the BC Court.
- (13) **Defendants** means the entities named as defendants in the Actions as set out in Schedule "A" to this Settlement Agreement, and any Persons added as defendants in the Actions in the future. For greater certainty, except in the Québec action, the Defendants include, without limitation, the Settling Defendant.
- (14) **Documents** mean all papers, computer or electronic records, or other materials within the scope of *Rule 1.03(1)* and *Rule 30.01(1)* of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (15) **Effective Date** means the date when the Final Orders have been received from all Courts approving this Settlement Agreement.
- (16) **Espar Defendants** means Espar Inc., Espar Products Inc., Espar Climate Control Systems, Eberspaecher Climate Control Systems International Beteiligungs-GMBH, Eberspaecher Climate Control Systems GMBH & Co. KG (formerly known as J. Eberspaecher GMBH and Co. KG), Eberspaecher Gruppe GMBH and Co. KG.

- (17) **Execution Date** means the date of the execution of this Settlement Agreement by Class Counsel and the Settling Defendant.
- (18) **Excluded Person** means each Defendant, the directors and officers of any Defendant, the subsidiaries or affiliates of any Defendant, the entities in which any Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.
- (19) **Final Order** means the later of a final judgment entered by a Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.
- (20) **Hohensee Litigation** means the litigation commenced by Dr. Volker Hohensee against Espar Inc., Espar Products Inc., and Eberspaecher Exhaust Systems Canada Inc. and the counterclaim by Espar Inc., Espar Products Inc., and Eberspaecher Exhaust Systems Canada Inc. against Dr. Volker Hohensee and VWH EuroTech Marketing, commenced in Toronto, Ontario, Canada (Court File No. CV-15-519400).
- (21) **Intervener** means Transport T.F.I. 6, S.E.C.
- (22) **Non-Settling Defendants** means any Defendant that is not the Settling Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Execution Date.
- (23) **Notice of Certification and of Approval Hearings** means the form or forms of notice, agreed to by the Plaintiffs and the Settling Defendant, or such other form or forms of notice as may be approved by the Courts, which informs the Ontario and BC Settlement Classes of: (i) the certification of the Ontario and BC Actions as class proceedings for settlement purposes; (ii) the right to opt-out of the certified

Ontario and BC Actions and the process for doing so; (iii) the dates and locations of the Approval Hearings; and, (iiii) the process by which an Ontario or BC Settlement Class Member may object to the settlement.

- (24) **Ontario Action** means the action commenced by the Ontario Plaintiff before the Ontario Court as identified in Schedule "A" to this Settlement Agreement.
- (25) **Ontario Counsel** means Harrison Pensa ^{LLP}.
- (26) **Ontario Court** means the Ontario Superior Court of Justice.
- (27) **Ontario Plaintiff** means John Devries.
- (28) **Ontario Settlement Class** means the settlement class in respect of the Ontario Action that is defined in Schedule "A" to this Settlement Agreement.
- (29) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the Notice of Certification and of Settlement Approval Hearing is first published.
- (30) **Other Actions** means any other actions or proceedings, excluding the Actions, the Québec Action and the Hohensee Litigation, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (31) **Parking Heaters** means the parking heaters themselves, accessories and parts sold for use with heaters, packages containing heaters, and accessories and/or parts for parking heaters.
- (32) **Party and Parties** means the Settling Defendant, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (33) **Person(s)** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business

or legal entity and their heirs, predecessors, successors, representatives, or assignees.

- (34) **Plaintiffs** means the Ontario Plaintiff and the BC Plaintiff.
- (35) **Québec Action** means the proceeding commenced by the Intervener before the Québec Court identified in Schedule "A" to this Settlement Agreement.
- (36) **Québec Class** means the purported class as defined in the Québec Action.
- (37) **Québec Court** means the Superior Court of Québec.
- (38) **Recitals** means the recitals to this Settlement Agreement.
- (39) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, in this or any other Canadian or foreign jurisdiction (all of the foregoing, collectively, "Claims" or, individually, a "Claim"), that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall or may have, relating in any way to any conduct anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of or compensation for, Parking Heaters in Canada, (all of the foregoing, individually and collectively, the "Conduct"), specifically including, without limitation, any Claims in any way related to Parking Heaters prices or relating to any conduct alleged or which could have been alleged, directly or indirectly, in the Ontario and BC Actions, including, without limitation, any Claims, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or any other horizontal or vertical, or unilateral or coordinated, anti-competitive conduct (whether that conduct occurred in Canada or elsewhere) in connection with the purchase, sale,

pricing, discounting, marketing or distributing of Parking Heaters in Canada during the Class Period, including, without limitation, any claims for consequential, subsequent or follow on harm that arise after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof, except that nothing herein shall be construed to grant any release with respect to Claims that the Releasors may have against the Non-Settling Defendants as a result of the Releasee's Conduct, including, without limitation, any Claims that have been made or could have been made in the ongoing Hohensee Litigation, which are specifically and deliberately unaffected by this agreement. Notwithstanding the foregoing, nothing herein shall be construed to release any Claims arising from breach of contract, for negligence, bailment, failure to deliver, lost goods, delayed or damaged goods or similar claim between the Releasee and Releasors relating to Parking Heaters.

- (40) **Releasee** means Volker Hohensee, excluding always the Non-Settling Defendants and their affiliates.
- (41) **Releasors** means, jointly and severally, individually and collectively, the Ontario and BC Plaintiffs and the Ontario and BC Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee, trustee, servant, contractor or representative of any kind.
- (42) **Schedules** mean the schedules to this Settlement Agreement.
- (43) **Settlement Agreement** means this agreement, including the Recitals and Schedules.
- (44) **Settlement Class** means all Persons included in the Ontario Settlement Class and the BC Settlement Class.
- (45) **Settlement Class Member(s)** means a member of a Settlement Class.

- (46) ***Settling Defendant*** means Volker Hohensee.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final dismissal with prejudice of the Ontario and BC Actions as against the Releasee who is named as a Defendant in the Ontario Action and the BC Action.

2.2 Motions Seeking Approval of Notice and Certification

- (1) Subject to subsection 2.2(2), the Plaintiffs shall bring motions before the Ontario and BC Courts, at a time solely within the discretion of the Plaintiffs, for an order approving the Notice of Certification and of Approval Hearings, and certifying the Ontario and BC Actions commenced in their respective jurisdictions as a class proceeding as against the Settling Defendant (for settlement purposes only).
- (2) The Ontario order approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and certifying the Ontario Action for settlement purposes shall be substantially in the form attached as Schedule "B". The form and content of the BC order approving the Notice of Certification and of Approval Hearings described in subsection 2.2(1) and certifying the BC Action for settlement purposes shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order attached as Schedule "B".

2.3 Motions Seeking Approval of the Settlement

- (1) As soon as practicable after the order referred to in subsection 2.2(1) has been granted and the Notice of Certification and of Approval Hearings has been published, and subject to subsection 2.3(2), the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.
- (2) The Ontario order approving this Settlement Agreement shall be substantially in the form attached as Schedule "C". The BC order approving this Settlement

Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the Ontario order.

- (3) This Settlement Agreement shall only become final on the Effective Date.

SECTION 3 - SETTLEMENT BENEFITS: COOPERATION

3.1 EXTENT OF COOPERATION

- (1) Upon execution of the Settlement Agreement, and in any case no later than seven (7) days from the execution of the Settlement Agreement but prior to the settlement approval motions contemplated in subsection 2.3, the Settling Defendant shall provide to Class Counsel:

- (a) an initial written evidentiary proffer (the "Proffer"), on a confidential basis, supported by any documentation that the Settling Defendant wishes to provide at that time, which will provide a summary of the Settling Defendant's knowledge of (i) the range, scope, nature, duration and impact of the alleged conspiracy by the defendants; and (ii) to the extent it is not provided in item (1) above, the details of Marine Acquisition's role in the alleged conspiracy
- (b) an opportunity to conduct a 1 hour interview (the "Initial Interview") to answer questions about the Proffer. The Initial Interview shall not be transcribed and the Initial Interview (or notes or summaries relating to it) shall not be shared with anyone by Class Counsel until the Effective Date. After the Effective Date, Class Counsel may share notes/summaries of the Interview with counsel for the Intervenor but may not publicly file or otherwise disclose those note/summaries. The notes/summaries or any other information about the Initial Interview may only be used by Class Counsel and counsel for the Intervenor for purposes of evaluating the Actions and/or negotiating with the Non-Settling Defendants. For clarity, Class Counsel may use the information discussed in the Initial Interview in discussions with the Non-Settling Defendants prior to the Effective Date;

- (c) Class Counsel shall be permitted to provide the Proffer to the the Intervener and the Non-Settling Defendants and their counsel on a confidential basis; and,
- (2) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by the Parties, subject to any other provisions of this Settlement Agreement and any other legal restrictions, the Settling Defendant shall:
 - (a) make himself available, for video conferences or telephone conferences always as agreed between his lawyer and Class Counsel to provide information and to answer questions in respect of the matters at issue in the Actions, including, without limitation, his knowledge of the alleged conspiracy;
 - (b) the video conferences or telephone conferences referred to in subparagraph (b) above shall not exceed a total of 24 hours. Given that Mr. Hohensee does not reside in Ontario, Class Counsel shall attempt to have the video or telephone conferences on consecutive days and in increments of no less than 6 hours for any one telephone or video conference;
 - (c) produce any Documents in his power, possession or control except to the extent that doing so would contravene a law or court order.
- (3) The obligation to produce Documents pursuant to subsection 3.1(2)(c) shall be a continuing one to the extent that additional Documents are provided by the Settling Defendant to the U.S. DOJ, the Canadian Competition Bureau or any foreign governmental regulator relevant to the alleged conspiracy regarding Parking Heaters which is at issue in the Actions.
- (4) Subject to the rules of evidence and any other provisions of this Settlement Agreement, the Settling Defendant agrees to authenticate for use at trial, discovery, summary judgment motions and/or certification motions, any of the Documents and, to the extent possible, any Documents produced by other Defendants in connection with the Actions that were received by or originated from the Settling Defendant by way of an affidavit, unless the court orders otherwise.

The Plaintiffs will work to minimize any burden on the Settling Defendant pursuant to this section.

- (5) The Settling Defendant also agrees to provide testimony at trial, by way of video conference, in any of the Ontario, BC or Quebec Actions as may be required unless otherwise ordered by the court. The Ontario and BC Plaintiffs and the Intervener agree to work to minimize any burden or inconvenience to the Settling Defendant pursuant to this section.
- (6) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant to disclose or produce any Documents or information prepared by or for counsel for the Settling Defendant or to disclose or produce any Documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, including the deemed undertaking rule, or subject to solicitor-client privilege, litigation privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents the Settling Defendant obtained on a privileged or cooperative basis from any party to any action or proceeding who is not a Releasee.
- (7) If any Documents are protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such Documents shall be promptly returned to the Settling Defendant and the Documents and the information contained therein shall not be disclosed or used, directly or indirectly, except with the express written permission of the Settling Defendant, and the production of such Documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such Documents.
- (8) The obligations of the Settling Defendant to cooperate as particularized in this subsection 3.1 shall not be affected by the release provisions contained in Section 5 of this Settlement Agreement. The obligations of the Settling Defendant to cooperate shall cease at the date of final judgment in the Actions as against all Defendants.

- (9) If the Settling Defendant materially breaches this Section 3.1, the Plaintiffs may move before the Courts to enforce the terms of this Settlement Agreement or set aside the approval of the Settlement Agreement or a part thereof.
- (10) Subject to subsection 3.1(8), the provisions set forth in this subsection 3.1 are the exclusive means by which the Plaintiffs and Class Counsel may obtain discovery, information or Documents from the Settling Defendant and the Plaintiffs and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Settling Defendant whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.
- (11) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is his desire to limit the burden and expense of this litigation. Accordingly, the Plaintiffs and Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, agree not to seek information that is unnecessary, or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendant.
- (12) The Plaintiffs shall reimburse the Settling Defendant for all reasonably incurred costs (excluding legal fees) in connection with, or in any way related to, the Settling Defendant's obligations to provide evidence under this Agreement, including, without limitation, the costs of establishing any video-conference or teleconference connections and any necessary travel costs. The Settling Defendant's counsel shall co-ordinate with the Plaintiffs' counsel to make all necessary arrangements for the provision of the Settling Defendant's evidence in advance on an agreed basis.
- (13) In the event that the Settling Defendant is required to provide evidence at the request of the Non-Settling Defendants for any reason separately from the obligations to provide evidence under this agreement, the Settling Defendant reserves all rights to seek full reimbursement from the Non-Settling Defendants of any costs incurred in connection with the provision of such evidence and to otherwise establish the terms under which any such evidence might be provided.

3.2 Limits on Use of Documents

- (1) It is understood and agreed that all Documents and information made available or provided by the Settling Defendant to the Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Actions, and shall not be used directly or indirectly for any other purpose, except to the extent that the Documents or information are publicly available. The Plaintiffs and Class Counsel agree they will not disclose the Documents and information provided by the Settling Defendant except: (i) to experts, consultants or third-party service providers retained by them in connection with the Actions who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued; (ii) to the extent that the documents or information are publicly available; (iii) as evidence in the Actions; or (iv) as otherwise required by law. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such Documents and information, and of any work product of Class Counsel that discloses such Documents and information, except to the extent that the Documents and information are publicly available.
- (2) If the Plaintiffs or Class Counsel intend to produce for discovery or file in the Actions any Documents or other information provided by the Settling Defendant as cooperation under the Settlement Agreement, Class Counsel shall provide the Settling Defendant with an advance description of the Documents or other information sought to be produced or filed at least thirty (30) days in advance of the proposed production or filing, or in the case of documents or information produced under subsection 3.2 of the Settlement Agreement, at least ten (10) days in advance of the proposed production or filing, in order that the Settling Defendant may move to obtain a sealing or confidentiality order or similar relief. If the Settling Defendant so moves, the Plaintiffs, Settlement Class Members and Class Counsel shall not oppose the position taken by the Settling Defendant. The Plaintiffs and Class Counsel shall not disclose the confidential Documents or information until the Settling Defendant's motion has been decided and all applicable appeal periods have expired, except, so as not to delay prosecution of the Actions, Class

Counsel may provide, on an interim basis, Documents or information to counsel for the Non-Settling Defendants provided that counsel for the Non-Settling Defendants agree that they will keep the Documents or information confidential and/or on an external counsel only basis as appropriate until the Settling Defendant's motion has been decided and all applicable appeal periods have expired.

- (3) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any Documents or information provided by the Settling Defendant as cooperation under this Settlement Agreement, Class Counsel shall notify the Settling Defendant of such application promptly upon becoming aware of it in order that the Settling Defendant may move to oppose such disclosure or production. In no circumstances shall the Plaintiffs or Class Counsel apply for or consent to such an application for disclosure or production.

SECTION 4 - OPTING-OUT

4.1 Procedure

- (1) A Person may opt-out of the Ontario and BC Actions by sending a written election to opt-out, signed by the Person or the Person's designee, by pre-paid mail, courier, fax, or e-mail to Class Counsel or their duly appointed agent at an address to be identified in the Notice of Certification and of Approval Hearings.
- (2) An election to opt-out will only be effective if it is received by Class Counsel or their duly appointed agent on or before the Opt-Out Deadline.
- (3) The written election to opt-out must contain the following information in order to be effective:
 - (a) the Person's full name and current address; and
 - (b) a statement to the effect that the Person wishes to be excluded from the BC and/or Ontario Actions.

4.2 Opt-Out Report

- (1) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendant, a report containing the names of each Person who has validly and timely opted-out of the Ontario and BC Actions, as well as any reasons given by those Persons for opting-out.

SECTION 5 - RELEASES AND DISMISSALS

5.1 Release of Releasee

- (1) Upon the Effective Date, subject to subsection 5.2, in consideration of the settlement benefits and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasee from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

5.2 Covenant Not to Sue

- (1) Notwithstanding subsection 5.1, upon the Effective Date, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasee, but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasee in respect of or in relation to the Released Claims.

5.3 Dismissal of the Ontario and BC Actions

- (1) Upon the Effective Date, the Ontario Action and the BC Action shall be dismissed, with prejudice and without costs, as against the Releasee who is named as a Defendant in the Ontario Action and the BC Action.

5.4 Dismissal of Other Actions

- (1) Upon the Effective Date, each member of the Ontario Settlement Class and the BC Settlement Class shall be deemed to irrevocably consent to the dismissal,

without costs and with prejudice, of his, her or its Other Actions against the Releasee.

- (2) Upon the Effective Date, all Other Actions commenced in Ontario or British Columbia by a Settlement Class Member shall be dismissed against the Releasee, without costs and with prejudice.

5.5 Undertaking by the Intervener

- (1) The Intervener undertakes not to seek the addition of the Settling Defendant as a Defendant to the Québec Action if this Settlement Agreement is finally approved by the Courts and is not terminated.

SECTION 6 - SETTLEMENT APPROVAL ORDERS

6.1 Ontario and British Columbia Settlement Approval Orders

- (1) The Plaintiffs and the Settling Defendant agree that the Ontario and British Columbia orders approving this Settlement Agreement must include the following terms:
 - (a) a provision providing expressly that the Settlement Agreement, the Released Claims and the settlement approval orders do not grant any release with respect to Claims that the Releasors may have against the Non-Settling Defendants as a result of the Releasee's Conduct, including, without limitation, any Claims that have been made or could have been made in the ongoing Hohensee Litigation, which are specifically and deliberately unaffected by the Settlement Agreement;
 - (b) a provision that nothing in the British Columbia and Ontario orders approving this Settlement Agreement, as applicable, is intended to or shall limit, restrict or affect any arguments which the Parties may make regarding the assessment of damages, any restitutionary award, disgorgement of profits or judgment against the Non-Settling Defendants in favour of members of the Ontario or BC Settlement Class, as applicable, in the Ontario or BC Action, as applicable;

- (c) a provision that a Non-Settling Defendant may, on motion to the Ontario Court or BC Court, as applicable, determined as if the Settling Defendant remained party to the Ontario Action or BC Action, as applicable, and on at least ten (10) days' notice to Counsel for the Settling Defendant, and not to be brought unless and until the Ontario Action or BC Action, as applicable, against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek Orders for the following:
- (i) documentary discovery and an affidavit of documents (list of documents in British Columbia) from the Settling Defendant in accordance with the relevant rules of civil procedure;
 - (ii) oral discovery of the Settling Defendant by video conference or telephone conference only, the transcript of which may be read in at trial;
 - (iii) leave to serve a request to admit (notice to admit in British Columbia) on the Settling Defendant in respect of factual matters; and/or
 - (iv) the production of the Settling Defendant to testify at trial by video conference, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
- (d) a provision that the Settling Defendant retains all rights to oppose such motion(s) brought pursuant to subsection 6.1(1)(c). Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of Documents to be produced and/or for information obtained from discovery in accordance with subsection 6.1(1)(c). Notwithstanding any provision in the Ontario and British Columbia order approving this Settlement Agreement, on any motion brought pursuant to subsection 6.1(1)(c), the Ontario Court or BC Court, as applicable, may make such orders as to costs and other terms as it considers appropriate; and,

- (e) a provision that a Non-Settling Defendant may serve the motion(s) referred to in subsection 6.1(1)(c) on the Settling Defendant by service on counsel for the Settling Defendant in the relevant Action.
- (2) To the extent that such an order is granted pursuant to subsection 6.1(1)(c) and discovery is provided to the Non-Settling Defendants, the Non-Settling Defendants shall provide a copy of all discovery provided, whether oral or documentary in nature, to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant(s).

6.2 Claims Against Other Entities Reserved

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any Person other than the Releasee.
- (2) Further, for greater certainty, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any rights or claims by the parties in the Hohensee Litigation.

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

- (1) The Plaintiffs and Releasee expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs and the Releasee further agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasee, or of the truth of any of the claims or allegations contained in the Actions, or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

7.2 Agreement Not Evidence

- (1) The Plaintiffs and the Releasee agree whether or not it is approved, is terminated or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

SECTION 8 - CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

- (1) The Parties agree that the Ontario and BC Actions shall be certified as class proceedings as against the Settling Defendant solely for purposes of settlement of the Ontario and BC Actions and the approval of this Settlement Agreement by the Courts, and such certification shall not be used or relied on as against the Settling Defendant for any other purpose or in any other proceeding.
- (2) The Plaintiffs agrees that, in the motions for certification of the Ontario and BC Actions as class proceedings for settlement purposes and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Ontario Settlement Class and the BC Settlement Class.
- (3) The Parties agree that the certification of the Ontario and BC Actions as against the Settling Defendant, for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants, except as expressly set out in this Settlement Agreement.

SECTION 9 - NOTICE TO ONTARIO AND BC SETTLEMENT CLASSES

9.1 Notices Required

- (1) The proposed Ontario and BC Settlement Classes shall be given the following notice: (i) Notice of Certification and of Approval Hearings; and (ii) notice of termination (if the Settlement Agreement is terminated or otherwise fails to take effect).

9.2 Form and Distribution of Notices

- (1) The form of the notices referred to in subsection 9.1 and how and where they are published and distributed shall be as agreed to by the Plaintiffs and the Settling Defendant and, failing agreement, as ordered by the Courts.
- (2) The Plaintiffs shall bring and seek to schedule motions before the Courts seeking orders approving the notices described in subsection 9.1. The Plaintiffs may determine the timing of the motions in their full and complete discretion, after consultation with the Settling Defendant, and subject to subsection 2.2.

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel at a time within the discretion of Class Counsel.

SECTION 11 - ADMINISTRATION AND NOTICE EXPENSES

- (1) The Releasee shall not be liable for any fees, disbursements or taxes of any of Class Counsel's, the Plaintiffs' or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.
- (2) The Releasee shall not be liable for the costs of the notices required by subsection 11.1 and any costs of translation required by subsection 13.12 as they become due.

SECTION 12 - NON-APPROVAL OR TERMINATION OF SETTLEMENT AGREEMENT

12.1 Right of Termination

(1) In the event that:

- (a) any Court declines to certify the Ontario Settlement Class and/or the BC Settlement Class;
- (b) the Ontario Court or the BC Court declines to dismiss the Ontario Action or BC Action as against the Releasee who is named as a Defendant;
- (c) any Court declines to approve this Settlement Agreement or any material term thereof, and the Parties agree that the releases and covenants not to sue contemplated by this Settlement Agreement are all material terms;
- (d) the Court approves this Settlement Agreement in a materially modified form;
- (e) the Parties acting reasonably do not reach agreement on the form and content of any order required by this Settlement Agreement, or the order agreed by the Parties is approved by a Court in a materially modified form;
or
- (f) any order approving this Settlement Agreement made by the Courts does not become a Final Order;

the Settling Defendant, Class Counsel, and the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to subsection 13.18, within thirty (30) days following the event(s) described above. Except as provided for in subsection 12.3, if the Settling Defendant, Class Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

12.2 Effect of Non-Approval or Termination of Settlement Agreement

- (1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) no motion to certify the Ontario or BC Actions as class proceedings on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
 - (b) any order certifying the Ontario or BC Actions as class proceedings on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
 - (c) any prior certification of the Ontario or BC Actions as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Actions or any other litigation; and
 - (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all Documents or other materials provided by the Settling Defendant under this Settlement Agreement or containing or reflecting information derived from such Documents or other materials received from the Settling Defendant and, to the extent Class Counsel has disclosed any Documents or information provided by the Settling Defendant to any other Person, shall recover and destroy such Documents or information. Class Counsel shall provide counsel to the Settling Defendant with a written certification by Class Counsel of such destruction. Nothing contained in this subsection 12.2 shall be construed to require Class Counsel to destroy any of their work product. However, any Documents or information provided by the Settling Defendant or received from the Settling Defendant in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or

any other Person in any way for any reason, without the express prior written permission of the Settling Defendant. Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such Documents, information and any work product of Class Counsel derived from such Documents or information.

12.3 Survival of Provisions After Termination

- (1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of subsections 7.1, 7.2, 9.1, 9.2, 12.2 and 12.3, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of subsections 7.1, 7.2, 9.1, 9.2, 12.2 and 12.3, within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 13 - MISCELLANEOUS

13.1 Motions for Directions

- (1) Class Counsel or the Settling Defendant may apply to the Courts as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the Québec Action or the BC Action shall be determined by the Ontario Court.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

13.2 Releasee Has No Liability for Administration

- (1) The Releasee has no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

13.3 Headings, etc.

- (1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement," "hereof," "hereunder," "herein," and similar expressions refer to this Settlement Agreement and not to any particular section, subsection, or other portion of this Settlement Agreement.

13.4 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday as "holiday" is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

13.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Action commenced in its jurisdiction and the Parties thereto.
- (2) The Parties agree that no Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over the matter.
- (3) Notwithstanding subsections 13.5(1) and 13.5(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and

enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement shall be determined by the Ontario Court.

13.6 Governing Law

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

13.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.8 Amendments

- (1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties, and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

13.9 Binding Effect

- (1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Settling Defendant, the Releasors, the Releasee and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiffs shall be binding upon all Releasors and every covenant and agreement made by the Settling Defendant shall be binding upon the Releasee.

13.10 Counterparts

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile

or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.11 Negotiated Agreement

- (1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

13.12 Language

- (1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related Documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by any of the Courts, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid by Class Counsel as a disbursement of the Actions. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

13.13 Recitals

- (1) The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

13.14 Schedules

- (1) The Schedules annexed hereto form part of this Settlement Agreement.

13.15 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:

- (a) they have read and understood this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to them by their counsel;
- (c) they fully understands each term of this Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.16 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above, their respective signatures and their law firms.

13.17 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by e-mail, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

FOR THE PLAINTIFFS AND CLASS COUNSEL:

Jonathan Foreman
Harrison Pensa ^{LLP}
450 Talbot Street
London, ON N6A 4K3

Tel: (519) 679-9660
Fax: (519) 667-3362
E-mail: jforeman@harrisonpensa.com

Reidar Mogerman
Camp Fiorante Matthews Mogerman
4th Floor, Randall Bldg.
555 West Georgia St.
Vancouver, BC V6B 1Z6

Tel: (604) 331-9530
Fax: (604) 689-7554
E-mail : rmogerman@cfmlawyers.ca

FOR THE SETTLING DEFENDANT:

Simon Bieber
Wardle Daley Bernstein Bieber
401 Bay Street Suite 2104
Toronto, ON M5H 2Y4

Tel: (416) 351-2770
Fax: (416) 351-9196
E-mail: sbibeber@wdbblaw.ca

13.18 Date of Execution


- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.

John Devries, by his counsel

Name of Authorized Signatory:

Jon Foreman

Signature of Authorized Signatory:



Harrison Pensa ^{LLP}
Class Counsel

Dumas Trucking Ltd., by their counsel

Name of Authorized Signatory:

Jon Foreman

Signature of Authorized Signatory:


Camp Florante Matthews Mogerman
Class Counsel

VOLKER HOHENSEE, by his counsel

Name of Authorized Signatory

Volker Hohensee

Signature of Authorized Signatory:



Wardle Daley Bernstein Bieber
Canadian Counsel

- (2) The Intervener has executed this Settlement Agreement as of the date on the cover page and intervenes to this Settlement Agreement strictly to make the undertaking at Section 5.5 hereof.

Transport T.F.I. 6, S.E.C., by its counsel

Name of Authorized Signatory:

Maxime Nasr

Signature of Authorized
Signatory:

 for
Bebeau Lapointe sncrl

SCHEDULE "A"

THE ACTIONS

Proceeding	Plaintiff	Defendants	Settlement Class
Ontario Superior Court of Justice Court File No. 534/15 CP (the "Ontario Action")	John Devries	ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO THERMO AND COMFORT NORTH AMERICA INC.; MARINE CANADA ACQUISITION INC. (O/A SEASTAR SOLUTIONS); VOLKER HOHENSEE; WEBASTO SE; and WEBASTO THERMO & COMFORT SE	<i>All persons or entities in Canada who directly or indirectly purchased a Parking Heater for use in a commercial vehicle during the Class Period, other than (1) members of the Québec Class and (2) members of the BC Settlement Class.</i>
Supreme Court of British Columbia Court File No. S-15318Z & S-175623 (collectively the "BC Action")	Dumas Trucking Ltd.	ESPAR INC.; ESPAR PRODUCTS INC.; ESPAR CLIMATE CONTROL SYSTEMS; EBERSPAECHER CLIMATE CONTROL SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO THERMO AND COMFORT NORTH AMERICA INC.; MARINE CANADA ACQUISITION INC. (O/A SEASTAR SOLUTIONS); WEBASTO SE; WEBASTO THERMO & COMFORT SE and VOLKER HOHENSEE	<i>All persons or entities in British Columbia who directly or indirectly purchased a Parking Heater for use in a commercial vehicle during the Class Period.</i>

Proceeding	Plaintiff	Defendants	Settlement Class
Superior Court of Québec (No. 500-06-000736-153) (the "Québec Action")	Transport T.F.I. 6, S.E.C.	ESPAR INC.; ESPAR CLIMATE CONTROL SYSTEMS; EBERSPAECHER CLIMATE CONTROL SYSTEMS INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO. KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; ESPAR PRODUCTS INC.; WEBASTO SE; WEBASTO THERMO & COMFORT SE; WEBASTO THERMO & COMFORT NORTH AMERICA, INC.;	N/A

SCHEDULE "B"

Court File No. 3795/15 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
MR. JUSTICE R. RAIKES) OF , 2017

BETWEEN:

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL SYSTEMS
INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL
SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO.
KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO THERMO AND COMFORT
NORTH AMERICA INC.; MARINE CANADA ACQUISITION INC. (O/A SEASTAR
SOLUTIONS); VOLKER HOHENSEE; WEBASTO SE; and WEBASTO THERMO & COMFORT
SE

Defendants

Proceeding under the *Class Proceedings Act, 1992, S.O. 1992, c. 6*

ORDER

THIS MOTION made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against Volker Hohensee (the "Settling Defendant") and approving the notice of settlement approval hearing and the method of dissemination of said notice was heard this day at the Court House, 80 Dundas Street, London, Ontario.

ON READING the materials filed, including the settlement agreement dated ●, 2017 attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of Class Counsel, counsel for the Settling Defendant, and counsel for the Non-Settling Defendants in the Action;

AND ON BEING ADVISED that ● has consented to being appointed as the notice provider in accordance with the terms of this Order;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Action is certified as a class proceeding as against the Settling Defendant for settlement purposes only.
3. **THIS COURT ORDERS** that the "Settlement Class" is certified as follows:

All persons or entities in Canada who directly or indirectly purchased a parking heater, parking heater accessory, or parking heater kit manufactured and/or sold by the Defendants for use in commercial vehicles between September 13, 2001 and December 31, 2012 other than (1) all persons and entities resident in British Columbia and (2) all persons and entities who directly or indirectly purchased a Product in Québec.
4. **THIS COURT ORDERS** that the Action is certified on the basis of the following Common Issue:

Did the Settling Defendant conspire to fix, raise, maintain or stabilize the price of, or allocate markets and customers of, Parking Heaters directly or indirectly in Canada during the Class Period? If so, what damages, if any, did Settlement Class Members suffer?
5. **THIS COURT ORDERS** that the Plaintiff, John Devries is appointed as the representative plaintiff for the Settlement Class.
6. **THIS COURT ORDERS** that paragraphs 2, 3, 4 and 5 of this Order, the certification of this Action against the Settling Defendant for settlement purposes and the definitions of the Settlement Class, Class Period and Common Issue are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Action and, without restricting the generality of the foregoing, may not be relied on by any Person to establish jurisdiction, the criteria for certification

(including class definition) or the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.

7. **THIS COURT ORDERS** that Settlement Class Members who wish to opt-out of this Action must do so by sending a written election to opt-out, signed by the Person or the Person's designee, together with the information required in the Settlement Agreement to Class Counsel or their duly appointed agent, by pre-paid mail, courier, facsimile or e-mail received on or before the Opt-Out Deadline.
8. **THIS COURT ORDERS** that any Settlement Class Member who has validly opted-out of this Action shall no longer participate or have the opportunity in the future to participate in this Action.
9. **THIS COURT ORDERS** that any Settlement Class Member who has not validly opted-out of this Action will be bound by any Settlement Agreement approved by the Court and may not opt-out of this Action in the future.
10. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who has not validly opted-out of this Action shall consent and shall be deemed to have consented to the dismissal as against the Settling Defendant and the Releasee of any Other Actions he, she or it has commenced, without costs and with prejudice.
11. **THIS COURT ORDERS AND DECLARES** that each Other Action commenced by any Settlement Class Member who has not validly opted-out of this action shall be and is hereby dismissed against the Settling Defendant and the Releasee, without costs and with prejudice.
12. **THIS COURT ORDERS** that the notice of certification and settlement approval hearing (the "Notice") is hereby approved substantially in the form attached hereto as **Schedules "B"**.
13. **THIS COURT ORDERS** that the plan of dissemination of the Notice (the "Plan of Dissemination") is hereby approved in the form attached hereto as **Schedule "C"**

and that the Notice shall be disseminated in accordance with the Plan of Dissemination.

14. **THIS COURT ORDERS** that ● is appointed to disseminate the Notice in accordance with the terms of this Order.
15. **THIS COURT ORDERS** that this Order is contingent upon parallel orders being made by the BC Court, and the terms of this Order shall not be effective unless and until such orders are made by the BC Court.

Date:

The Honourable Justice Raikes

JOHN DEVRIES
Plaintiff

v. ESPAR INC., ET AL.
Defendants

Court File No. 534/15 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the Class Proceedings Act, 1992

**ORDER
(Motion for Certification and Notice Approval)**

HARRISON PENSEA LLP
450 Talbot Street
London, ON N6A 4K3

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Lawyers for the Plaintiff

SCHEDULE "C"

Court File No. 534/15 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) , THE DAY
MR. JUSTICE R. RAIKES) OF , 2017

BETWEEN:

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL SYSTEMS
INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL
SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO.
KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO THERMO AND COMFORT
NORTH AMERICA INC.; MARINE CANADA ACQUISITION INC. (O/A SEASTAR
SOLUTIONS); VOLKER HOHENSEE; WEBASTO SE; and WEBASTO THERMO & COMFORT
SE

Defendants

Proceeding under the *Class Proceedings Act, 1992, S.O. 1992, c. 6*

ORDER

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with Volker Hohensee (the "Settling Defendant") and dismissing this action as against the Settling Defendant, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

AND ON READING the materials filed, including the settlement agreement dated ●, 2017 attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of Class Counsel, counsel for the Settling Defendant and counsel for the Non-Settling Defendants in the Action;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been ● objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting-out of the Action has passed, and there were ● opt-outs;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of *Rules 7.04(1)* and *7.08(4)* of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
5. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 10, each Releasor who has not validly opted-out of this Action has released and shall be conclusively deemed to have forever and absolutely released the Releasee from the Released Claims.
6. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who has not validly opted-out of this Action shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against the Releasee, or any other Person who

may claim contribution or indemnity or other claims over relief from the Releasee, in respect of any Released Claims except for the continuation of the Action against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees or, if the Action is not certified, the continuation of the claims asserted in the Action on an individual basis or otherwise against any Non-Settling Defendants or unnamed co-conspirator that is not a Releasee.

7. **THIS COURT ORDERS** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasee in respect of or in relation to the Released Claims.
9. **THIS COURT ORDERS** that the Settlement, the Released Claims and this settlement approval order do not grant any release with respect to Claims that the Releasors may have against the Non-Settling Defendants as a result of the Releasee’s Conduct, including, without limitation, any Claims that have been made or could have been made in the ongoing Hohensee Litigation, which are specifically and deliberately unaffected by the Settlement Agreement.
10. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any argument which the Parties may make regarding the assessment of damages (including punitive damages, if any), any restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) or judgment against the Non-Settling Defendants in favour of the Settlement Class Members in the Action.

11. **THIS COURT ORDERS** that a Non-Settling Defendants may, on motion to this Court brought on at least ten (10) days' notice and to be determined as if the Settling Defendant was a party to the Action, and not to be brought until the Action against the Non-Settling Defendant has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
- (a) documentary discovery and an affidavit of documents from the Settling Defendant in accordance with the *Rules of Civil Procedure*;
 - (b) oral discovery of the Settling Defendant by video conference or telephone conference only, the transcript of which may be read in at trial;
 - (c) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (d) the production of the Settling Defendant to testify at trial by video conference, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
12. **THIS COURT ORDERS** that the Settling Defendant retain all rights to oppose such motion(s) brought under paragraph 11.
13. **THIS COURT ORDERS** that a Non-Settling Defendant(s) may serve the motion(s) referred to in paragraph 11 above on the Settling Defendant by service on counsel for the Settling Defendant in the Action.
14. **THIS COURT ORDERS** that this Settlement Agreement and any related bar order does not settle, compromise, release, limit or affect in any way whatsoever any rights or claims by parties in the Hohensee Litigation.
15. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and

enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

16. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Members have or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not the Releasee.
17. **THIS COURT ORDERS** that the Releasee shall not have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.
18. **THIS COURT ORDERS** that the Action is hereby dismissed as against the Settling Defendant, without costs and with prejudice.
19. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the BC Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the BC Court, and the BC Action has been dismissed with prejudice and without costs. If such order is not secured in British Columbia, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.
20. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.

Date:

The Honourable Justice Raikes

JOHN DEVRIES
Plaintiff

ESPAR INC., ET AL.
Defendants

v.

Court File No. 534/15 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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**ORDER
(Motion for Settlement Approval)**

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Lawyers for the Plaintiff

Schedule "B"

Jonathan J. Foreman | Partner

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Anni Barry | Senior Law Clerk

Tel: 519.914.1175 ext. 107

Email: abarry@foremancompany.com

October 20, 2020

VIA E-MAIL

Adair Goldblatt Bieber ^{LLP}
Attn: Simon Bieber
95 Wellington Street West
Suite 1830
Toronto, ON M5J 2N7
Email: SBieber@agblp.com

Dear Mr. Bieber,

Re: *John Devries v. Espar Inc., et al.*, Court File No. 534/15 CP (the "Ontario Action")
***Dumas Trucking Ltd. v. Webasto SE*, BCSC Action No. S175623 (the "BC Action")**

I write on behalf of counsel in the Ontario and BC parking heaters class actions (listed above) to confirm that an agreement has been reached between your client, Volker Hohensee, and the plaintiffs in our respective actions to amend the settlement agreement entered into between the parties on December 6, 2017 (the "**Settlement Agreement**") and to confirm the approach for the pending Motion for Certification for Settlement Purposes and Notice Approval (the "**Motion for Certification for Settlement Purposes**") and the Motion for Settlement Approval.

Since entering the Settlement Agreement, the plaintiffs in the Ontario and BC Actions have come to an agreement with the remaining Non-Settling Defendants to certify the Ontario Action, on a consent basis, on behalf of an amended class inclusive of all class members in Canada, excluding Québec (the "**Consent Certification Motion**").

The plaintiffs in the Ontario and BC Actions and the Non-Settling Defendants have further agreed that the BC Action will be permanently stayed and not revived unless the Ontario Court declines to adjudicate the claims of BC class members as parties to the Ontario Action.

The Settlement Agreement currently defines the Settlement Classes as follows:

The Ontario Settlement Class:

All persons or entities in Canada who directly or indirectly purchased a Parking Heater for use in a commercial vehicle during the Class Period, other than (1) members of the Quebec Class and (2) members of the BC Settlement Class.

The BC Settlement Class:

All persons or entities in British Columbia who directly or indirectly purchased a Parking Heater for use in a commercial vehicle during the Class Period.

The Amended Class definition agreed to between the plaintiffs and the Non-Settling Defendants for the Consent Certification Motion is as follows:

All Direct Purchasers and/or Indirect Purchasers of a Parking Heater other than all Direct Purchasers and Indirect Purchasers of a Parking Heater in Québec.

"Parking Heater" means a parking heater, including the heater itself, accessories and parts sold for use with heaters, packages containing heaters, and accessories and/or parts for parking heaters (parking heater 'kits'), which was manufactured or sold by the Defendants for use in a commercial vehicle between September 13, 2001 and December 31, 2012.

"Direct Purchasers" means all persons or entities in Canada who purchased a Parking Heater directly.

"Indirect Purchasers" means all persons or entities in Canada who purchased a Parking Heater from someone other than a Defendant including any person or entity who purchased, leased and sub-leased a commercial vehicle containing a Parking Heater.

The plaintiffs in the Ontario and BC Actions have proposed, and your client has agreed, to amend the process contemplated in the Settlement Agreement by way of this letter to incorporate the Amended Class definition and to seek approval of the Settlement Agreement before the Ontario Court only.

To implement the amended Settlement Agreement, the plaintiffs and your client agree to the following steps:

1. The Consent Certification Motion between the plaintiff in Ontario Action and the Non-Settling Defendants will proceed immediately before the Motion for Certification for Settlement Purposes;
2. The plaintiff in the Ontario Action will issue an amended Statement of Claim which includes the broader Amended Class;
3. The Motion for Certification for Settlement Purposes will be heard immediately following the Consent Certification Motion. A parallel hearing will not be required in the BC Action;
4. A joint notice program advising the Amended Class of the consent certification as against the Non-Settling Defendants, certification for settlement purposes as against Mr. Hohensee, the opt-out period, and the upcoming Settlement Approval Hearing will occur pursuant to a court-approved plan of dissemination; and

5. Following the conclusion of the opt-out period, the Motion for Settlement Approval will take place in Ontario only. The Motion for Settlement Approval will seek a release for Mr. Hohensee on behalf of the Amended Class. A parallel hearing will not be required in the BC Action.

The parties agree that the Settlement Agreement is amended only to the extent necessary to give effect to this amending agreement and that all other unaltered provisions remain in force and the parties shall continue to be governed by their obligations under the Settlement Agreement as executed.

Please acknowledge your agreement with the foregoing by signing and returning a copy of this letter.

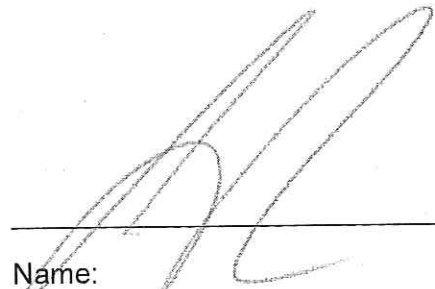
Yours very truly,
Foreman & Company



Jonathan J. Foreman
JJF/ast

October 20, 2020

Date:



Name:
Adair Goldblatt Bieber LLP, Counsel
for Mr. Volker Hohensee

Schedule "C"

CERTIFICATION GRANTED IN THE PARKING HEATERS PRICE-FIXING CLASS ACTION

The Parking Heaters price-fixing class action has been certified by the Court and a settlement agreement has been reached with an individual defendant who was a former executive of one of the defendants.

If you are a Canadian resident, outside of Québec, who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater between September 13, 2001 and December 31, 2012 **your rights may be affected.**

WHAT HAPPENS NOW?

The parties will now exchange documents and certain representatives for each side will be asked questions in a process known as examinations for discovery. The matter will then proceed to trial. At trial, a judge will decide, among other things, if the defendants participated in an illegal conspiracy to fix the price of Parking Heaters in Canada and if they did, what damages, if any, class members suffered.

A settlement approval hearing will also take place with respect to the settlement reached with the individual defendant, Volker Hohensee on [date and time] at [location].

If you are a Class Member that wants to be included in the Class Action, and you do not oppose the settlement, you do not need to do anything at this time.

If you do not want to be included in this Class Action or if you wish to comment on the settlement agreement, you must do so by **[date]**. Consult the website below or contact Class Counsel for more details.

For more information, please visit:
<https://www.foremancompany.com/parking-heaters-price-fixing> or call: 1.855.814.4575 ext. 107

SCHEDULE D

LEGAL NOTICE AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

CANADIAN PARKING HEATERS CLASS ACTION

Did you purchase a parking heater, or purchase, lease or sub-lease a vehicle containing a parking heater, between September 13, 2001 and December 31, 2012? If so, your legal rights could be affected.

What is this Class Action about?

A class action was initiated in Ontario against Espar¹ and Webasto², who are manufacturers of Parking Heaters. The case was initiated on behalf of all Canadians, excluding Québec residents (a separate lawsuit was commenced in Québec on behalf of Québec residents), who purchased parking heaters, or purchased, leased or subleased a vehicle containing a parking heater, between September 13, 2001 and December 31, 2012 (the "Class Period") (the "Class Members").

A "Parking Heater" means a parking heater, accessories and parts sold for use with heaters, packages containing heaters and accessories and/or parts for parking heaters which were manufactured or sold by the Defendants for use in a commercial vehicle during the Class Period.

The lawsuit alleges that the defendants participated in an unlawful conspiracy to fix, raise, maintain or stabilize the price of Parking Heaters in Canada, amongst other allegations (the "Class Action"). •

Certification

The Ontario Court has "certified" the Class Action meaning the Court has agreed that the lawsuit is suitable to proceed to trial as a class action.

Certification is not a ruling on the merits of the case, and the Court has not yet made a decision on the allegations made in the Class Action.

What happens next?

The parties will now engage in a process known as discovery where they exchange relevant documents and examine representative witnesses for each side.

The matter will then proceed to trial. At trial, a judge will decide, whether or not the claims will be successful and whether remedies should be ordered in favour of Class Members.

Settlement reached with Volker Hohensee

A settlement has been reached with the individual defendant Volker Hohensee, a former executive of the defendant Espar, in which Mr. Hohensee has agreed to provide the plaintiff with early cooperation and evidence in respect of the alleged conspiracy by the defendants. In exchange, Mr. Hohensee will be provided with a release of the claims against him in the Class Action. The settlement must be approved by the court before it becomes effective.

A settlement approval hearing will take place before the Ontario Superior Court of Justice on April 29, 2021 at 9:00 a.m. to determine if the settlement is fair, reasonable and in the best interest of Class Members. The settlement approval hearing is presently expected to be conducted by Zoom and can be accessed through: <https://zoom.us/j/91972027948> or (Tel): 647.374.4685; Meeting ID: 919 7202 7948. Please visit www.foremancompany.com/parking-heaters-price-fixing for more information.

If you do not oppose the proposed settlement agreement, you do not need to appear at the hearing or take any other action at this time. If you want to tell the court what you think about the proposed

settlement, you must send a written submission to Class Counsel by [date].

Does this cost me anything?

You do not have to pay the lawyers working on the Class Action any money. The lawyers only get paid if the Class Action is successful, and if so, they are paid out of any recovery that is achieved on behalf of the Class Members.

The lawyers working on the Class Action will seek a legal fee of up to 30% of the value of the results obtained, plus out of pocket case expenses and applicable taxes. Lawyers' fees and expenses, if any, are subject to Court approval.

Participating in the Class Action

If you want to be included in this Class Action, you do not need to do anything at this time.

You will be automatically included in the Class Action and may eventually receive money or other benefits from the Class Action.

If you participate in the Class Action, you will not be able to pursue your own case against the defendants regarding the claims at issue. You will be bound by the results of the Class Action, win or lose.

Opting-Out of the Class Action

Class Members have the right to exclude themselves from the Class Action by opting-out.

If you opt-out, you will not be eligible to participate in or receive any money or other remedies from the Class Action.

You may be able to start or continue your own case regarding the claims at issue at your own obligation and expense. If you wish to pursue your claims on an individual basis, you should consider consulting with a lawyer to discuss your options and any applicable deadlines for commencing your action.

If you do not want to be a Class Member in the Class Action, your opt-out must be received **by [date] at the latest.** Completed opt-outs can be sent to Class Counsel at the contact particulars below. For complete instructions on how to opt-out, please view the long-form notice on the website listed below or contact Class Counsel.

More Information

A copy of the complete certification order, settlement agreement, long-form notice and other important documents can be viewed at: www.foremancompany.com/parking-heaters-price-fixing

Class Counsel

Foreman & Company, Attn: Jonathan Foreman
4 Covent Market Place, London, ON N6A 1E2
Tel: 1.855.814.4575 ext. 107, Fax: 1.226.884.5340 or
E-mail: classactions@foremancompany.com

Camp Fiorante Matthews Mogerman LLP, Attn: Aisling Slevin
Suite 400, 856 Homer Street, Vancouver, BC V6B 2W5
Tel: 1.800.686.2322, Fax: 1.604.698.7554 or
E-mail: info@cfmlawyers.ca

¹ **Espar means:** Espar Inc., Espar Products Inc., Eberspaecher Climate Control Systems International Beteiligungs-GMBH, Eberspaecher Climate Control Systems GMBH & Co. KG (formerly known as J. Eberspaecher GMBH and Co.

KG), Eberspaecher Gruppe GMBH and Co. KG.

² **Webasto means:** Webasto Thermo and Comfort North America Inc., Webasto SE and Webasto Thermo & Comfort SE

Schedule "E"

1

NOTICE OF CERTIFICATION IN THE PARKING HEATERS CLASS ACTION

TO: All persons in Canada, excluding Québec, who purchased a Parking Heater, or purchased, leased or sub-leased a vehicle containing a Parking Heater, between September 13, 2001 and December 31, 2012 (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

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What is a Class Action?

A class action is a lawsuit filed by one person on behalf of a large group of people known as the "class" who share "common issues" in the lawsuit. The lawsuit must be "certified" by a Canadian court in order to be deemed a class action.

What is a Parking Heater and what is this Class Action about?

A "Parking Heater" is a component used in commercial vehicles to warm the engine and cabin in lieu of idling the vehicle. Parking Heaters are primarily sold in two varieties: "air heaters" or "water/coolant heaters". The Class Action has defined a Parking Heater to mean a parking heater, accessories and parts sold for use with heaters, packages containing heaters and accessories and/or parts for parking heaters that were manufactured or sold by the Defendants for use in a commercial vehicle during the Class Period.

In 2015, a class action was initiated in Ontario on behalf of Canadians, excluding residents of Québec, who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater during the Class Period (the "Class Action"). The Class Action claims

Questions? Visit www.foremancompany.com/parking-heaters-price-fixing
or call 1.855.814.4575 ext. 107 (toll free)

that the companies who manufacture and sell Parking Heaters were involved in a conspiracy to unlawfully increase the prices of Parking Heaters.

Separate actions were commenced in British Columbia, but those actions have been stayed and the BC class members will be represented in the Ontario action.

A separate lawsuit was initiated in Québec on behalf of Québec residents who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater during the same Class Period (the "Québec Action"). The Québec Action has been authorized (certified) by the Québec Court and the opt out period for the Québec Action has expired.

The named defendants are: Espar Inc., Espar Products Inc., Eberspaecher Climate Control Systems International Beteiligungs-GMBH, Eberspaecher Climate Control Systems GMBH & Co. KG (formerly known as J. Eberspaecher GMBH and Co. KG), Eberspaecher Gruppe GMBC and Co. KG, Webasto Thermo and Comfort North America Inc., Webasto SE and Webasto Thermo & Comfort SE.

Foreman & Company is counsel to the plaintiff in the Class Action. Foreman & Company is working in concert with Camp Fiorante Matthews Mogerman ^{LLP} in British Columbia to prosecute the Class Action ("Class Counsel") and with Belleau Lapointe s.e.n.c.r.l. in Québec to coordinate the Québec Action with the Class Action.

What is Certification?

The Court has "certified" the Class Action meaning the Court has agreed that the lawsuit is suitable to proceed to trial as a class action.

Certification is not a ruling on the merits of the case and the Court has not yet made a decision on the allegations made in the Class Action.

What is a Settlement and what Settlements have been reached in the Class Action?

A settlement occurs when the parties in litigation agree to resolve the dispute between them on terms that are established through negotiations.

A settlement has been reached with the defendant Volker Hohensee in the Class Action. Mr. Hohensee is a former executive who worked for one of the Espar defendants. Mr. Hohensee is not one of the corporate defendants. He was named as a defendant in the Ontario action by the plaintiff based on his potential knowledge of the facts surrounding the allegations in the case. The Class Action will continue against the other named defendants.

Mr. Hohensee has agreed to provide early cooperation and assistance to the plaintiffs in Ontario and Québec by providing evidence in respect of the alleged conspiracy by the defendants. In exchange, Mr. Hohensee will be provided with a release of the claims against him.

The settlement is not an admission by Mr. Hohensee of liability, fault, or wrongdoing, but is a compromise of the disputed claims.

The settlement is subject to court approval. A settlement approval hearing will take place before the Ontario Superior Court of Justice on April 29, 2021 at 9:00 a.m.. It is currently anticipated that the hearing will be conducted virtually by Zoom. You can participate in the hearing by using the

following information: <https://zoom.us/j/91972027948> or (tel): 647.374.4685; Meeting ID: 919 7202 7948. Alternative local phone numbers can be found at <https://zoom.us/u/acdgcyHvar>. Any updates with respect to the hearing will be posted on www.foremancompany.com/parking-heaters-price-fixing. Please check the website or contact Class Counsel for further information in advance of the settlement approval hearing.

At the hearing, the court will decide whether the settlement is fair, reasonable and in the best interest of Class Members. If the settlement is not approved the litigation will continue against Mr. Hohensee.

What happens next?

The plaintiff and the Defendants in the Class Action will now engage in a process known as discovery where they exchange relevant documents and examine representative witnesses for each side.

The matter will then proceed to trial. At trial, a judge will decide, whether or not the claims will be successful and whether remedies should be ordered in favour of Class Members.

Who is a Class Member in the Class Action?

You are a class member if between September 13, 2001 and December 31, 2012 you:

- Purchased a Parking Heater or you purchased, leased or sub-leased a vehicle containing a Parking Heater which was manufactured or sold by a defendant for use in a commercial vehicle; and
- You are a Canadian resident, excluding residents of Québec.

What do I need to do at this time?

If you do not oppose the proposed settlement and you wish to be included in the Class Action you do not need to appear at the hearings or take any other action at this time to indicate your desire to participate in the lawsuit.

If you do nothing:

- You will be eligible to participate in the Class Action; and
- You may receive money from the Class Action if the lawsuit is successful; but
- You will not be able to start or continue your own lawsuit against the defendants regarding the claims at issue in the Class Action; and
- You will be bound by the results of the Class Action, win or lose.

If you wish to receive future court-approved notices and updates regarding this Class Action directly, please send an e-mail with your full name, mailing address and telephone number to classactions@foremancompany.com

If you want to tell the court what you think about the proposed settlement or speak to the court at the hearing mentioned above, you must send your written submissions to Class Counsel by •. Contact information for Class Counsel can be found below. Class Counsel will file all submissions with the court.

What if I don't want to be in the Class Action?

If you do not want to be a member of the Class Action, you must exclude yourself from the Class Action by opting out by • at the latest.

You can opt out by sending a signed letter to Class Counsel, by pre-paid mail, courier, fax or e-mail at the following address:

Foreman & Company
 Attention: Jonathan Foreman
 Mail: 4 Covent Market Place, London, ON N6A 1E2
 Fax: 1.226.884.5340
 E-mail: classactions@foremancompany.com

All opt outs must contain the following information:

- Your full name, current address and telephone number;
- If you are writing on behalf of a company, the name of the company and your position at the company;
- A statement saying that you (or the company) want to opt out of the Parking Heaters Class Action; and
- Your signature.

Your opt out must be received **no later than •**.

If you exclude yourself by opting out:

- You will not be eligible to participate in the Class Action;
- You will not receive any money from the Class Action; but
- You may be able to start or continue your own lawsuit against the defendants, at your own obligation and expense, regarding the claims at issue in the Class Action. If you wish to pursue your claims on an individual basis, you should consider consulting with a lawyer to discuss your options and any applicable deadlines for commencing your action.

This is your only chance to exclude yourself by opting out of the Class Action. You will not have another opportunity to opt out of the Class Action in the future. If you have questions about the Class Action or the opt out process, you are encouraged to contact Class Counsel using the contact particulars described below. More information concerning opt outs is also available at www.foremancompany.com/parking-heaters-price-fixing.

Can I be a member of the class and still comment on the proposed settlement?

Yes, if you do not opt-out of the Class Action, you will be a member of the class. As a member of the class, you have the right to comment on the proposed settlement with Mr. Hohensee. If you want to tell the court what you think about the proposed settlement or speak to the court at the hearing mentioned above, you must send your written submissions to Class Counsel by •. Contact information for Class Counsel can be found below. Class Counsel will file all submissions with the court.

What do I have to pay?

You do not have to pay the lawyers working on the Class Action any money. Class Counsel will only get paid if the Class Action is successful, and if so, they are paid out of any recovery that is achieved on behalf of Class Members. The Court will be asked to decide how much Class Counsel will be paid. Class Counsel will seek a legal fee of up to 30% of the value of the results obtained, plus disbursements (out of pocket expenses) and applicable taxes at the appropriate time. Class Counsel is not seeking legal fees at this time.

Who are the lawyers working on the Class Action?

- Foreman & Company represents Class Members in all provinces other than Québec. Foreman & Company can be reached at:

Tel: 1.855.814.4575 ext. 107 (toll free)

Fax: 1.226.884.5340

E-mail: classactions@foremancompany.com

Mail: 4 Covent Market Place, London, ON N6A 1E2, Attention: Jonathan Foreman.

- Camp Fiorante Matthews Mogerman ^{LLP} is working in concert with Foreman & Company. Camp Fiorante Matthews Mogerman ^{LLP} can be reached at:

Tel: 1.800.689.2322 (toll free)

Fax: 1.604.698.7554

E-mail: info@cfmlawyers.ca

Mail: Suite 400, 856 Homer Street, Vancouver, BC V6B 2W5, Attention: Aisling Slevin

- Belleau LaPointe s.e.n.c.r.l. represents Class Members in Québec. Belleau LaPointe s.e.n.c.r.l. can be reached at:

Tel: 1.888.987.6701 (toll free)

Fax: 1.514.987.6996

E-mail: info@belleaulapointe.com

Mail: 300, Place d'Youville, Bureau B-10, Montréal, Québec H2Y 2B6, Attention: •

Where can I ask more questions?

A copy of the Certification Order, Settlement Agreement and other important documents can be viewed on the dedicated Parking Heaters Class Action website at www.foremancompany.com/parking-heaters-price-fixing. If you would like a copy of the Certification Order, Settlement Agreement, or have questions that are not answered online, please contact the lawyers identified above. Inquiries should not be directed to the Court.

Interpretation

This notice contains a summary of some of the terms in the Certification Order and Settlement Agreement. If there is a conflict between the provisions of this notice and the Certification Order and/or the Settlement Agreement, the terms of the Certification Order and/or Settlement Agreement shall prevail.

Schedule "F"

Parking Heaters Price-Fixing Class Action Certified by the Court

LONDON, ON - ●, ●, 2020. An Ontario class action has been certified to proceed to trial. The case alleges that certain manufacturers of Parking Heaters for trucks and commercial vehicles participated in an unlawful price-fixing conspiracy to fix, raise, maintain or stabilize the price of those Parking Heaters and certain related kits, parts and accessories. The action has been certified by the Court on behalf of all Canadian residents, excluding Québec, who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater between September 13, 2001 and December 31, 2012 (the "Class Period"). Separate actions were commenced in British Columbia, but those actions have been stayed and the BC class members will be represented in the Ontario action. A separate action has also been commenced in Québec on behalf of Québec resident class members. That action has previously been authorized to proceed to trial as a class action. The Ontario and Québec actions will move forward on a coordinated basis under the guidance of the Courts in both Provinces.

A settlement has also been reached with the individual defendant Volker Hohensee, a former executive of the defendant Espar Inc. Mr. Hohensee has agreed to provide the plaintiff with early cooperation and evidence in respect of the alleged conspiracy by the defendants in exchange for a release from the claims made against him. The settlement must be approved by the court before it becomes effective.

A "Parking Heater" means a parking heater, accessories and parts sold for use with heaters, packages containing heaters and accessories and/or parts for parking heaters which were manufactured or sold by the defendants for use in a commercial vehicle during the Class Period.

The parties will now engage in a process known as "discovery" where they exchange relevant documents and examine representative witnesses for each side regarding the allegations made in the case. The matter may then proceed to trial. At trial, a judge will decide, whether or not the claims will be successful and whether remedies should be ordered in favour of Class Members.

For more detailed information about the case, including the certification orders, the settlement agreement, the court-approved notices, and an explanation of the rights of class members at this juncture of the case, please visit www.foremancompany.com/parking-heaters-price-fixing.

Class Members are represented by:

Foreman & Company
Camp Fiorante Matthews Mogerman ^{LLP}

Media Contact:

Jonathan Foreman – classactions@foremancompany.com

Schedule "G"

Banner Ad Content

Are you a Canadian resident, outside of Québec, who purchased a Parking Heater or purchased, leased or sub-leased a vehicle containing a Parking Heater between September 13, 2001 and December 31, 2012?

IF SO, YOUR LEGAL RIGHTS MAY BE AFFECTED BY THE CERTIFICATION RULING IN THE PARKING HEATERS PRICE FIXING CLASS ACTION. [LEARN MORE](#)

Schedule "H"

Parking Heaters Plan of Dissemination

The Notice of Certification will be distributed in publication, short-form, long-form, press release, and banner ad format (collectively the "Notices"). The Notices will be delivered via the following media:

1. The short- and long-form notices, a copy of the certification orders, and a copy of the settlement agreement reached with the defendant Volker Hohensee (the "Settlement Agreement") will be posted, in English, on counsel in the Ontario Action's dedicated Parking Heaters Class Action webpage: www.foremancompany.com/parking-heaters-price-fixing.
2. A news posting with information about, and a link to, the Notices, the certification orders, and the Settlement Agreement will also be posted on counsel in the Ontario Action and counsel in the BC Actions' (collectively "Class Counsel") respective "News" webpages: www.foremancompany.com/news and www.cfmlawyers.ca/news/.
3. A link to the dedicated Parking Heaters Class Action webpage will be posted on Class Counsel's respective social media accounts (including but not limited to LinkedIn and Twitter).
4. By distribution to major news and broadcast outlets across Canada, in English, through a press release on Canada Newswire with promotion through Canada Newswire's social media feeds.
5. The publication notice will be published once in print, in the legal section, in the following national newspapers, in English, subject to each having reasonable publication deadlines:
 - a. The Globe and Mail (National Edition);

- b. The National Post; and
 - c. The Vancouver Sun.
6. The short-form notice will be provided to the following organizations and membership associations, in English, requesting voluntary distribution to their membership and/or that a copy of the short-form notice or information about the Ontario Action be posted on their website:
- a. Canadian Trucking Alliance, including their respective provincial associations:
 - i. Alberta Motor Transport Association;
 - ii. Atlantic Provinces Trucking Association;
 - iii. BC Trucking Association;
 - iv. Manitoba Trucking Association;
 - v. Ontario Trucking Association; and
 - vi. Saskatchewan Trucking Association;
 - b. Canadian Truckers Association;
 - c. Private Motor Truck Council of Canada;
 - d. Toronto Trucking Association;
 - e. The Consumers' Association of Canada; and
 - f. The Consumers' Council of Canada.

The manner by which any Notices and/or information are distributed, if any, will be at the discretion of each organization.

7. There will be a nationally syndicated digital distribution of the banner ad on regional and community news outlets within the Postmedia Network Inc. The banner ad will be provided in English and may be modified as necessary to fit the dimensions and specifications as required by particular websites and media providers. The banner ad will redirect class members to the dedicated Parking Heaters Class Action webpage where they will be able to consult the short- and long-form notices as well as a copy of the certification orders and Settlement Agreement. The banner ad will run for seventy-five (75) day period, targeting a Canadian audience, excluding Québec, through publication on news media webpages. The banner ad will be posted a total of approximately 200,000 times over the seventy-five (75) day timeframe.
8. Within seven (7) days of the first publication of the Notices, the short-form notice will be sent by direct mail, fax and/or e-mail to:
 - a. all persons who have registered to receive updates from Class Counsel about the litigation; and
 - b. to all Canadian customers, excluding Québec residents, who are identified by the Defendants to Class Counsel for the purposes of dissemination of Notices, to the extent that such information is currently within the Defendants' power, possession or control.

JOHN DEVRIES

v. ESPAR INC., et al.

Court File No. 534/15 CP

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act*, 1992

ORDER

**(Motion for Certification for Settlement Purposes
and Notice Approval)**

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