

**CANADIAN POLYURETHANE FOAM CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of June 12, 2015

Between

**“HI! NEIGHBOR” FLOOR COVERING CO. LIMITED, MAJESTIC MATTRESS MFG.
LTD, TRILLIUM PROJECT MANAGEMENT LTD. and OPTION CONSOMMATEURS**

(the "Plaintiffs")

and

**FFP HOLDINGS, LLC (formerly known as FLEXIBLE FOAM PRODUCTS, INC.),
FUTURE FOAM, INC., BRUCE SCHNEIDER, HICKORY SPRINGS
MANUFACTURING COMPANY, LEGGETT & PLATT, INC., MOHAWK
INDUSTRIES, INC.**

(the "Settling Defendants")

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RECITALS

A. WHEREAS the Ontario Plaintiff, the Quebec Petitioner and the BC Plaintiffs have respectively commenced the Ontario Proceedings, the Quebec Proceeding and the BC Proceedings which allege that the Defendants, including the Settling Defendants, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and common law;

B. WHEREAS the deadline for Persons to opt out of the Proceedings has passed as a result of a prior settlement;

C. WHEREAS there were no opt outs from the Proceedings;

D. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceedings or otherwise;

E. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants 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 Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;

F. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

G. WHEREAS counsel for the Settling Defendants and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to the sales of Foam Products in Canada;

H. WHEREAS as part of these settlement discussions and negotiations, the Settling Defendants provided some information to the Class Counsel regarding the Settling Defendants' sales of Foam Products into Canada;

I. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Class they seek to represent, subject to approval of the Courts;

J. 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 litigating the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value 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 Settlement Class they seek to represent;

K. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

L. WHEREAS for the purposes of settlement only, and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties now consent to certification or authorization of the Proceedings as class proceedings and now consent to their respective Settlement Class and the Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada on the express understanding that such certification or authorization shall not derogate from the 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;

M. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by the Parties that the BC Proceedings and Ontario Proceedings be settled and dismissed with prejudice, as to the Settling Defendants only, without costs as to the Plaintiffs, the Settlement Class they seek to represent or the Settling Defendants, and that the Quebec Proceeding shall be settled out of court and without costs, subject to the approval of the Courts, on the following terms and conditions:

Section 1 - Definitions

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

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, Claims Administrator, or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (2) ***BC Class Proceedings Act*** means the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (3) ***BC Counsel*** means Camp Fiorante Matthews Mogerma and Branch MacMaster LLP.
- (4) ***BC Court*** means the Supreme Court of British Columbia.
- (5) ***BC Plaintiffs*** mean Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd.
- (6) ***BC Proceedings*** mean the proceedings commenced by Majestic Mattress Mfg. Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. VLC-S-S-106362, filed on September 24, 2010, and by Trillium Project Management Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. S-106213, filed on September 15, 2010.
- (7) ***BC Settlement Class*** means all Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons.

- (8) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, in accordance with its provisions and any Distribution Protocol, and any employees of such firm.
- (9) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (10) **Class Counsel Fees** include the fees, disbursements, costs, interest, and/or charges of Class Counsel, and any GST, HST and other applicable taxes or charges thereon, including any amounts payable by Class Counsel or the Settlement Class Members to any other body or person, including the Fonds d'aide aux recours collectifs in Quebec.
- (11) **Common Issue** in each Proceeding means: Did the Settling Defendants conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Settling Defendants to the Settlement Class Members?
- (12) **Courts** mean the Ontario Court, the Quebec Court and the BC Court.
- (13) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.
- (14) **Defendants** mean the individuals and entities named as defendants in any of the Proceedings and any persons added as defendants in any of the Proceedings in the future. For greater certainty, Defendants include the Settled Defendants and the Settling Defendants.
- (15) **Distribution Protocol** means the plan developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Courts.
- (16) **Effective Date** means the date when Final Orders have been received from all Courts approving this Settlement Agreement.
- (17) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates has a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(18) **Final Order** means the later of a final judgment entered by a Court in respect of the approval of this Settlement Agreement 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 upon a final disposition of all appeals.

(19) **Foam Products** mean flexible polyurethane foam and any and all products that contain flexible polyurethane foam, including carpet underlay.

(20) **Individual Action** means the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Notice of Action issued August 1, 2012 in the Ontario Superior Court (Windsor Registry), Court File No. CV-10-18219 and Statement of Claim filed on August 31, 2012.

(21) **Non-Settling Defendant** means any Defendant that is not a Settled Defendant or a 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 Date of Execution.

(22) **Ontario Class Proceedings Act** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, S.O. 2006, c. 19.

(23) **Ontario Counsel** means Sutts, Strosberg LLP.

(24) **Ontario Court** means the Ontario Superior Court of Justice.

(25) **Ontario Plaintiff** means “Hi! Neighbor” Floor Covering Co. Limited.

(26) **Ontario Proceedings** mean the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Notice of Action issued August 19, 2010 in the Ontario Superior Court (Windsor Registry), Court File No. CV-10-15164 and Statement of Claim filed on September 15, 2010, as amended, and the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Statement of Claim issued in the Ontario Superior Court (Windsor Registry), Court File No. CV-11-17279, on December 30, 2011.

(27) **Ontario Settlement Class** means all Persons resident in Canada who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the BC Settlement Class and the Quebec Settlement Class.

(28) **Other Actions** mean actions or proceedings, other than the Proceedings and the Individual Action, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(29) **Parties** mean the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(30) **Person** 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.

(31) **Plaintiffs** mean the Ontario Plaintiff, the BC Plaintiffs and the Quebec Petitioner.

(32) **Proceedings** mean the BC Proceedings, the Quebec Proceeding, and the Ontario Proceedings.

(33) **Proportionate Liability** means the proportion of any judgment that, had it not settled, a Court would have apportioned to each Settling Defendant.

(34) **Quebec Counsel** means Belleau Lapointe LLP.

(35) **Quebec Court** means the Superior Court of Quebec.

(36) **Quebec Petitioner** means Option consommateurs.

(37) **Quebec Proceeding** means the proceeding commenced by Option consommateurs in the form of a motion for authorization to institute a class proceeding (Requête pour autorisation d'exercer un recours collectif) in the Quebec Court, Court File No. 500-06-000524-104, filed on October 1, 2010.

(38) **Quebec Settlement Class** means all Persons resident in Quebec who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and any legal person established for a private interest, partnership or association which at any time between October 1, 2009 and October 1, 2010 had under its direction or control more than 50 persons bound to it by contract of employment or that is not dealing at arm's length with Option consommateurs.

(39) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, 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 Foam Products in Canada or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere. However, nothing herein shall be construed to release any claims related to or arising from any alleged product defect, breach of contract, breach of warranty, or similar claims between the Parties relating to Foam Products.

(40) **Releasees** mean, jointly and severally, individually and collectively, the Settling Defendants and all of their present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and the Settled Defendants.

(41) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(42) **Settled Defendants** mean Domfoam International, Inc., Valle Foam Industries (1995) Inc., A-Z Sponge & Foam Products Ltd. and Dean Brayianis.

(43) **Settlement Agreement** means this agreement, including the recitals and schedules.

(44) **Settlement Amount** means the combined sum of CDN \$2,032,497 comprised of each Settling Defendant's respective Settlement Amount Share.

(45) **Settlement Amount Share** means the amount indicated for each of the respective Settling Defendants as follows:

FFP Holdings, LLC \$476,800

Future Foam, Inc. and Bruce Schneider \$100,000

Hickory Springs Manufacturing Company \$200,000

Leggett & Platt, Inc. \$580,697

Mohawk Industries, Inc. \$675,000

(46) **Settlement Class** means all persons included in the Ontario Settlement Class, the BC Settlement Class and the Quebec Settlement Class.

(47) **Settlement Class Member** means a member of a respective Settlement Class who has not validly opted out of the Proceedings in accordance with the orders of the Courts.

(48) **Settlement Class Period** means the period from January 1, 1999 to January 10, 2012.

(49) **Settling Defendants** mean FFP Holdings, LLC (formerly known as Flexible Foam Products, Inc.), Future Foam, Inc., Bruce Schneider, Hickory Springs Manufacturing Company, Leggett & Platt, Inc., and Mohawk Industries, Inc.

(50) ***Trust Account*** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Camp Fiorante Matthew Mogergerman for the benefit of the Settlement Class Members or the Settling Defendants, as provided for in this Settlement Agreement.

(51) ***U.S. Litigation*** mean the class action proceedings pending before the United States District Court for the Northern District of Ohio under the caption *In re Polyurethane Foam Antitrust Litigation*, Master File No.: 10-MLS-2196 (JZ), MDL No. 2196, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to Foam Products that are pending or that may be commenced before the federal or state courts of the U.S.

Section 2 – Settlement Approval

2.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the BC Proceedings and Ontario Proceedings as against the Settling Defendants, and a prompt, complete and final declaration of settlement out of Court of the Quebec Proceeding.

2.2 Motions Approving Notice and Seeking Certification or Authorization

(1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the notices described in Section 11 and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants for settlement purposes.

(2) The BC order approving the notices described in Section 11 and certifying the BC Proceedings shall be substantially in the form attached hereto as Schedule A. The Ontario and Quebec orders approving the notices described in Section 11 and authorizing or certifying those Proceedings shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order.

2.3 Motions for Approval of the Settlement

(1) The Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement as soon as practicable after:

- (a) the orders referred to in Section 2.2(2) are granted,
- (b) the notices described in Section 11 have been published; and
- (c) the deadline for objecting to the Settlement Agreement has expired.

(2) The BC order approving this Settlement Agreement shall be substantially in the form attached hereto as Schedule B. The Ontario and Quebec orders approving this Settlement Agreement shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order.

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

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by Section 2.2 is filed, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of counsel for the respective Settling Defendant and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

Section 3 - Settlement Amount

3.1 Payment of Settlement Amount

(1) Within forty-five (45) days of the Execution Date, each of the Settling Defendants shall pay its respective Settlement Amount Share to Camp Fiorante Matthews Mogerman to be held in the Trust Account in accordance with the terms of this Settlement Agreement unless otherwise ordered by the Courts.

(2) The Settlement Amount shall be provided in full satisfaction of the Released Claims against the Releasees.

- (3) The obligation of each Settling Defendant in respect of the Settlement Amount is only to pay its/their respective Settlement Amount Share.
- (4) The Settling Defendants shall have no obligation to pay any amount in addition to their respective Settlement Amount Share, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (5) The Settlement Amount and each of the Settlement Amount Shares shall be all-inclusive.
- (6) The cost of disseminating the notices contemplated in Section 11 and the translations contemplated in Section 14.12 of this Settlement Agreement shall be paid out of the Settlement Amount in the Trust Account.
- (7) Camp Fiorante Matthews Mogergerman shall maintain the Trust Account as provided for in this Settlement Agreement.
- (8) Camp Fiorante Matthews Mogergerman shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement or in accordance with an order of the Courts, obtained with notice to the Parties.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to Section 3.2(4), all Canadian taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Camp Fiorante Matthew Mogergerman and the Claims Administrator, respectively, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account.

(4) Notwithstanding Section 3.2(3), if this Settlement Agreement is terminated in respect of one (1) or more of the Settling Defendants, the interest earned on that Settlement Amount Share in the Trust Account attributable to such terminating Settling Defendant shall be paid to such Settling Defendant which, in such case, shall be responsible for the payment of all taxes on such interest.

Section 4 – Cooperation

4.1 Extent of Cooperation

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Settlement Agreement, the Settling Defendants agree to provide cooperation to Class Counsel in accordance with the requirements of this section of the Settlement Agreement.

(2) Within thirty (30) days of the Non-Settling Defendant making production of documents in any of the Canadian Proceedings, or at a later time mutually agreed upon by the Class Counsel and each Settling Defendant, each Settling Defendant shall make reasonable efforts to make the following available to Class Counsel:

(a) existing electronic transactional data or reports for sales by the Settling Defendant of Foam Products delivered in Canada during the Settlement Class Period, to the extent that such data has not previously been provided pursuant to Section 12.2(1). Counsel for the Settling Defendant agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the electronic transactional data produced by the Settling Defendant;

(b) any transcripts or video recordings of all depositions of the Settling Defendant's employees, directors or officers taken in the course of the U.S. Litigation, but, in the event any such production in unredacted form requires relief from the protective order in the U.S. Litigation, no production shall be made until such relief is obtained by Class Counsel;

- (c) all pre-existing documents created in the ordinary course of business that have been produced by the Settling Defendants as of the Date of Execution to any governmental authority in Canada in connection with that governmental authority's investigation of potential price-fixing relating to the sale of Foam Products in Canada or elsewhere; and
- (d) all pre-existing business documents created in the ordinary course of business that have been produced by the Settling Defendants in the U.S. Litigation as of the Date of Execution as part of their discovery obligations or as part of a settlement and that relate to the allegations in the Proceedings together with a production log if one exists.

(3) Notwithstanding anything else in this Agreement, the Defendant FFP Holdings LLC (formerly, Flexible Foam Products Inc.) is not required to provide the cooperation set out in Section 4.1(2)(b).

(4) Each Settling Defendant shall use its best efforts to make a representative available to provide written declarations for the sole purpose of authenticating the documents it has produced pursuant to Sections 4.1(2)(a), (c) and (d). Upon request of the Plaintiffs, the Settling Defendants will provide a statutory declaration or affidavit authenticating those documents of the particular Settling Defendant sought to be admitted at trial. If the courts do not accept the authentication of the requested documents on the basis of such evidence, the Settling Defendant will agree to provide a current employee as a witness solely for that purpose, at the Plaintiffs' cost.

(5) The provisions set forth in Section 4.1 of this Settlement Agreement shall constitute the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery and/or evidentiary disclosure from the Settling Defendants and the Releasees for the purposes of any certification and/or authorization motion and/or any other motion for discovery and/or for trial in connection with the Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery and/or evidentiary disclosure as against the Settling Defendants or the Releasees in connection with the Proceedings, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction. Notwithstanding the above in this Section 4.1(5), subject

to other provisions of this Settlement Agreement, the Plaintiffs are at liberty to exercise any rights they may have to subpoena any current or former officer, director or employee of the Settling Defendants at trial.

(6) Nothing in this Settlement Agreement shall be construed to require the Settling Defendants to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any applicable jurisdiction.

(7) Nothing in this Settlement Agreement shall require, or shall be construed to require the Settling Defendants to disclose or produce any documents or information prepared by or for counsel for each 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 applicable jurisdiction, or subject to solicitor-client privilege, litigation privilege, or any other privilege, or to disclose or produce any information or documents it obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee, or to redact or edit any document to bring its disclosure into compliance with any such restriction.

(8) If any documents 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 by any Settling Defendant, 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 that Settling Defendant, and the production of such documents shall in no way be construed to have waived in any manner any privilege or protection attached to such documents.

(9) The Settling Defendants' obligations to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement.

(10) A material factor influencing the Settling Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendants and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendants.

4.2 U.S. Protective Order Cooperation

(1) The Settling Defendants shall not oppose any application by or on behalf of the Plaintiffs to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and information subject to protective order.

4.3 Limits on Use of Documents

(1) It is understood and agreed that all documents made available or provided by the Settling Defendants and all information provided by the Settling Defendants or their counsel to Plaintiffs and Class Counsel under this Settlement Agreement, shall be used only in connection with the prosecution of the claims in the Proceedings and the Individual Action against the Non-Settling Defendants and shall not be used directly or indirectly for any other purpose, including the prosecution of any claim against the Releasees.

(2) The Plaintiffs and Class Counsel further acknowledge and agree that all documents and information provided by the Settling Defendants or their counsel to Plaintiffs and Class Counsel shall be held in confidence and they will not disclose the documents and information provided by the Settling Defendants without express prior written consent except (i) to experts, consultants, or third-party service providers retained by them in connection with the Proceedings who have agreed to comply with the provisions of this Settlement Agreement and any confidentiality orders issued pursuant to Section 4.3(3), (ii) to the extent that the documents or information are publicly available, (iii) as evidence in the Proceedings, 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 or information are publicly available.

(3) Prior to the disclosure of any documents or information described in Section 4.1, the Settling Defendants will move in the Proceedings to obtain and must be granted Protective Orders which will prohibit disclosure of the Settling Defendants' confidential and highly confidential information to substantially the same degree as the draft Protective Order in the form attached as Schedule C or in a form otherwise satisfactory to the Settling Defendants. The Plaintiffs and Class Counsel shall consent to the Settling Defendants' motion(s).

(4) In the event that a Person applies for an order requiring the Plaintiffs to disclose or produce any documents or other information provided by the Settling Defendants as cooperation under this Settlement Agreement, Class Counsel shall notify the Settling Defendants of such application promptly upon becoming aware of it in order that the Settling Defendants may intervene 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 5 – Distribution of the Settlement Amount and Accrued Interest

5.1 Distribution Protocol

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will make an application seeking orders from the Courts approving the Distribution Protocol.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

5.2 No Responsibility for Administration or Fees

(1) After the Effective Date, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account.

Section 6 – Termination of Settlement Agreement

6.1 Right of Termination

(1) The Plaintiffs may terminate the Settlement Agreement in its entirety or any Settling Defendant may terminate the Settlement Agreement as it relates to it in the event that:

- (a) any Court declines to certify or authorize the Proceedings for the purposes of settlement;

- (b) any Court declines to approve this Settlement Agreement or any material part hereof;
- (c) any Court approves this Settlement Agreement in a materially modified form;
- (d) any Court issues a settlement approval order that is not substantially in the form attached to this Settlement Agreement as Schedule B; or
- (e) any orders approving this Settlement Agreement made by the Ontario Court, the BC Court or the Quebec Court do not become Final Orders.

(2) In addition, the Plaintiffs shall have the right to terminate this Settlement Agreement as against any Settling Defendant which fails to pay its Settlement Amount Share in full within forty-five (45) days of the execution of this Settlement Agreement by the Parties.

(3) The exercise of a right of termination by or against a Settling Defendant shall only terminate the Settlement Agreement as between the Plaintiffs and that Settling Defendant and shall have no force or effect as against the other Settling Defendants and shall not terminate this Settlement Agreement or otherwise impact the rights and obligations of the Plaintiffs and the other Settling Defendants in relation to whom the Settlement Agreement is not terminated.

(4) Any order, ruling or determination made (or rejected) by any Court with respect to Class Counsel's fees and disbursements, the Distribution Protocol, or the provisions of the bar order set out in Section 8.1(1)(b), shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement in whole or in part.

(5) To exercise a right of termination, a terminating party shall deliver a written notice of termination pursuant to Section 14.18 within thirty (30) days of the ground for termination becoming known to the terminating party.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, in its entirety:

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been heard, shall proceed;
- (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of this 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 or authorization of a Proceeding 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 Proceedings or any other litigation;
- (d) it shall be null and void and have no further force or effect except as provided for in Section 6.4, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation; and
- (e) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants or their counsel under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other person, shall recover and destroy such documents or information. Class Counsel shall provide counsel for the Settling Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy any of their work product; however, Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of any such work product derived from such documents or information, and any such work product may not be disclosed to any Person in

any manner, directly or indirectly, without the express prior written permission of the Settling Defendants.

(2) If this Settlement Agreement is terminated by or in relation to some but not all the Settling Defendants in accordance with its terms, Section 6.2(1) above shall apply with necessary modifications as between the Plaintiffs and the terminating defendant(s) only and all orders made in respect of this Settlement Agreement shall be amended so that they are of no force and effect as against the Settling Defendant in relation to whom this Settlement Agreement is terminated.

(3) The Plaintiffs and any Settling Defendant in relation to whom this Settlement Agreement is terminated shall negotiate in good faith to determine a new timetable for the Proceedings to continue against it.

6.3 Allocation of Monies in the Trust Account Following Termination

(1) If the Settlement Agreement is terminated in relation to some or all Settling Defendants, Camp Fiorante Matthews Mogerma shall return to each such Settling Defendant its Settlement Amount Share in the Trust Account, if any, including all interest accrued thereon, less a proportionate share of all costs and expenses that have been actually incurred as of the date of termination in relation to providing notice in accordance with Section 11 and Section 13, and less a proportionate share of reasonable costs of translation pursuant to Section 13 and Section 14.2, within thirty (30) business days of the exercise of the right of termination.

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated in relation to one or more Settling Defendants, the provisions of this Section and Sections 3.1(5), 3.1(7), 3.2(2), 3.2(4), 4.1(5), 6.2(1), 6.3(1), 9.1(1), 9.2(1), 13(1), 14.1, 14.5 and 14.6 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 Sections 3.1(5), 3.1(7), 3.2(2), 3.2(4), 4.1(5), 6.2(1), 6.3(1), 9.1(1), 9.2(1), 13(1), 14.1, 14.5 and 14.6 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 7 – Releases and Dismissals

7.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees 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.

7.2 Release by Releasees

(1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

7.3 Covenant Not To Sue

(1) Notwithstanding Section 7.1, 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 Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.4 No Further Claims

(1) The Releasors 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 any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings and the Individual Action against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.

7.5 Dismissal of the Proceedings

- (1) Upon the Effective Date, the BC Proceedings and the Ontario Proceedings shall be dismissed with prejudice and without costs as against those Releasees who are defendants in the BC Proceedings and in the Ontario Proceedings, respectively.
- (2) Upon the Effective Date, the Quebec Proceeding shall be settled, without costs and without reservation as against those Releasees who are respondents in the Quebec Proceeding, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court.

7.6 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 those Releasees who are defendants in such Other Actions.
- (2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by any Settlement Class Member shall be dismissed against those Releasees who are defendants in such Other Actions, respectively, without costs and with prejudice.
- (3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against those Releasees who are defendants in such Other Actions.
- (4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against those Releasees who are defendants in such Other Actions, without costs and without reservation.

Section 8 – Bar Orders, Waiver of Solidarity Order and Other Claims

8.1 British Columbia and Ontario Bar Orders

- (1) Bar orders shall be granted by the BC Court and the Ontario Court providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or the Individual Action, by any Non-Settling Defendant or any other person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Section 8;

- (b) if the BC Court or the Ontario Court, as applicable, ultimately determines that there is a right of contribution and indemnity among the Defendants, the BC Plaintiffs or the Ontario Plaintiffs and the BC or Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the relevant Proceeding or otherwise, and the relevant Court shall have full authority to determine the Proportionate Liability of the Releasees at trial or other disposition of the relevant Proceeding, whether or not the Releasees appear at trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant Proceeding and any determination by the relevant Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceedings;

- (c) a Non-Settling Defendant may, on motion to the relevant Court, and on at least sixty (60) days notice to counsel for a Settling Defendant, and not to be brought unless and until the relevant Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for discovery from a Settling Defendant as provided for and in accordance with

that Court's rules of procedure, and the Settling Defendant shall retain and reserve all of its rights to oppose any such motion for discovery.

- (d) on any motion brought pursuant to Section 8.1(1)(c), the relevant Court may make such orders as to costs and other terms as it considers appropriate;
- (e) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall timely be provided by the Settling Defendant to the Plaintiffs and Class Counsel to the extent and on the terms set out in the order;
- (f) the BC and Ontario Courts will retain an ongoing supervisory role over the discovery process and the Settling Defendant in the relevant Proceeding; and
- (g) a Non-Settling Defendant may effect service of a motion referred to in Section 8.1(1)(c) on a Settling Defendant by service on counsel of record for a Settling Defendant in the relevant Proceeding.

8.2 Quebec Waiver or Renunciation of Solidarity Order (Quebec "Bar Order")

- (1) A waiver or renunciation of solidarity shall be granted by the Quebec Court providing for the following:
 - (a) the Quebec Petitioner and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the Released Claims;
 - (b) the Quebec Petitioner and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;

- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Quebec Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Quebec Code of Civil Procedure*.

8.3 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 Releasees.

Section 9 – Effect of Settlement

9.1 No Admission of Liability

- (1) Whether or not this Settlement Agreement is terminated, 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 Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

9.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is terminated, 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.

9.3 No Further Litigation

(1) No Class Counsel, nor anyone currently employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings and the Individual Action against any Non-Settling Defendant or named or unnamed co-conspirators who are not Releasees. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent permitted pursuant to the provisions of this Settlement Agreement, such information is otherwise publicly available or unless ordered to do so by a court. However, this Section 9.3(1) shall not be operative to the extent that it is inconsistent with BC Counsel's obligations under Rule 3.2-10 of the *Code of Professional Conduct for British Columbia*.

Section 10 – Certification or Authorization for Settlement Only

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings 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 Settlement Class.

Section 11 – Notice to Settlement Class

11.1 Notices Required

(1) The proposed Settlement Class shall be given a single notice of (i) the certification or authorization of the Proceedings as class proceedings as against the Settling Defendants for settlement purposes, (ii) the hearings at which the Courts will be asked to approve the Settlement Agreement and, if they are brought with the hearings to approve the Settlement Agreement, (iii) the requests to approve Class Counsel Fees.

11.2 Form and Distribution of Notices

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.
- (2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

Section 12 – Administration and Implementation

12.1 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 and Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

12.2 Information and Assistance

- (1) Each Settling Defendant will make reasonable efforts to provide Class Counsel with the names and addresses of Persons, if any, in Canada who purchased Foam Products from it during the Settlement Class Period, to the extent such data currently exists and is reasonably accessible and available from the Settling Defendants' records or documents.
- (2) The information required by Section 12.2(1) shall be delivered to the Class Counsel within thirty (30) days of the Date of Execution, and in any event at least five (5) days in advance of the first publication of the notice required in Section 11.1(1).
- (3) Class Counsel may only use the information provided under Section 12.2(1) to advise Settlement Class Members of this Settlement Agreement and the date of the approval hearings before the Courts, to facilitate the claims administration process established in accordance with Section 5 of this Settlement Agreement, or as otherwise authorized in Section 4.
- (4) All information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4. Any Court-appointed notice provider and/or any Court appointed claims administrator shall be bound by the same confidentiality obligations set out in

Section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 6.2(1)(e) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

Section 13– Class Counsel Fees and Administration Expenses

- (1) The costs of the notices referred to in Section 11 and the costs of translation referred to in Section 14.12 of this Settlement Agreement may be paid out of the Trust Account as they are incurred, irrespective of any termination which may thereafter occur.
- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and/or Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.
- (3) Except as provided in Section 13(1), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.
- (4) The Settling Defendants 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.

Section 14 – Miscellaneous

14.1 Motions for Directions

- (1) The Parties may apply to the Courts for directions in respect of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the counsel for the Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

14.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

14.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections 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 or other portion of this Settlement Agreement.

14.4 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 (2) events, the number of days 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, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in those Proceedings.

(2) No Party shall ask a Court to 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 that matter.

(3) Notwithstanding Sections 14.5(1) and 14.5(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, the Trust Account, and other matters not specifically related to the claim of a BC Settlement Class Member or a Quebec Settlement Class Member shall be determined by the Ontario Court.

14.6 Governing Law

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

14.7 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.

14.8 Amendments

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

14.9 Binding Effect

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

and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

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

14.11 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.

14.12 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, a French translation of the Settlement Agreement and/or any notices, orders or other documents contemplated by this Settlement Agreement shall be prepared, the cost of which shall be paid for from the Settlement Amount. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.13 Transaction

(1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

14.14 Recitals

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

14.15 Schedules

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

14.16 Acknowledgements

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

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the 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 with respect to the first Party's decision to execute this Settlement Agreement.

14.17 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.

14.18 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 email, 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 for Class Counsel in the Proceedings:

J. J. Camp, Q.C. and
Reidar Mogerman

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Luciana Brasil

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333 Bay Street, Suite 2400
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Paul J. Martin/Laura F. Cooper

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Fax: 416-3647813

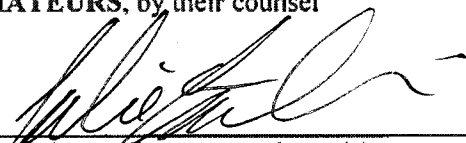
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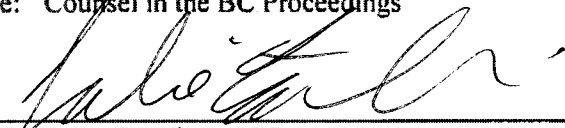
lcooper@fasken.com


14.19 Date of Execution


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

**HI! NEIGHBOR™ FLOOR COVERING CO. LIMITED,
MAJESTIC MATTRESS MFG. LTD, TRILLIUM
PROJECT MANAGEMENT LTD. and OPTION
CONSOMMATEURS, by their counsel**

By: 
Name: Camp Fiorante Matthews Mogerman
Title: Counsel in the BC Proceedings

By: 
for Name: Sutts, Strosberg LLP
Title: Counsel in the Ontario Proceedings

By: 
for Name: Branch MacMaster LLP
Title: Counsel in BC Proceedings

By: 
Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

FFP HOLDINGS, LLC, by its counsel

By: _____
Name: Torys LLP
Title: Canadian Counsel

**FUTURE FOAM, INC. and BRUCE SCHNEIDER, by
their counsel**

By: _____
Name: Stikeman Elliott LLP
Title: Canadian Counsel

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FFP HOLDINGS, LLC, by its counsel

By:



Name: Torys LLP
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PROJECT MANAGEMENT LTD. and OPTION
CONSUMMATEURS, by their counsel**

By:

Name: Camp Fiorante Matthews Mogerma
Title: Counsel in the BC Proceedings

By:

Name: Sutts, Strosberg LLP
Title: Counsel in the Ontario Proceedings

By:

Name: Branch MacMaster LLP
Title: Counsel in BC Proceedings

By:

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

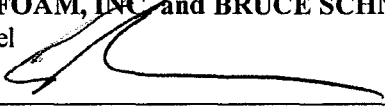
FFP HOLDINGS, LLC, by its counsel

By:

Name: Torys LLP
Title: Canadian Counsel

**FUTURE FOAM, INC and BRUCE SCHNEIDER, by
their counsel**

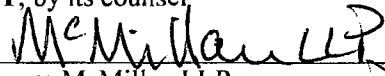
By:



Name: Stikeman Elliott LLP
Title: Canadian Counsel

**HICKORY SPRINGS MANUFACTURING
COMPANY**, by its counsel

By:


Name: McMillan LLP
Title: Canadian Counsel *for client*

LEGGETT & PLATT, INC., by its counsel

By:

Name: Fasken Martineau DuMoulin LLP
Title: Canadian Counsel

MOHAWK INDUSTRIES, INC., by its counsel

By:

Name: Blake, Cassels & Graydon LLP
Title: Canadian Counsel

**HICKORY SPRINGS MANUFACTURING
COMPANY, by its counsel**

By:

Name: McMillan LLP
Title: Canadian Counsel

LEGGETT & PLATT, INC., by its counsel

By:

Fasken Martineau DuMoulin LLP

Name: Fasken Martineau DuMoulin LLP
Title: Canadian Counsel

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MOHAWK INDUSTRIES, INC., by its counsel

By:

Name: Blake, Cassels & Graydon LLP
Title: Canadian Counsel

**HICKORY SPRINGS MANUFACTURING
COMPANY, by its counsel**

By:

Name: McMillan LLP
Title: Canadian Counsel


LEGGETT & PLATT, INC., by its counsel

By:

Name: Fasken Martineau DuMoulin LLP
Title: Canadian Counsel

MOHAWK INDUSTRIES, INC., by its counsel

By:



Name: Blake, Cassels & Graydon LLP
Title: Canadian Counsel

Robin L. Reinertson
Barrister & Solicitor

SCHEDULE A

		No. VLC-S-S-106362 Vancouver Registry
	<i>In the Supreme Court of British Columbia</i>	
Between	MAJESTIC MATTRESS MFG, LTD.	
		Plaintiff
and	VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM INCORPORATED, HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES (1995) INC., DOMFOAM INTERNATIONAL, INC., A-Z SPONGE & FOAM PRODUCTS LTD., THE CARPENTER COMPANY, WOODBRIDGE FOAM CORPORATION, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC., FOAMEX INNOVATIONS, INC., AND FUTURE FOAM, INC.	
		Defendants
	BROUGHT UNDER THE <i>CLASS PROCEEDINGS ACT</i>	
		No. S-106213 Vancouver Registry
	<i>In the Supreme Court of British Columbia</i>	
Between	TRILLIUM PROJECT MANAGEMENT LTD.	
		Plaintiff
and	HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES, INC., DOMFOAM INTERNATIONAL, INC., CARPENTER CO., CARPENTER CANADA CO., THE WOODBRIDGE GROUP, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC., FOAMEX INNOVATIONS, INC., FOAMEX INNOVATIONS CANADA, INC., FUTURE FOAM, INC., VITAFOAM PRODUCTS CANADA LIMITED AND VITAFOAM, INC.	
		Defendants
	BROUGHT UNDER THE <i>CLASS PROCEEDINGS ACT</i>	

**ORDER MADE AFTER APPLICATION FOR
CERTIFICATION FOR SETTLEMENT AND
APPROVAL OF NOTICE**

BEFORE THE HONOURABLE MR. JUSTICE)
 BOWDEN) dd/mm/yyyy
)

ON THE APPLICATION of the BC Plaintiffs coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing J.J. Camp, Q.C. and Reidar Mogerman, counsel for the BC Plaintiffs, [Insert Counsel] for Flexible Foam Products, Inc., Future Foam, Inc. and Bruce Schneider, Hickory Springs Manufacturing Company, Leggett & Platt, Inc., and Mohawk Industries, Inc., counsel for the Settling Defendants;

ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule "A" (the "Settlement Agreement");

AND WHEREAS the deadline for opting out of the BC Proceedings has passed, and no member of the BC Settlement Class has validly opted out;

AND ON BEING ADVISED that the Plaintiffs and the Settling Defendants consent to this Order;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement attached as **Schedule “A”** apply to and are incorporated into this Order;

Certification for Settlement

2. The BC Proceedings are certified as class proceedings for settlement purposes only as against the Settling Defendants;
3. The BC Settlement Class in each of the BC Proceedings is defined as:

All Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons;

4. Majestic Mattress Mfg, Ltd. is appointed as the representative plaintiff for the BC Settlement Class in the Majestic Action and Trillium Project Management Ltd. is appointed as the representative plaintiff for the BC Settlement Class in the Trillium Action;
5. The following issue is common to the BC Settlement Class in each of the BC Proceedings:

Did the Settling Defendants conspire to harm the members of the BC Settlement Class during the Settlement Class Period? If so, what damages, if any, are payable by the Settling Defendants to the members of the BC Settlement Class?

6. This Order, including the Settlement Agreement, is binding upon each and every member of the BC Settlement Class including those persons who are minors or mentally

incapable, and the requirements of Rule 20-2 of the Supreme Court Civil Rules are dispensed with in respect of the BC Proceedings;

Notices of Certification for Settlement and Settlement Approval Hearing

7. The Notice of Certification or Authorization and Settlement Approval Hearings (the “Pre-Approval Notice”) is hereby approved substantially in the form attached hereto as **Schedule “B”**;
8. The plan of dissemination of the Pre-Approval Notice (the “Plan of Dissemination”) is hereby approved in the form attached as **Schedule “C”**;
9. The Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order;
10. This Order, including without limiting the generality of the foregoing, the certification of the BC Proceedings against the Settling Defendants for settlement purposes pursuant to this Order, and the definitions of the BC Settlement Class, Settlement Class Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in this or any other proceeding on any issue, including any issue of appropriate forum or abuse of process, the issue of whether the Settlement Agreement should be approved and the issue of whether the BC Proceedings should be certified as a class proceeding as against the Non-Settling Defendants. Except as set out below, no person may rely, cite or refer to all or any part of this Order or any reasons given by the Court in support of this Order as authority against any of the Non-Settling Defendants in this or any other proceeding. For greater certainty, this Order, the Court’s reasons in support of this Order and the certification of the BC Proceedings against the Settling Defendants for settlement purposes only are not binding and shall have no effect on this Court’s ruling in this or any other proceeding as against the Non-Settling Defendants. Notwithstanding the foregoing, the Non-Settling Defendants may not rely, cite or refer to all or any part of this Order or any reasons given by the Court in support of this Order, and may not assert a deficiency in the notice plan set out in this Order and/or the unavailability of a further opt out opportunity as a basis for opposition to approval of the Settlement Agreement, including

without limitation as a basis for opposition of the proposed bar order contained in the Settlement Agreement; and

11. This Order is contingent upon orders being made by the Ontario Court and the Quebec Court in the Proceedings in their jurisdictions that also provide for certification or authorization and notice in relation to the Settlement Agreement and the terms of this Order shall not be effective unless and until such orders are made.
12. Endorsement of this Order by the Non-Settling Defendants and Settled Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for Plaintiff, Majestic
Mattress Mfg, Ltd.
Branch MacMaster LLP

Signature of lawyer for Plaintiff, Trillium
Project Management Ltd., Camp Fiorante
Matthews Mogerma LLP

Signature of lawyer for the Defendant
Flexible Foam Products, Inc.
Torys LLP

Signature of lawyer for the Defendants
Future Foam, Inc. and Bruce Schneider
Stikeman Elliott LLP

Signature of lawyer for the Defendant
Hickory Springs Manufacturing Company
McMillan LLP

Signature of lawyer for the Defendant
Leggett & Platt, Inc.
Fasken Martineau DuMoulin LLP

Signature of lawyer for the Defendant
Mohawk Industries, Inc.
Blake, Cassels & Graydon LLP

By the Court

Registrar

SCHEDULE B

Court File No. VLC-S-S-106362

In the Supreme Court of British Columbia

Between

Majestic Mattress Mfg. Ltd.

Plaintiff

and

Vitafoam Products Canada Limited, Vitafoam Incorporated, Hickory Springs Manufacturing Company, Valle Foam Industries (1995) Inc., Domfoam International, Inc., A-Z Sponge & Foam Products Ltd., The Carpenter Company, Woodbridge Foam Corporation, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc. and Future Foam, Inc.

Defendants

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

Court File No. S-106213

In the Supreme Court of British Columbia

Between

Trillium Project Management Ltd.

Plaintiff

and

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

Defendants

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

ORDER MADE AFTER APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

BEFORE THE HONOURABLE MR. JUSTICE)
 BOWDEN) dd/mm/yyyy
)

ON THE APPLICATION of the BC Plaintiffs coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing J.J. Camp, Q.C. and Reidar

Mogerman, counsel for the BC Plaintiffs, [Insert Counsel] for Flexible Foam Products, Inc., Future Foam, Inc. and Bruce Schneider, Hickory Springs Manufacturing Company, Leggett & Platt, Inc., and Mohawk Industries, Inc., , counsel for the Settling Defendants;

ON READING the materials filed, including the Settlement Agreement attached to this Order as Schedule “A” (the “Settlement Agreement”);

AND WHEREAS the deadline for opting out of the BC Proceedings has passed, and no member of the BC Settlement Class has validly opted out;

AND ON BEING ADVISED that the BC Plaintiffs and the Settling Defendants consent to this Order;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement attached as **Schedule “A”** apply to and are incorporated into this Order;
2. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class in each BC Proceeding;
3. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms;
4. The Settlement Agreement is incorporated by reference into and forms part of this Order;
5. This Order, including the Settlement Agreement, is binding upon the representative plaintiffs and each and every member of the BC Settlement Class in the BC Proceedings, including those Persons who are minors or mentally incapable, and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Proceedings;
6. Upon the Effective Date, each member of the BC Settlement Class in each BC Proceeding shall consent and shall be deemed to have consented to the dismissal as

against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice;

7. Upon the Effective Date, any Other Action commenced in British Columbia by any member of the BC Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
8. Instead of releasing the claims against the Releasees, upon the Effective Date, in accordance with Section 7.3(1) of the Settlement Agreement, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims, except for the continuation of the Individual Action and the BC Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees. The use of the terms “Releasors”, “Releasees” and “Released Claims” in this Order is a matter of form only for consistency with the Settlement Agreement;
9. Each Releasor 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 any Releasee or any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Individual Action and the BC Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees;
10. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the BC Proceedings, or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, or any named or unnamed co-conspirators who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this Order;

11. If, in the absence of paragraph 10 hereof, the Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - a. the BC Plaintiffs and the members of the BC Settlement Class shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - b. this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant BC Proceeding, whether or not the Releasees remain in the relevant BC Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant BC Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant BC Proceeding and shall not be binding on the Releasees in any other proceedings;
12. If, in the absence of paragraph 10 hereof, the Non-Settling Defendants would have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or effect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the relevant BC Proceeding;
13. A Non-Settling Defendant may, on application to this Court on at least sixty (60) days' notice to counsel for a Settling Defendant, and not to be brought unless and until the relevant BC Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for discovery from a Settling Defendant as provided for in accordance with the *Supreme Court Civil Rules*.
14. The Settling Defendants retain all rights to oppose such application(s) brought under paragraph 13. To the extent that such an application is made and results in an order granting discovery to a Non-Settling Defendant, a copy of all discovery provided,

whether oral or documentary in nature, shall timely be provided by the Settling Defendant to the BC Plaintiffs and Class Counsel to the extent and on the terms set out in the order.

15. Notwithstanding any provision in this Order, on any application brought pursuant to paragraph 13, the Court may make such orders as to costs and other terms as it considers appropriate;
16. A Non-Settling Defendant may effect service of the application(s) referred to in paragraph 13 above on a Settling Defendant by service on counsel of record for that Settling Defendant in the relevant BC Proceeding;
17. For purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement;
18. Except as provided herein, this Order does not affect any claims or causes of action that any member of the BC Settlement Class has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the relevant BC Proceeding;
19. After the Effective Date, the Settling Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account;
20. Camp Fiorante Matthews Mogergerman shall hold the Settlement Amount, plus any accrued interest, in trust and make only such payments therefrom as provided for in the Settlement Agreement, pending further orders of the Courts;
21. Approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court in the Proceedings in their jurisdictions, and the terms of this Order shall not be effective unless and until such approval orders are made;
22. This Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms; and

23. Except as aforesaid, upon the Effective Date, the BC Proceedings are hereby dismissed against those Releasees who are defendants in the BC Proceedings without costs and with prejudice.
24. Endorsement of this Order by the Non-Settling Defendants and Settled Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for Plaintiff, Majestic
Mattress Mfg, Ltd.
Branch MacMaster LLP

Signature of lawyer for Plaintiff, Trillium
Project Management Ltd., Camp Fiorante
Matthews Mogerman LLP

Signature of lawyer for the Defendant
Flexible Foam Products, Inc.
Torys LLP

Signature of lawyer for the Defendants
Future Foam, Inc. and Bruce Schneider
Stikeman Elliott LLP

Signature of lawyer for the Defendant
Hickory Springs Manufacturing Company
McMillan LLP

Signature of lawyer for the Defendant
Leggett & Platt, Inc.
Fasken Martineau DuMoulin LLP

Signature of lawyer for the Defendant
Mohawk Industries, Inc.
Blake, Cassels & Graydon LLP

By the Court

Registrar

SCHEDULE C

Court File No. VLC-S-S-106362

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N:

MAJESTIC MATTRESS MFG, LTD.

Plaintiff

AND:

VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM, INCORPORATED,
HICKORY SPRINGS MANUFACTURING COMPANY,
VALLE FOAM INDUSTRIES (1995) INC., DOMFOAM INTERNATIONAL INC.,
A-Z SPONGE & FOAM PRODUCTS LTD., THE CARPENTER COMPANY,
WOODBIDGE FOAM CORPORATION, FLEXIBLE FOAM PRODUCTS, INC.,
SCOTTDEL INC., FOAMEX INNOVATIONS, INC. and FUTURE FOAM, INC.

Defendants

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

Court File No. VLC-S-S-106213

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N:

TRILLIUM PROJECT MANAGEMENT LTD.

Plaintiff

AND:

HICKORY SPRINGS MANUFACTURING COMPANY,
VALLE FOAM INDUSTRIES, INC., DOMFOAM INTERNATIONAL, INC.,
CARPENTER CO., CARPENTER CANADA CO.,
THE WOODBRIDGE GROUP,
FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC.,
FOAMEX INNOVATIONS, INC.,
FOAMEX INNOVATIONS CANADA, INC., FUTURE FOAM, INC.,
VITAFOAM PRODUCTS CANADA LIMITED and VITAFOAM, INC.

Defendants

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

CONSENT ORDER

BEFORE THE HONOURABLE MR. JUSTICE
BOWDEN

)
)

dd/mm/yyyy

ON THE APPLICATION of all parties without a hearing and by consent;

THIS COURT ORDERS that:

TYPES OF MATERIALS WHICH MAY BE DESIGNATED CONFIDENTIAL OR HIGHLY CONFIDENTIAL

1. Any documents, including without limitation, any affidavits, exhibits, answers to interrogatories, responses to requests for admission, examination for discovery or cross-examination on affidavit testimony, transcripts of examination for discovery and exhibits, and any other material or information, produced in this litigation, including any such material initially produced in another litigation (hereinafter, collectively, "Materials"), may be designated by a producing party or non-party as "Confidential" or "Highly Confidential" in accordance with this Protective Order.

2. "Confidential Information" shall include any Materials which are not in the public domain and contain any trade secret or other confidential information, including but not limited to personal data, personnel records, confidential research and development information, or other non-public commercial information.

3. "Highly Confidential Information" shall include any Confidential Information which is so competitively sensitive that it is entitled to extraordinary protections, such as trade secrets or other highly sensitive confidential information the disclosure of which is reasonably likely to result in demonstrable harm to the producing party, including but not limited to financial information relating to costs, unpublished pricing information, or unpublished plans to buy or sell a business or business unit.

4. Any copies or reproductions, excerpts, summaries or other documents or media (e.g., electronic, video, or audio) that excerpt, contain, or otherwise reveal the substance of (other than in general terms) Confidential Information or Highly Confidential Information shall also be treated as Confidential Information or Highly Confidential Information pursuant to this Order.

DESIGNATION OF MATERIALS AS CONFIDENTIAL OR HIGHLY CONFIDENTIAL

5. Any Materials that are to be designated "Confidential" or "Highly Confidential" may be so designated by the producing party or non-party by:

- (a) providing copies of the documents, material or information so designated that are stamped with the legend "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER". Materials stamped or designated "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER", including those produced in prior litigation bearing such stamp or designation or the designation "HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL EYES ONLY", "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and subsequently made available in this action, shall be treated as Confidential or Highly Confidential, respectively, for the purposes of this Order; or

- (b) furnishing a separate written notice to counsel for the party receiving such documents, material or information at the time of their production or as soon thereafter as practicable specifically identifying the documents or materials as "Confidential," or "Highly Confidential," so long as the producing party supplies substitute copies (bearing the same bates numbers as the original copies, where practicable) of any such documents bearing the designations set forth in paragraph 5(a) within 10 days or as many days as the parties shall agree.

6. Notwithstanding any designation pursuant to paragraph 5 of this Order, any material initially designated as Confidential or Highly Confidential in prior litigation, which subsequently lost its designation pursuant to a court order, or was publicly filed in the prior litigation, shall be treated in this action consistent with its final status in the prior litigation.

7. To the extent a producing party makes documents available for inspection and copying at the producing party's or counsel's location prior to confidentiality designation of the documents, such materials shall be treated as Highly Confidential until such time as they are produced and assigned confidentiality designations in accordance with this Order.

8. If Confidential Information or Highly Confidential Information is disclosed to any person other than in the manner authorized by this Order, the party responsible for the disclosure shall, immediately upon learning of such disclosure, inform the producing party or non-party of all pertinent facts relating to such disclosure and shall make every effort to retrieve the designated material and to prevent the occurrence of any further disclosure unauthorized by this Order.

9. Any Materials designated "Confidential" or "Highly Confidential" must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order. For purposes of this Order, a secure website, or other internet-based document depository with adequate security, shall be deemed a secure location.

10. Inadvertent production of or failure to designate any information as Confidential or Highly Confidential shall not be deemed a waiver of the producing party's or non-party's claim of confidentiality as to such information, and the producing party or non-party may thereafter designate such information as Confidential or Highly Confidential as appropriate.

11. Inadvertent production of any document produced in response to discovery requests in this action by any party or non-party, that a party or non-party later claims should have been withheld on grounds of a privilege, including the solicitor-client privilege and litigation privilege will not be deemed to waive any privilege or work product protection. Nothing in this Order shall preclude a party from arguing that the production of an allegedly inadvertently produced privileged document was not inadvertent or that conduct or circumstances constitute a waiver, except that, to the extent previously-produced documents were inadvertently produced and retracted in any prior litigation, the inadvertent reproduction of such documents in this case shall not be deemed a waiver of privilege.

12. The parties shall serve a copy of this Order simultaneously with any discovery request made to a non-party in this action.

PERMISSIBLE USES OF MATERIALS

13. All persons obtaining access to Materials produced in connection with this action shall use such Materials only for the purpose of the following actions, and not for any other purpose:

- (a) BC Supreme Court, Vancouver Registry File Nos. VLC-S-S-106362, VLC-S-S-106213, and VLC-S- S-125443;
- (b) Ontario Superior Court of Justice, Windsor Registry Court File Nos. CV-11-15164, CV-11-17279 and CV-12-18219; and
- (c) Quebec Superior Court, Montreal District, Court File No. 500-06-000524-104.

14. However, the terms of paragraph 13 shall not apply to any Materials subsequent to them becoming part of the public record in this action or in prior litigation. Nothing in this Order shall limit or restrict a party's rights, if any, to use its own Materials or any information obtained independent of discovery in this action in any manner that the party deems appropriate.

15. Nothing herein shall impose any restrictions on the use or disclosure by a party or witness of documents, material or information obtained by such party or witness independently of the discovery or other proceedings in this action, whether or not such documents, material or information are also obtained through discovery or other proceedings in this action.

16. Confidential Information may be disclosed only to the following persons:

- (a) The Court;
- (b) Outside counsel for any party in these actions and any other actions filed in Canada or the U.S. against the party alleging the same or similar claims, including but not limited to "*Hi Neighbor*" *Floor Covering Co. Limited v. Hickory Springs Manufacturing Company et al.*, Court File No. CV-11-17279; "*Hi Neighbor*" *Floor Covering Co. Limited v. Hickory Springs Manufacturing Company et al.*, Court File No. CV-10-15164; *Option Consommateurs et al. v. Produits Vitafoam Canada Limitée et al.*, Court File No. 500-06-000524-104; and *In re Polyurethane Foam Antitrust Litigation*, Case File No. 1:10 MD 2196; as well as associated personnel necessary to assist outside counsel in these actions, such as litigation assistants, paralegals, and secretarial or other clerical personnel;
- (c) Consultants, experts or litigation support services, including outside copying services, court reporters, or companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, retained by a party for the purpose of assisting that party in this action, provided that any retained consultant or expert is not, at the time Materials are to be disclosed, a party in this action or an employee of a party in these actions (nor known to the engaging party to have accepted an offer to become an employee of a party in this action).

- (d) Associated personnel of any person within categories (a) through (c) for whom access to Confidential Information is necessary to assist such persons in the action, including any Court personnel assisting the Court, secretarial or other clerical personnel, stenographers or other person involved in taking or transcribing or videotaping of testimony in this action, and principals and employees of the firm with which consultants or experts are associated;
- (e) Any other person whom the party or non-party producing the Confidential Information has consented to disclosure in advance and in writing;
- (f) Any person identified as an author or recipient of a document, or any other person who is otherwise specifically identified or whose conduct is purported to be specifically identified in the document containing the Confidential Information;
- (g) During their examination for discoveries or cross-examination on affidavit, witnesses in the action to whom the disclosure is reasonably necessary, provided that disclosure is made in accordance with the provisions of paragraphs 20 and 23 below; and
- (h) In house-counsel, legal assistants, and other legal staff for each of the parties. Parties which do not employ in-house counsel may each designate, and identify to the other parties, one officer, director or employee in the place of in-house counsel pursuant to this provision (“Designated Non-Legal Recipient”). No party shall disclose confidential information to a Designated Non-Legal Recipient pursuant to this paragraph until: (1) the proposed recipient has executed a confidentiality agreement in accordance with the procedures set forth in paragraph 20, and (2) notice of the designation has been provided to all parties without objection for at least 7 days. The Court will entertain any objection to the disclosure of confidential information pursuant to this paragraph that is made within 7 days of receipt of notice of the intended disclosure.

17. Highly Confidential Information may be disclosed only to any persons falling within categories (a) through (g) in paragraph 16 above.

18. Notwithstanding the provisions in paragraphs 16 and 17 above, Confidential and Highly Confidential Information may be disclosed to:

- (a) any current employee, director or officer (and their independent legal counsel, if any) of the party or non-party producing such information; and
- (b) any former employee, director or officer, (and their independent legal counsel, if any) of the party or non-party producing such information to whom disclosure is reasonably necessary for this litigation.

19. Persons described in paragraph 16(b) shall be deemed bound by the terms of this Order upon its entry by the Court.

20. No party shall disclose Confidential Information or Highly Confidential Information to persons described in paragraphs 16(c) (including associated personnel), and 16(e)-(h) or any person described in paragraph (b) until they have first:

- (a) advised the recipient that the information is Confidential or Highly Confidential Information and may only be used in connection with this action;
- (b) provided the recipient with a copy of this Order; and
- (c) except for persons described in paragraph 16(g), obtained the recipient's execution of a confidentiality agreement stating the following:

"I, [name, position of employment], hereby acknowledge and agree that I am about to receive confidential information. I certify my understanding that such information is to be provided to me pursuant to the terms and restrictions of the court order made [date] in *Majestic Mattress Mfg, Ltd. v. Vitafoam Products Canada Limited et al.*, BC Supreme Court Vancouver Registry File No VLC-S-S-106362, and *Trillium Project Management Ltd. v. Hickory Springs Manufacturing Company et al.*, BC Supreme Court Vancouver Registry File No VLC-S-S-106213. I have been given a copy of and have read this Order and agree to be bound by its terms. In particular, I understand that the confidential information provided to be shall not be disclosed to anyone not bound by this Order."

21. Persons described in paragraphs 16(f), 16(g) and 18 shall not retain copies of Confidential or Highly Confidential Information.

22. Nothing in this Order shall prevent any counsel from advising his or her client concerning this litigation and, in the course of providing such advice, from referring to or disclosing generally Confidential or Highly Confidential Information, so long as he or she does not disclose its specific contents.

EXAMINATION FOR DISCOVERY PROCEDURES

23. Subject to the terms of this Order and the British Columbia Supreme Court Civil Rules, any party may use Confidential Information in the course of an examination for discovery or cross-examination on affidavit or hearing provided that, prior to any examination of a witness with respect to such Confidential Information, the witness and court reporters are furnished with a copy of this Order and a copy of the confidentiality agreement set out in paragraph 20(c). Counsel for each party representing a witness at an examination for discovery or cross-examination on affidavit shall have responsibility for supplying this Order to that witness before the examination for discovery or cross-examination on affidavit and attempting to obtain their execution of the confidentiality agreement. Witnesses not represented by a party's counsel shall be provided with a copy of this Order at the start of the examination, shall be advised on the record that he or she is subject to sanctions for violating the terms of this. If a witness refuses to execute a copy of the confidentiality agreement, the admonition in the immediately preceding sentence shall serve as a substitute for the execution of the confidentiality agreement and shall be sufficient to allow examination of the witness as to Confidential Information.

24. A copy of this Order (including a copy of the confidentiality agreement) shall be included with each subpoena or appointment served on non-parties, and the subpoena or appointment shall state that this Order shall apply to all documents or other information produced in response to the subpoena or appointment.

25. Examination for discovery or cross-examination on affidavit testimony and the transcripts and video recordings thereof conducted during pre-trial discovery in this litigation shall be treated as Highly Confidential

(a) for a period of 30 days

(b) or for as many days as the parties shall agree,

after receipt of such transcript of examination for discovery or cross-examination on affidavit and/or video recordings.

26. Prior to the expiry of the time set out in paragraph 25, person being examined or counsel for that person being examined, or any party or non-party or its counsel, shall notify all parties of any Highly Confidential Information or Confidential Information in the transcript and/or video recording. Such Highly Confidential or Confidential Information shall be designated by page and line number, and video cassettes (or other storage media) shall be labelled in accordance with the provisions of this Order.

27. Any examination for discovery or cross-examination on affidavit testimony concerning a Confidential or Highly Confidential document produced by a non-party will be marked by the court reporter or videographer as Confidential or Highly Confidential on the transcript of examination for discovery or cross-examination on affidavit or videotape.

CHALLENGES TO CONFIDENTIAL OR HIGHLY CONFIDENTIAL DESIGNATIONS

28. If any party disagrees with the designation by the producing party or non-party of any Materials as Confidential or Highly Confidential Information, then the parties to the dispute, after providing notice to all parties in this action, will attempt first to resolve the dispute on an informal basis before presenting the dispute to the Court. All items objected to shall continue to be treated as Confidential or Highly Confidential pending resolution of the parties' dispute. If the dispute can be resolved, all parties shall promptly be informed of the resolution. If the dispute cannot be resolved informally, the disputing party may, within 30 days thereafter, or such other time period as to which the applicable persons have agreed in writing or pursuant to a court order, move the Court for a re-designation of the Materials. Until the Court rules on the motion, the Materials shall be treated consistent with their existing designation. The producing party or non-party bears the burden of persuading the Court that the information is in fact Confidential or Highly Confidential within the definition(s) or those term(s) set forth above. Materials shall not be entitled to a Confidential or Highly Confidential designation where the disputing party demonstrates that such Materials were in the public domain at the time of, or have become public since, their designation. Nothing in this Order precludes any party from challenging a confidentiality designation on any other ground.

29. Entering into, agreeing to, and/or complying with the terms of this Order shall not:

- (a) operate as an admission by any party that any particular documents, material or information contain or reflect currently valuable trade secrets or proprietary or commercial information; or
- (b) prejudice in any way the right of a party at any time:
 - (i) to seek a determination by the Court of whether any particular document, item of material or piece of information should be subject to the terms of this Order;
 - (ii) to seek relief on appropriate notice from any provision(s) of this Order, either generally or as to any particular document, item of material or piece of information;
 - (iii) to object to any discovery request, including the right to assert that no discovery shall be had of certain documents or information;
 - (iv) to seek a higher level of protection than provided for by this Order if the party believes that new and unique circumstances warrant that higher level of protection; or
 - (v) to seek documents or other information from any source.

30. In any instance where a producing party asserts a higher level of protection to discovery material after its initial production, the higher protection level shall apply to the materials only as of the time of their re-designation. Persons who obtain access to such materials prior to their re-designation shall, from the time of notice to them of the materials' re-designation, restrict their review or use of those materials in accordance with the higher protection level.

EFFORTS BY NON-PARTIES TO OBTAIN CONFIDENTIAL INFORMATION

31. If any party has obtained Confidential or Highly Confidential Information under the terms of this Order and receives a subpoena or other compulsory process commanding the production of such Confidential or Highly Confidential Information, such party shall notify the producing party or non-party no later than seven days following receipt of the subpoena (but in no event later than seven days prior to compliance with the subpoena), including in such notice the date set for the production of such subpoenaed information, so that the producing party may file a motion for a protective order or to quash the subpoena. In the event the producing party files such a motion, the subpoenaed party shall not produce any Confidential or Highly Confidential Information in response to the subpoena without the prior written consent of the producing party or non-party unless in response to an order of a court of competent jurisdiction, or unless a failure to produce such Confidential or Highly Confidential Information would, in the judgment of the subpoenaed party, constitute a violation of any law, rule or regulation.

32. The parties will not object to the producing party or non-party having a reasonable opportunity to appear in the litigation or process commanding disclosure of such Confidential or Highly Confidential Information for the sole purpose of seeking to prevent or restrict disclosure thereof.

PROCEDURES CONCERNING THIRD PARTY MATERIALS

33. To the extent a party to this action is required to produce Materials that were initially produced in prior litigation, or which otherwise contain information supplied by a non-party to this action, or which are covered by a nondisclosure agreement pursuant to which consent to production must be obtained ("Third-Party Materials"), and notice must be given prior to production in this action of such Third-Party Materials, the producing party must, within 20 days of becoming aware that a discovery request hereinafter served seeks production of Third Party Materials, initiate the steps necessary to comply with any pre-production notice requirements imposed by any protective order in a prior litigation and/or any other notice obligations ("Third-Party Notice Requirements"). Upon satisfaction of its Third-Party Notice Requirements and resolution of any objections to the production of the Third Party Materials in this action, the producing party shall promptly re-produce such Third-Party Materials. The Parties reserve all rights to invoke this Court's jurisdiction in this litigation to resolve any issues relating to third parties' rights in the production of this material.

34. In the event a producing party inadvertently produces Third-Party Materials without first complying with any Third-Party Notice Requirements ("Inadvertently Produced Third-Party Materials"), the producing party may request the return of the Inadvertently Produced Third-Party Materials, and the possessing parties shall within five business days return or destroy such Inadvertently Produced Third-Party Materials, except that, in the event a possessing party expects to move for an order allowing continued retention and use of the recalled Inadvertently Produced Third-Party Materials, the possessing party may retain one copy of such materials, solely for use in connection with such a motion. Promptly after discovering its production of Inadvertently Produced Third-Party Materials, the producing party shall comply with any applicable Third-Party Notice Requirements.

FILING UNDER SEAL

35. All Confidential or Highly Confidential Information filed with the Court shall be filed under seal in accordance with British Columbia Supreme Court Practice Direction PD-35.

USE OF CONFIDENTIAL OR HIGHLY CONFIDENTIAL INFORMATION AT HEARINGS AND TRIAL

36. In the event that any Confidential Information or Highly Confidential Information is used in any pre-trial court hearing or proceeding in this action, and there is any dispute as to whether such material continues to be Confidential or Highly Confidential, the parties will meet and confer to resolve such dispute.

37. The parties shall confer and attempt to agree before any trial or other hearing on the procedures under which Confidential or Highly Confidential Information may be introduced into evidence or otherwise used at such trial or hearing. Upon reaching agreement, the parties shall give notice of the terms of such agreement to each non-party producing any Confidential or Highly Confidential Information which may be used or introduced at such trial or hearing. Absent agreement, the Court shall be asked to issue an order governing the use of such

Confidential and Highly Confidential Information at trial or hearing upon reasonable notice to all parties and non-parties who have produced such information.

PROCEDURES UPON TERMINATION OF ACTION

38. After the running of any applicable time to appeal the final order entered in this litigation, any producing party or non-party may request that a party return or destroy any Materials the producing party or non-party has provided (other than outside counsel's copies of documents filed with the Court, outside counsel's file copies of papers prepared in connection with this matter and any Materials that experts or consultants are required by statutory or regulatory requirements to retain), which request shall be honored. If the possessing party elects to destroy the Materials rather than return them, the possessing party shall provide the producing party written certification that the destruction has been completed.

39. Nothing in paragraph 37 shall limit the rights, if any, of any party or non-party to object to and seek a ruling of the Court concerning a party's retention of any Materials.

40. To the extent any person retains copies of certain documents after the termination of this action, for any reason, such information shall continue to be subject to the protections provided by this Order. In addition, all restrictions in this Order regarding the use by any person of information or knowledge obtained from Materials shall continue even after such Materials are returned or destroyed.

41. After dismissal or entry of final judgment not subject to further appeal, the Court clerk or registrar may elect to return to counsel for the parties, or after notice, destroy documents filed or offered at trial under seal or otherwise restricted by the Court as to disclosure.

42. Notwithstanding paragraph 37, counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence and all lawyer work product, even if such Materials contain Confidential Information. Any such archival copies that contain or constitute Confidential Information remain subject to this Protective Order. In addition, counsel may retain lawyer work product, including an index which refers or relates to Materials, so long as that work product does not duplicate verbatim substantial portions of the text or images of the Material. This work product shall remain subject to this Protective Order.

MISCELLANEOUS

43. This Order shall not affect the right of any party or non-party to oppose production of Materials on any ground permitted by the British Columbia Supreme Court Civil Rules, including any applicable privilege. Moreover, the Order shall not affect the scope of discovery by any party that is not otherwise proper under the British Columbia Supreme Court Civil Rules.

44. Nothing in this Order shall prejudice the right of any party or non-party to move the Court to broaden or restrict the rights of access to and use of particular Material, or to seek modifications of this Order upon due notice to all other parties and affected non-parties.

45. No Party shall seek to disqualify any counsel of record in this action based on that counsel's receipt of a party's Confidential Information or Highly Confidential Information in this

action or any related proceedings, as the case may be, or from representing any party or other person in connection with any other matter.

46. This Order shall not be construed to cause any counsel to produce, return, and/or destroy their own lawyer work product, or the work product of their co-counsel.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the Plaintiff,
Majestic Mattress MFG, Ltd.
Branch MacMaster LLP

Signature of lawyer for the Plaintiff,
Trillium Project Management Ltd.
Camp Fiorante Matthews

Signature of lawyer for the Defendants,
A-Z Sponge & Foam Products Ltd.,
Domfoam International, Inc., and
Valle Foam Industries (1995), Inc.
Osler Hoskin & Harcourt LLP

Signature of lawyer for the Defendants,
Carpenter Canada Co., and
The Carpenter Co.
Aird & Berlis LLP

Signature of lawyer for the Defendant,
Flexible Foam Products, Inc.
Torys LLP

Signature of lawyer for the Defendants,
Foamex Innovations Canada, Inc., and
Foamex Innovations, Inc.
Affleck Greene McMurtry LLP

Signature of lawyer for the Defendant,
Future Foam, Inc.
Stikeman Elliott LLP

Signature of lawyer for the Defendant,
Hickory Springs Manufacturing Company
McMillan LLP

Signature of lawyer for the Defendants,
Vitafoam Products Canada Limited and
Vitafoam Incorporated
Borden Ladner Gervais LLP

Signature of lawyer for the Defendants,
Woodbridge Foam Corporation, and
The Woodbridge Group
McCarthy Tetrault LLP

Signature of lawyer for Donald Phillips,
Michael Calderoni and Vincenzo Bonaddio
Affleck Greene McMurtry LLP

Signature of lawyer for Leggett & Platt, Inc.
Fasken Martineau DuMoulin LLP

Signature of lawyer for Mohawk Industries, Inc.
Blake, Cassels & Graydon LLP

By the Court

Registrar