

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

N° : 500-06-000524-104

DATE : 21 mars 2017

PRESIDING: THE HONOURABLE JEAN-YVES LALONDE, J.S.C.

OPTION CONSOMMATEURS

Plaintiff

-and-

KARINE ROBILLARD

Designated person

v.

LES INDUSTRIES FOAMEXTRA ET AL.

Defendants

MOHAWK INDUSTRIES INC. ET AL.

Mises en cause

-and-

FONDS D'AIDE AUX ACTIONS COLLECTIVES

RICEPOINT ADMINISTRATION INC.

ME LAURA BRUNEAU

Mises en cause

-and-

BELLEAU LAPOINTE, S.E.N.C.R.L.

Class counsel

**JUDGMENT
(FXI SETTLEMENT AGREEMENT)**

[1] **WHEREAS** Option consommateurs has brought before this Court a Motion for the approval of a settlement agreement entered into with the Defendants Foamex Innovations Inc., Foamex Innovations Canada Inc., Michael Calderoni, Donald Phillips and Vincenzo Bonaddio;

[2] **CONSIDERING** the Motion before the Court;

JL3280

- [3] **CONSIDERING** the exhibits in the file including the Settlement Agreement entered into on September 2nd 2016, filed as Exhibit 1;
- [4] **CONSIDERING** the submissions of counsel for the parties and the representations made on all sides;
- [5] **CONSIDERING** Section 590 of the *Code of Civil Procedure*;

WHEREFORE, THE COURT:

- [6] **GRANTS** the present Motion for the approval of a settlement agreement;
- [7] **DECLARES** that the definitions set forth in the Settlement Agreement, Exhibit R-1, apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part hereof, being understood that the definitions are binding on the Parties to the Settlement Agreement;
- [8] **DECLARES** that, subject to all of the other provisions of this Judgment, the Settlement Agreement is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members, and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Quebec*, binding all Parties and all members described therein;
- [9] **DECLARES** the Settlement Agreement in conformity with Article 590 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of this Judgment;
- [10] **DECLARES** that, subject to the other provisions of this Judgment, the Settlement Agreement, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to this Judgment as Schedule A and shall form an integral part of this Judgment;
- [11] **ORDERS AND DECLARES** that effective immediately upon the Effective Date, and in consideration of payment of the Settlement Amount, 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;

- [12] **DECLARES** that 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;
- [13] **ORDERS AND DECLARES** that upon the Effective Date, the Quebec Proceeding shall be settled, without costs and without reservation as against the FXI Defendants, and the Parties shall sign and file a declaration of out of court settlement with the Quebec Court;
- [14] **DECLARES** that each Quebec Settlement Class Member 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 Quebec Other Actions against the Releasees;
- [15] **DECLARES** that each Other Action commenced in Quebec by a Quebec Settlement Class Member who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation;
- [16] **DECLARES** that except as provided in the Settlement Agreement, 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;
- [17] **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, shall be binding on every Quebec Settlement Class Member who has not validly opted-out of the action;
- [18] **DECLARES** that this Court retains an ongoing supervisory role for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement;

- [19] **DECLARES** that this Court retains an exclusive jurisdiction over the Quebec Proceedings, the Parties thereto and Class Counsel Fees in those Proceedings;
- [20] **PRAYS ACT** that on the Effective Date, counsel for the Settling Defendants shall transfer the Trust Account to Camp Fiorante Matthews Mogerman;
- [21] **DECLARES** that following the transfer of the Settlement Amount and accrued interest, the Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of the monies in the Trust Account;
- [22] **ORDERS** that this Judgment is contingent upon the approval of the Settlement Agreement by the Ontario Court and the British Columbia Court in the Proceedings in their jurisdictions, and this Judgment shall have no force and effect unless and until such approval orders are made;
- [23] **WITHOUT COSTS.**



THE HONOURABLE JEAN-YVES LALONDE, J.S.C.

SCHEDULE A

CANADIAN POLYURETHANE FOAM CLASS ACTIONs
FXI SETTLEMENT AGREEMENT

Made as of September 2, 2016

Between

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

(the "Plaintiffs")

And

FOAMEX INNOVATIONS, INC., and
FOAMEX INNOVATIONS CANADA, INC./ LES INDUSTRIES FOAMEXTRA INC.

(the “Corporate Defendants”)

And

MICHAEL CALDERONI, DONALD PHILLIPS AND VICENZO BONADDIO

(the “Employee Defendants”, collectively the "Settling Defendants")

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

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

RECITALS

- A. WHEREAS the Plaintiffs have commenced the Proceedings, which allege that the Defendants, including the Settling Defendants, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Flexible Foam Products in Canada and/or to allocate markets and customers for the sale and distribution of Flexible Foam Products in Canada, contrary to Part VI of the *Competition Act*, common law or Quebec civil law, which allegations include those that were certified as class proceedings in British Columbia and Quebec;
- B. WHEREAS the deadline for Persons to opt out of the Proceedings has passed as a result of the certification or authorization obtained in respect of a prior approved 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 Flexible Foam Products in Canada;

H. 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;

I. WHEREAS the Parties and their 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 Parties and their counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Settling Defendants, the Plaintiffs and the Settlement Class they seek to represent; and

J. 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;

K. WHEREAS the Ontario Plaintiff asserts that it is an adequate class representative for the Ontario Settlement Class and will seek to be appointed representative plaintiff in the Ontario Proceedings;

L. 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 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, 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, the Settlement Class 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 Counsel** means Camp Fiorante Matthews Mogerman and Branch MacMaster LLP.
- (3) **BC Court** means the Supreme Court of British Columbia.
- (4) **BC Plaintiffs** mean Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd.
- (5) **BC Proceedings** mean the proceedings commenced by Majestic Mattress Mfg. Ltd. in the form of a Notice of Civil Claim filed in the BC 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 BC Court (Vancouver Registry), Court File No. S-106213, filed on September 15, 2010.
- (6) **BC Settlement Class and BC Settlement Class Members** means: all Persons resident in British Columbia who purchased Flexible Foam Products in Canada during the Settlement Class Period, except Excluded Persons.
- (7) **Carpet Underlay** means the subset of Flexible Foam Products that are scrap polyurethane foam bonded together by various chemicals into a padding material,;.
- (8) **Claims Administrator** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims

process in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.

(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, PST, 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 actions collectives in Quebec.

(11) **Common Issue** 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) **Competition Act** means the *Competition Act*, RSC 1985, c. C-34, as amended.

(13) **Corporate Defendants** means Foamex Innovations, Inc. and Les Industries Foamextra Inc.

(14) **Counsel for the Settling Defendants** means Affleck Greene McMurtry LLP.

(15) **Courts** mean the Ontario Court, the Quebec Court and the BC Court.

(16) **Date of Execution** means the date on the cover page hereof as of which the Parties have executed this Settlement Agreement.

(17) **Defendants** mean the Persons named as defendants in any of the Proceedings and any Persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settled Defendants and the Settling Defendants.

(18) **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.

(19) **Effective Date** means the date when Final Orders have been received from all Courts approving this Settlement Agreement.

(20) **Employee Defendants** means Michael Calderoni, Donald Phillips and Vincenzo Bonaddio.

(21) **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.

(22) **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.

(23) **Flexible Foam Products** mean flexible polyurethane foam and any and all products that contain flexible polyurethane foam, including Carpet Underlay, except for Molded Foam Products and Technical Foam Products.

(24) **Flexible Polyurethane Foam Products** means the subset of Flexible Foam Products that are not Carpet Underlay Products.

(25) **Molded Foam Products** means flexible polyurethane foam products produced by mixing certain chemicals and pouring the mixture into a fixed shape mold (which is often a proprietary mold of an original equipment manufacturer ("OEM") or "Tier 1" supplier of an OEM). When the foam cures and is removed from the mold, it has unique surface contours that hold the shape of the mold cavity in which it was produced. The physical properties of the foam, including the foam's appearance can be altered to meet customer specifications by changing the chemical formulation.

(26) **Ontario Counsel** means Sutts, Strosberg LLP and the Law Office of Andrew J. Morganti.

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

(28) **Ontario Plaintiff** means "Hi! Neighbor" Floor Covering Co. Limited.

(29) **Ontario Proceedings** mean the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Notice of Action issued August 19, 2010 in the Ontario Court (Windsor Registry), Court File No. CV-10-15164 and Statement of Claim filed on September 15, 2010, as amended, the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Statement of Claim issued on December 30, 2011 in the Ontario Court (Windsor Registry), Court File No. CV-11-17279, and the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Notice of Action issued August 1, 2012 in the Ontario Court (Windsor Registry), Court File No. CV-10-18219 and Statement of Claim filed on August 31, 2012.

(30) **Ontario Settlement Class and Ontario Settlement Class Members** means all Persons resident in Canada who purchased Flexible 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.

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

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

(33) **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.

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

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

(36) **Purchase Price** means the purchase price paid by Settlement Class Members for Flexible Foam Products purchased in Canada during the Settlement Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.

(37) **Quebec Civil Code** means the Civil Code of Quebec, as amended.

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

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

(40) **Quebec Plaintiff** means Option consommateurs.

(41) **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.

(42) **Quebec Settlement Class and Quebec Settlement Class Members** means: all Persons resident in Quebec who purchased Flexible 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.

(43) **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 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, 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 Flexible 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 that are not related to the purchase, sale, pricing, discounting, marketing or distributing of Flexible Foam Products in Canada including 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 Flexible Foam Products.

(44) **Releasees** mean, jointly and severally, individually and collectively, the Settling Defendants, FXI Holdings Inc., Foamintel Enterprises Inc., FXI Inc., 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, including any alleged predecessors such as Foamex International Inc.; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(45) **Releasers** 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.

(46) **Settled Defendants** mean Domfoam International, Inc., Valle Foam Industries (1995) Inc., A-Z Sponge & Foam Products Ltd., Dean Brayianis, Douglas Dolphin, Antonio Da Costa (improperly named Anthony Da Costa), Carpenter Co., Carpenter Canada Co., Michael Lajambe, 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., Vitafoam Products Canada Limited, Vitafoam, Inc. and Woodbridge Foam Corporation.

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

(48) **Settlement Amount** means CDN\$2,450,000.

(49) **Settlement Class and Settlement Class Members** means all Persons included in the Ontario Settlement Class, the BC Settlement Class and the Quebec Settlement Class.

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

(51) **Settling Defendants** means the Corporate Defendants and Employee Defendants.

(52) **Technical Foam Products** means highly engineered, specialty foam products that have different chemical formulations than the flexible foams used for bedding, furniture, packaging or carpet. The specifications typically go beyond just the density and indentation force deflection or hardness of the foam and include the pore size, air flow measured via pressure drop across the foam and/or the resistance of the foam to various medical or industrial fluids. The products themselves often have very precise physical properties and are used in a broad array of applications, such as gasketing, ink regulation in printer cartridges, sealing systems in automobiles, noise and vibration dampening in electronics. Consumer technical products include sponges, mops, paint brushes, and cosmetic applicators.

(53) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Counsel for the Settling Defendants until Effective date and of Class Counsel as of Effective Date, for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement.

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 9 and certifying the Ontario Proceedings as a class proceeding as against the Settling Defendants for settlement purposes.

(2) The BC order approving the notices described in Section 9 shall be substantially in the form attached hereto as Schedule "A". The Ontario and Quebec orders approving the notices described in Section 9 shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order and such other provisions as may be required to provide for certification of the Ontario Proceedings shall be agreed upon by the Parties.

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 the orders referred to in Section 2.2(2) are granted, and the notices described in Section 9 have been published.

(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 Settling Defendants and Class Counsel, as the case may be, except in the discretion of Class Counsel to the Courts, or as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements), or as otherwise required by law.

Section 3 Settlement Amount

3.1 Payment of Settlement Amount

- (1) Within thirty (30) days of the Execution Date, the Settling Defendants shall pay the Settlement Amount to Counsel for the Settling Defendants to be held in the Trust Account in accordance with the terms of this Settlement Agreement.
- (2) On the Effective Date, Counsel for the Settling Defendants shall transfer the Trust Account to Camp Fiorante Matthews Mogerman.
- (3) Counsel for the Settling Defendants and Camp Fiorante Matthews Mogerman, respectively, shall maintain the Trust Account as provided for in this Settlement Agreement.
- (4) Counsel for the Settling Defendants and Camp Fiorante Matthews Mogerman, respectively, 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 after notice to the Parties.
- (5) The cost of disseminating the notices contemplated in Section 9(2) and the translations contemplated in Section 12.12 of this Settlement Agreement shall be paid out of the Settlement Amount in the Trust Account, whether or not the Settlement is eventually approved.

3.2 No Further Settlement Payments

- (1) Subject to Section 3.1(1), the Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (2) The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.

3.3 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue from the date of deposit to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to Section 3.3(5) 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.

(3) Before the Effective Date, the Settling Defendants shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount, including any obligation to report taxable income and make tax payments. After the Effective Date, Camp Fiorante Matthews Mogergerman 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.

(4) After the Effective Date, 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.

(5) Notwithstanding Sections 3.3(2), 3.3(3) and 3.3(4), if this Settlement Agreement is terminated the interest earned on the Settlement Amount in the Trust Account shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

Section 4 Distribution of the Settlement Amount and Accrued Interest

4.1 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.

4.2 No Responsibility for Administration or Fees

(1) After the transfer of the Settlement Amount and accrued interest as triggered by 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 5 Termination of Settlement Agreement

5.1 Right of Termination

- (1) In the event that:
- (a) any Court declines to approve this Settlement Agreement or any material part hereof;
 - (b) any Court approves this Settlement Agreement in a materially modified form; or
 - (c) any orders approving this Settlement Agreement made by the Ontario Court, the BC Court or the Quebec Court do not become Final Orders;

Settling Defendants, Class Counsel, and the Plaintiffs shall have the right to terminate this Settlement Agreement.

(2) In addition, the Plaintiffs shall have the right to terminate this Settlement Agreement in the event that the Settling Defendants fail to pay the Settlement Amount provided for in Section 3.1.

(3) Except as provided for in Section 5.4, if the Settling Defendants, Class Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null

and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(4) Any order, ruling or determination made (or rejected) by any Court with respect to Class Counsel's fees and disbursements or the Distribution Protocol 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.

(5) To exercise a right of termination, a terminating party shall deliver a written notice of termination pursuant to Section 12.18 within twenty (20) days of the ground for termination becoming known to the terminating party.

5.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect:

- (a) any order certifying or authorizing the Ontario Proceedings as class proceedings 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;
- (b) except as provided in Section 5.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation; and
- (c) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants 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.

5.3 Allocation of Monies in the Trust Account Following Termination

(1) If the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect, Counsel for the Settling Defendants or Camp Fiorante Matthews Mogerman, as applicable, shall return to the Settling Defendants all monies in the Trust Account including interest, but less the costs of notice and translations incurred in accordance with Section 9, Section 10, and Section 11 within thirty (30) business days of the relevant termination event in Section 5.1.

5.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated, the provisions of Sections 3.1(3), 3.1(4), 3.1(5), 3.3(5), 5.1(3), 5.2(1), 5.3(1), 5.4(1), 7.1(1), 7.1(2), 10.2(4), 11.1, 12.1, 12.5 and 12.6 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(3), 3.1(4), 3.1(5), 3.3(5), 5.1(3), 5.2(1), 5.4(1), 7.1(1), 7.2(1), 10.2(4), 11.1, 12.1, 12.5 and 12.6, 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 6 Releases and Dismissals

6.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount, the Releasers 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.

6.2 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.

6.3 Covenant Not To Sue

(1) Notwithstanding Section 6.1, 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 Releasers 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.

6.4 No Further Claims

(1) The Releasers 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.

6.5 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 the Settling Defendants.

(2) Upon the Effective Date, the Quebec Proceeding shall be settled, without costs and without reservation as against the Settling Defendants, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court.

6.6 Dismissal of Other Actions

(1) Upon the Effective Date, each Ontario Settlement Class Member and BC Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

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

(3) Each Quebec Settlement Class Member 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 the Releasees.

(4) Each Other Action commenced in Quebec by a Quebec Settlement Class Member who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

6.7 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 7 Effect of Settlement

7.1 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.

7.2 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.

7.3 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. 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 7.3(1) shall not be operative to the extent that it is inconsistent with BC Counsel's obligations under Rule 4–7 of the *British Columbia Professional Conduct Handbook*.

Section 8 Certification of Ontario Proceedings

8.1 Certification of Ontario Proceedings for Settlement Only

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

(2) The Ontario Plaintiff agrees that, in the motions for certification of the Ontario Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that it will seek to define is the Common Issue and the only classes that it will assert is the Ontario Settlement Class.

Section 9 Notice to Settlement Class

9.1 Notices Required

(1) The Settlement Class shall be given a single notice of (i) the certification of the Ontario 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 (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve the Distribution Protocol and/or the Class Counsel Fees.

9.2 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 10 Administration and Implementation

10.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

10.2 Information and Assistance

(1) The Settling Defendants will make reasonable best efforts to compile a list of the names and addresses of Persons, if any, in Canada who purchased Flexible Foam Products in Canada from them or from the Releasees during the Settlement Class Period and the Purchase Price paid by each such Person for such purchases.

(2) The information required by Section 10.2(1) shall be delivered to the Class Counsel at least five (5) days in advance of the first publication of the notices required in Section 9.1(1), whichever is earlier.

(3) Class Counsel may use the information provided under Section 10.2(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 4 of this Settlement Agreement.

(4) If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 10.2(1) shall be dealt with in accordance with Section 5.2(1)(c) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

Section 11 Class Counsel Fees and Administration Expenses

11.1 Class Counsel Fees and Administration Expenses

(1) Notwithstanding any other provision of this Settlement Agreement, the costs of the notices referred to in Section 9(2) and the costs of translation referred to in Section 12.12 of this Settlement Agreement shall be paid out of the Trust Account by Counsel for the Settling Defendants or Camp Fiorante Matthews Mogerman, as applicable, as they are incurred and irrespective of whether the Effective Date has passed.

(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 11.1, 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 12 Miscellaneous

12.1 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 Parties except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

12.2 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.

12.3 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.

12.4 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.

12.5 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

complimentary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

(3) Notwithstanding Sections 12.5(1) and 12.5(2), the BC 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 an Ontario Settlement Class Member or a Quebec Settlement Class Member shall be determined by the BC Court.

12.6 Governing Law

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

12.7 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.

12.8 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.

12.9 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.

12.10 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.

12.11 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.

12.12 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. If a French translation of the Settlement Agreement and/or any notices, orders or other documents contemplated by this Settlement Agreement is prepared, the cost of such shall be paid 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.

12.13 Transaction

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

12.14 Recitals

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

12.15 Schedules

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

12.16 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.

12.17 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.

12.18 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:

Reidar Mogerman

CAMP FIORANTE MATTHEWS MOGERMAN
4th Floor, 856 Homer St.
Vancouver, BC V6B 2W5
Tel: 604-689-7555
Fax: 604-689-7554
Email: rmogerman@cfmlawyers.ca

Heather Rumble Peterson

SUTTS, STROSBURG LLP
600-251 Goyeau Street
Windsor, ON N9A 6V4
Tel: 1-800-229-5323
Fax: 1-866-316-5308
Email: hpeterson@strobergco.com

Daniel Belleau and Maxime Nasr

BELLEAU LAPOINTE
306 Place d'Youville, Suite B-10
Montreal, QC H2Y 2B6
Tel: 514-987-6700
Fax: 514-987-6886
Email: dbelleau@belleaulapointe.com
mnasr@belleaulapointe.com

Ward Branch Q.C. and Luciana Brasil

BRANCH MACMASTER
1410 – 777 Hornby Street
Vancouver, BC V7G 3E2
Tel: 604-654-2966
Fax: 604-684-3429
Email: wbranch@branmac.com
lbrasil@branmac.com

For the Settling Defendants:

Michael Binetti

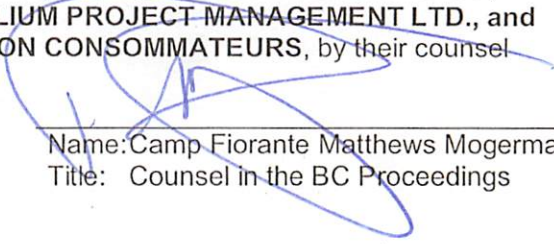
AFFLECK GREENE MCMURTRY LLP
365 BAY STREET, SUITE 200
TORONTO, ON M5H 2V1
Tel: 416-360-2800
Fax: 416-360-5960
Email: mbinetti@agmlawyers.com

12.19 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:

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

By:

Name: Law office of Andrew J. Morganti
Title: Counsel in the Ontario Proceedings

By:

Name: Branch MacMaster LLP
Title: Counsel in the BC Proceedings

By:

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

**FOAMEX INNOVATIONS, INC., FOAMEX
INNOVATIONS CANADA, INC., MICHAEL CALDERONI,
DONALD PHILLIPS and VICENZO BONADDIO, by their
counsel**

By:

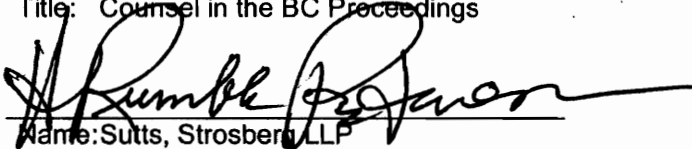

Name: Affleck Greene McMurtry LLP
Title: Canadian Counsel

**"HII NEIGHBOR" FLOOR COVERING CO.
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TRILLIUM PROJECT MANAGEMENT LTD., and
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By:



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Title: Counsel in the Ontario Proceedings

By:

Name: Law office of Andrew J. Morganti
Title: Counsel in the Ontario Proceedings

By:

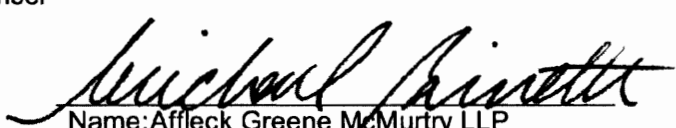
Name: Branch MacMaster LLP
Title: Counsel in the BC Proceedings

By:

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

**FOAMEX INNOVATIONS, INC., FOAMEX
INNOVATIONS CANADA, INC., MICHAEL CALDERONI,
DONALD PHILLIPS and VICENZO BONADDIO, by their
counsel**

By:



Name: Affleck Greene McMurtry LLP
Title: Canadian Counsel

**"HII NEIGHBOR" FLOOR COVERING CO.
LIMITED, MAJESTIC MATTRESS MFG. LTD,
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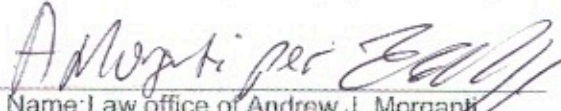
By:

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Title: Counsel in the BC Proceedings

By:

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

By:



Name: Law office of Andrew J. Morganti
Title: Counsel in the Ontario Proceedings

By:

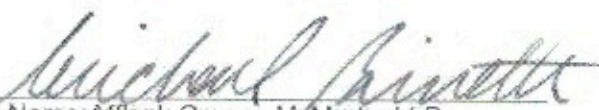
Name: Branch MacMaster LLP
Title: Counsel in the BC Proceedings

By:

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

**FOAMEX INNOVATIONS, INC., FOAMEX
INNOVATIONS CANADA, INC., MICHAEL CALDERONI,
DONALD PHILLIPS and VICENZO BONADDIO, by their
counsel**

By:




Name: Affleck Greene McMurtry LLP
Title: Canadian Counsel

**“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 Mogerma
Title: Counsel in the BC Proceedings

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

By: _____
Name: Law office of Andrew J. Morganti
Title: Counsel in the Ontario Proceedings

By:  _____
Name: Branch MacMaster LLP
Title: Counsel in the BC Proceedings

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

**FOAMEX INNOVATIONS, INC., FOAMEX
INNOVATIONS CANADA, INC., MICHAEL CALDERONI,
DONALD PHILLIPS and VICENZO BONADDIO,** by their
counsel

By:  _____
Name: Affleck Greene McMurtry LLP
Title: Canadian Counsel

**"HII 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: _____
Name: Sutts, Strosberg LLP
Title: Counsel in the Ontario Proceedings

By: _____
Name: Law office of Andrew J. Morganti
Title: Counsel in the Ontario Proceedings

By: _____
Name: Branch MacMaster LLP
Title: Counsel in the BC Proceedings

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

**FOAMEX INNOVATIONS, INC., FOAMEX
INNOVATIONS CANADA, INC., MICHAEL CALDERONI,
DONALD PHILLIPS and VICENZO BONADDIO, by their
counsel**

By: Michael Binnett
Name: Affleck Greene McMurtry LLP
Title: Canadian Counsel

Schedule "A"

	<i>In the Supreme Court of British Columbia</i>	No. VLC-S-S-106362 Vancouver Registry
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>	

	<i>In the Supreme Court of British Columbia</i>	No. S-106213 Vancouver Registry
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
APPROVAL OF NOTICE**

	BEFORE THE HONOURABLE MR. JUSTICE)	
<input checked="" type="checkbox"/>	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 Reidar Mogerman, counsel for the BC Plaintiffs and David Edinger for Foamex Innovations, Inc., Foamex Innovations Canada, Inc., Michael Calderoni, Donald Phillips and Vincenzo Bonaddio , 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 BC Settlement Class Member 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;
2. The Notice of Settlement Approval Hearings (the "Pre-Approval Notice") is hereby approved substantially in the form attached hereto as **Schedule "B"**;
3. The plan of dissemination of the Pre-Approval Notice (the "Plan of Dissemination") is hereby approved in the form attached as **Schedule "C"**;
4. The Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order;
5. The Class Period set out in the Order of this Court granted April 7, 2015 is amended to the period between January 1, 1999 and January 10, 2012.
6. This Order is contingent upon:
 - a. orders being made by the Ontario Court that provide for certification for settlement purposes and notice in relation to the Settlement Agreement;
and
 - b. orders being made by the Quebec Court that provide for notice in relation to the Settlement Agreement

and the terms of this Order shall not be effective unless and until such orders are made;

7. Endorsement of this Order by 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:

<insert all signatures>

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, 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, 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 Smith Street, Vancouver, BC, on dd/mmm/yyyy and on hearing Reidar Mogerman, counsel for the BC Plaintiffs and David Edinger for Foamex Innovations, Inc., Foamex Innovations Canada, Inc., Michael Calderoni, Donald Phillips and Vincenzo Bonaddio, 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 BC Settlement Class Member 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. 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 BC Settlement Class Member 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 BC Settlement Class Member 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 BC Settlement Class Member 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;
10. 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;
11. Upon the Effective Date, Counsel for the Settling Defendants shall transfer the Trust Account to Camp Fiorante Matthews Mogerman;
12. After the Effective Date, the Settling Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account;
13. Camp Fiorante Matthews Mogerman 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;

14. 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;
15. 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;
16. Except as aforesaid, the BC Proceedings are hereby dismissed against the Settling Defendants without costs and with prejudice; and
17. Endorsement of this Order by the 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:

<insert signatures>

By the Court

Registrar