

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-000524-104

DATE : October 26, 2015

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

OPTION CONSOMMATEURS

Petitioner

-and-

KARINE ROBILLARD

Designated Person

v.

PRODUITS VITAFOAM CANADA LIMITÉE

VITAFOAM INC.

CARPENTER CANADA Co.

CARPENTER Co.

FUTURE FOAM INC.

FLEXIBLE FOAM PRODUCTS INC.

LEGGETT & PLATT INC.

MOHAWK INDUSTRIES INC.

HICKORY SPRINGS MANUFACTURING COMPANY

WOODBIDGE FOAM CORPORATION

Respondents

-and-

LES INDUSTRIES FOAMEXTRA INC.

FOAMEX INNOVATIONS INC.

MICHAEL CALDERONI

DONALD PHILLIPS

VINCENZO BONADDIO

Defendants

-and-

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

Class counsel

-and-

FONDS D'AIDE AUX RECOURS COLLECTIFS

Mise en cause

JUDGMENT
(VITAFOAM SETTLEMENT AGREEMENT)

- [1] **WHEREAS** Option consommateurs has brought before this Court a Motion for the approval of a settlement agreement entered into with the Respondents Produits Vitafoam Canada Limitée and Vitafoam inc.;
- [2] **CONSIDERING** the Motion before the Court;
- [3] **CONSIDERING** the exhibits in the file;
- [4] **CONSIDERING** also the agreement entered into on June 16th, 2015, filed as Exhibit 3 in support of Mtre Luciana Brasil's Affidavit dated September 15th, 2015;
- [5] **CONSIDERING** the submissions of counsel for the parties and the representations made on all sides;
- [6] **CONSIDERING** Section 1025 of the *Code of Civil Procedure*;
- [7] **WHEREFORE, THE COURT:**
- [8] **GRANTS** the present *Requête pour l'approbation de transactions et en approbation des honoraires et déboursés des Procureurs-requérants*;
- [9] **DECLARES** that the definitions set forth in the Settlement Agreement apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the Parties to the Settlement Agreement, and that the other Respondents and Defendants, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of the Judgment;
- [10] **DECLARES** that, subject to all of the other provisions of the Judgment, the Settlement Agreement is valid, fair, reasonable and in the best interest of the Québec Settlement Class Members, and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all Parties and all members described therein;
- [11] **APPROVES** the Settlement Agreement in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of the Judgment;

[12] **DECLARES** that, subject to the other provisions of the Judgment, the Settlement Agreement, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to the Judgment as Schedule "A" and shall form an integral part of the Judgment and shall be binding on all Parties;

[13] **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Settlement Agreement, the terms of the present Judgment shall prevail;

[14] **ORDERS AND DECLARES** that, upon the Effective Date, 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;

[15] **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 Other Actions against the Releasees;

[16] **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;

[17] **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, shall be binding on every Québec Settlement Class Member who has not validly opted-out of the action;

[18] **DECLARES** that 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;

[19] **DECLARES** that the Quebec Petitioner and the Quebec Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, interests 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;

[20] **DECLARES** that 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;

[21] **DECLARES** that the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the Code of Civil Procedure of Quebec, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the Code of Civil Procedure of Quebec;

[22] **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;

[23] **DECLARES** that this Court retains an exclusive jurisdiction over the Quebec Proceedings, the Parties thereto and Class Counsel Fees in those Proceedings;

[24] **DECLARE** that the Settling Defendants shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;

[25] **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court in the Proceedings in their jurisdictions, and this Judgment shall have no force and effect unless and until such approval orders are made;

[26] **WITHOUT COSTS.**



26 OCT. 2015

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