

OCT 08 2015

ENTERED

Between



No. VLC-S-S-106362
Vancouver Registry

In the Supreme Court of British Columbia

MAJESTIC MATTRESS MFG, LTD.

Plaintiff

and

VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM INCORPORATED, HICKORY SPRINGS
MANUFACTURING COMPANY, CARPENTER CO., CARPENTER CANADA CO., WOODBRIDGE FOAM
CORPORATION, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC., FOAMEX INNOVATIONS, INC.,
FOAMEX INNOVATIONS CANADA, INC., VINCENZO BONADDIO, MICHAEL CALDERONI, DONALD
PHILLIPS, LEGGETT & PLATT INC. AND FUTURE FOAM, INC.

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT

No. S-106213
Vancouver Registry

In the Supreme Court of British Columbia

Between

TRILLIUM PROJECT MANAGEMENT LTD.

Plaintiff

and

HICKORY SPRINGS MANUFACTURING COMPANY, , CARPENTER CO., CARPENTER CANADA CO.,
WOODBRIDGE FOAM CORPORATION, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC.,
FOAMEX INNOVATIONS, INC., FOAMEX INNOVATIONS CANADA, INC., VINCENZO BONADDIO,
MICHAEL CALDERONI, DONALD PHILLIPS, FUTURE FOAM, INC., LEGGETT & PLATT INC., MOHAWK
INDUSTRIES INC., VITAFOAM PRODUCTS CANADA LIMITED AND VITAFOAM INCORPORATED

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT

**ORDER MADE AFTER APPLICATION FOR
APPROVAL OF SETTLEMENT AGREEMENT - VITAFOAM**

BEFORE THE HONOURABLE MR. JUSTICE
BOWDEN

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Sept 21, 2015

ON THE APPLICATION of the BC Plaintiffs coming on for hearing at the Courthouse at 800 Smithe Street, Vancouver, BC, on September 21, 2015 and on hearing Ward K. Branch and Chelsea D. Hermanson, counsel for the BC Plaintiffs; Jack Finn, counsel for Vitafoam Products Limited and Vitafoam, Inc. (the "Settling Defendants"); Eliot Kolers, counsel for Future Foam, Inc.; Joan Young and Jamieson Virgin, counsel for Hickory Springs Manufacturing Company; Richard Berrow and Katie Peardon (articled student), counsel for Leggett & Platt, Inc.; Robin Reinertson, counsel for Mohawk Industries Inc.; Linda Plumpton, counsel for Flexible Foam Products, Inc. and Bruce Schneider; Christopher Naudie, counsel for Valle Foam Industries (1995) Inc. and Domfoam International, Inc.; Paul McCallen, counsel for The Carpenter Company, Carpenter Co.,

and Carpenter Canada Co. and appearing as agent for counsel for Michael Lajambe; David Edinger, counsel for Foamex Innovations, Inc., Foamex Innovations Canada Inc., 2422735 Canada Inc. (formerly known as Foamex Canada Inc.), FXI Foamex Innovations Inc., Michael Calderoni, Donald Phillips, and Vincenzo Bonaddio; Donald B. Houston and Emily MacKinnon, counsel for The Woodbridge Foam Corporation; and J. Kevin Wright and Nikiforos Iatrou, counsel for Douglas Dolphin and Anthony DaCosta;

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, 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 BC 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;
 - 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 affect 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 the following:
 - a. documentary discovery and a list of documents in accordance with the *Supreme Court Civil Rules* from a Settling Defendant;
 - b. oral discovery of a representative of a Settling Defendant, the transcript of which may be read in at trial;
 - c. leave to serve a notice to admit on a Settling Defendant in respect of factual matters; and/or
 - d. the production of a representative of a Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants;
14. The Settling Defendants retain all rights to oppose such application(s) brought under paragraph 13. 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;
15. 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;
16. 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;

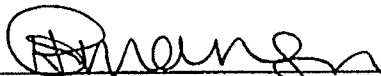
17. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the relevant BC Proceeding;
18. After the Effective Date, the Settling Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account;
19. 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;
20. 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;
21. 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;
22. Except as aforesaid, the BC Proceedings are hereby dismissed against the Settling Defendants without costs and with prejudice;
23. Nothing In this Order shall amend, vary or alter any of the terms of the Order of the B.C. Supreme Court dated March 19, 2014 relating to the approval of the settlement agreement with Valle Foam Industries (1995) Inc. (incorrectly named as Valle Foam Industries Inc. in Court File No. S-106213, and now known as

3113736 Canada Ltd.), Domfoam International Inc. (now known as 4362063 Canada Ltd.), A-Z Sponge & Foam Products Ltd. and other persons;

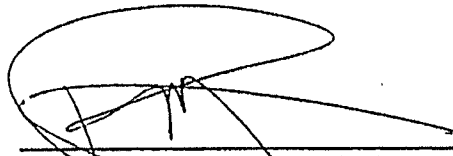
24. Endorsement of this Order by the Non-Settling Defendants and Settled Defendants is dispensed with; and

25. This Order may be signed in counterpart, electronically or by facsimile.

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:



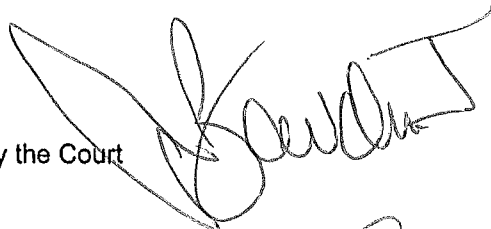
Signature of lawyer for Plaintiff, Majestic Mattress Mfg, Ltd.
Branch MacMaster LLP



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

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

By the Court



Registrar



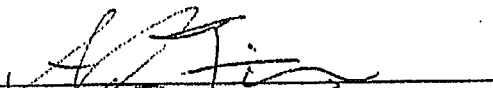
3113736 Canada Ltd.), Domfoam International Inc. (now known as 4362063 Canada Ltd.), A-Z Sponge & Foam Products Ltd. and other persons;

24. Endorsement of this Order by the Non-Settling Defendants and Settled Defendants is dispensed with; and

25. This Order may be signed in counterpart, electronically or by facsimile.

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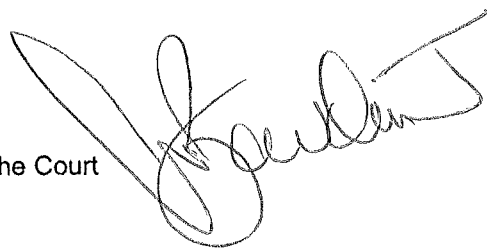
Signature of lawyer for Plaintiff, Majestic
Mattress Mfg, Ltd.
Branch MacMaster LLP



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

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

By the Court



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**ORDER MADE AFTER APPLICATION FOR
APPROVAL OF SETTLEMENT AGREEMENT - VITAFOAM**

BRANCH MACMASTER LLP

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