

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 12TH DAY
)
JUSTICE PATTERSON) OF AUGUST, 2015

B E T W E E N:

ROBERT CECILE, MICHELLE CECILE, GERALD PATRICK DOYLE,
STANLEY LAWTON, STANISLAO CALANDRA, BRUCE ANDREW MACLELLAN,
JEFFREY MICHAEL SIMPSON, SIMONE MARISA CUPID,
CINDY RUTH ARMSTRONG, JAIME BATISTA and SUSAN HUNTLEY

Plaintiffs

and

RETROFOAM OF CANADA INCORPORATED, RETROFOAM HOLDINGS INC.,
RETROFOAM WINDSOR INC., RETROFOAM OF SOUTHERN ONTARIO INC.,
RETROFOAM OF EASTERN ONTARIO LTD., POLYMASTER, INC., ENERLIV INC.,
PAUL JOHN WEIGEL, NORTHERN RETROFOAM, INC., MNP LTD. In its capacity as
Trustee in Bankruptcy of ENWISE POWER SOLUTIONS INC., ENWISE BUILDING
SCIENCE INC., GARY ZAVAROS, 756882 ONTARIO LTD.,
c.o.b. as LAMBTON INSULATION LTD., THE ATTORNEY
GENERAL OF CANADA, ATTIE ENTERPRISES LTD. AND I-GEN ENERGY INC.

Defendants

Proceeding under the Class Proceedings Act, 1992

JUDGMENT

THIS MOTION, made by the plaintiffs for an order approving the proposed settlement, approving class counsel fees and disbursements, the cost of administration and fixing an honorarium for the representative plaintiffs, was heard on Wednesday, August 12, 2015 at the Court House, 245 Windsor Street, Windsor, Ontario.

ON READING the materials filed, including the following:

- (a) the affidavits of S. Alex Constantin, sworn July 21, 2015 and August 6, 2015;
- (b) the affidavit of Sarkis Isaac, sworn August 11, 2015;
- (c) the affidavit of Robert Cecile, sworn July 23, 2015;
- (d) the affidavit of Michelle Cecile, sworn July 23, 2015;
- (e) the affidavit of Gerald Patrick Doyle, sworn July 25, 2015;
- (f) the affidavit of Stanley Lawton, sworn July 22, 2015;
- (g) the affidavit of Stanislao Calandra, sworn July 23, 2015;
- (h) the affidavit of Bruce Andrew MacLellan, sworn July 23, 2015;
- (i) the affidavit of Jeffrey Michael Simpson, sworn July 22, 2015;
- (j) the affidavit of Simone Marisa Cupid, sworn July 24, 2015;
- (k) the affidavit of Cindy Ruth Armstrong, sworn July 23, 2015;
- (l) the affidavit of Jaime Batista, sworn July 20, 2015;
- (m) the affidavit of Susan Huntley, sworn July 23, 2015;
- (n) the letter from Reva Devins agreeing to be appointed as Arbitrator;
- (o) the letter from Marsh agreeing to be appointed as Administrator;
- (p) the correspondence from the Children's Lawyer and Public Guardian and Trustee;
- (q) the affidavit of Shane Sartori, sworn July 22, 2015; and
- (r) the affidavit of Michelle Kunkel, sworn July 22, 2015.

AND ON HEARING the submissions of Class Counsel and counsel for the defendants, and being advised that the Children's Lawyer and Public Guardian and Trustee take no position on this motion,

AND ON BEING ADVISED of the objections of [REDACTED]

[REDACTED]

[REDACTED]

1. THIS COURT ORDERS that, for the purposes of this Judgment, the following definitions apply:

- (a) “**Action**” means the action *Cecile et al. v. RetroFoam of Canada Incorporated et al.*, court file no. CV-09-12583 CM including all crossclaims;
- (b) “**Administrator**” means **Marsh** or its successor appointed from time to time by the **Court**;
- (c) “**AG**” means the Attorney General of Canada;
- (d) “**Arbitrator**” means Reva Devins or her successor appointed from time to time by the **Court**;
- (e) “**Claim Form**” or “**Claim Forms**” means the Standard Claim Form and the Summary Claim Form which are substantially in accordance with the forms attached hereto as Schedules “B” and “C” respectively;
- (f) “**Claims Bar Date**” means December 1, 2015;
- (g) “**Class**” or “**Class Member(s)**” means all persons who owned or had an interest in real property when RetroFoam was injected or installed and who applied for a grant pursuant to the **EcoEnergy Program** excluding the defendants, their subsidiaries, affiliates, shareholders, officers, directors, senior employees and their heirs, predecessors, successors and assigns;
- (h) “**Class Counsel**” means Sutts, Strosberg LLP;
- (i) “**Class Counsel Fees**” means the award for fees, disbursements, interest and taxes to **Class Counsel** awarded in the **Judgment** in this **Action**;
- (j) “**Costs of Administration**” means all of the costs for the **Administrator** and **Arbitrator**;
- (k) “**CJA**” means the *Courts of Justice Act*;

- (l) “**Court**” means the Ontario Superior Court of Justice;
- (m) “**CPA**” means the *Class Proceedings Act, 1992*;
- (n) “**Distribution Amount**” is the amount to be distributed after paying **Class Counsel Fees**, the **Costs of Administration** and the honorariums to the representative plaintiffs;
- (o) “**Distribution Plan**” means the Distribution Plan attached hereto as Schedule “A”;
- (p) “**EcoEnergy Program**” meaning the EcoEnergy Retrofit-Homes Program;
- (q) “**Judgment**” means this judgment of Justice Patterson approving the settlement of this **Action** and the **Distribution Plan**;
- (r) “**Marsh**” means Marsh Risk Consulting Canada;
- (s) “**Minor**” or “**Minors**” means a person, who as of the date of this distribution under this **Judgment**, has not attained the age of 18 years;
- (t) “**Notice**” means a notice of the settlement of this **Action** substantially in the form of the **Notice** attached hereto as Schedule “D”;
- (u) “**Notice Program**” means the method of giving **Notice** to the **Class Members** particularized in paragraph 7 of this **Judgment**;
- (v) “**Property**” or “**Properties**” means the real property owned by the **Class Member(s)** into which RetroFoam was injected or installed;
- (w) “**Released Claims**” means any and all claims, injuries, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, contracts, liabilities, agreements, costs and expenses, of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising in the future from the facts asserted in this **Action** or which could have been asserted in this **Action** concerning the importation, distribution, marketing, sale, injection or installation of RetroFoam;
- (x) “**Released Crossclaims**” means any and all claims, injuries, rights, damages, losses, demands, obligations, actions, causes of action, suits, cross-claims, matters, issues, debts, contracts, liabilities, agreements, costs and expenses of any nature or kind whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims arising in the future from the facts asserted in this **Action** or which could have been asserted in this **Action** concerning the importation, distribution, marketing, sale, injection or installation of RetroFoam;

- (y) **“Released Parties”** means the defendants as well as their parent, subsidiary, affiliated, related, predecessor or successor corporations, and each of their respective officers, directors, shareholders, partners, employees, servants, agents, heirs, executors, administrators, estate trustees, successors, assigns, insurers and re-insurers, both present and former;
- (z) **“Settlement Amount”** means \$13,000,000; and
- (aa) **“SS”** means Sutts, Strosberg LLP.

2. THIS COURT ORDERS:

- (a) that the following people did not validly opt out of this Action and will be considered Class Members who may claim for compensation under this Judgment:

Name	Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

and;

- (b) [REDACTED] did validly opt out of this Action and will not be considered a Class Member who may claim for compensation under this Judgment.

3. THIS COURT ORDERS AND DECLARES that the Settlement Amount and the Distribution Plan, attached hereto as Schedule “A” which is incorporated by reference into this Judgment, are fair, reasonable and in the best interests of the Class and are hereby approved and the defendants and their Insurer or Insurers will not be liable to any Class Members for any amount in excess of the Settlement Amount.

4. THIS COURT ORDERS AND DECLARES that the defendants must deliver the Settlement Amount to SS in trust within 30 days of the date of this Judgment.

5. THIS COURT ORDERS AND DECLARES that the Distribution Amount will be divided among the approved Class Members on the following formula:

$$\frac{\text{Distribution Amount}}{\text{the number of Properties approved by the Administrator}}$$

6. THIS COURT ORDERS that the Administrator and Arbitrator are appointed, each with the duties and responsibilities set out in the Distribution Plan and in this Judgment.

7. THIS COURT ORDERS AND DECLARES that, on or before Wednesday, August 26, 2015, the Administrator must implement the Notice Program, giving Notice of this Judgment and the Distribution Plan, by:

- (a) delivering the Notice by mail to all addresses set out in Schedule "D";
- (b) posting the Notice on the website www.retrofoamclassaction.com;
- (c) emailing the Notice to every person who registered with Class Counsel and provided a valid email address;
- (d) sending the Notice by email to Children's Lawyer and the Public Trustee; and
- (e) providing the Notice to any other person who requests it.

8. THIS COURT DECLARES that the Notice Program provided for in paragraph 7 satisfies the requirements of s. 17 of the *CPA*.

9. THIS COURT ORDERS AND APPROVES the Claim Forms which are attached hereto as Schedules "B" and "C".

10. THIS COURT ORDERS that each Class Member who qualifies to participate in the Distribution Plan must submit a Claim Form and supporting documentation to the Administrator on or before the Claims Bar Date in accordance with the Distribution Plan.

11. THIS COURT ORDERS AND DECLARES that, if a Class Member does not submit a Claim Form to the Administrator on or before the Claims Bar Date in accordance with the Distribution Plan, the Class Member, and each of their respective heirs, executors and assigns shall be forever barred from participating in the Distribution Plan but shall, in all other respects, be bound by the terms of this Judgment.

12. THIS COURT ORDERS that the Administrator shall pay any award to a Class Member who is a Minor to the Accountant of the Superior Court of Justice to the credit of the Minor until the Minor attains the age of 18 years, at which time the Accountant shall pay the amount to the Class Member without any further order of the Superior Court of Justice.

13. THIS COURT ORDERS AND DECLARES that each Class Member who did not opt out of this Action and each of their respective heirs, executors, administrators, estate trustees, successors, assigns and insurers:

- (a) fully and finally release the Released Parties from the Released Claims;
- (b) shall not commence or continue against any Released Party any action or take any proceeding relating in any way to or arising from the Released Claims; and

- (c) shall not commence or continue against any person, any action or take any proceeding relating in any way to or arising from the Released Claims, who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief, against any Released Party.

14. THIS COURT ORDERS AND DECLARES that each of the Released Parties:

- (a) fully and finally release each other from the Released Crossclaims;
- (b) shall not commence or continue against any of the Released Parties any action or take any proceeding relating in any way to or arising from the Released Crossclaims; and
- (c) shall not commence or continue against any person, any action or take any proceedings relating in any way to or arising from the Released Crossclaims who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief, against any of the Released Parties.

15. THIS COURT ORDERS AND DECLARES that, unless a Class Member validly opted out of the Action in accordance with the certification orders of Justice Patterson made on April 1, 2011 and June 16, 2011, this Judgment and the Distribution Plan are binding upon each and all of the Class Members and each of their respective heirs, executors, administrators, assigns and Insurers, including those who are persons under a disability and the requirements of rule 7.08(4) of the *Rules of Civil Procedure* with respect to this Judgment and the Distribution Plan are dispensed with.

16. THIS COURT ORDERS AND DECLARES that:

- (a) each Class Member who owned an interest in real property that was injected or installed with RetroFoam must disclose on the sale of the property to the subsequent purchaser(s) that the property has or had urea formaldehyde foamed-in-place insulation; and

- (b) any defendant may register this judgment against the properties listed in Schedule "E" pursuant to s. 17 of R.R.O. 1990, Regulation 690 of the *Land Titles Act*, R.S.O. 1990, c.L.5.

17. THIS COURT ORDERS AND DECLARES that:

- (a) the fees payable to Class Counsel are fixed in the amount of \$3,900,000 (30% of \$13,000,000) plus HST of \$507,000 total \$4,407,000;
- (b) Class Counsel has properly incurred disbursements totalling \$810,588.49 and must give the Class a credit of \$93,518.26 for costs and expenses recovered from the defendants, and the net amount of disbursements are rounded to \$717,000;
- (c) each representative plaintiff shall be paid an honorarium of \$4,000 totalling \$44,000;
- (d) the costs of the Administrator is fixed in the amount of \$200,000 inclusive of disbursements and HST and is payable by SS from time to time; and
- (e) the cost of the Arbitrator is fixed in the maximum amount of \$20,000, including disbursements and taxes payable by SS when billed by the Arbitrator.

18. THIS COURT ORDERS AND DECLARES that SS will pay the amounts set out in paragraph 17(a), (b) and (c) upon receipt of the Settlement Amount under paragraph 4.

19. THIS COURT ORDERS AND DECLARES that the fees and disbursements set out in paragraph 17(a) and (b) are a first charge on the Settlement Amount in favour of SS.

20. THIS COURT ORDERS that Class Counsel, the Administrator and Arbitrator may make a motion to the Court for directions.

21. THIS COURT ORDERS that the Administrator, after completing this administration, may apply for a discharge as Administrator without notice to the defendants.

22. THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceeding against the Arbitrator or the Administrator or SS or the AG or any of their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Judgment or the administration of the Settlement Agreement, except with leave of the Court.

23. THIS COURT ORDERS AND DECLARES that the Released Parties have no responsibility or liability for the Distribution Plan.

24. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, the Action and Crossclaims be and are hereby dismissed, with prejudice and without further costs.

25. THIS COURT ORDERS that a copy of this Judgment shall be served upon the Children's Lawyer and Public Guardian and Trustee by email.



JUSTICE

ENTERED AT WINDSOR	
In Book No.	26
re Document No.	963
on	AUG 12 2015
by	R

CECILE et al.

Plaintiffs

vs. RETROFOAM OF CANADA INCORPORATED et al.

Defendants

Court File No. CV-09-12583 CM

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT THE
CITY OF TORONTO

JUDGMENT

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