

SCHEDULE "A"

**DISTRIBUTION PLAN**

**INTERPRETATION**

1. For the purposes of this Distribution Plan, 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) "**Approval Date**" means 30 days after the Court approves the settlement of this Action;
  - (f) "**Claimant**" means a person who files a **Claim Form** who may be recognized as a **Class Member**;
  - (g) "**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 Schedule "B" and "C" respectively;
  - (h) "**Claims Bar Date**" means December 1, 2015;
  - (i) "**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 Retrofit Initiative-Homes Program excluding the defendants, their subsidiaries, affiliates, shareholders, officers, directors, senior employees and their heirs, predecessors, successors and assigns"
  - (j) "**Class Counsel**" means Sutts, Strosberg LLP;
  - (k) "**Class Counsel Fees**" means the fees, disbursements and taxes approved by the Court;
  - (l) "**Costs of Administration**" means the costs of the **Administrator** and the **Arbitrator** approved by the **Court**";
  - (m) "**CJA**" means the *Courts of Justice Act*;
  - (n) "**Court**" means the Ontario Superior Court of Justice;

- (o) “**CPA**” means the *Class Proceedings Act, 1992*;
- (p) “**Distribution Amount**” means the **Settlement Amount** less **Class Counsel Fees** and less the **Cost of Administration** and the honorariums, as approved in the **Judgment**;
- (q) “**Distribution Plan**” means this plan and the procedures to distribute the Distribution Amount which is attached as Schedule “A” to the **Judgment**;
- (r) “**Electronically**” means electronically by way of the private secure on-line claim system;
- (s) “**ecoEnergy Program**” means the ecoEnergy Retrofit-Homes Program;
- (t) “**Judgment**” means the judgment of Justice Patterson approving the settlement of this Action and the Distribution Plan;
- (u) “**Marsh**” means Marsh Risk Consulting Canada;
- (v) “**Presumptive List**” means the **Class Members** who the **Administrator** decides were **Class Members**;
- (w) “**Settlement Amount**” means \$13,000,000;
- (x) “**Summary Claims List**” means the list of **Claimants** who registered with **Class Counsel** before July 12, 2015, which list will be delivered to the **Administrator** by **SS**; and
- (y) “**SS**” means Sutts Strosberg LLP.

**RECEIPT OF THE SETTLEMENT AMOUNT AND DISTRIBUTION OF THE SETTLEMENT AMOUNT**

2. The defendants will pay to SS in trust the amount of \$13,000,000 within thirty (30) days of the Judgment.

3. In accordance with the Judgment, SS will pay the honorariums approved by the Court for the representative plaintiffs, Class Counsel Fees and the Costs of Administration.

**POWERS AND RESPONSIBILITIES OF THE ADMINISTRATOR**

4. The Administrator is appointed to fulfill the duties and responsibilities set out in the Judgment and this Distribution Plan, including but not limited to the following:

- (a) implement the Notice Program in accordance with paragraph 6 of the Judgment;
- (b) establish a private secure web-based claims system, accessible from the public website, to
  - (i) receive Claim Forms and other documentation to comply with this Distribution Plan;
  - (ii) communicate with the Arbitrator, Class Counsel and the Class Members;
  - (iii) forward all documents electronically to all authorized persons;
  - (iv) receive all notices of appeal; and
  - (v) distribute all decisions of the Arbitrator;
- (c) establish a toll-free phone number which will be designated as a help line for Claimants and Class Members with questions about the Summary Claim Form, the Standard Claim form and the claims process;
- (d) manage the public website and update this website by posting the frequently asked questions and answers;
- (e) decide whether persons are eligible as Class Members and communicate those decisions in writing electronically;
- (f) maintain all necessary records;
- (g) make all calculations;
- (h) perform all necessary accounting functions;
- (i) make decisions necessary for the orderly administration of this settlement;
- (j) report to the Court when required and when the administration is completed; and

- (k) obtain a discharge when the administration is complete.

#### **POWERS AND RESPONSIBILITY OF THE ARBITRATOR**

5. The Arbitrator is appointed to deal with eligibility only under the Judgment and this Distribution Plan. She must:
  - (a) establish a written summary procedure for Claimants to prove eligibility, meaning, that he or she owned property when RetroFoam was injected or installed and he or she applied for a grant under the ecoEnergy Program; and
  - (b) deliver all decisions in writing Electronically to the Administrator for distribution to interested parties within thirty (30) days of completion of the hearing or process.
6. The decisions of the Arbitrator shall be final and conclusive and there shall be no appeal from the Arbitrator's decisions.

#### **TRANSFER OF INFORMATION FROM CLASS COUNSEL TO THE ADMINISTRATOR**

7. Class Counsel will turn over to the Administrator its secure, electronic registration system which contains all of its pre-settlement information about Claimants and Class Members including the Summary Claims List. Class Counsel will provide to the Administrator the names of individual(s) who validly opted out of the Action.

#### **THE CLAIMS PROCESS**

8. Unless the Administrator agrees in advance to receive a Claim Form by fax or mail, each Claimant must submit a Claim Form for compensation under this Distribution Plan electronically before the Claims Bar Date.

9. If a Claimant is:
  - (a) deceased, the Claim Form may be submitted electronically by the estate trustee or by the spouse or by any other of his or her family members; or
  - (b) a mentally incapable person, or a minor, the Claim Form must be submitted electronically by the Guardian of Property or the Attorney for Property or by the Public Trustee or a parent or person with custody or by the spouse or by any other of his or her family members.
  
10. The Claimant must establish, on the balance of probabilities, to the Administrator or to the Arbitrator, that he or she or it was a Class Member.
  
11. Unless the Administrator agreed in advance to receive an appeal by fax or mail, the Claimant must file his or her appeal by email, addressed to the Administrator, within thirty (30) days of the Administrator sending its decision on the Claimant's eligibility to the Claimant.
  
12. The Administrator may, in its absolute discretion, enter the names of Claimants on the Summary Claims List.
  
13. The Administrator will advise the Claimants on the Summary Claims List by email that he and/or she must file with the Administrator a Summary Claim Form before the Claims Bar Date.
  
14. All other Claimants must file the Standard Claim Form before the Claims Bar Date with the Administrator.

15. If a Summary Claim Form and a Standard Claim Form are received for the same property, the Administrator may request the Claimant who submitted the Summary Claim Form to submit supporting evidence to document the claim. If there is conflicting supporting evidence, the Administrator will search the provincial property database. The disbursement for the cost of the search will be deducted from the amount payable to the Class Member.

16. If a property has multiple owners and there is a payout approved by the Court for this property, a single cheque will be written to the owners provided they are resident at the same address. If the owners are not resident at the same address, the payout approved by the Court will be divided equally among the owners, and a separate cheque will be written to each of the owners for their proportionate share.

#### **INVOLVEMENT WITH THE AG**

17. From time to time, the Administrator may ask the AG whether a Claimant applied for a grant under the ecoEnergy Program.

18. The AG may respond by using his best efforts to answer the Administrator's questions.

#### **REPORTING TO THE COURT AND DISTRIBUTION OF SETTLEMENT FUNDS**

19. As soon as practical after the Claims Bar Date has passed and all eligibility appeals are final, SS and/or the Administrator will move to the Court for an order authorizing payment to each Class Member.

20. The Administrator shall post on the private website used in this class action a report addressed to the Court and a notice of motion addressed to Class Counsel, counsel for the defendants, the Children's Lawyer, and the Public Trustee listing each Class Member and the amount that he or she will receive under this Distribution Plan and the Judgment.

21. The Court will decide whether or not this report will be sealed in whole or in part.

22. If the Court is satisfied with the Administrator's report, the Court shall approve the distribution and/or make any other order that the Court deems appropriate.

23. After distributing the cheques to the Class Members, inevitably, there will be some cheques that will not be negotiated. After six months, each cheque that has not been negotiated will be cancelled. The balance of the funds remaining in trust will be paid to the Access to Justice Fund operated by the Law Foundation.

#### **NO ACTIONS**

24. No person may bring any action or take any proceedings against the AG, Administrator, Arbitrator or Class Counsel or their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Agreement, the administration of the Plan or implementation of the Judgment, except with leave of the Court.