

**CANADIAN POLYURETHANE FOAM NATIONAL CLASS ACTIONS****ADMINISTRATION PROTOCOL****INDEX**

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## **GENERAL PRINCIPLES OF THE ADMINISTRATION**

1. This protocol (the “Administration Protocol”) is intended to govern the administration of the claims process developed to distribute the Net Proceeds recovered in the Canadian Polyurethane Foam National Class Actions in accordance with the Distribution Protocol approved by the Courts.
2. Compensation will be paid to Class Members who file a valid Claim as determined in accordance with the claims process established by this Administration Protocol.
3. Generally, the claims administration shall:
  - (a) establish a claims process including a website and electronic web-based systems and procedures for completing, filing, receiving and adjudicating Claims;
  - (b) employ secure, web-based systems with electronic registration and record keeping wherever possible;
  - (c) provide professional and timely support and assistance to Class Members applying for compensation;
  - (d) provide efficient and timely adjudication of all Claims made in accordance with industry standards;
  - (e) provide timely payment of all valid Claims;
  - (f) provide complete and timely reporting in respect of all aspects of the claims process;
  - (g) provide timely payment of all Court-approved expenses;
  - (h) provide for an interest bearing trust account at a Canadian Schedule 1 bank in Canada to hold the Proceeds and any income accruing thereto; and
  - (i) be bilingual in all respects.
4. A simplified claims process will be established for End Consumers to permit them to elect to receive compensation in a fixed amount based upon their declaration and

proof of the purchase of Carpet Underlay and/or at least one Foam Product in Canada in the Class Period.

5. Class Members who purchased larger quantities of Flexible Polyurethane Foam, Foam Products or Carpet Underlay will be required to report additional purchase information and provide proof of purchase.

## DEFINITIONS

6. For the purpose of this Administration Protocol the following definitions will also apply:

- (a) **"Bedding"** means bed mattresses made in Canada containing Flexible Polyurethane Foam, in single/twin, double, queen and king sizes.
- (b) **"Canadian Polyurethane Foam National Class Actions"** means:
  - (i) *Trillium Project Management Ltd. v. Hickory Springs Manufacturing Company et al.*, Vancouver Registry No. S-106213;
  - (ii) *Majestic Mattress Mfg. Ltd. v. Vitafoam Products Canada Limited et al.*, Vancouver Registry No. S-106362;
  - (iii) *Trillium Project Management Ltd. v. Bonaddio et al.*, Vancouver Registry No. S-125443;
  - (iv) *"Hi! Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company et al.*, Ontario Court File No. CV-10-15164;
  - (v) *"Hi! Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company et al.*, Ontario Court File No. CV-11-17279;
  - (vi) *"Hi! Neighbor" Floor Covering Co. Limited v. Bonaddio et al.*, Ontario Court File No. CV-12-18219; and
  - (vii) *Option Consommateurs et al c. Produits Vitafoam Canada Limitee et al.*, District de Montréal No. 500-06-000524-104.
- (c) **"Carpet Underlay"** means carpet pad, carpet cushion or carpet underlay that was made in Canada of scrap Flexible Polyurethane Foam bonded together by various chemicals into a padding material.

- (d) **“Claim”** means the claim forms developed for the claims process that a Class Member must complete and submit by the Claims Filing Deadline.
- (e) **“Claims Administrator”** means the entity appointed by the Courts to administer the Settlement Agreements and the Distribution Protocol in accordance with this Administration Protocol as approved by the Courts, and any employees of such firm.
- (f) **“Claims Filing Deadline”** means the date by which Claims and supporting documentation must be postmarked or electronically submitted in order for Class Members to make a timely Claim.
- (g) **“Class Counsel”** means Camp Fiorante Matthews Mogerman; Branch MacMaster LLP, Sutts, Strosberg LLP; Law Office of Andrew J. Morganti; and, Belleau Lapointe LLP.
- (h) **“Class Members”** means individuals and entities resident in Canada and related parties who purchased Flexible Polyurethane Foam and any and all products that contain Flexible Polyurethane Foam in Canada between January 1, 1999 and January 10, 2012, except Excluded Persons.
- (i) **“Class Period”** means January 1, 1999 to January 10, 2012.
- (j) **“Courts”** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Superior Court of Quebec.
- (k) **“Distribution Protocol”** means the rules and plan for distributing the Net Proceeds as developed by Class Counsel and approved by the Courts.
- (l) **“Excluded Persons”** means each defendant in the Canadian Polyurethane Foam Class Actions, 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.
- (m) **“Flexible Polyurethane Foam”** means slabstock flexible polyurethane foam, except for Molded Foam and Technical Foam.
- (n) **“Foam Products”** means Bedding and Furniture.
- (o) **“Furniture”** means any of the following upholstered products made in Canada which contain Flexible Polyurethane Foam: office chair, armchair, two-seat sofa, three-seat sofa and sectional sofa.
- (p) **“Molded Foam”** means flexible polyurethane foam produced by mixing certain chemicals and pouring the mixture into a fixed shape mold. 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.

- (q) **“Net Proceeds”** means that portion of the Proceeds remaining after the payments contemplated by the Settlement Agreement and Orders of the Courts.
- (r) **“Proceeds”** means the proceeds of all approved settlements in the Canadian Polyurethane Foam National Class Actions and proceeds from In the Matter of A Plan of Compromise or Arrangement of 3113736 Canada Ltd., 4362063 Canada Ltd., and A-Z Sponge & Foam Products Ltd., Ontario Court File No. CV-12-9545-00CL.
- (s) **“Settlement Agreements”** means the settlement agreements as approved by the Courts in the Canadian Polyurethane Foam National Class Actions.
- (t) **“Technical Foam”** means foam that has unique defined properties that are not cushioning related and that include characteristics such as pore size, air flow measured via pressure drop across the foam and/or resistance of the foam to various medical or industrial fluids.

## THE CLAIMS ADMINISTRATOR’S DUTIES AND RESPONSIBILITIES

7. The Claims Administrator shall administer the Distribution Protocol in accordance with the provisions of the Orders of the Courts, the Settlement Agreements and this Administration Protocol under the oversight of Class Counsel and ongoing authority and supervision of the Courts.

8. The Claims Administrator’s duties and responsibilities shall include the following:

- (a) providing notice(s) to the Class Members as may be required;
- (b) receiving the defendants’ customer information, including names, addresses and sales information;
- (c) developing, implementing and operating the claims process including a claims website;
- (d) assisting Class Members and facilitating their Claims;
- (e) performing industry standard verification procedures on Claims made to ensure their validity;

- (f) making timely decisions in respect of Claims received and notifying the Class Members of the decision promptly thereafter;
- (g) submitting required materials for appeals;
- (h) reporting the results of the claims process and the intended distributions for each claims category to Class Counsel in a timely fashion;
- (i) performing such recalculation of the distributions in those claims categories as may be required by Class Counsel or if ordered by the Courts;
- (j) maintaining the Claims information so as to permit Class Counsel to audit the claims administration at the discretion of Class Counsel or if ordered by the Courts;
- (k) arranging payment to Class Members in a timely fashion;
- (l) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;
- (m) remitting the amounts payable to the *Fonds d'aide aux recours collectifs*;
- (n) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered by the Courts;
- (o) reporting to Class Counsel respecting Claims received and administered and administration expenses;
- (p) holding the Proceeds in an interest bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Proceeds from that account as authorized;
- (q) cash management and audit control;
- (r) preparing and submitting reports and records as directed by Class Counsel or the Courts; and
- (s) fulfilling any obligation to report taxable income and make tax payments (including interest and penalties) due with respect to the income earned by the Net Proceeds.

## THE CLAIMS PROCESS

### ***Electronic Claims Process***

9. The Claims Administrator shall create and maintain a claims website for the purposes of providing Class Members with relevant information pertaining to the claims process.

10. Where one or more defendant has identified a Class Member and provided customer information about that Class Member, the Claims Administrator may use that customer information to provide notice to the Class Member or as *prima facie* proof of the Class Member's Claim, provided the Claims Administrator, in its sole discretion, considers that the customer information provided by the defendant(s) is sufficiently clean and accurate to be useful.

11. Generally, the Claim shall require:

- (a) information about the Class Member and the Class Member's purchases that will allow the Claims Administrator to verify purchases were made and are properly categorized;
- (b) a declaration by the Class Member of the type and volume purchased in each category during the Class Period (and such other purchase information as is required for the various types and quantities of purchases);
- (c) such proofs of purchase as are acceptable to the Claims Administrator;
- (d) disclosure as to whether the Class Member or any person or entity related to the Class Member has received compensation through other proceedings or settlements pertaining to purchases and the details of the compensation received and the claims released;
- (e) authorization to the Claims Administrator to contact the Class Member or its representative for clarification, information and/or to audit the Claim;
- (f) a declaration that the information submitted in the Claim is true and correct and that the purchases comprising the Claim have not been submitted for any other compensation claim; and
- (g) such further and other information as the Claims Administrator may require to process Claims.

12. A Class Member will need to establish that the purchases claimed were manufactured in Canada. The Administrator shall accept any reasonable basis of proof in this regard including, in particular, an emailed or photocopied photograph of the tag on the product.

***Claims Filing Deadline***

13. The completed Claim together with the required supporting proof of purchase must be submitted to the Claims Administrator postmarked or electronically submitted no later than the Claims Filing Deadline.

14. Any Claim not submitted on or before the Claims Filing Deadline will be rejected by the Claims Administrator.

***Claims Audit***

15. The Claims Administrator shall perform such checks and balances as are industry standard to ensure the validity of the Claims made and, in its sole discretion, may elect to audit any Claim. The Claims Administrator shall reject a Claim, in whole or in part, where, in the Claims Administrator's view, the Class Member has submitted insufficient information or false information or has otherwise engaged in fraudulent conduct.

***Deficiencies***

16. If the Claims Administrator finds that deficiencies exist in a Claim, the Claims Administrator shall forthwith notify the Class Member of the deficiencies. The Class Member will have thirty (30) days after being informed of a deficiency to correct the deficiencies to the satisfaction of the Claims Administrator.

***Claims Administrator's Decision***

17. In respect of each Claim, the Claims Administrator shall:

- (a) determine whether the claimant is a Class Member;
- (b) determine whether the Class Member has satisfied the Claims requirements;

- (c) calculate the Class Member's compensation based on the Distribution Protocol; and
- (d) advise the Class Member of its approval or rejection of the Claim within ninety (90) days of the Claims Filing Deadline (the "Decision Notice").

18. Where the Claims Administrator has rejected or re-categorized all or part of a Claim, the Claims Administrator shall include in the Decision Notice its grounds for so doing.

19. The Claims Administrator's decision will be final and binding upon the Class Member, subject to the limited right of appeal afforded to the Class Members in section 23.

***Appeal of the Claims Administrator's Decision***

20. Except as provided in section 23, Class Members may appeal the rejection or re-categorization of their Claim. Any such appeal must be postmarked or electronically submitted within thirty (30) days of the date of the Decision Notice.

21. Appeals will be determined by a bilingual arbitrator appointed by the Courts.

22. The arbitrator shall apply the rules provided herein to any appeals. There shall be no right of appeal in respect of:

- (a) Claims filed after the Claims Filing Deadline; and
- (b) Claims entitled to the fixed compensation of \$20.

23. Appeals shall be on the basis of written submissions of the Class Member supported by the documentation provided to the Claims Administrator as part of the claims process and any other material provided by the Class Member in support of the appeal. Notwithstanding the foregoing, the arbitrator, in his or her sole discretion, may request oral submissions to be made via teleconference or establish additional

procedures to be followed during the appeal in cases where he or she determines that is warranted.

24. The arbitrator, in his or her sole discretion, may mediate the differences at any stage in the proceedings and, if mediation is unsuccessful, continue to arbitrate the appeal.

25. The arbitrator's decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

### **THE CLAIMS DISTRIBUTION PROCESS**

26. As soon as practicable after all valid Claims are processed, the Claims Administrator shall report to Class Counsel stating the particulars of the proposed distribution of the Net Proceeds.

27. Upon receipt of the Claims Administrator's report, Class Counsel shall forthwith take such steps as they determine may be required pursuant to the provisions of the Distribution Protocol to finalize compensation payments to Class Members including, if necessary, an application to the Courts.

28. Once all steps contemplated by section 27 are complete, Class Counsel will instruct the Claims Administrator to make any recalculations of compensation which may be required and pay approved Claims.

29. The Claims Administrator shall make arrangements to pay approved Claims as expeditiously as possible following receipt of Class Counsel's instruction.

### **CLASS COUNSEL**

30. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Administration Protocol, the Distribution Protocol and the claims process. Class Counsel may, in consultation with the Claims Administrator, modify provisions of this Administration Protocol, including any time limits or deadlines, during the claims process to enhance the efficacy of the

claims process if they consider it is necessary and reasonable for the fair administration of the Distribution Protocol.

### **CONFIDENTIALITY**

31. All information received from the defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.