

**Canadian Polyurethane Foam National Class Actions
Distribution Protocol**

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RULES FOR DISTRIBUTION OF NET PROCEEDS:

Definitions

1. The following definitions apply for the purposes of this protocol (the “Distribution Protocol”):
 - (a) **“Administration Protocol”** means the administration protocol approved by the Courts for the administration of the claims process developed to distribute the Net Proceeds in accordance with this Distribution Protocol.
 - (b) **“Bedding”** means bed mattresses made in Canada containing Flexible Polyurethane Foam, in single/twin, double, queen and king sizes.
 - (c) **“Canadian Polyurethane Foam National Class Actions”** means the following actions:
 - (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.
 - (d) **“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.
 - (e) **“Carpet Underlay Manufacturer Claim”** means a claim made by a Class Member in respect of Flexible Polyurethane Foam purchased by the Class Member in Canada during the Class Period in support of its manufacture/fabrication of Carpet Underlay.

- (f) **“Carpet Underlay Reseller Claim”** means a claim made by a Class Member in respect of Carpet Underlay purchased by the Class Member in Canada during the Class Period for commercial resale without fabrication/modification by the Class Member.
- (g) **“Class Member”** 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.
- (h) **“Class Period”** means January 1, 1999 to January 10, 2012.
- (i) **“Courts”** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Superior Court of Quebec.
- (j) **“End Consumer Claim”** means a claim made by a Class Member in respect of new Foam Products and/or Carpet Underlay purchased by the Class Member in Canada during the Class Period for the Class Member’s own use and not for commercial resale.
- (k) **“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.
- (l) **“Flexible Polyurethane Foam”** means slabstock flexible polyurethane foam, except for Molded Foam and Technical Foam.
- (m) **“Foam”** means Flexible Polyurethane Foam and Foam Products.
- (n) **“Foam Products”** means Bedding and Furniture.
- (o) **“Foam Reseller Claim”** means a claim made by a Class Member in respect of Flexible Polyurethane Foam or Foam Products purchased by the Class Member in Canada during the Class Period for commercial resale without fabrication/modification by the Class Member.
- (p) **“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.
- (q) **“General Manufacturer Claim”** means a claim made by a Class Member in respect of Flexible Polyurethane Foam purchased by the Class Member in Canada during the Class Period in support of its manufacture/fabrication of a Foam Product or any product that incorporates Flexible Polyurethane Foam, except Carpet Underlay.

- (r) **“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.
- (s) **“Net Proceeds”** means the aggregate proceeds of all approved settlements in the Canadian Polyurethane Foam National Class Actions and aggregate 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 after those payments contemplated by the Settlement Agreements and Orders of the Courts.
- (t) **“Settlement Agreements”** means the settlement agreements as approved by the Courts in the Canadian Polyurethane Foam National Class Actions.
- (u) **“Supervising Court”** means the Supreme Court of British Columbia.
- (v) **“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.

General Provisions

2. The Net Proceeds shall be distributed in accordance with the rules established by this Distribution Protocol according to a claims-made process to compensate Class Members for the Flexible Polyurethane Foam, Foam Products and Carpet Underlay they purchased in Canada during the Class Period.
3. Class Members may not recover in relation to any type of polyurethane foam other than Flexible Polyurethane Foam or in relation to any type of polyurethane foam product other than Foam Products. Additionally, Class Members may not recover in relation to Flexible Polyurethane Foam, Foam Products and Carpet Underlay compensated or released as part of U.S. proceedings or a private settlement.

4. Five “**Funds**” will be created and the Net Proceeds will be allocated to each Fund as follows:

1)	General Manufacturer Fund	44%
2)	Carpet Underlay Manufacturer Fund	0.3%
3)	Foam Reseller Fund	4%
4)	Carpet Underlay Reseller Fund	3.55%
5)	End Consumer Fund	48.15%

5. Class Members will be entitled to advance claims in the following claims categories:
- (a) General Manufacturer Claims;
 - (b) Carpet Underlay Manufacturer Claims;
 - (c) Foam Reseller Claims;
 - (d) Carpet Underlay Reseller Claims; and
 - (e) End Consumer Claims.
6. Class Members may advance claims in respect of more than one claims category, provided those claims are in compliance with the rules applicable to each claims category. The claims process will be designed to assist Class Members to easily and efficiently advance their claims in all applicable claims categories.
7. Compensation payable for all valid claims received will be calculated by the Claims Administrator based on the rules for the applicable claims category and the Net Proceeds available in the applicable Fund.
8. The distribution in Quebec will be subject to the application of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R. c. R-2.1, r. 2.
9. Subject to sections 16 and 31, if there are more monies allocated to any Fund than is required to pay the maximum compensation to Class Members for all valid claims made against that Fund on the terms set out below, Class Counsel may apply such excess to proportionately increase the other Funds up to the amount required to provide the maximum compensation permitted on the terms set out in respect of those Funds.

General Manufacturer Fund

10. General Manufacturer Claims will be advanced by Class Members against the General Manufacturer Fund and compensation payable for valid General Manufacturer Claims will be paid from that Fund.
11. Subject to section 12, the compensation payable for each valid General Manufacturer Claim will be calculated by the Claims Administrator on a pro rata basis based on the dollar value of the Class Member's purchases of Flexible Polyurethane Foam in Canada during the Class Period, to a maximum of 5.5% of their purchases.
12. No payment will be made if the compensation calculated for a valid General Manufacturer Claim is less than \$20. Any amounts remaining in the General Manufacturer Fund as a result of this provision will be reallocated pro rata across the other valid General Manufacturer Claims payable, up to the maximum compensation permitted at section 11.

Carpet Underlay Manufacturer Fund

13. Carpet Underlay Manufacturer Claims will be advanced by Class Members against the Carpet Underlay Manufacturer Fund and compensation payable for valid Carpet Underlay Manufacturer Claims will be paid from that Fund.
14. Subject to section 15, the compensation payable for each valid Carpet Underlay Manufacturer Claim will be calculated by the Claims Administrator on a pro rata basis based on the dollar value of the Class Member's purchases of Flexible Polyurethane Foam in Canada during the Class Period, to a maximum of 1% of their purchases.
15. No payment will be made if the compensation calculated for a valid Carpet Underlay Manufacturer Claim is less than \$20. Any amounts remaining in the Carpet Underlay Manufacturer Fund as a result of this provision will be reallocated pro rata across the other valid Carpet Underlay Manufacturer Claims payable, up to the maximum compensation permitted by section 14.
16. Should the Claims Administrator determine that there will be monies left in the Carpet Underlay Manufacturer Fund after the payment of all valid Carpet Underlay Manufacturer Claims, the Claims Administrator will distribute the monies left between the Carpet Underlay Reseller Fund and the End Consumer Carpet Underlay Sub-Fund in an 18-82% proportion.

Foam Reseller Fund

17. Foam Reseller Claims made in respect of Flexible Polyurethane Foam and/or Foam Products will be advanced by Class Members against the Foam Reseller Fund and compensation payable for valid Foam Reseller Claims will be paid from that Fund.

18. Subject to sections 20 and 21, the compensation payable for each valid Foam Reseller Claim made in respect of Flexible Polyurethane Foam will be calculated by the Claims Administrator based on the dollar value of the Class Member's purchases of Flexible Polyurethane Foam in Canada during the Class Period, and allocating 0.5% of their purchases.
19. Subject to sections 20 and 21, the compensation payable for each valid Foam Reseller Claim made in respect of Foam Products will be calculated by the Claims Administrator based on the type and number of Foam Products purchased by the Class Member in Canada during the Class Period, and allocating 0.5% of the values set out in Appendix A.
20. Notwithstanding the provisions of sections 18 and 19, should there be insufficient monies in the Foam Reseller Fund to pay all valid Foam Reseller Claims, the Claims Administrator will subject the compensation payable for each valid Foam Reseller Claim to such pro-rata as may be required.
21. No payment will be made if the compensation calculated for a Foam Reseller Claim is less than \$20. Any amounts remaining in the Foam Reseller Fund as a result of this provision will be reallocated pro rata across the other valid Foam Reseller Claims payable, up to the maximum compensation calculated at sections 18 and 19.

Carpet Underlay Reseller Fund

22. Carpet Underlay Reseller Claims will be advanced by Class Members against the Carpet Underlay Reseller Fund and compensation payable for valid Carpet Underlay Reseller Claims will be paid from that Fund.
23. Subject to section 24, the compensation payable for each valid Carpet Underlay Reseller Claim will be calculated by the Claims Administrator on a pro rata basis based on the dollar value of the Class Member's purchases of Carpet Underlay in Canada during the Class Period, to a maximum of 1.8% of their purchases.
24. No payment will be made if the compensation for a Carpet Underlay Reseller Claim is less than \$20. Any amounts remaining in the Carpet Underlay Reseller Fund as a result of this provision will be reallocated pro rata across the other valid Carpet Underlay Reseller Claims payable, up to the maximum compensation permitted at section 23.

End Consumer Fund

25. The Net Proceeds allocated to the End Consumer Fund will be divided into two sub-funds as follows:

4)	End Consumer Fund	48.15%
	a) End Consumer Foam Product Sub-Fund	32%
	b) End Consumer Carpet Underlay Sub-Fund	16.15%

End Consumer Claims

26. End Consumer Claims will be advanced by Class Members against the End Consumer Fund and compensation payable for valid End Consumer Claims will be paid from the appropriate sub-fund in accordance with the provisions that follow.
27. The Foam Products and/or Carpet Underlay purchases of family members residing in the same household must be pooled together and filed as a single End Consumer Claim. Persons under the age of eighteen (18) at the time of filing will not be permitted to file a claim except as part of a household claim. Compensation payable in respect of a household claim will be issued to the person filing the claim on behalf of the household.
28. The compensation payable for each valid End Consumer Claim made in respect of Foam Products will be calculated by the Claims Administrator based on the type and number of Foam Products he/she/they purchased in Canada during the Class Period, and allocating 4.0% of the values set out in Appendix A.
29. The compensation payable for each valid End Consumer Claim made in respect of Carpet Underlay will be calculated by the Claims Administrator on a pro rata basis based on the dollar value of the Carpet Underlay he/she/they purchased in Canada during the Class Period, to a maximum of 8.2% of those purchases.
30. Subject to section 31, each valid End Consumer Claim:
- a) made exclusively in respect of Foam Products purchases will be paid the greater of \$20 or the compensation calculated at paragraph 28 from the End Consumer Foam Products Sub-Fund; or
 - b) made exclusively in respect of Carpet Underlay purchases will be paid the greater of \$20 or the compensation calculated at paragraph 29 from the End Consumer Carpet Underlay Sub-Fund; or

c) made in respect of both Foam Products and Carpet Underlay will be paid the greater of \$20 or the sum of the compensation calculated at paragraphs 28 and 29 as follows:

- (i) if the compensation calculated is \$20, it will be paid exclusively from the End Consumer Foam Products Sub-Fund; or
- (ii) if the compensation calculated is greater than \$20, the portion of the compensation for Foam Products purchases will be paid from the End Consumer Foam Products Sub-Fund and the portion of the compensation for Carpet Underlay purchases will be paid from the End Consumer Carpet Underlay Sub-Fund,

subject to such pro-ration as may be required should there be insufficient monies in the applicable sub-fund to pay all valid End Consumer Claims charged against it.

31. Notwithstanding the provisions of section 30, should the pro-ration required if there are insufficient monies in the applicable sub-fund have the effect of reducing the compensation for all valid End Consumer Claims charged against that sub-fund by 50% or more, no individual claim valued at \$10 or less after pro-ration will be paid. Rather the amount of those pro-rated claims will be distributed *cy pres* to the benefit of small claimants.

Residual Discretion for the Management of the Distribution Protocol

32. Notwithstanding the foregoing, if, during the claims process or following the claims process and the calculation of compensation in accordance with this Distribution Protocol, Class Counsel have concerns that the claims process and/or Distribution Protocol is producing an unjust result on the whole or to any segment of the Class Members or that a modification is required or recommended, they shall move to the Supervising Court for approval of a reasonable modification to this Distribution Protocol or for further directions with respect to the distribution of the Net Proceeds.
33. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, Class Counsel shall seek a consensus among themselves failing which they may move to the Supervising Court for a determination of any such issue.

Residual Distribution

34. If there remains any amounts in any of the Funds after the distribution has been made to all valid claims in accordance with the provisions of this Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Supervising Court to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class

Counsel will consider all relevant factors, including the utility and efficacy of a *cy prè*s distribution, if appropriate.

Administration

35. Class Counsel will move to the Courts for approval of the Administration Protocol and the appointment of a Claims Administrator to implement it.
36. The administration of this Distribution Protocol and the claims process will be governed by the Administration Protocol.
37. The claims-made process will be designed in accordance with the provisions of the Administration Protocol to assist Class Members to easily and efficiently advance their claims in all applicable claims categories pursuant to the provisions of this Distribution Protocol.

APPENDIX A

Class Members' purchases of Foam Products will be calculated on the following basis:

Eligible Foam Product Type	Value of Flexible Polyurethane Foam per Unit
Twin/Single Bed Mattress	\$104
Double Bed Mattress	\$144
Queen Bed Mattress	\$160
King Bed Mattress	\$208
Sectional Sofa (greater than 3 seats)	\$27 per seat + \$12
Three-Seat Sofa	\$93
Two-Seat Sofa	\$66
Armchair	\$39
Upholstered office chair	\$17