

COUR SUPÉRIEURE

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-000524-104

DATE : October 28, 2013

PRESIDED BY : **THE HONORABLE JEAN-YVES LALONDE, J.C.S.**

OPTION CONSOMMATEURS

Petitioner

And

KARINE ROBILLARD

Designated Person

v.

PRODUITS VITAFOAM CANADA LIMITÉE
VITAFOAM INC.
CARPENTER CANADA CO.
CARPENTER CO.
A-Z SPONGE & FOAM PRODUCTS LTD.
DOMFOAM INTERNATIONAL INC.
VALLE FOAM INDUSTRIES (1995) INC.
FUTURE FOAM INC.
FLEXIBLE FOAM PRODUCTS INC.
LES INDUSTRIES FOAMEXTRA INC.
LEGGETT & PLATT INC.
MOHAWK INDUSTRIES INC.
HICKORY SPRINGS MANUFACTURING COMPANY
WOODBIDGE FOAM CORPORATION

Respondents

And

DELOITTE & TOUCHE INC.
FONDS D'AIDE AUX RECOURS COLLECTIFS

Mises-en-cause

JUDGMENT

L3280

1. **WHEREAS** Option consommateurs has brought before this Court a Motion for the approval of the settlement agreement entered into notably with the Respondents Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd. (the "Domfoam Defendants");
2. **CONSIDERING** the Motion before the Court;
3. **CONSIDERING** the exhibits in the file;
4. **CONSIDERING** also the agreement entered into on January 10th, 2012 between notably the Petitioner and the Domfoam Defendants, filed as part of Exhibit R-1 (the "Settlement Agreement");
5. **CONSIDERING** the submissions of the counsel for the parties and the representations made on all sides;
6. **CONSIDERING** the letter filed as Exhibit R-2 and dated October 21, 2013 from Coupons Parent inc. stating that it does not want to be excluded from the Proceedings and;
7. **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;

FOR THESE REASONS, THE COURT:

8. **GRANTS** the present *Requête pour l'approbation d'une transaction*;
9. **DECLARES** that the definitions set forth in the Settlement Agreement apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the parties to the Settlement Agreement, and that the other Respondents, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of the Judgment; JKL
xcs
10. **DECLARES** that, subject to all of the other provisions of the Judgment, the Settlement Agreement is valid, fair, reasonable and in the best interest of the Québec Settlement

Québec Settlement Class Members, and constitute a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all parties and all members described thereto; ^{ML}_{J.C.S.}

11. **APPROVES** the Settlement Agreement in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of the Judgment;
12. **DECLARES** that, subject to the other provisions of the Judgment, the Settlement Agreement, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to the Judgment as Schedule "A" and shall form an integral part of the Judgment and shall be binding on all parties; ^{ML}_{J.C.S.}
13. **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Settlement Agreement, the terms of the present Judgment shall prevail;
14. **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
15. **DECLARES** that any Québec Settlement Class Member who makes a claim under the Settlement Agreement shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
16. **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, shall be binding on every Québec Settlement Class Member who has not validly opted-out of the action;
17. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members expressly waive and renounce the benefit of solidarity with respect to any share of liability, including without limitation liability arising from *in solidum*

obligations, that can be attributed in any way to the Releasees in respect of the Québec Proceedings (if any), in capital, interest and/or costs;

18. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members expressly waive and renounce, to the Releasees' exclusive benefit, to claim or receive payment from the Non-Settling Defendants or any other person of any amount representing any share of liability that can be attributed in any way to the Releasees in respect of the Québec Proceeding (if any), in capital, interests and/or costs;
19. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members release the Non-Settling Defendants and any other person in respect of any share of liability that can be attributed in any way to the Releasees in respect of the Québec Proceeding (if any), in capital, interests and costs;
20. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members will bear the Releasees' share in the contribution in respect of the Québec Proceeding (if any) that would result from the insolvency of a Non-Settling Defendant or any other Person;
21. **DECLARES** that in the event that any person brings an action in warranty or any other claim to obtain from the Releasees an amount representing the share of liability attributed to the Releasees in the Québec Proceeding (if any) and the Plaintiffs, the Domfoam Defendants, the Individual Settling Parties and the other Releasees are not able to obtain the dismissal of such an action or claim through a preliminary motion at first instance before the Québec Court, then the Plaintiffs in Québec and the Québec Settlement Class Members shall undertake to indemnify the Releasees and to save the Releasees harmless in respect of any damage, harm, loss or cost reasonably incurred in respect of such action or claim, provided that any such indemnity will only be paid out of any present or future undistributed settlement or judgment amount collected from the Non-Settling Defendants or named or unnamed co-conspirator or any other person for the benefit of the

Plaintiffs and the Québec Settlement Class Members in respect of the Québec Proceeding, provided however that the payment of this indemnity shall not affect the ability of the Plaintiffs to seek interim distributions of settlement funds subject to court approval;

22. **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment;
23. **DECLARES** that Domfoam Defendants shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;
24. **DECLARES** that, notwithstanding the terms of section 4.5(23) of the Settlement Agreement, in the event that:
 - i. the Plaintiffs allege a material breach by one or more of the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties (a "Non-Cooperating Party" or the "Non-Cooperating Parties") of their obligations under section 4.5 of the Settlement Agreement;
 - ii. the Plaintiffs apply to the Ontario Court for specific performance of such obligations by the Non-Cooperating Party or Parties;
 - iii. the Ontario Court finds that the Non-Cooperating Party or Parties have materially breached section 4.5 of the Settlement Agreement and orders specific performance (the "Cooperation Performance Order"); and
 - iv. the Non-Cooperating Party or Parties fail to comply with the Cooperation Performance Order;

the Settlement Agreement shall not be terminated as to the Non-Cooperating Party or Parties.

25. **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court and this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
26. **DECLARES** that Coupons Parent has not opted out of the Proceedings;
27. **THE WHOLE** without costs.


JEAN-YVES LALONDE, J.C.S.