

COURT OF APPEAL FOR ONTARIO

BETWEEN:

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., 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, NATIONAL RESEARCH COUNCIL OF CANADA,
ATTIE ENTERPRISES LTD., I-GEN ENERGY INC. and FOAM COMFORT INC.

Defendants

NOTICE OF APPEAL

FEDERATED INSURANCE COMPANY OF CANADA, A NON-PARTY, APPEALS
to the Court of Appeal from the Order of Justice Patterson dated September 1, 2010, made at
Windsor.

THE APPELLANT ASKS the following relief:

1. An Order that the Order of The Honourable Mr. Justice Patterson, dated September 1, 2010, requiring Federated Insurance Company of Canada to defend the Defendant, Foam Comfort Inc., be set aside;
2. Costs of this appeal;

3. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

1. The Motion's Judge, Mr. Justice Patterson, erred in law in requiring Federated Insurance Company of Canada to defend the Defendant, Foam Comfort Inc.

2. Mr. Justice Patterson erred in law as the issue of Federated Insurance Company of Canada defending Foam Comfort Inc. was not before the Court, nor did Federated Insurance Company of Canada have any notice that such an Order would be made.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Rule 61.04 of the *Rules of Civil Procedure*.
2. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c.C.43.
3. The Order appealed from is final.
4. Leave to appeal is not required.

September 8, 2010

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RCP-E 61A (November 1, 2005)

ROBERT CECILE et al.
Plaintiffs

-and- RETROFOAM OF CANADA INCORPORATED et al.
Defendants

Court File No. CV-09-12583 CM

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
WINDSOR

NOTICE OF APPEAL

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RCP-E 4C (July 1, 2007)