

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE JUSTICE) FRIDAY, THE 1ST DAY
)
TERRENCE PATTERSON) OF APRIL, 2011.

B E T W E E N

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., AND I-GEN ENERGY INC. ~~and FOAM COMFORT INC.~~

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the plaintiffs for certification of this action as a
class proceeding, was heard this day by teleconference at Windsor, Ontario.

ON READING the Motion Record filed,

ON HEARING the submissions of Class Counsel and counsel for the defendants.

ON BEING ADVISED OF THE CONSENT to this certification order by RetroFoam Windsor Inc., RetroFoam of Eastern Ontario Ltd., Polymaster, Inc., Enerliv Inc., Paul John Weigel, Enwise Power Solutions Inc., Enwise Building Science Inc., Gary Zavaros, 756882 Ontario Ltd., c.o.b. as Lambton Insulation Ltd., Attie Enterprises Ltd., and I-Gen Energy Inc..

AND ON BEING ADVISED THAT the Attorney General of Canada does not oppose the certification of the action except for the issue of s. 5(1)(a) of the *CPA* which will be determined by further motion.

AND ON BEING ADVISED THAT these proceedings are stayed against Retrofoam of Canada Incorporated and Retrofoam Holdings Inc., by operation of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C.B-3 as amended.

AND ON BEING ADVISED THAT Northern Retrofoam Inc. and Retrofoam Southern Ontario Inc. have been noted in default,

1. THIS COURT ORDERS THAT, for the purposes of this order, the following definitions apply:

- (a) “**AG**” means the Attorney General of Canada;
- (b) “**Class Counsel**” means Sutts, Strosberg LLP;
- (c) “**Class**” and “**Class Members**” 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;
- (d) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c.6;
- (e) “**EcoEnergy Program**” means EcoEnergy Retrofit Initiative-Homes Program;
- (f) “**Energy Advisors**” means persons certified by **NRCAN** to perform residential energy assessments and recommend energy efficient improvements to homeowners;
- (g) “**Energy Efficient Evaluation Report**” means the standard form of initial report required by **NRCAN** assessing energy efficiency of a property;
- (h) “**HPA**” means the *Hazardous Products Act, R.S., 1985, c. H-3*, as amended, and all Schedules thereto;
- (i) “**MNR**” means the Minister of Natural Resources of Canada;
- (j) “**Motion to Strike**” means the rule 21 motion made by the **AG**;
- (k) “**Notice**” means the notice of certification of this action as a class proceeding which is attached as Schedule 2;
- (l) “**NRCAN**” means the Minister of Natural Resources acting through the Office of Energy Efficiency of the Department of Natural Resources;
- (m) “**Opt-Out Form**” means the form which is located at the bottom of the **Notice**;
- (n) “**Property**” or “**Properties**” means the real property into which **RetroFoam** was injected or installed;

- (o) “**RetroFoam**” is the trade name of a urea formaldehyde based thermal insulation which is prohibited in Canada pursuant to the *HPA*, that, when in the form of foam, is intended to be injected into the existing wall cavities and the core of concrete block foundations of properties; and
- (p) “**Weigel**” means Paul John Weigel.

2. THIS COURT ORDERS that this action is hereby certified as a class proceeding against RetroFoam Windsor Inc., RetroFoam of Eastern Ontario Ltd., Polymaster, Inc., Enerliv Inc., Paul John Weigel, Enwise Power Solutions Inc., Enwise Building Science Inc., Gary Zavaros, 756882 Ontario Ltd., c.o.b. as Lambton Insulation Ltd., Attie Enterprises Ltd., Retrofoam of Canada Incorporated, Retrofoam Holdings Inc., I-Gen Energy Inc., Northern Retrofoam Inc. and Retrofoam Southern Ontario Inc..

3. THIS COURT ORDERS THAT:

- (a) the Motion to Strike and the issue of s. 5(1)(a) of the *CPA* shall be heard on June 27 and 28, 2011;
- (b) against the AG, this action satisfies all s. 5 and s. 6 requirements of the *CPA*, except the issue of s. 5(1)(a); and
- (c) in the event that the Motion to Strike is dismissed, this action is hereby certified as a class proceeding against the AG, subject to further order on appeal.

4. THIS COURT ORDERS that the Class is defined as:

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.

5. THIS COURT ORDERS that 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 are hereby appointed as the representative plaintiffs of the Class.

6. THIS COURT DECLARES that the causes of action asserted on behalf of the Class are negligence and breach of contract.

7. THIS COURT DECLARES that the relief sought by the Class includes various declarations, special and general damages, prejudgment interest and costs.

8. THIS COURT ORDERS that Sutts, Strosberg LLP is hereby appointed as Class Counsel.

9. THIS COURT DECLARES that the common issues are:

1. Does RetroFoam contain urea-formaldehyde?
2. Was the licensing, distribution, importing, advertising, sale and installation of RetroFoam prohibited by the *HPA*?
3. Did the AG (as the representative of the MNR) owe a duty of care to the Class Members? If so, what was the standard of care? Did the AG breach the standard of care? If so, when and how?
4. Did Polymaster, Inc. owe a duty of care to the Class Members in relation to the licensing, franchising, importation into Canada and the installation of RetroFoam into the Properties? If so, what was the standard of care? Did Polymaster, Inc. breach the standard of care? If so, when and how?
5. Did Weigel and/or Enerliv Inc. owe a duty of care to the Class Members? If so, what was the standard of care? Did Weigel and/or Enerliv Inc. breach the standard of care? If so, when and how?

6. Did the defendants who were installers of RetroFoam, and/or inspectors under the EcoEnergy Program, owe a duty of care to each of the Class Members with whom each did business when recommending, selling, installing and/or dealing with RetroFoam and their Properties? If so, what was the standard of care? Did these defendants breach the standard of care? If so, when and how?
7. Did the defendants who sold but did not install RetroFoam owe a duty of care to each of the Class Members with whom each did business by selling, or dealing with RetroFoam? If so, what was the standard of care? Did these defendants breach the standard of care? If so, when and how?
8. Did the defendants who sold RetroFoam, installed RetroFoam and/or caused RetroFoam to be installed have a contractual relationship with the Class Members with whom each did business? If so, were they prohibited from selling and/or installing RetroFoam pursuant to the *HPA*?
9. Did the installation of RetroFoam cause damage to the Properties?
10. Are the defendants, or any of them, liable to pay damages (including compensatory damages) to the Class Members? If so, who should pay damages, to whom, why and in what amount?
11. Should the court assess damages in the aggregate, in whole or in part, for the Class? If so, who should pay what amount of aggregate damages to whom and why?
12. Should some or all of the defendants pay prejudgment and postjudgment interest to the Class Members? If so, who should pay prejudgment and postjudgment interest, at what rate and should the interest be simple or compound?
13. Should some or all of the defendants pay the costs to administer and distribute any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If so, who should pay what costs, why, in what amount and to what extent?

10. THIS COURT ORDERS that the plaintiffs' litigation plan attached as Schedule 1 to this order is workable.

11. THIS COURT ORDERS that the AG (as the representative of the MNR) shall produce to Class Counsel, on or before May 16, 2011, for the purposes of giving Notice to the Class in these proceedings, pursuant to s. 8(2)(c) of the *Privacy Act*,

R.S.C. 1985, c. P-21, a list of all Class Members known to the MNR, including the full name, municipal address, email address, telephone number and all other contact information on file for each such person and counsel, on behalf of the AG, shall confirm, in writing, that she or he has done his or her best efforts to compile this list completely and accurately.

12. THIS COURT ORDERS that RetroFoam Windsor Inc., RetroFoam of Eastern Ontario Ltd., Polymaster, Inc., Enerliv Inc., Paul John Weigel, Enwise Power Solutions Inc., Enwise Building Science Inc., Gary Zavaros, 756882 Ontario Ltd., c.o.b. as Lambton Insulation Ltd., Attie Enterprises Ltd., I-Gen Energy Inc., Northern RetroFoam Inc., and RetroFoam Southern Ontario Inc. produce to Class Counsel, on or before May 16, 2011, an affidavit containing a list of all Class Members with whom it contracted for the sale/and or installation of RetroFoam, or into whose properties it injected RetroFoam, including the full name, municipal address, email address, telephone number and all contact information on file for each Class Member.

13. THIS COURT ORDERS that the Notice attached as Schedule 2 to this order is hereby approved.

14. THIS COURT ORDERS that, on or before June 30, 2011, the Class shall be given notice of this certification order in the following manner (the "Notice Program"):

- (a) by Class Counsel mailing the Notice or emailing the Notice to each individual whose name and address or email address is disclosed in accordance with paragraphs 11 and 12 above;
- (b) by Class Counsel emailing the Notice to other persons who registered with Class Counsel and provided a valid email address; and
- (c) by Class Counsel posting the Notice on the www.retrofoamclassaction.com website.

15. THIS COURT ORDERS that on or before July 15, 2011, Class Counsel shall file with the court an affidavit confirming compliance with paragraph 13 above.

16. THIS COURT ORDERS that a member of the Class may only opt out of this class action by sending an Opt-Out Form, by ordinary mail, fax, email or courier on or before September 1, 2011 at 5:00 p.m., Windsor time, (“Opt-Out Deadline”), signed by the member of the Class or such member’s authorized representative to:

Sarkis Isaac
Howie & Partners, Chartered Accountants
3063 Walker Road, Windsor, ON N8W 3R4
Attention: RetroFoam Class Action
fax to: 519.250.1929
email to: sisaac@howieandpartners.com.

17. THIS COURT ORDERS that no member of the Class may opt out after the Opt-Out Deadline.

18. THIS COURT ORDERS that no person may opt out a minor or a mentally incapable member of the Class from this class action without the permission of

the Court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as the case may be.

19. THIS COURT ORDERS that Sarkis Isaac of Howie & Partners shall, on or before September 15, 2011, report to the Court and to the parties by affidavit and provide the names and addresses of those persons, if any, who have opted out of this Class Action.

20. THIS COURT ORDERS that the costs of this certification motion between the plaintiffs and the defendants RetroFoam Windsor Inc., RetroFoam of Eastern Ontario Ltd., Polymaster, Inc., Enerliv Inc., Paul John Weigel, Enwise Power Solutions Inc., Enwise Building Science Inc., Gary Zavaros, 756882 Ontario Ltd., c.o.b. as Lambton Insulation Ltd., Attie Enterprises Ltd., and I-Gen Energy Inc. are costs in the cause.

21. THE COURT ORDERS that the costs between the plaintiffs and the AG for the certification motion are reserved to Justice Patterson after he decides the Motion to Strike.

22. THIS COURT ORDERS that:

- (a) on or before May 30, 2011, every defendant must deliver a statement of defence and any crossclaims against their co-defendants, except the AG;

- (b) on or before May 30, 2011, if a defendant elects to participate in the Motion to Strike, the defendant must deliver a crossclaim against the AG; and
- (c) all other defendants must deliver their crossclaims, if any, against the AG, within 14 days, in the event that Justice Patterson decides to dismiss the Motion to Strike.

23. THIS COURT ORDERS that in the event that the AG is successful on the Motion to Strike, the AG may not seek costs against any defendant who did not elect to assert a crossclaim against the AG.

24. THIS COURT ORDERS in the event that the AG is successful at the Motion to Strike, the AG may claim costs against each defendant who elects to participate in the Motion to Strike.

25. THIS COURT ORDERS in the event that the AG is unsuccessful at the Motion to Strike, each defendant who participated in this motion, may seek costs against the AG for the Motion to Strike.

26. THE COURT ORDERS that on or before May 16, 2011, the AG shall produce to Class Counsel and any other parties requesting copies:

- (a) the grant applications for the EcoEnergy Program for each representative plaintiff in NRCAN's possession;
- (b) the data relayed from the service organizations into NRCAN's computer network for each representative plaintiff, including the data evaluation, the date of the evaluation and the date of the report generated;

- (c) all data which was inputted into the HOT2000 software for each representative plaintiff and the data input pages for all forms;
- (d) all completed forms for the EcoEnergy Program for each representative plaintiff including any documents by which service organizations provided NRCAN with documentation including data collection forms;
- (e) all internal memoranda, instructions to auditors and representatives and all emails for the EcoEnergy Program with respect to the representative plaintiffs;
- (f) all approvals for RetroFoam for the EcoEnergy Program with respect to the representative plaintiffs;
- (g) all documents, which the Energy Advisors for each representative plaintiff signed for NRCAN, including the documents which are set out in paragraphs 44 and 45 of the Further Fresh Statement of Claim;
- (h) all Quick Notes which NRCAN prepared and distributed; and
- (i) all documents, emails, memos and letters which directly refer to Quick Note 112, including the “blown-in foam,” the “blown-in foam” which was identified as RetroFoam, the decision to prohibit the “blown-in foam” into “cores of concrete block,” the chemical composition of RetroFoam and/or the “latex foam” and/or the “consistency of resin mixed with water” which are relevant to paragraphs 50 and 51 of the further fresh statement of claim.

27. THIS COURT ORDERS that the following is the schedule for the Motion to Strike:

- (a) the AG must deliver its factum on or before June 6, 2011;
- (b) Class Counsel and any other defendants who intend to make submissions must deliver their responding facta on or before June 20, 2011; and
- (c) the AG must deliver its reply factum, if any, on or before June 24, 2011.

28. Class Counsel may deliver a "Second Further Fresh Statement of Claim" without interlineations on or before May 16, 2011.



JUSTICE

901888v15

ENTERED AT WINDSOR	
In Book No.	<u>22</u>
re Document No.	<u>642</u>
on	<u>May 10 / 20 11</u>
by	<u>BK</u>

**REVISED LITIGATION PLAN
RETROFOAM CLASS ACTION
AS OF APRIL 1, 2011**

DEFINITIONS

1. Unless otherwise stated, capitalized terms that are not defined in this litigation plan have the definitions assigned to them in the most recent statement of claim. In addition, the following defined terms apply:

- (a) “**Administrator**” means a person appointed by the Court to carry out the functions described in the Plan;
- (b) “**Administrator’s Eligibility Decision**” means the Administrator’s written decision on eligibility;
- (c) “**Chief Referee**” means a person appointed by the Court to carry out the functions described in the Plan;
- (d) “**Claim Form**” means a claim form, in the form to be approved by the Court, to be completed by the **Class Members** and submitted to the **Administrator** in order for the **Class Members** to participate in the procedure described herein;
- (e) “**Claims Deadline**” means the date by which each **Class Member** must file a **Claim Form**;
- (f) “**Class Counsel**” means Sutts, Strosberg LLP;
- (g) “**Class**” and “**Class Members**” means the definition in paragraph 5 of this **Plan**;
- (h) “**EcoEnergy Program**” means EcoEnergy Retrofit Initiative-Home Program;
- (i) “**Notice Program**” means the method of distributing the **Notice** described in paragraph 21(d);
- (j) “**Notice**” means the notice to the **Class** of the certification of the action;
- (k) “**Plan**” means this litigation plan;
- (l) “**Property**” or “**Properties**” means the real property into which **RetroFoam** was injected or installed;

- (m) “**Referee**” or “**Referees**” means a person or persons appointed by the Court to carry out the functions described in the **Plan**; and
- (n) “**Resolution Notice**” means the notice of resolution of the common issues;
- (o) “**RetroFoam**” means a thermal insulation that, when in the form of foam, is intended to be injected into the existing wall cavities and the core of concrete block foundation of properties;
- (p) “**Statement of Opposition**” means a defendant’s concise statement of material facts responding to a **Claim Form**; and
- (q) “**Website**” means the website located at www.retrofoamclassaction.com.

OVERVIEW

2. This Plan contemplates a determination of eligibility and an assessment of damages for each Class Member after the determination of the common issues.

CLASS COUNSEL

3. Class Counsel has the requisite knowledge, skill, experience, personnel and financial resources to prosecute this class action to conclusion. Class Counsel intends to add other lawyers and other professionals to their complement if they consider it necessary. These other professionals may be paid on a contingency basis and their usual fees may be increased by the multiplier, if any, that will be applied to Class Counsel’s base fees.

4. Class Counsel anticipates that prosecuting this action will require:

- (a) reading, organizing, profiling, scanning, managing and analyzing thousands of documents; and
- (b) extensive expert evidence with respect to urea-formaldehyde, including its chemical composition, its removal from the Properties and its effect on the market value of the Properties.

THE CLASS DEFINITION

5. The plaintiffs seek to represent a Class defined as:

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.

REPORTING TO AND COMMUNICATING WITH THE CLASS MEMBERS

6. Class Counsel created the Website. The Home section contains information about the status of the action and explains how a class action operates. The secure Registration section permits Class Members to register, provide information electronically deliver documents to Class Counsel and electronically communicate with Class Counsel. As of April 1, 2011, about 377 Class members have registered.

7. Copies of some of the publicly filed Court documents, Court decisions and notices and other information relating to the action will be posted on or will be accessible from the Website. This will allow Class Counsel to keep the Class Members, wherever resident, informed of the status of the action.

8. The Website also:
 - (a) lists a toll-free telephone number containing a recorded message about the status of the action which will be updated as required; and
 - (b) lists the direct-dial telephone number of some of the lawyers who are prosecuting this action.

9. From time to time, Class Counsel may send email updates reporting on the status of the action directly to members of the Class who provide email addresses. They will also post these updates on the Website.

LITIGATION SCHEDULE

10. Justice Patterson is case managing this action.

11. Class Counsel will ask Justice Patterson to set a litigation schedule for:
 - (a) the hearing of the rule 21 motion of the Attorney General;
 - (b) the completion of pleadings;
 - (c) the documentary production and delivery of affidavits of documents by the parties;
 - (d) the examinations for discovery including the location and length of the examinations;
 - (e) other interlocutory motions as necessary;
 - (f) the delivery of experts' reports; and
 - (g) the trial of the common issues.

12. Class Counsel will likely request that the litigation schedule be amended from time to time.

PRESERVATION OF EVIDENCE

13. On January 15, 2010, Justice Patterson ordered certain defendants who were either bankrupt or out of business to preserve all relevant information and business documents, which were then in their power, possession or control.

DOCUMENT EXCHANGE AND MANAGEMENT

14. The defendants possess most of the documents relating to the common issues. These documents will be produced to Class Counsel through the normal production, cross-examination and examination for discovery processes. The plaintiffs will produce all relevant documents in their possession, subject to privilege.

15. Class Counsel will use data management systems to organize, code and manage the plaintiffs' documents and the documents produced by the defendants.

PLAINTIFFS' EXPERTS

16. The plaintiffs have retained:
- (a) Barry Lebow, a real estate appraiser, to opine on the impact of the installation of insulation containing urea-formaldehyde on the value of the Properties;
 - (b) F.D. Woodall, an engineer and contractor, to opine on how insulation containing urea-formaldehyde might be removed from the Properties and the cost of removal; and
 - (c) Mark Nazar, a chemist, to opine, if necessary, on the chemical composition of urea-formaldehyde.

17. Class Counsel will probably retain other experts as the action proceeds.

MEDIATION

18. The plaintiffs will participate in mediation or non-binding alternative dispute resolution efforts if the defendants are prepared to do so.

THE FOLLOWING TERMS OF THIS PLAN PRESUPPOSE THAT THE COURT CERTIFIES THE ACTION AS A CLASS PROCEEDING

NOTICE OF CERTIFICATION OF THE ACTION AS A CLASS PROCEEDING AND THE OPT-OUT PROCEDURE

19. Class Counsel know the names and addresses of about 377 Class Members and this number will likely increase because of the registration process on the Website.
20. Class Counsel believe that the defendants collectively know the names and addresses of the other or most of the other Class Members.
21. As part of the certification order, the Court will be asked to:
 - (a) order the defendants to disclose the names, municipal addresses, telephone numbers, email addresses and any other contact information for Class Members known to them for the purpose of giving direct notice;
 - (b) set an opt-out date ninety (90) days after the date of the order certifying the action;
 - (c) settle the form and content of the Notice after the certification decision is released; and

- (d) settle the particulars of the Notice Program as follows:
 - (i) delivered by email to any person who registered with Class Counsel or whose email address is disclosed by a defendant to Class Counsel;
 - (ii) mailed to each Class Member to whom a notice has not been emailed and whose name and address is disclosed by a defendant to Class Counsel or whose name and address is otherwise known to Class Counsel; and
 - (iii) posted by Class Counsel on the Website.
- (e) approve the following opt-out procedure:
 - (i) a person may opt out of the class proceeding by sending a written election to opt-out to a person designated by the Court before a date fixed by the Court;
 - (ii) no person may opt out a minor or a person who is mentally incapable without leave of the Court after notice to the Children's Lawyer and/or the Public Guardian and Trustee, as appropriate; and
 - (iii) no member of the Class may opt out after the expiration of the opt-out period set by the Court except by Court order; and
- (f) appoint Sarkis Isaac, an accountant with Howie & Partners in Windsor, to receive the written elections to opt out of the class action and, within thirty (30) days after the expiration of the opt-out period, to deliver to the Court and the parties an affidavit listing the names and addresses of all persons who have opted out of this class action. Mr. Isaac has previously been appointed by the Court to fulfill these tasks.

EXAMINATIONS FOR DISCOVERY

22. Class Counsel intend to examine for discovery at least one representative of each defendant. Class Counsel will ask Justice Patterson to schedule and the location of each examination for discovery if Class Counsel and defence counsel are unable to agree on the length of each examination for discovery.

23. The plaintiffs may ask the Court for an order allowing them to examine multiple representatives of certain defendants, if necessary.

CLARIFICATION OF COMMON ISSUES

24. From time to time, the plaintiffs may ask the Court for an order to amend, clarify and/or redefine the common issues.

25. The plaintiffs will ask the Court to set a date for the trial of the common issues within six months after the completion of the examinations for discovery, including the delivery of answers to the undertakings and the resolution of any refusals motions.

26. The findings of fact and conclusions on the common issues will permit the judge at the common issues trial to give directions, pursuant to s. 25(3) of the CPA, to deal with any remaining individual issues.

AFTER THE RESOLUTION OF THE COMMON ISSUES

27. Assuming that the common issues are resolved by judgment in favour of the Class, it will be necessary for the Court to establish and supervise a claims and assessment procedure. The precise structure of the assessment process will depend upon the conclusions reached by the judge at the common issues trial. The defendant(s) who, as a result of the common issues trial may be required to pay monies to some or all of the

Class Members, may participate in the process described in the following paragraphs.

28. The plaintiffs will ask the Court to:
- (a) settle the form and content of the Resolution Notice and the Claim Form;
 - (b) order that the Resolution Notice be disseminated substantially in accordance with the Notice Program set out at paragraph 23, except that the Notice of Resolution shall not be mailed to any person who validly opted out in accordance with the procedure set by the certification order;
 - (c) set a Claims Deadline by which date claimants will be required to file their Claim Form;
 - (d) appoint an Administrator to hold any monies recovered at the common issues trial and to implement this Plan by, among other things, receiving and evaluating Claim Forms in accordance with protocols approved by the Court;
 - (e) appoint a Referee to decide any issues not decided at the common issues trial including quantum of damages. Depending on the geographic distribution of the Class Members, the Court may decide to appoint more than one Referee. In that event, the Court may decide to designate one Referee as the Chief Referee to oversee the dispute resolution process to ensure uniformity in the process; and
 - (f) appoint a Class Counsel Representative to represent the interests of the Class in dealing with issues of general application relating to the damages assessment process.

THE CLAIMS PROCESS

29. The Claim Form will be equivalent to a statement of claim and affidavit of documents. Electronically, before the Claims Deadline, each claimant must deliver to the Administrator a completed Claim Form with the relevant documents in his or her possession.

30. In and with the Claim Form, the claimant will, among other things:
- (a) assert the basis of his or her eligibility as a Class Member, namely, that the Claimant had an interest in a property when RetroFoam was injected or installed for the purposes of the EcoEnergy Program;
 - (b) disclose all interests in the Property, for example, the name, municipal address, telephone number and email address of every mortgagee, execution creditor and lien claimant and the amount owing or allegedly owing to each and the priorities among them;
 - (c) address any issues that are not determined at the common issues trial. For example, the Claim Form will require the Class Member to state when and where RetroFoam was installed in the Property, the estimated or actual cost of removal, particulars of any grants received pursuant to the EcoEnergy Program and particulars of other actual or anticipated expenses such as the cost of alternative accommodation during the period of construction when the RetroFoam was removed or will be removed;
 - (d) deliver all relevant documents in his or her possession and under his or her control, including, but not limited to, documents relating to the EcoEnergy Program and the grant process, the contract for the installation of RetroFoam into the Property, title documents and any other documents showing the ownership interests in the Property and documents evidencing the costs of removal and any other damages;
 - (e) provide details of all out-of-pocket expenses actually incurred and likely to be incurred including the estimated cost of removal; and
 - (f) specify whether the estimated total value of the claim is:
 - (i) \$25,000 or less; or
 - (ii) more than \$25,000 but no more than \$100,000; or
 - (iii) more than \$100,000.

31. Electronically, the Administrator will make a copy of each of the Claim Forms and accompanying materials available to each of the defendants who, as a result of the findings at the common issues trial, have an interest in this process.

32. These defendant(s) shall have 30 days after receipt of the Claim Form and accompanying material to file electronically with the Administrator a written Statement

of Opposition and all relevant documents in their possession or under their control. The Statement of Opposition shall be treated as if it is a statement of defence and affidavit of documents, and shall address both eligibility and damages issues. Electronically, the Administrator will make available to the claimant, a copy of the Statement of Opposition and any documents delivered by the defendant(s). The claimant, within 10 days of receipt of the Statement of Opposition, may electronically deliver a written Reply to the Administrator who will, electronically, make it available to the defendant(s).

33. Electronically, the Administrator will receive the Claim Form, Statement of Opposition, Reply and all documents unless, in the exercise of its discretion, the Administrator decides to receive documents from a particular Class Member in paper form, because, for example, a Class Member does not have access to a computer with internet capability.

34. Class Counsel will transfer the Website (without privileged material) to the control of the Administrator. Thereafter, the Administrator will operate the Website. A section of the Website will remain public and will be accessible to all Class Members and the general public.

35. The Administrator will establish a secure section of the Website which will require userid and a password to gain access.

36. Each Class Member will select a userid and password which will be disclosed only to the Administrator. This will allow each Class Member access to the secure section of a database on the Website which is relevant only to their claim. In this secure

section, the Class Member may complete the Claim Form, the Reply, and/or upload documents which have not already been produced to Class Counsel. Or the Administrator may upload the documents that may be transmitted electronically from the Class Member to it.

37. Each defendant will select a userid and password which will be disclosed only to the Administrator. This will allow each defendant access to the secure section of the database which is relevant only to the claim of a specific Class Member. In this secure section, the defendant(s) may review the Claim Form and documents, complete and deliver their Statement of Opposition, review any Reply and upload their documents.

38. In this secure section, the Administrator and the Referee may communicate with the Class Member and the defendant(s) and post any written decisions.

THE ADMINISTRATOR'S ELIGIBILITY DECISION

39. On the basis of the documents delivered to it, the Administrator shall decide whether or not a claimant is a member of the Class who is entitled to claim under this Plan. The Administrator's Eligibility Decision shall be in writing and the Administrator shall, electronically, deliver this decision to the claimants and the defendant(s) by uploading it to the relevant secure section of the Website.

40. Within 15 days of receipt of the Administrator's Eligibility Decision, the claimant or the defendant(s) may in writing deliver to the Administrator a demand that the Referee

review the Administrator's Eligibility Decision, failing which the Administrator's Eligibility Decision is final. Because the defendant(s) will be obliged to disclose the names of Class Members, it is likely that there will only be a few disputes about eligibility.

REVIEW OF ADMINISTRATOR'S ELIGIBILITY DECISION BY THE REFEREE

41. The Court will designate a single referee to deal with all eligibility issues. The eligibility review will be dealt with only on the basis of the written record, without oral evidence, unless the Referee orders otherwise.

42. The review of the Administrator's Eligibility Decision shall proceed in such manner as the Referee directs and the Referee shall have the power to award costs of the review to the successful party.

43. The Referee's decision on eligibility is a report which will be confirmed on the expiration of 15 days after a copy is uploaded to the relevant secure section of the Website, or mailed or faxed to the claimant and the defendant(s) unless a notice of motion to oppose confirmation is served within that time as required by rule 54.09(b).

44. For greater certainty, the eligibility decisions described in paragraphs 39 to 43 will determine only whether or not a claimant is a member of the Class.

THE ASSESSMENT OF AGGREGATE DAMAGES

45. At the trial of the common issues, the Court may award some amount of damages in the aggregate. If such an aggregate award is made, the claimant will have the right to claim additional damages in the Claim Form.

THE PROCEDURE FOR RESOLUTION OF THE INDIVIDUAL ISSUES

46. After determining the common issues, the trial judge will be asked to give directions as to whether, and, if so, when the Referees' hearings may be in writing and when a hearing with oral evidence is necessary. The type of hearing will depend upon the nature and complexity of the claim and the amount of damages claimed by the member of the Class.

47. The Court may be asked to authorize a hearing or hearings before the Referee(s) to allow the Class Members and the defendant(s) to adduce general and expert evidence which may be applicable to some or all individual claims. The type of evidence which may be of general application is, for example, expert evidence about the composition of RetroFoam, how RetroFoam disperses in a cavity, the alternate methods of removal of RetroFoam, the potential limitations of the removal process and evidence of labour costs in various areas of Ontario which may have application to a cluster of Class Members resident in these areas.

48. Individual issues which a Referee may be required to decide for each of the Class Members may include the actual cost of removal of RetroFoam from a particular

Property, the diminution in value of a particular Property as a result of the installation of RetroFoam and the cost of alternate accommodation during the removal process.

49. A claimant may appear at a reference in person or with counsel or such other representative as he or she may designate in writing. A claimant will be responsible for the cost of such representation. A defendant may appear by counsel or in person.

50. The Court will be asked to approve protocols for the reference process that:

- (a) establish the procedures to be followed;
- (b) direct that there be no examinations for discovery if the Claim of the Class Member is less than \$25,000;
- (c) limit examinations for discovery of each Class Member to a maximum of two hours and two hours for each defendant if the claim of the Class Member(s) relating to the Property is more than \$25,000 but no than \$100,000 exclusive of prejudgment interest;
- (d) limit examinations for discovery of the Class Member owners of a particular Property to a maximum of seven hours and seven hours for each defendant if the claim of the Class Member(s) relating to the Property is more than \$100,000 exclusive of prejudgment interest;
- (e) direct that the time limits for examinations for discovery may only be exceeded by agreement of the parties or by order of the Referee;
- (f) provide that a Referee should have the power to award prejudgment interest and costs of each hearing;
- (g) provide that a Referee should have the power to make any order necessary for a fair determination of each hearing; and
- (h) permit the Referee to hear evidence that is generic in nature in an efficient manner to eliminate the need for duplication.

51. Following every hearing, the Referee shall prepare a written report setting out his/her reasons for decision. The Referee will deliver this decision to the Class Member,

the defendant(s) and the Administrator by uploading it to the relevant section of the Website, and/or by mailing it and/or by faxing it to the Class Member and filing it with the Court. The Referee's report shall be confirmed upon the expiration of 15 days after it is filed with the Court unless the defendant(s) or the Class Member serves a notice of motion to oppose confirmation of the report within that 15 day period as required by rule 54.09(b).

THE DISTRIBUTION PROCESS

52. If an aggregate award is made at the common issues trial, it shall be paid to the Administrator who shall hold the monies in a segregated trust account as the Court directs. The Administrator will not make any distribution to eligible Class Members until authorized by the Court.

53. The defendant(s) should be ordered to pay to the Administrator the amount of each assessment immediately after each report becomes final. The Administrator shall hold this money in the segregated trust account and invest it as the Court directs. The Court will decide when the Administrator may make payments to Class Members.

54. As soon as practicable after all of the Referee's hearings are completed, the Administrator shall by motion, on notice to the Class Members, Class Counsel Representative and the defendant(s), report to the Court the proposed distribution for each Class Member including his or her prorated share of any punitive damages award and/or prejudgment interest award.

55. Each eligible Class Member shall sign such documents as the Administrator may require in accordance with a protocol approved by the Court as a condition precedent to receiving any distribution.

INSUFFICIENT RECOVERED MONIES

56. In the event that the defendant(s) do not pay all of the assessed damages in full, the Court will be asked to give further directions to ensure that there are no priorities among eligible members of the Class.

CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

57. At the common issues trial, the Court will be asked to fix the amount of Class counsel fees, disbursements and applicable taxes ("Class Counsel Fees"). Class Counsel will ask the Court to direct the Administrator or the defendants to pay the Class Counsel Fees out of any monies recovered. Class Counsel Fees are a first charge on every recovery.

58. Class Counsel may decide to act as the lawyer for a particular Class Member in the assessment of damages process if requested to do so by the Class Member. The Class Member will be required to pay fees, disbursements and taxes for this additional service which is not provided as part of Class Counsel's responsibility. If a Class Member retains other lawyers or a representative, the Class Member must pay the fees, disbursements and taxes for their services on whatever basis they privately agree.

59. The Court will be asked to fix the costs of the persons appointed to implement and oversee the Plan such as the Administrator, the Referee(s) and Class Counsel Representative and order the defendant(s) to pay these costs.

FINAL REPORT

60. After the Administrator makes the final distribution to Class Members, the Administrator shall make its final report to the Court in such manner as the Court directs and the Court will be asked to then make an order discharging the Administrator.

REVIEW OF THE LITIGATION PLAN

61. The Court may revise this Plan before the determination of the certification motion and/or before and/or after the determination of the common issues at the common issues trial or otherwise.

MOTIONS FOR DIRECTIONS

62. The Administrator, Class Counsel, the defendant(s) and the Class Counsel Representative may apply to the Court for directions.

NOTICE OF THE CERTIFICATION OF THE RETROFOAM CLASS ACTION

This Notice may affect your rights. Please read carefully.

TO CLASS MEMBERS, WHO ARE:

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.

CERTIFICATION

A class action was commenced in the Ontario Superior Court of Justice against 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 ("AG"), Attie Enterprises Ltd., and I-Gen Energy Inc..

The class action seeks damages on behalf of the Class who had RetroFoam installed in their homes. It is alleged that RetroFoam is prohibited in Canada because it is a urea-formaldehyde based insulation.

On April 1, 2011, Justice Patterson certified the action as a class proceeding against the defendants, except the AG. The certification order is posted at www.retrofoamclassaction.com

A further motion relating to the certification of this action against the AG will be heard on June 28 and 29, 2011. The reasons and order of Justice Patterson will be posted at www.retrofoamclassaction.com

DO NOTHING IF YOU WISH TO PARTICIPATE IN THE CLASS ACTION

Class members are automatically included in the class action and need not do anything at this time if they wish to participate. They will be bound by the judgment in the action whether favourable or not.

OPTING OUT

If you are part of the Class described above but wish to be excluded from the Class and not bound by any order made in this class action, you must send the Opt-Out Form which is attached to this Notice, by prepaid mail, fax or email to:

Sarkis Isaac
Howie & Partners, Chartered Accountants
3063 Walker Road, Windsor ON N8W 3R4
Attention: Retrofoam Class Action
Fax: 519.250.1929
Email: sisaac@howieandpartners.com

If your Opt Out-Form is not received by 5:00 p.m. eastern time on September 1, 2011, you will be a member of the Class.

A person who opts out will not be bound by the judgment in the class action and will not be eligible for any recovery in the class action but may be eligible to pursue an individual claim.

Do not opt out if you wish to participate in the class action.

CLASS COUNSEL FEES AND DISBURSEMENTS

The plaintiffs and Class Counsel signed a fee agreement providing for the payment of fees, disbursements and applicable taxes, only in the event of success in the class action, to be paid out of any recovery in the class action as follows:

- (a) 25% of the recovery, plus disbursements and applicable taxes if the action is settled before examinations for discovery are commenced;
- (b) 30% of the recovery, plus disbursements and applicable taxes if the action is settled after examinations for discoveries are commenced; or
- (c) 33.3% of the recovery, plus disbursements and applicable taxes if the action is settled after the commencement of the trial of the common issues or as a result of a judgment at the trial.

Class Counsel will make a motion to the court to have the fee agreement approved. If Class members require individual representation after the class action is resolved, the Class member will be required to pay fees, disbursements and taxes for this additional service, in addition to the amounts set out above.

INFORMATION

Any questions for Class Counsel regarding the class action and the April 1, 2011 certification order should be directed to:

Sharon Strosberg
SUTTS, STROSBERG LLP
600-251 Goyeau Street, Windsor ON N9A 6V4
Tel: 519.561.6294
Fax: 519.561.6203
Email: sharon@strosbergco.com

Additional information about the class action can be found at www.retrofoamclassaction.com

INTERPRETATION

This Notice is a summary of some of the terms of the certification order. If there is a conflict between the provisions of this Notice and the terms of the certification order, the certification order prevails.

This Notice is approved by the Superior Court of Justice for Ontario.

Any questions about this Notice should not be directed to the court as its administrative structure is not designed to address this type of inquiry

RETROFOAM CLASS ACTION OPT-OUT FORM

Instructions. Fill out and submit this form by mail, fax or email only if you wish to be **EXCLUDED** from the RetroFoam class action.

1. RETROFOAM HOMEOWNER IDENTIFICATION

Provide the following information about the homeowner who installed RetroFoam into their home. If that person is deceased, provide the information about the person's date of death. **PLEASE PRINT**

Homeowner Last Name:	First Name:	Middle Initial:	Date of Birth: ____/____/____ YYYY MM DD
Address of Home where RetroFoam was installed	City:	Province:	Postal Code:
Home Phone:	Work or Mobile Phone:		
Mailing Address (only if different from address provided above)	City:	Province:	Postal Code:

2. LAWYER, LEGAL OR ESTATE REPRESENTATIVE IDENTIFICATION (IF APPLICABLE)

If you are not the homeowner please state the source of your authority to fill out this form on behalf of the homeowner and provide the following personal identification information and attach a copy of your court order or other authorization that allows you to represent that person. **PLEASE PRINT**

Representative Last Name:	First Name:	Relationship to Homeowner:		
Mailing Address:				Suite Number
City:	Province:	Postal Code:	Firm Name (if applicable)	
Daytime Phone: ()	Fax Number: ()	Email Address:		

I am the Estate Trustee with a will:
(attach copy of deceased's will)

I am the Estate Trustee without a will:
(attach copy of Certificate of Appointment)

I am the Power of Attorney:
(attach copy of Power of Attorney)

3. I WISH TO OPT OUT

Check the box below to confirm your intention to opt out of the RetroFoam class action.

I wish to opt out of (be excluded from) the RetroFoam class action. **I OPT OUT**

4. SIGNATURE

(Your Signature)

____/____/____
YYYY MM DD

Submit this Opt-Out Form and any attachments by 5pm E.S.T on Sept. 1, 2011 to: Sarkis Isaac, Howie & Partners, Chartered Accountants, 3063 Walker Road, Windsor ON N8W 3R4 Attention: RetroFoam class action Fax: 519.250.1929 Email: sisaac@howieandpartners.com #903645

ROBERT CECILE et al.

Plaintiffs

vs. RETROFOAM OF CANADA
INCORPORATED et al.

Defendants

Court File No. CV-09-12583CM

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR

ORDER

SUTTS, STROSBERG LLP

Lawyers

600 Westcourt Place

251 Goyeau Street

Windsor ON N9A 6V4

HARVEY T. STROSBERG, Q.C.

LSUC Number: 126400

PATRICIA A. SPEIGHT

LSUC Number: 26380C

SHARON STROSBERG

LSUC Number: 44233W

Tel: 519.258.9333

Fax: 519.561.6203

LAWYERS FOR THE PLAINTIFFS

FILE: 79-115-000

REF: HTS/mu