

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In re POLYURETHANE FOAM ANTITRUST)
LITIGATION)

MDL Docket No. 2196
Index No. 10-MD-2196 (JZ)

This document relates to:)

ALL DIRECT PURCHASER ACTIONS)
_____)

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL APPROVAL
OF SETTLEMENT WITH DEFENDANT VITAFOAM AND FOR FINAL APPROVAL
OF VOLUNTARY DISMISSAL AND SETTLEMENT WITH DEFENDANT DOMFOAM
AND OTHERS**

THIS CAUSE came before the Court on Direct Purchaser (Class) Plaintiffs' April 22, 2013 motion for final approval of the settlement with defendants Vitafoam, Inc. and Vitafoam Products Canada Limited ("Vitafoam"), and for final approval of voluntary dismissal and settlement with: (1) Defendants Domfoam International Inc. ("Domfoam"), Valle Foam Industries (1995) Inc. ("Valle Foam"), and A-Z Sponge & Foam Products Ltd. (collectively, "Voluntary Dismissal Defendants"), and (2) non-defendants Bruce Bradley, Dean Brayianis, Michael Cappuccino, Peter Foti, Duke Greenstein, John Howard, Dale McNeill, James William Sproule, Robert Rochietti-Valle, Tony Vallecoccia, and Fred Zickmantel (collectively, "Individual Settling Parties"). Class Plaintiffs Ace Foam, Inc., Adams Foam Rubber Co., a/k/a Adams Foam Rubber Company, Inc., Cambridge of California, Inc., GCW Carpet Wholesalers, Inc. t/a Floors USA, Foam Factory, Inc., J&S Packaging, Inc., VFP Acquisitions d/b/a Vanguard Foam and Packaging Company entered into a settlement agreement with Vitafoam on October 19, 2011, and with the Voluntary Dismissal Plaintiffs and Individual Settling Parties on January 3, 2013 (together, the "Settlement Agreements"). Notice was provided to the Class pursuant to

the Preliminary Approval Orders and the November 29, 2012 Order; the Court held a fairness hearing on May 7, 2013, and the 90-day period for federal officials to request a hearing under the Class Action Fairness Act expired on February 19, 2012 for the Vitafoam Settlement, and on June 12, 2012 for the Domfoam Settlement.

The Court, having reviewed the Motion, its accompanying memorandum, the Settlement Agreements, and the file, hereby:

ORDERS AND ADJUDGES:

1. The Court has jurisdiction over the subject matter of this Action (and all actions and proceedings consolidated in this Action).
2. Terms used in the Order that are defined in the Settlement Agreements are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreements.

Notice Satisfies Due Process

3. The Preliminary Approval Orders and November 29, 2012 Order outlined the form and manner by which the Plaintiffs would provide the Settlement Classes with notice of the settlement, the fairness hearing, and related matters. The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. Proof that the mailing and publication conformed with the Court's prior Orders has been filed with the Court. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements and fairness hearing and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.

Final Approval of Settlement Agreement

4. After an analysis of the appropriate factors, the Court has determined that the

Settlement Agreements are “fair, reasonable, and adequate” to the Settlement Classes. *IUE-CWA v. General Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006); *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *7 (E.D. Mich. Dec. 13, 2011). Final approval of the Settlement Agreements, therefore, is granted pursuant to Fed. R. Civ. P. 23(e).

Certification of the Settlement Classes

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Settlements, the Court hereby finds that the prerequisites for a class action have been met for settlement purposes and certifies the following settlement class in connection with the Vitafoam settlement (the “Vitafoam Settlement Class”):

All Direct Purchaser Plaintiffs that purchased flexible polyurethane foam in the United States directly from a Defendant or Co-conspirator from January 1, 1999 to August 2010. Excluded from the Settlement Class are 1) defendants and co-conspirators and their respective parents, subsidiaries, and affiliates and 2) any Direct Purchaser Plaintiff who timely elects to be excluded from this settlement.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and in light of the proposed Settlements, the Court hereby finds that the prerequisites for a class action have been met for settlement purposes and certifies the following settlement class in connection with the Domfoam settlement (the “Domfoam Settlement Class,” collectively with the Vitafoam Settlement Class, the “Settlement Classes”):

All persons who purchased polyurethane foam in the United States directly from the Defendants in the Action and/or an Alleged Co-Conspirator (as defined above) at any time from January 1, 1999 through the present (defined as the “Class Period”). As will be reflected in the class notices approved by the Court, excluded from the Class are the Voluntary Dismissal Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees, and the Non-Settling Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees. Also excluded from the Class are all federal, state, and local governmental entities, any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

7. The Court finds that the certification of the Settlement Classes is warranted in

light of the Settlement Agreements because: (a) the Settlement Classes are so numerous that joinder is impracticable; (b) Plaintiffs' claims present common issues and are typical of the Settlement Classes; (c) Plaintiffs and Lead Counsel (defined below) will fairly and adequately represent the Settlement Classes; and (d) common issues predominate over any individual issues affecting the members of the Settlement Classes. The Court further finds that Plaintiffs' interests are aligned with the interests of all other members of the Settlement Classes. The Court also finds settlement of this action on a class basis superior to other means of resolving the matter.

8. The persons and entities identified in Exhibit A, which is attached hereto and incorporated by reference herein, have timely and validly requested exclusion from the specified Settlement Classes and are hereby excluded from the Settlement Class for which they requested exclusion, not bound by this Order and Final Judgment, and may not make any claim or receive any benefit from the settlement(s), whether monetary or otherwise.¹ Said excluded persons may not pursue any Released Claims on behalf of those who are bound by this Order and Final Judgment. Each Settlement Class member who has not so requested to be excluded from the Settlement Class(es), and is not listed in Exhibit A, is bound by this Order and Final Judgment, and will remain forever bound. No parties have filed objections to the Settlement Agreements.

Appointment of Lead Counsel and Class Representatives

9. The Court hereby appoints Stephen Neuwirth of Quinn Emanuel Urquhart & Sullivan, LLP and William Isaacson of Boies, Schiller & Flexner LLP as Lead Counsel for the Settlement Class, having previously determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

¹ Lead Counsel provided the Court with an initial list of excluded persons and entities at the time the Motion for Final Approval was filed. Subsequent to the April 30, 2013 Opt Out deadline, Lead Counsel supplemented the initial list with additional persons and entities who timely filed a request for exclusion.

10. Plaintiffs Ace Foam, Inc., Adams Foam Rubber Co., a/k/a Adams Foam Rubber Company, Inc., Cambridge of California, Inc., GCW Carpet Wholesalers, Inc. t/a Floors USA, Foam Factory, Inc., J&S Packaging, Inc., VFP Acquisitions d/b/a Vanguard Foam and Packaging Company will serve as Class Representatives on behalf of the Settlement Classes.

Release and Covenant Not to Sue

11. As to the Released Parties, as defined in the Settlement Agreements, any and all currently pending class action lawsuits directly related to the subject matter of this litigation are dismissed with prejudice and in their entirety, on the merits, and except as provided for in the Settlement Agreements, without costs. This dismissal shall not affect, in any way, Plaintiffs' right to pursue claims, if any, outside the scope of the Releases set forth in the Settlement Agreements.

12. The Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Claims released in the Settlement Agreements against any Released Party, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state, or federal court, or in any agency or other authority or arbitral or other forum wherever located.

13. The Releasing Parties release, forever discharge, and covenant not to sue the Released Parties from and for Claims as set forth in the Settlement Agreements.

14. This Order and Final Judgment does not settle or compromise any claims by Class Representatives or the Settlement Classes against the Defendants or other persons or entities other than the Released Parties, and all rights against any other Defendant or other person or entity are specifically reserved. The sales of Polyurethane Foam to members of the Settlement Classes by the Released Parties shall remain in these cases against the non-settling Defendants as

a basis for damage claims and shall be part of any joint and several liability claims against any non-settling Defendant or other person or entity other than the Released Parties.

Final Judgment

15. Pursuant to Fed. R. Civ. P. 54(b), the Court hereby directs the entry of final judgment of dismissal be entered as to the Released Parties.

Other Provisions

16. Without affecting the finality of this Order and Final Judgment, the Court retains exclusive jurisdiction over the Actions and the Settlement Agreement, including the administration, interpretation, consummation, and enforcement of the Settlement Agreement.

17. The escrow account established by certain of the parties, and into which Vitafoam has deposited the amounts required by the Vitafoam Settlement and into which it will deposit the remainder of the settlement amounts upon this Order, plus accrued interest thereon, is approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

DATED: _____

HON. JACK ZOUHARY
UNITED STATES DISTRICT JUDGE