

**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 CLASS ACTIONS ) |                           |
| _____ )                              |                           |

**MOTION AND MEMORANDUM IN SUPPORT FOR ORDER TO APPROVE  
DISTRIBUTION OF SETTLEMENT FUNDS TO CLASS MEMBERS AND PAYMENT  
OF ADMINISTRATIVE FEES AND EXPENSES FOR THE DIRECT PURCHASER  
SETTLEMENT CLASSES**

### **RELIMINARY STATEMENT**

The Direct Purchaser Class (“Plaintiffs” or the “Class”) respectfully requests that this Court enter the [Proposed] Order to Approve: (1) direct distribution of the Net Settlement Funds to Settlement Class Members in connection with the Settlement Agreement Between Direct Purchaser Class and Defendant Hickory Springs Manufacturing Company (the “Hickory Springs Settlement Agreement”) and the Settlement Agreement Between Direct Purchaser Class and Defendants Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., and Woodbridge Foam Fabricating, Inc. (the “Woodbridge Settlement Agreement”); (3) approve of GCG’s fees and expenses of \$ 175,754.71, invoiced since the last motion seeking approval of notice fees (Dkt. 1868), as set forth in Ex. A to the Declaration of Jacqueline Brasefield (“Brasefield Declaration”).

### **ARGUMENT**

On May 16, 2016, this Court approved the administrative determinations of the Claims Administrator Garden City Group, LLC (“GCG”) as to whether to accept or reject the claims submitted by the Class (including acceptance of various late Claim Forms), and resolution of all disputed and adjusted claim amounts in connection with all settlements in this case.<sup>1</sup> (Dkt. 2095).

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<sup>1</sup> In addition to the Hickory Springs Settlement and the Woodbridge Settlement, the settlements include the Settlement Agreement Between Direct Purchaser Class Plaintiffs and Defendant Leggett & Platt, Incorporated (the “L&P Settlement Agreement”); the Settlement Agreement Between Direct Purchaser Class and Defendants Carpenter Co., E.R. Carpenter, L.P., and Carpenter Holdings, Inc. (the “Carpenter Settlement Agreement”); the Settlement Agreement Between Direct Purchaser Class and Defendant FFP Holdings, LLC (f/k/a Flexible Foam Products, Inc.) (the “FFP Settlement Agreement”); the Settlement Agreement Between Direct Purchaser Class and Defendant Future Foam, Inc. (the “Future Foam Settlement Agreement”); the Settlement Agreement Between Direct Purchaser Class and Defendant Foamex Innovations, Inc. (the “FXI Settlement Agreement”); the Settlement Agreement Between Direct Purchaser Class and Defendant Mohawk Industries, Inc. (the “Mohawk Settlement Agreement”); and the Settlement Agreement Between Direct Purchaser Class and Defendants Vitafoam, Inc. and Vitafoam Products Canada Limited (“Vitafoam Agreement”).

This Court also approved direct distribution of Net Settlement Funds to Settlement Class Members of the Settlement Funds that had been paid through the date of the Class's May 9, 2016 Motion to Approve Distribution of Settlement Funds to Class Members and Payment of Notice Fees for the Direct Purchaser Settlement Classes ("First Distribution Motion") (Dkt. 2086), as well as GCG's fees and expenses that had been incurred through that same period. (Dkt. 2095). The amounts available as Net Settlement Funds were calculated by subtracting attorneys' fees, administrative fees and expenses incurred through that same period, and also future anticipated administrative fees and expenses. *E.g.* Dkt. 2086-2 (Castaneda Declaration at ¶¶36(a), 55(a)).

The Hickory Springs and Woodbridge Settlements provided for staggered payments over time. Specifically, the Hickory Springs Settlement provided for Hickory Springs to pay \$19,500,000, total, on the following schedule: \$3,000,000 around the time the Settlement Agreement was signed; \$2,500,000 within 10 days of Final Approval of the Settlement Agreement; \$7,000,000 on or before January 31, 2016; and \$7,000,000 on or before January 31, 2017. The Woodbridge Settlement provided that Woodbridge would pay \$50,000,000, total, on the following schedule: \$9,000,000 around the time of the settlement agreement; \$9,000,000 on or before November 15, 2015; \$14,000,000 on or before November 15, 2016; and \$18,000,000 on or before November 15, 2017. Dkt. 1699-1 at 3-4.

Accordingly, since this Court's May 16, 2016 approval of the distribution of the Net Settlement Funds pursuant to the First Distribution Motion, Hickory Springs and Woodbridge have respectively paid the \$7,000,000 and \$14,000,000 that were owed to date pursuant to the terms of their settlements. After accounting for attorneys' fees, \$5,600,160.03 is available for distribution to class members from the Hickory Springs Settlement and \$11,200,442.57 is available for distribution to class members from the Woodbridge Settlement. Brasfield Decl. ¶

7. The Class seeks approval to distribute these funds to Class Members as set forth in Exhibit B to the Brasefield Declaration.

Moreover, since this Court's May 16, 2016 Order, the claims administrator has incurred costs associated with administering all settlements in this litigation (see *supra* n.1). The Class and claims administrator anticipated that such costs would be incurred and, prior to the Spring 2016 distributions, set aside a portion of all settlements to address such costs, as noted above and as set forth in Lori Castaneda's May 2016 Declaration, which was attached to the Class' First Distribution Motion. Dkt. 2086-2 at ¶¶36(a), 55(a). Consistent with these anticipated future fees and expenses, GCG has incurred additional administrative fees and expenses through the date of this Motion in the amount of \$ 175,754.71 Brasefield Decl. ¶ 5, Ex. A. The amounts set aside prior to the Spring 2016 distributions are more than sufficient to reimburse the claims administrator for these administrative fees and expenses.

Accordingly, the Class seeks permission to approve distribution of Settlement Funds for payment of administrative costs and fees in the *pro rata* amounts of \$12,314.45 from the Leggett & Platt settlement fund; \$33,413.16 from the Carpenter settlement fund; \$28,319.90 from the FXI settlement fund; \$9,205.92 from the Hickory Springs settlement fund; \$46,250.64 from the Mohawk settlement fund; \$7,554.57 from the FFP settlement fund; \$15,096.15 from the Future Foam settlement fund; and \$23,599.92 from the Woodbridge settlement fund.

### **CONCLUSION**

For all the reasons set forth above, the Class respectfully requests that the Court approve Plaintiffs' request for direct distribution of the Net Settlement Funds and approve Plaintiffs' request for payments to the Claims Administrator for fees incurred to date.

DATED: March 2, 2017

/s/ William A. Isaacson  
William A. Isaacson  
BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015  
Phone: 202-237-5607  
Fax: 202-237-6131

/s/ Stephen R. Neuwirth  
Stephen R. Neuwirth  
QUINN EMANUEL URQUHART  
& SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Phone: 212-849-7165  
Fax: 212-849-7100

***Co-Lead Counsel for Direct Purchaser Class Plaintiffs***

**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2017, I served via the Court's Electronic Case Filing system, **MOTION AND MEMORANDUM IN SUPPORT FOR ORDER TO APPROVE DISTRIBUTION OF SETTLEMENT FUNDS TO CLASS MEMBERS AND PAYMENT OF ADMINISTRATIVE FEES AND EXPENSES FOR THE DIRECT PURCHASER SETTLEMENT CLASSES**, on all counsel of record.

/s/ Melissa Felder Zappala

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In re POLYURETHANE FOAM  
ANTITRUST LITIGATION

MDL Docket No. 2196

Index No. 10-MD-2196 (JZ)

**DECLARATION OF JACQUELINE BRASEFIELD REGARDING ADMINISTRATIVE  
FEES AND SECOND DISTRIBUTION TO ELIGIBLE CLASS MEMBERS**

I, JACQUELINE BRASEFIELD, declare as follows:

1. I am an Assistant Director, Operations at Garden City Group, LLC (“GCG”). The following statements are based on my personal knowledge and information provided by other experienced GCG employees working under my supervision, and, if called on to do so, I could and would testify competently thereto.

2. GCG is serving as the Claims Administrator in the above-captioned litigation (“Action”) in accordance with the terms of the Settlement Agreement Between Direct Purchaser Class Plaintiffs and Defendant Leggett & Platt, Incorporated (“Leggett & Platt”); the Settlement Agreement Between Direct Purchaser Class and Defendants Carpenter Co., E.R. Carpenter, L.P., and Carpenter Holdings, Inc. (“Carpenter”); the Settlement Agreement Between Direct Purchaser Class and Defendant FFP Holdings, LLC (f/k/a Flexible Foam Products, Inc.) (“FFP”); the Settlement Agreement Between Direct Purchaser Class and Defendant Future Foam, Inc. (“Future Foam”); the Settlement Agreement Between Direct Purchaser Class and Defendant Foamex Innovations, Inc. (“FXI”); the Settlement Agreement Between Direct Purchaser Class and Defendant Hickory Springs Manufacturing Company (“Hickory Springs”); the Settlement Agreement Between Direct Purchaser Class and Defendant Mohawk Industries, Inc.



(“Mohawk”); and the Settlement Agreement Between Direct Purchaser Class and Defendants Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., and Woodbridge Foam Fabricating, Inc. (“Woodbridge”).

3. GCG has completed the processing of all submitted claim forms related to the above referenced Settlements and issued the eligible Class Member payments in June 2016 relating to the funds received into the Settlement Accounts for Vitafoam, Carpenter, Leggett & Platt, FFP, FXI, Future Foam, Hickory Springs, Mohawk, and Woodbridge prior to June 2016. GCG submits this declaration to provide details regarding the incurred administrative fees and expenses relating to the administration of the Carpenter, Leggett & Platt, FFP, FXI, Future Foam, Hickory Springs, Mohawk, and Woodbridge Settlements. Additionally, GCG submits this declaration to provide details regarding the upcoming distribution of funds received into the Hickory Springs Qualified Settlement Fund and the Woodbridge Qualified Settlement Fund.

4. Previously, as noted in the Direct Purchaser Class’ May 9, 2016 Motion to Approve Distribution of Settlement Funds to Class Members and Payment of Notice Fees for the Direct Purchaser Settlement Classes (Dkt. 2086), GCG anticipated that a total estimated \$269,789.74 would be incurred in future administrative fees and expenses (Declaration of Lori L. Castaneda Regarding Settlement Administration, Dkt. 2086-2, at ¶¶35, 53). Prior to the June 2016 distribution, the \$269,789.74 in anticipated funds were held back to cover any fees and expenses incurred by GCG in its administration of the above-referenced Settlements.

5. The Court’s May 16, 2016 Order (Dkt. 2095) approved payment of incurred administration fees and expenses from the Carpenter, Leggett & Platt, FFP, FXI, Future Foam,



Hickory Springs, Mohawk, and Woodbridge Qualified Settlement Funds.<sup>1</sup> Between the dates of March 1, 2016 and January 31, 2017, GCG has since incurred an additional \$175,754.71 in fees and expenses:

- a. \$33,413.16 related to the administration of the Carpenter Settlement;
- b. \$12,314.45 related to the administration of the Leggett & Platt Settlement;
- c. \$7,554.57 related to the administration of the FFP Settlement;
- d. \$28,319.90 related to the administration of the FXI Settlement;
- e. \$15,096.15 related to the administration of the Future Foam Settlement;
- f. \$9,205.92 related to the administration of the Hickory Springs Settlement;
- g. \$46,250.64 related to the administration of the Mohawk Settlement; and
- h. \$23,599.92 related to the administration of the Woodbridge Settlement.

These incurred fees and expenses are a result of the distribution of funds made in June 2016, Class Member inquiries, check reissue requests, and various Settlements' account maintenance. GCG's outstanding invoices are attached hereto as Exhibit A.

6. Between November 2016 and January 2017, the Qualified Settlement Funds for Hickory Springs and Woodbridge have received additional funds in the following manner:

- a. On or about November 15, 2016, \$14 million was received into the Woodbridge Qualified Settlement Fund; and
- b. On or about January 31, 2017, \$7 million was received into the Hickory Springs Qualified Settlement Fund.

7. GCG has received a total of \$21 million into the Woodbridge and Hickory Springs Settlement Accounts from November 2016 through January 2017. GCG has since distributed

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<sup>1</sup> Previously supplied administrative fees and expenses related to the Carpenter, Leggett & Platt, FFP, FXI, Future Foam, Hickory Springs, Mohawk, and Woodbridge Settlements were incurred between the dates of December 1, 2015 and February 29, 2016.

\$1.4 million of the Hickory Springs Settlement funds and \$2.8 million of the Woodbridge Settlement Funds, representing the 20 percent fee award granted by the Court in its Memorandum Opinion and Order re Settlement Motion (Dkt. 1971). After deduction of administrative fees and costs and attorneys' fees, GCG anticipates that \$5,600,160.03 is available for distribution to eligible Class Members from the Hickory Springs Qualified Settlement Fund and \$11,200,442.57 is available for distribution to eligible Class Members from the Woodbridge Qualified Settlement Fund.<sup>2</sup> A distribution chart of the estimated *pro rata* monetary awards available for each eligible Class Member from the Hickory Springs and Woodbridge Settlements is attached hereto as Exhibit B.<sup>3</sup>

8. On approval of the court, GCG will distribute available funds from the Hickory Springs and Woodbridge Settlements to eligible Class Members.

Executed on March 1, 2017 at Seattle, Washington.

  
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JACQUELINE BRASEFIELD

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<sup>2</sup> These numbers are inclusive of interest gained on the Qualified Settlement Accounts since the June 2016 distribution.

<sup>3</sup> Eligible Class Member's estimated award amounts were determined by (1) dividing the Hickory Springs and Woodbridge Settlement Funds by the total dollar amount of valid claimed purchases of Flexible Polyurethane Foam from participating Class Members during the Class Period, then (2) multiplying the resulting fraction by the amount of each participating Class Member's eligible valid claimed purchases of Flexible Polyurethane Foam.

# Exhibit A



# INVOICE

| INVOICE DATE | INVOICE NUMBER |
|--------------|----------------|
| 2/15/2017    | 00000          |
| PERIOD START | THROUGH DATE   |
| 10/1/2016    | 1/31/2017      |

Stephen R. Neuwirth, Esq.  
 Quinn Emanuel Urquhart & Sullivan, LLP  
 51 Madison Avenue, 22nd Floor  
 New York, NY 10010

**Project Name: PolyFoam (Mohawk, Future Foam, FFP, Woodbridge, FXI, Hickory Springs)**

| Description   |  |  | Amount             |
|---|--|--|--------------------|
| <b>Fees</b>   |  |  |                    |
| <b>Notice Dissemination</b>                                     |  |  |                    |
| Enter name and address records into database (hard copy)        |  |  | \$2.25             |
| <b>Imaging, Document Management &amp; Storage</b>               |  |  |                    |
| Sort Mail   |  |  | \$10.35            |
| Prep Mail   |  |  | \$60.50            |
| Scan Mail (per img.)  |  |  | \$6.84             |
| Process undeliverables  |  |  | \$1.00             |
| Document Storage - Paper (per box/per month)                    |  |  | \$88.50            |
| <b>Claim Validation</b>   |  |  |                    |
| Additional processing for non-conforming claims                 |  |  | \$45.00            |
| <b>Contact Services</b>   |  |  |                    |
| IVR (per minute)  |  |  | \$151.68           |
| CSR/Live Operator including transcriptions of recorded messages |  |  | \$552.90           |
| Management of call center                                       |  |  | \$64.00            |
| Handling of class member communications                         |  |  | \$2,724.00         |
| <b>Distribution Services</b>                                    |  |  |                    |
| Check reissues  |  |  | \$23.40            |
| Handling undeliverable checks                                   |  |  | \$2.25             |
| <b>Project Management</b>                                       |  |  |                    |
|   |  |  | \$6,066.00         |
| <b>Systems Support</b>  |  |  |                    |
|   |  |  | \$160.00           |
| <b>Quality Assurance</b>  |  |  |                    |
|   |  |  | \$160.00           |
| <b>Total Fees</b>   |  |  | <b>\$10,118.67</b> |
| <b>Total Project Expenses (See Exhibit A)</b>                   |  |  | <b>\$2,033.54</b>  |
| <b>Sub Total</b>  |  |  | <b>\$12,152.21</b> |
| Less Credit for Previously Billed Media Charges                 |  |  | (\$9,399.99)       |
| <b>Sub Total</b>  |  |  | <b>\$2,752.22</b>  |



# INVOICE

| Project Name: PolyFoam (Mohawk, Future Foam, FFP, Woodbridge, FXI, Hickory Springs) |  |  |                     |
|---|--|--|---------------------|
| Description   |  |  | Amount              |
| <b>Fees</b>   |  |  |                     |
| Outstanding Balance Prior Invoice   |  |  | \$76,880.05         |
| Outstanding Balance Prior Invoice   |  |  | \$27,195.44         |
| Outstanding Balance Prior Invoice   |  |  | \$8,462.45          |
| Outstanding Balance Prior Invoice   |  |  | \$9,873.98          |
| Outstanding Balance Prior Invoice   |  |  | \$4,862.96          |
| <b>Grand Total</b>  |  |  | <b>\$130,027.10</b> |

### Outstanding

|                            |        |             |
|----------------------------|--------|-------------|
| FXI Settlement             | 21.78% | \$28,319.90 |
| Hickory Springs Settlement | 7.08%  | \$9,205.92  |
| Mohawk Settlement          | 35.57% | \$46,250.64 |
| FFP Settlement             | 5.81%  | \$7,554.57  |
| Future Foam Settlement     | 11.61% | \$15,096.15 |
| Woodbridge Settlement      | 18.15% | \$23,599.92 |

**EXHIBIT A**

| <b>Project Name: PolyFoam (Mohawk, Future Foam, FFP, Woodbridge, FXI, Hickory Springs)</b> |                   |
|--|-------------------|
| Description  | Amount            |
| <b><u>Project Expenses</u></b>   |                   |
| For the period: Oct 01, 2016 through Jan 31, 2017  |                   |
| Tax Consulting   | \$1,365.00        |
| Postage  | \$5.58            |
| FedEx, Messenger & Shipping  | \$22.86           |
| P. O. Box Rental/Renewal   | \$640.00          |
| Copy Charges   | \$0.10            |
| <b>Total</b>   | <b>\$2,033.54</b> |

**Please Remit To :**

Garden City Group, LLC  
 1985 Marcus Avenue, Suite 200  
 Lake Success, NY 11042

-Or-

Garden City Group, LLC  
 Operating A/C  
 Signature Bank  
 1225 Franklin Avenue  
 Garden City, NY 11530



# INVOICE

| INVOICE DATE | INVOICE NUMBER |
|--------------|----------------|
| 2/15/2017    | 00000          |
| PERIOD START | THROUGH DATE   |
| 12/1/2016    | 1/31/2017      |

Stephen R. Neuwirth, Esq.  
 Quinn Emanuel Urquhart & Sullivan, LLP  
 51 Madison Avenue, 22nd Floor  
 New York, NY 10010

| Project Name: Polyurethane Foam Antitrust (L&P and Carpenter Settlements/Class Certification) |  |  |                    |
|---|--|--|--------------------|
| Description   |  |  | Amount             |
| <b>Fees</b>   |  |  |                    |
| <b>Notice Dissemination</b>   |  |  |                    |
| Enter name and address records into database (hard copy)                                      |  |  | \$0.45             |
| <b>Imaging, Document Management &amp; Storage</b>   |  |  |                    |
| Sort Mail   |  |  | \$0.45             |
| Prep Mail   |  |  | \$5.50             |
| Scan Mail (per img.)  |  |  | \$0.36             |
| Document Storage - Paper (per box/per month)  |  |  | \$28.50            |
| <b>Contact Services</b>   |  |  |                    |
| Handling of class member communications   |  |  | \$639.30           |
| <b>Distribution Services</b>  |  |  |                    |
| Check reissues  |  |  | \$5.85             |
| <b>Project Management</b>   |  |  |                    |
|   |  |  | \$547.00           |
| <b>Quality Assurance</b>  |  |  |                    |
|   |  |  | \$60.00            |
| <b>Total Fees</b>   |  |  | <b>\$1,287.41</b>  |
| <b>Total Project Expenses (See Exhibit A)</b>   |  |  | <b>\$301.60</b>    |
| <b>Sub Total</b>  |  |  | <b>\$1,589.01</b>  |
| Outstanding Balance Prior Invoice   |  |  | \$16,227.24        |
| Outstanding Balance Prior Invoice   |  |  | \$14,251.64        |
| Outstanding Balance Prior Invoice   |  |  | \$4,905.98         |
| Outstanding Balance Prior Invoice   |  |  | \$4,068.91         |
| Outstanding Balance Prior Invoice   |  |  | \$2,828.13         |
| Outstanding Balance Prior Invoice   |  |  | \$1,856.70         |
| <b>Grand Total</b>  |  |  | <b>\$45,727.61</b> |
| Carpenter Settlement – 73.07%   |  |  | \$33,413.16        |
| Leggett Settlement – 26.93%   |  |  | \$12,314.45        |



**EXHIBIT A**

| <b>Project Name: Polyurethane Foam Antitrust (L&amp;P and Carpenter Settlements/Class Certification)</b> |                 |
|--|-----------------|
| Description  | Amount          |
| <b><u>Project Expenses</u></b>   |                 |
| For the period: Dec 01, 2016 through Jan 31, 2017  |                 |
| Tax Consulting   | \$280.00        |
| Postage  | \$19.34         |
| Stationery & Supplies  | \$2.26          |
| <b>Total</b>   | <b>\$301.60</b> |

| Please Remit To :  |      |
|--|------|
| Garden City Group, LLC<br>1985 Marcus Avenue, Suite 200<br>Lake Success, NY 11042                          | -Or- |
| Garden City Group, LLC<br>Operating A/C<br>Signature Bank<br>1225 Franklin Avenue<br>Garden City, NY 11530 |      |

## Exhibit B

Filed Under Seal Pursuant to Protective Order



the FFP settlement fund; \$15,096.15 from the Future Foam settlement fund; and \$23,599.92 from the Woodbridge settlement fund.

SO ORDERED.

BY THE COURT:

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JACK ZOUHARY, J.