

FINAL REPORT OF REPRESENTATIVE COUNSEL ON SETTLEMENT ADMINISTRATION

DEFINITIONS

1. The definitions from the Amended and Restated Minutes of Settlement (“ARMS”) apply in this report. The applicable definitions are attached as Appendix “A”.

BACKGROUND INFORMATION

2. On April 2, 2001, Grace filed voluntary petitions for protection in the U.S. Court, under Chapter 11 of the United States Bankruptcy Code (“the U.S. Proceedings”), and was granted a temporary restraining order by the U.S. Court providing certain injunctive relief in favour of Grace as well as certain other third parties (the “Affiliated Entities”).
3. On April 4, 2001, Grace Canada was granted an order (the “Initial Order”) pursuant to Section 18.6(4) of the Companies’ Creditors Arrangement Act in the CCAA Court which, among other things, provided for a stay of proceedings prohibiting the commencement or continuation of any asbestos-related suits.
4. On November 14, 2005 as a result of a number of proposed class action proceedings (the “Proposed Class Actions”) commenced in Canada against Grace and other third parties including the Crown, the CCAA Court granted an order recognizing the injunctive relief provided in the U.S. Proceedings, giving effect to it in Canada and implementing a limited stay of proceedings with respect to the Crown.

5. Grace, Grace Canada and other parties were variously named as defendants in Canadian actions listed in Appendix B to the ARMS. The plaintiffs sought damages for CDN ZAI Claims.
6. Pursuant to an order of the CCAA Court dated November 15, 2005, a Modified Preliminary Injunction granted by the U.S. Court was recognized in Canada and the Proposed Class Actions were stayed.
7. Pursuant to the order of Farley J., dated February 8, 2006, Scarfone Hawkins LLP and Lauzon Belanger were appointed Representative Counsel on behalf of all persons who have, or at any time in the future may have a claim, arising out of or in any way connected to damages or loss suffered, directly or indirectly, from the manufacture, sale or distribution of ZAI products in Canada (“Canadian Claimants”) by Grace, Grace Canada and certain other Affiliated Entities (as defined in the order of the U.S. Court made on January 22, 2002, as amended).

The Canadian ZAI Settlement

8. On September 2, 2008, Grace, Grace Canada and Representative Counsel entered into the Original Settlement. The Original Settlement was approved by the CCAA Court on October 17, 2008. It became null and void when the U.S. Court failed to issue the U.S. Confirmation Order by October 31, 2009.

The Amended Canadian ZAI Settlement (“ARMS”)

9. On November 16, 2009, Grace, Grace Canada and Representative Counsel signed the ARMS.
10. On December 13, 2009, the CCAA Court approved the ARMS over objections from the Crown. Leave to appeal the approval was denied by the Ontario Court of Appeal.
11. Paragraph 20 of the ARMS provides that the settlement would be null and void in the event the U.S. Confirmation Order was not entered on or before December 31, 2010 (the “Deadline”).
12. The Deadline was extended by mutual agreement as set forth in amendments to the ARMS.

The Plan

13. Grace filed the First Amended Joint Plan (“Plan”) on February 27, 2009.
14. On January 31, 2011, the U.S. Court granted an order confirming the Plan (the “U.S. Confirmation Order”).
15. The Plan provides that for it to be effective, the U.S. Confirmation Order must be recognized by the CCAA Court with no appeals outstanding (the “Canadian Order”). On April 8, 2011, the CCAA Court granted the Canadian Order.
16. After the U.S. Confirmation Order, there were a number of appeals and motions for reconsideration, re-hearing, amendments and stays brought in various levels of court in the U.S.

17. The dismissal of the last appeal remaining in the Third Circuit Court was docketed on February 3, 2014. The Third Circuit Court dismissed the final appeal. All conditions required to be met for the Plan to be effective, were fulfilled on February 3, 2014 (the “Effective Date”).

AMENDMENTS TO THE ARMS

18. By application to the Court in April 2016, Representative Counsel and the Claims Administrator proposed amendments to the ARMS. Attached at Tab A is the Report of Representative Counsel on Requested Further Amendments to ARMS. By Order dated April 22, 2016, Mr. Justice Morawetz granted the request of Representative Counsel and the Claims Administrator approving the amendments to the ARMS. Attached at Tab B is a copy of the Order of Mr. Justice Morawetz dated April 22, 2016, together with the ARMS.

CLAIMS ADMINISTRATION

19. Collectiva Class Action Services Inc., as Claims Administrator, carried out and substantially completed its distribution of compensation under the ARMS in 2016. The Claims Administrator paid out and distributed settlement funds of \$5,089,187.63 to 6,922 claimants. Attached at Tab C is a copy of the Final Report of the Claims Administrator dated March 13, 2018.
20. However, after a six-month period, any cheques which were not cashed became stale-dated. The Claims Administrator carried out searches of claimants who had not cashed their cheques and whose cheques were stale-dated. The Claims Administrator was able to locate,

distribute and pay-out an additional \$201,521.90 to claimants, leaving a remaining Settlement Fund of \$178,478.10.

21. Representative Counsel and the Claims Administrator have determined that given the passage of time, the limited information contained in the 2008 database, the unlikelihood of locating any additional individual claimants and the wasted time and expense to do so, Representative Counsel and the Claims Administrator propose that the remainder of \$178,478.10 be donated to charitable organizations.

PROPOSED DONATION OF REMAINING SETTLEMENT FUNDS TO CHARITIES

22. Paragraph 26(b) of the ARMS provides that;

“If the Fund is not exhausted after the administration of the Canadian ZAI PD Claims Procedure is complete, such funds shall be used for such charitable or education purposes as the Claims Administrator, in consultation with CCAA Representative Counsel deems appropriate.”


23. Representative Counsel and the Claims Administrator propose to donate one-quarter of the remainder of settlement funds in the amount of \$44,619.53 each to four charities as follows:
 - a. Princess Margaret Cancer Centre’s Mesothelioma Program. Attached as Tab D is an overview of the program;
 - b. Canadian Mesothelioma Foundation. Attached as Tab E is an overview of Canadian Mesothelioma Foundation;
 - c. Nature Québec. Attached as Tab F is an overview of Nature Québec; and,
 - d. Québec Environmental Law Centre. Attached as Tab G is an overview of Québec Environmental Law Centre.

24. Representative Counsel and the Claims Administrator request the Court's approval for distribution as proposed.

FINAL REPORT

25. This is the Final Report to the Court following completion of payment of compensation to claimants, pursuant to paragraphs 25 and 26 of the ARMS.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of July, 2018.



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APPENDIX "A"

DEFINED TERMS

"Canadian Settlement Approval" means the Order of the CCAA Court of October 17, 2008 as described in paragraph 6;

"CCAA Court" means the Ontario Superior Court of Justice;

"CCAA Representative Counsel" means Lauzon Belanger S.E.N.C.R.L. and Scarfone Hawkins LLP in their capacity as representative counsel to the Canadian ZAI Claimants pursuant to an Order of the CCAA Court made on February 8, 2006;

"CDN ZAI PD Claims" means claims arising out of or in any way connected to property damages arising, directly or indirectly, from the manufacture, sale or distribution of ZAI in Canada as more particularly defined in the First Amended Joint Plan and includes, without limitation all past, present and future claims against the Grace Parties described in or arising from the Actions, including any ZAI PD Claims asserted or to be asserted by the Crown;

"CDN ZAI PD Claims Fund" or the **"Fund"** means the fund to be established for the administration, adjudication and distribution of funds with respect to CDN ZAI PD Claims;

"CDN ZAI PD Claims Procedure" means procedures established by the Claims Administrator and the CCAA Representative Counsel for the Fund to review, administer, adjudicate and pay Allowed CDN ZAI PD Claims as appropriate;

"Claims Administrator" means a person appointed by CCAA Representative Counsel and approved by the U.S. Court to administer the Fund in accordance with this Settlement and any subsequent Fund administration agreement or other related document;

"Crown" means the Attorney General of Canada (Her Majesty the Queen in Right of Canada);

“First Amended Joint Plan” means Grace’s First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code filed in Grace's Chapter 11 cases or any subsequent version thereof;

“Grace” means W. R. Grace & Co. and its 61 U.S. subsidiaries filed under the Chapter 11 cases;

“Grace Canada” means Grace Canada, Inc.;

“Modified Preliminary Injunction” means the Order granted to Grace on January 22, 2002, that provided injunctive relief to affiliated entities;

“Original Settlement” means the minutes of settlement between the Parties dated September 2, 2008.

“U.S. Confirmation Order” means the Confirmation Order as defined in the First Amended Joint Plan.

“U.S. Court” means the United States Bankruptcy Court for the District of Delaware;

“ZAI” means Zonolite Attic Insulation, which is loose-fill, non-roll vermiculite home attic insulation, which may contain naturally occurring asbestos manufactured and sold by the Grace Parties and installed in homes and buildings that are located in Canada.