

## **INFORMATION REGARDING ZONOLITE ATTIC INSULATION LAWSUITS AND POSSIBLE CLAIMS**

This information notice is intended to inform possible claimants generally of recent developments concerning Zonolite Attic Insulation ("ZAI") litigation issues in Canada and the legal options available to you.

In 2005, Lauzon Bélanger Inc., the Merchant Law Group<sup>LLP</sup> and Aikins, MacAulay & Thorvaldson<sup>LLP</sup>, commenced various proposed class action proceedings throughout Canada. In those proposed class proceedings, legal claims were alleged against W.R. Grace & Co., Grace Canada Inc., (the "Grace Companies") and the Government of Canada ("the Crown"), in connection with the presence of and/or exposure to ZAI.

Given a significant number of asbestos-related legal actions in the United States, the Grace Companies had sought and obtained Court protection under Chapter 11 bankruptcy proceedings in the United States. An ancillary proceeding under the *Companies' Creditors Arrangement Act* ("CCAA") extended the bankruptcy protection to the Grace Companies in Canada. Accordingly, all legal proceedings arising from asbestos claims were stayed in favour of resolution under the Chapter 11 and CCAA proceedings.

On February 8, 2006, Scarfone Hawkins<sup>LLP</sup> and Lauzon Bélanger Inc. were appointed Representative Counsel by the CCAA Court on behalf of all Canadian ZAI claimants in respect of all legal claims against the Grace Companies and the Crown in connection with ZAI, ("Representative Counsel").

Representative Counsel have worked in cooperation with the Merchant Law Group<sup>LLP</sup> and Aikins, MacAulay & Thorvaldson<sup>LLP</sup> ("Plaintiffs' Counsel"), pursuant to a co-counsel arrangement.

Various legal proceedings took place as well as a scientific hearing held in the U.S. attempting to resolve issues with respect to ZAI and the potential liability of the Grace Companies.

On December 14, 2006, a Memorandum Opinion issued by Judge Fitzgerald of the United States Bankruptcy Court ruled that ZAI did not present an unreasonable risk of harm when left undisturbed in homes. In concluding her Memorandum Opinion, Judge Fitzgerald scheduled a status conference to discuss the form of an order regarding disposition of proofs of claim that may be dismissed based upon her findings and questioned what, if any, claims may still remain in respect of ZAI.

Judge Fitzgerald's Memorandum Opinion created a significant impediment with respect to prosecution of legal claims against the Grace Companies. The Grace Companies maintained that, based upon Judge Fitzgerald's Memorandum Opinion, the Grace Companies had no liability whatsoever in respect of ZAI property damage claims.

Given the bankruptcy protection granted to the Grace Companies in Canada and the U.S. and the difficulty in proving that ZAI creates an unreasonable risk of harm, Representative Counsel have agreed to a proposed settlement which includes a notice and claims program.

The circumstances of this case are such that settlement is warranted given the uncertainties associated with further prosecution of the legal actions.

### **NOTICE OF HEARING**

The proposed settlement reached is subject to Court approval in Canada.

The Court will decide whether or not to approve the settlement and a hearing in that regard is scheduled for **September 30, 2008** in the CCAA proceeding before the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) at 10:00 a.m. at 330 University Avenue, Toronto.

If you wish to make representations at the hearing, you need to make arrangements to provide your submissions to the Court either in writing, in person, or by retaining your own lawyer to represent you.

As Representative Counsel, we have endorsed the settlement and, along with Plaintiffs' Counsel, will be requesting the Court to approve it.

The Canadian Zonolite Attic Insulation Minutes of Settlement ("CDN ZAI Minutes of Settlement") are available for review at [www.lauzonbelanger.qc.ca](http://www.lauzonbelanger.qc.ca).

Court documents regarding the hearing have been served upon us by the lawyers for the Grace Companies. Those documents are also available for review at [www.classactionlaw.ca](http://www.classactionlaw.ca).

This correspondence will be the only notice you receive concerning the hearing.

### **THE SETTLEMENT**

The settlement reached contemplates a settlement of all Canadian ZAI claims, both property damage and personal injury, on the following terms:

- (a) Grace shall create a Canadian ZAI Property Damage ("PD") claims fund which shall be administered by a claims administrator;
- (b) Grace will contribute \$6,500,000.00 to the Canadian ZAI PD claims fund. Those funds will be further distributed as follows:
  - (i) up to \$150,000.00 to a qualified expert to provide expert and consulting services to assist in establishing procedures for the identification of ZAI,

remedial measures that might be undertaken by a ZAI PD claimant and the development of the Canadian ZAI PD claims procedure;

- (ii) up to \$850,000.00 to a claims administrator for the purposes of administering the Canadian ZAI PD claims procedure and the fund;
  - (iii) \$2,000,000.00 to Representative Counsel in respect of legal fees and disbursements;
  - (iv) a further \$250,000.00 to CCAA Representative Counsel in respect of future legal fees and disbursements incurred for the purposes of carrying out their duties in respect of the Canadian ZAI PD claims notice program and the Canadian ZAI PD claims procedure;
  - (v) the remainder of the fund to be distributed to Canadian ZAI PD claimants pursuant to Allowed Canadian ZAI PD claims.
- (c) Canadian ZAI Personal Injury ("PI") claimants shall be entitled to file claims against the asbestos personal injury trust to be created as part of Grace's plan of reorganization in the United States bankruptcy proceedings;
- (d) a broad-based media notice program has been established to provide notice to affected homeowners with respect to the settlement. The notice program must be approved by the U.S. Court and a hearing has been scheduled to proceed in that regard on **October 20, 2008**;
- (e) monies will be distributed out of the Canadian ZAI PD claims fund based on the ability of a claimant to prove that his or her property contained ZAI and that monies were spent to contain or remove ZAI from the property. A claimant may recover up to \$300.00 or \$600.00 per property depending on the circumstances.

Over the past 3 years, Representative Counsel and Plaintiffs' Counsel have spent a significant amount of time and expense attempting to prosecute Canadian ZAI claims. Representative Counsel and Plaintiffs' Counsel have also paid out more than \$350,000.00 to U.S. lawyers acting as our agents in the U.S. bankruptcy proceedings.

The terms of the settlement provide a complete bar and extinguishment of all Canadian ZAI claims against the Grace Companies.

For greater certainty, if the proposed settlement receives a court approval in Canada, Canadian ZAI PI claims against the Grace Companies may only be advanced against the U.S. asbestos trust. Canadian ZAI PD claims against the Grace Companies may only be advanced against the Canadian ZAI PD claims fund.

Certain ZAI claims might continue against the Crown.

You may wish to retain your own independent lawyer for purposes of obtaining advice regarding the proposed settlement and how it affects you/your family.

We are unable to give you independent legal advice on these issues.

If the proposed settlement receives court approval in Canada, it provides that, any and all individual claims against the Grace Companies will be barred and extinguished except only those claims against the Grace Companies that may be advanced against the asbestos trust and Canadian ZAI PD claims fund.

This correspondence is not intended to provide you with specific legal advice but general information only. This correspondence is being sent to many potential claimants.

For legal advice specific to your situation, you need to take steps to inform yourself as to your options including possibly retaining your own independent counsel.

**LAUZON BÉLANGER INC.**

Michel Bélanger  
Careen Hannouche

**SCARFONE HAWKINS <sup>LLP</sup>**

David Thompson  
Matthew G. Moloci