



**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MR. JUSTICE R. RAIKES)

16th
Wednesday THE DAY
OF June , 2021

B E T W E E N :

JOHN DEVRIES

Plaintiff

-and-

ESPAR INC.; ESPAR PRODUCTS INC.; EBERSPAECHER CLIMATE CONTROL SYSTEMS
INTERNATIONAL BETEILIGUNGS-GMBH; EBERSPAECHER CLIMATE CONTROL
SYSTEMS GMBH & CO. KG (FORMERLY KNOWN AS J. EBERSPAECHER GMBH AND CO.
KG); EBERSPAECHER GRUPPE GMBH AND CO. KG; WEBASTO THERMO AND COMFORT
NORTH AMERICA INC.; ~~MARINE CANADA ACQUISITION INC. (O/A SEASTAR
SOLUTIONS)~~; VOLKER HOHENSEE; WEBASTO SE; and WEBASTO
THERMO & COMFORT SE

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

**ORDER
(Motion for Settlement Approval – Hohensee Settlement)**

THIS MOTION made by the Plaintiff for an Order approving the settlement agreement entered into with Volker Hohensee (the “Settling Defendant”) and dismissing this action as against the Settling Defendant, was heard this day at the Court House, 80 Dundas Street, London, Ontario.

AND ON READING the materials filed, including the settlement agreement dated December 6, 2017, attached to this Order as **Schedule “A”** and the Amending Letter Agreement dated October 20, 2020, attached to this Order as **Schedule “B”** (collectively, the “Settlement Agreement”), and on hearing the submissions of Class Counsel, counsel for the Settling Defendant and counsel for the Non-Settling Defendants in the Action;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no objections to the Settlement Agreement;

AND ON BEING ADVISED that the deadline for opting-out of the Action has passed, and there were no opt-outs;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant consent to this Order and that the Non-Settling Defendants take no position on this motion:

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
4. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of *Rules 7.04(1)* and *7.08(4)* of the *Rules of Civil Procedure* are dispensed with in respect of the Action.
5. **THIS COURT ORDERS** that, upon the Effective Date, subject to paragraph 7, each Releasor who has not validly opted-out of this Action has released and shall be conclusively deemed to have forever and absolutely released the Releasee from the Released Claims.
6. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor who has not validly opted-out of this Action shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against the Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from the Releasee, in respect of any Released Claims except for the continuation of the Action against the Non-Settling Defendants or unnamed alleged co-conspirators that are not Releasees.

7. **THIS COURT ORDERS** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasee in respect of or in relation to the Released Claims.
9. **THIS COURT ORDERS** that the Settlement, the Released Claims and this settlement approval Order do not grant any release with respect to Claims that the Releasers may have against the Non-Settling Defendants as a result of the Releasee’s Conduct, including, without limitation, any Claims that have been made or could have been made in the ongoing Hohensee Litigation, which are specifically and deliberately unaffected by the Settlement Agreement.
10. **THIS COURT ORDERS** that nothing in this Order is intended to or shall limit, restrict or affect any argument which the Parties may make regarding the assessment of damages (including punitive damages, if any), any restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) or judgment against the Non-Settling Defendants in favour of the Settlement Class Members in the Action or the rights of the Plaintiff and Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.
11. **THIS COURT ORDERS** that a Non-Settling Defendant may, for the following purposes, treat the Settling Defendant as a Party to the Action, and on at least sixty (60) days’ notice to counsel for the Settling Defendant, a Non-Settling Defendant may:
 - (a) compel the Settling Defendant to produce an affidavit of documents in accordance with the *Rules of Civil Procedure*;
 - (b) compel the Settling Defendant to submit to an examination for discovery by video-conference in accordance with the *Rules of Civil Procedure*, the transcript of which may be read in at trial by the Non-Settling Defendant;

- (c) serve a request to admit on the Settling Defendant in respect of factual matters;
and
 - (d) compel the production of the Settling Defendant to testify at trial, by video-conference unless otherwise ordered by the court, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
12. **THIS COURT ORDERS** that this Settlement Agreement does not settle, compromise, release, limit or affect in any way whatsoever any rights or claims by parties in the Hohensee Litigation.
 13. **THIS COURT ORDERS** that the approval of the Settlement Agreement and this Order, and any reasons given by the Court in connection with the approval of the Settlement Agreement or this Order are without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Action and, without restricting the generality of the foregoing, may not be relied upon by any Person to establish the existence or elements of the causes of action asserted in the Action, as against the Non-Settling Defendants.
 14. **THIS COURT ORDERS** that for purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.
 15. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Releasor has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.
 16. **THIS COURT ORDERS** that the Releasees shall not have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement.
 17. **THIS COURT ORDERS** that subject to paragraph 14 of this order the Action is hereby dismissed as against the Settling Defendant, without costs and with prejudice.

18. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.

Date: June 16, 2021



The Honourable Mr. Justice Raikes

JOHN DEVRIES
Plaintiff

v.

ESPAR INC., ET AL.
Defendants

Court File No. 534/15 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT LONDON

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER
(Motion for Settlement Approval – Hohensee
Settlement)**

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