

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF VALLE FOAM INDUSTRIES (1995) INC.,  
DOMFOAM INTERNATIONAL INC., AND  
A-Z SPONGE & FOAM PRODUCTS LTD.**

**APPLICANTS**

**FIRST REPORT OF THE MONITOR  
DATED JANUARY 25, 2012**

January 25, 2012

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Lawyers for the Monitor, Deloitte & Touche Inc.

## INDEX

### EXHIBIT

### DOCUMENT

1. First Report of the Monitor dated January 25, 2012
  - A. Initial Order dated January 12, 2012
  - B. Initial Notice of the CCAA Proceeding dated January 17, 2012
  - C. Conditions of Sale
  - D. Form of Offer

# TAB 1

ONTARIO  
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IN THE MATTER OF THE *COMPANIES' CREDITORS*  
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FIRST REPORT OF THE MONITOR  
DATED JANUARY 25, 2012

**INTRODUCTION**

1. By Order of the Court dated January 12, 2012 (the "**Initial Order**"), Valle Foam Industries (1995) Inc. ("**Valle Foam**"), Domfoam International Inc. ("**Domfoam**") and A-Z Sponge & Foam Products Ltd. ("**A-Z Foam**") (collectively, the "**Applicants**" or the "**Companies**"), obtained protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The CCAA proceeding with respect to the Applicants is referred to herein as the "**CCAA Proceeding**".
2. Pursuant to the Initial Order, Deloitte & Touche Inc. ("**Deloitte**") was appointed monitor of the Applicants as part of the CCAA Proceeding (the "**Monitor**"). Pursuant to the Initial Order, all proceedings against the Applicants have been stayed until February 10, 2012, or until such later date as this Court may order. A copy of the Initial Order is attached hereto as Exhibit "A".

3. The Initial Order together with related Court documents and the Notice to Creditors dated January 19, 2012 have been posted on the Monitor's website at [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam) (the "Monitor's Website"). The Monitor has also established a toll free number at 1-855-601-6415 and a dedicated e-mail address at [vallefoam@deloitte.ca](mailto:vallefoam@deloitte.ca) for creditors and other interested parties to contact the Monitor with questions or concerns regarding the CCAA Proceeding.
4. On January 23, 2012, the Monitor in its capacity as foreign representative of the Companies in the CCAA Proceeding, filed with the United States Bankruptcy Court, Northern District of Ohio (Western Division) a petition for recognition of the CCAA Proceeding as a foreign main proceeding pursuant to Chapter 15 of the *U.S. Bankruptcy Code*. A hearing with respect to the foregoing petition is scheduled for January 25, 2012.
5. The purpose of this report (the "First Report") is to provide the Court with the Monitor's recommendation with respect to the Companies' motion seeking approval of the sale process (the "Sale Process") to be conducted with respect to the Companies' assets described in more detail below.

#### TERMS OF REFERENCE

6. In preparing the First Report, the Monitor has relied upon unaudited financial information, the Company's books and records, the financial information prepared by the Company, and discussions with management ("Management") and legal counsel of the Companies. The Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in the First Report.
7. Certain of the information referred to in the First Report consists of forecasts and/or projections. An examination or review of financial forecasts and projections, as outlined in the Canadian Institute of Chartered Accountants Handbook, has not been performed. Future oriented financial information referred to in the First Report was prepared by the Company based on Management's estimates and assumptions. Readers are cautioned that since forecasts and projections are based upon assumptions about future events and

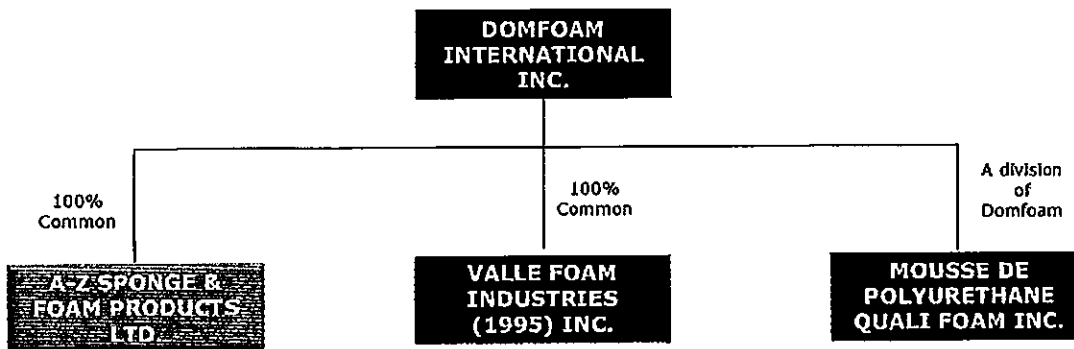
conditions that are not ascertainable, actual results will vary from the forecasts and projections and, even if the assumptions materialize, the variations could be significant.

8. Unless otherwise stated, all dollar amounts contained in this First Report are expressed in Canadian dollars.
9. Capitalized terms not otherwise defined in this First Report are as defined in the Initial Order.

## **BACKGROUND**

10. The Companies operate together as one of Canada's leading and largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. The operations of Valle Foam and Domfoam have historically comprised substantially all of the Companies' operations.
11. Domfoam was founded by Saul Pomerantz in 1963 in Montreal, Quebec. Domfoam is a manufacturer and distributor of flexible polyurethane foam products, principally for the furniture, bedding, floor covering and packaging industries throughout Canada and selected regions of the United States.
12. In 1994, Domfoam purchased Valle Foam, a company established in Toronto, in 1986 by Tony Vallecoccia. Valle Foam is also a manufacturer and distributor of polyurethane foam products. The purpose of the acquisition was to increase the overall capacity of Domfoam and to streamline distribution channels.
13. In 1999, Domfoam purchased A-Z Foam in Delta, British Columbia to expand into the Western Canadian market.
14. In 2000, Domfoam purchased Mousse de Polyurethane Quali Foam Inc. ("**Quali Foam**") to solidify its footprint in Quebec and the Eastern Canadian marketplace and better service smaller, low volume customers. Quali Foam was amalgamated with and continued as Domfoam on May 1, 2006.

15. Mr. Vallecoccia is the President and Chief Executive Officer of Domfoam, President of Valle Foam, and the sole officer and director of A-Z Foam.
16. The following diagram depicts the Companies' corporate structure.



17. As at the date of the Initial Order, the Companies employed more than 500 full and part-time employees in three manufacturing locations in Montreal, Toronto and Vancouver.
18. As at the date of the Initial Order, Valle Foam employed 278 full time employees plus between 15 and 20 temporary employees at four locations in and around Brampton, Ontario. The Valle Foam employees are not unionized.
19. As at the date of the Initial Order, Domfoam employed 172 full time employees and between 15 and 45 temporary employees at three locations in and around Montreal, Quebec. The 127 factory floor employees of Domfoam are members of Teamsters Local 973 (the "Domfoam Union").
20. As at the date of the Initial Order, A-Z employed 34 employees at Annacis Island, Delta, British Columbia. Certain of the employees of A-Z are members of Pulp and Paper Workers Local #5 (the "A-Z Union").
21. Each of the Applicants operates from leased premises. The businesses of the Applicants involve the use of chemicals in the course of manufacturing their products. Some of these products are hazardous and all of these products must be carefully managed. The premises of each of the Applicants have been specifically designed or modified to allow

for the use of these chemical agents. As set out in the Affidavit of Mr. Vallecoccia sworn January 11, 2012 in support of the Companies' application for the Initial Order (the "Vallecoccia Affidavit"), if the Applicants' businesses were to cease, the Applicants would require a detailed disposal plan to be implemented pursuant to applicable environmental laws in order to properly dispose of the chemicals used in the Applicants' businesses. The Applicants' leased premises cannot be safely abandoned or rendered inoperative without such efforts.

### SECURED AND UNSECURED CREDITORS

22. Royal Bank of Canada previously supplied a secured operating loan to the Applicants. However, that credit facility has been permanently repaid and no amounts are outstanding thereunder.
23. In addition, certain equipment lessors have registered security interests against certain of the Applicants. The Monitor has not yet reviewed any of those lease agreements.
24. Other than the Applicants' lease obligations, the following is a summary of the Applicants' liabilities as at December 1, 2011.

Liability	Valle Foam	Domfoam	A-Z
Trade Payables	\$3,100,000	\$2,778,000	\$92,000
Accrued Payroll (including statutory liabilities) and Accrued Vacation Pay	\$725,000	\$400,000	\$143,000
Accrued Sales Taxes	\$164,000	\$33,000	\$21,000
Other Payables and Accrued Liabilities	\$40,000	\$1,516,000	\$6,000
<b>Total</b>	<b>\$4,029,000</b>	<b>\$4,727,000</b>	<b>\$262,000</b>

Source: Vallecoccia Affidavit, paragraph 88



25. Management has informed the Monitor that the Companies do not offer pension plans to their employees.

**CAUSES OF FINANCIAL DIFFICULTY AND EVENTS LEADING UP TO THE CURRENT SITUATION**

26. The Monitor has been advised by Management that the Companies' operations have been negatively impacted by, among other things:
- (a) increased competition and imports of finished goods from China;
  - (b) the decline in North American new housing starts in recent years, which has contributed to excess capacity in the industry;
  - (c) a reduction in prices and gross margins, led by larger competitors in the foam industry, with a view to making a profit based on selling larger volumes;
  - (d) certain customers have either downsized their operations or become insolvent as a result of the impact of the economic downturn that commenced in 2008, or have been acquired by the Companies' competitors with a view to vertically integrating their operations and creating internal synergies;
  - (e) a significant decrease in the demand for carpet underlay in recent years, as customers have increasingly trended towards hardwood flooring; and
  - (f) significant legal costs incurred in connection with an investigation by the Competition Bureau (Canada) (the "**Competition Bureau**") and related civil class action litigation, as described in greater detail below.

***The Competition Bureau (Canada) Fines and Related Litigation***

27. As set out in the Vallecoccia Affidavit, both Domfoam and Valle Foam were recently charged with, and on January 5, 2012, pled guilty to certain offences under the *Competition Act*, R.S.C. 1985, c C-34 (the "**Competition Act**") arising from collusion with other manufacturers of slab foam and carpet underlay within Canada to lessen competition in the sale or supply of these products and by conspiring with other manufacturers to fix or control the price for these products.

28. Domfoam was fined a total of \$6.0 million and Valle Foam was fined a total of \$6.5 million. No fine was assessed against A-Z as no charges were laid against A-Z. In accordance with the terms of the sentence imposed, on the day of the guilty pleas, Valle Foam paid \$500,000 in partial payment of the fines imposed against it.
29. As a result of the foregoing, each of Valle Foam and Domfoam has an outstanding liability of \$6.0 million in fines payable to the Crown.
30. In accordance with the terms of the sentences imposed, Domfoam and Valle Foam are to each pay \$1.0 million on the 1<sup>st</sup> of January of each year, commencing 2013 and ending in 2018.
31. As set out in the Vallecoccia Affidavit, the Applicants disclosed their financial difficulties to the Crown prior to the entry of their guilty pleas and advised of the Applicants' intention to file for protection under the provisions of a Canadian insolvency regime.

#### **CLASS ACTIONS**

32. The Monitor has been advised by the Applicants that some or all of the Applicants have been named as a defendant in at least five class action lawsuits in Canada, and over two dozen class action lawsuits in the United States (together, the "Class Actions"), based upon allegations of price fixing by certain of the Applicants and other manufacturers in the slab foam industry.

#### **U.S. CLASS ACTION LITIGATION**

33. The Applicants' U.S. counsel have negotiated a settlement with the three different groups of plaintiffs in the United States alleging certain antitrust violations against Domfoam, Valle Foam and other foam manufacturers (the Direct Class, Indirect Class and "opt-out" plaintiffs) which are part of a multi-district litigation proceeding styled *In re Polyurethane Foam Antitrust Litigation* in the United States District Court for the Northern District of Ohio. The proposed plaintiff classes allege that Domfoam and Valle

Foam are jointly and severally liable with other foam manufacturers for damages which may be in the hundreds of millions of dollars.

34. The Direct and Indirect Class plaintiffs have agreed, subject to Court approval, to voluntarily dismiss their complaints as against the Companies and to release any of the Companies' current or former employees, shareholders, or owners from any and all liability in this and potentially related matters. Neither the Companies nor any related individuals are required to pay any amounts to these plaintiffs or their counsel.
35. Preliminary approval by the supervising U.S. court may occur within 30-60 days of filing of these settlement agreements with that Court. Final approval may take substantially longer.
36. Domfoam and Valle Foam have also reached settlement agreements with certain "opt-out" plaintiffs in the United States, each of whom filed an individual lawsuit against Domfoam, Valle Foam and other foam manufacturers alleging certain antitrust violations.
37. The settlement agreements with the direct and indirect class plaintiffs as well as the opt-out plaintiffs were all conditional upon the Companies filing for protection from their creditors by January 31, 2012. The suspension and/or dismissal of the various U.S. Class Actions are without prejudice to the plaintiffs asserting their claims as creditors within the CCAA Proceeding in amounts to be determined.

#### **CANADIAN CLASS ACTION LITIGATION**

38. The Monitor has been advised by the Applicants that there are currently five Class Actions in Canada that are pending before the courts in Ontario, Quebec and British Columbia in connection with the Competition Bureau's investigation of price-fixing allegations in the polyurethane foam industry. The Applicants have been named (or one or more of the Applicants have been named) in four of these class proceedings. The plaintiffs in these proceedings (the "Canadian Class Plaintiffs") allege that the Applicants and the other manufacturers, along with certain individuals, are jointly and

severally liable for damages to the proposed class members and they seek millions of dollars of damages along with other relief.

39. The Companies' Canadian counsel have reached a proposed national class settlement on behalf of the Companies with the Canadian Class Plaintiffs in respect of all of the Canadian Class Actions.
40. Under the terms of this proposed national settlement, the Canadian Class Plaintiffs have agreed, subject to separate court approvals by the Ontario Superior Court, the B.C. Supreme Court and the Quebec Superior Court, to discontinue their proceedings as against the Companies and to release any of the Companies' current or former officers, employees, agents, shareholders, or owners from any and all liability in this and potentially related matters.
41. Although the Companies are not required to contribute to a settlement fund, the Companies have agreed to assign certain proceeds of an unrelated class action proceeding known as the *U.S. Urethane Antitrust Litigation* in an amount up to \$200,000, subject to any order of this Court. Under the terms of the settlement, the Canadian Class Plaintiffs have agreed to bear any risk relating to the validity or enforceability of the assignment. The proposed settlement also provides for the payment of \$1.2 million by certain individuals who are parties to the settlement agreement. The Monitor has not yet reviewed the validity or enforceability of the foregoing assignment.
42. Under the terms of the proposed settlement, the discontinuance of the Canadian Class Actions against the Companies is without prejudice to the ability of the Canadian Class Plaintiffs and putative class members to assert their claims as creditors within the CCAA Proceeding in amounts to be determined.
43. The process of obtaining court approval of the proposed settlement in Ontario, Quebec and B.C. may take several months. During this period, the Canadian Class Plaintiffs have agreed to suspend the active pursuit of proceedings as against the Applicants while the motions for court approval are pending.

#### **ACTIVITIES OF THE MONITOR**

44. The Monitor has undertaken the following activities in accordance with the Initial Order:
- (a) on January 12, 2012, the Monitor made the Initial Order publicly available by posting it on its website at [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam).
  - (b) arranged for publication in The Globe and Mail on January 19, 2012 of the Initial Notice of the CCAA Proceeding containing the prescribed information under the CCAA. A copy of the Notice is attached hereto as Exhibit "B";
  - (c) prepared and sent on January 18, 2012 a notice pursuant to section 23 (1)(a)(ii)(B) of the CCAA and the Initial Order to every known creditor who has a claim against the Companies of more than \$1,000 advising such creditor that the Order is publicly available;
  - (d) prepared a list, showing the names and addresses of those creditors of the Companies and the estimated amounts of those claims and made it publicly available in the prescribed manner;
  - (e) reviewed the Companies' cash flow statement as to its reasonableness, the results of which review are described in more detail below; and
  - (f) consulted with the Companies regarding the terms of the proposed Sale Process, described in more detail below.

#### **OPERATIONS OF THE COMPANIES**

45. As set out in the Vallecoccia Affidavit, it was originally intended that Valle Foam would cease operations immediately following the date of the Initial Order. Management of Valle Foam has determined that continuing to operate Valle Foam will preserve the going concern value of its business and that the costs of maintaining such going concern value are worthwhile, provided that the Sale Process as it relates to Valle Foam is conducted on an expedited basis.
46. However, in order to reduce costs while still preserving the going concern value of Valle Foam's business, Valle Foam has substantially closed its location at 317 Orenda Road in

Brampton and relocated its staff from its 11 Finley Road, Brampton location to its 4 West Drive, Brampton location. It also suspended manufacturing of its underlay products on or about January 19, 2012.

47. Accordingly, Valle Foam has laid off all of its temporary employees and 24 of its full-time employees at the 317 Orenda Road, Brampton location. The remaining 15 employees at the 317 Orenda Road, Brampton location operate one shift each day for Valle Foam's sewing and polyester business.
48. Two shifts of Valle Foam employees continue to operate at the 4 West Drive and 170 Glidden Road, Brampton locations.
49. Based on discussions with Management, the Monitor understands that certain of the Companies' customers have expressed concerns regarding the Companies' ability to continue to supply product to those customers in the near term as well as the long term viability of the Companies' businesses.

#### **CASH FLOW FORECAST AND RESULTS RELATIVE TO FORECAST**

50. The Monitor is currently reviewing the Companies' cash flow forecast and results relative to that forecast. The Monitor will report to the Court with respect to the reasonableness of the Companies' cash flow statement in connection with the Companies' pending motion for an extension of the stay of proceedings returnable on or about February 8, 2012.

#### **PROPOSED SALES PROCESS**

51. The Monitor has been advised that the Companies' principal restructuring strategy is to pursue a sale of all or substantially all of the Companies' assets as a going concern within the CCAA Proceeding. The CCAA Proceeding will permit the Companies to continue to conduct business in the ordinary course while they implement a Court-approved sales process.

52. As set out in the Affidavit of Mr. Vallecoccia sworn January 25, 2012, the Companies are concerned that the uncertainty regarding the Companies' operations brought about by the CCAA Proceeding may lead to customers resourcing with other manufacturers and suppliers refusing to supply product to the Companies. The Monitor is of the view that the Property should be marketed immediately in order to minimize the uncertainty associated with continued operations during the CCAA Proceeding. Given the relatively limited pool of potential purchasers of the Property, the Monitor believes that a relatively short marketing period of approximately 4 weeks will be sufficient to expose the Property and permit qualified parties to conduct due diligence to support their offers, while at the same time minimizing the uncertainty and costs of a prolonged marketing period within the CCAA Proceeding.
53. The Companies propose to invite offers to purchase some or all of the Property utilizing the following process (the "Sale Process"):
- (a) Immediately following Court approval of the Sale Process, the Companies will distribute a flyer identifying the opportunity (the "Flyer") to prospective purchasers identified by the Companies, in consultation with the Monitor. The Flyer will contain the following:
    - (i) an overview of the Property and the business conducted by each of the Companies;
    - (ii) a description of the transaction opportunity;
    - (iii) an invitation for offers to purchase all or any part of the Property by the Offer Date (as defined below);
    - (iv) a link to the terms and conditions of sale ("**Terms of Sale**") posted on the Monitor's website. A copy of the Terms of Sale is attached as Exhibit "C";
    - (v) a link to a confidentiality agreement ("**CA**") posted on the Monitor's website; and

- (vi) confirmation that interested parties who sign the CA will be provided access to a data room to be assembled and maintained by the Companies in consultation with the Monitor which will include, among other things, information regarding the Property and the Companies' businesses;
  - (b) The Monitor will place on its website a notice setting out the terms of the Sale Process including copies of the Flyer, the CA and the Terms of Sale;
  - (c) The Companies will place an advertisement in the national edition of The Globe and Mail within one week following Court approval of the Sale Process outlining the opportunity to purchase the Property;
  - (d) The Monitor will facilitate due diligence by prospective purchasers who sign the CA and will assist the Companies in maintaining the data room and coordinate site visits to the Companies' business premises. The Monitor will be available as required to answer questions regarding the Sale Process from prospective purchasers;
  - (e) All prospective purchasers who execute the CA will be provided with the Companies' template form of asset purchase agreement ("**Template Sale Agreement**"). Prospective purchasers will be encouraged to submit their offers in this form, or as close to this form as possible; and
  - (f) The deadline for submitting offers will be 4:00 p.m. (EDT) on February 22, 2012 (the "**Offer Date**"). The form of Offer to purchase some or all of the Property is attached as Exhibit "**D**".
54. The Terms of Sale stipulate, among other things, that:
- (a) the transaction will be on an "as is, where is" basis with no representations or warranties. Each offeror will be solely responsible for inspecting the Property subject to its offer and satisfying itself as to title to any of the Property it is offering to purchase;
  - (b) the Companies may not necessarily accept the highest offer or any offer and reserve the right to terminate their invitation to submit offers to



purchase any of the Property at any time or to accept an offer or offers for some or all of the Property at any time, including prior to the Offer Date;

- (c) the Companies shall consider all offers but, if deemed appropriate, the Companies may deal with one or more offers to purchase some or all of the Property to the exclusion of others, both prior to or after the Offer Date;
- (d) the Companies may extend the Offer Date without further order of the Court but subject to approval of the Monitor;
- (e) the acceptance by any of the Companies of any offer will be subject to the Court issuing an order (the “**Approval and Vesting Order**”) approving the offer and vesting in the offeror (hereafter, the “**Purchaser**”) title to that part of the Property subject to such offer free and clear of all claims and encumbrances upon closing of that transaction;
- (f) each offeror shall, with its offer, deliver to the Monitor the following:
  - (i) an amount equal to 10% of the purchase price specified in the offer which shall be held in a non-interest bearing account by the Monitor. If the offer is accepted, said cheque shall be deemed to be a cash deposit (the “**Deposit**”) against the aggregate offered purchase price (the “**Purchase Price**”) and, subject to the Approval and Vesting Order being issued by the Court, the Purchaser shall pay the balance of the Purchase Price to the Monitor, by wire transfer or by certified cheque, on the closing date of the subject transaction;
  - (ii) an executed copy of the Template Sale Agreement, amended to reflect that part of the Property subject to the offer (the Template Sale Agreement as amended, the “**Offeror Sale Agreement**”) and any other matters specific to the offer, which shall be binding and irrevocable until March 6, 2012;

- (iii) a comparison of the Template Sale Agreement to the executed and amended Offeror Sale Agreement;
  - (iv) a representation of the offeror and written evidence of available cash and/or a commitment for financing to evidence the offeror's ability to close the proposed transaction as the Companies may reasonably request;
  - (v) a copy of a board resolution or similar document demonstrating authority to make an irrevocable offer and to execute the transaction contemplated by the Offeror Sale Agreement; and
  - (vi) disclosure of the identity of each entity (including its ultimate shareholders) that has submitted the offer.
55. The Monitor notes that the Companies reserve their right to seek approval from the Court to accept an offer to purchase some or all of the Property prior to the Offer Date if the Companies determine that it is in their best interests to do so. Given the concerns expressed by certain of the Companies' customers regarding the Companies' continued viability, both in the short and long term, the Monitor does not object to this provision of the Sale Process, provided that the Monitor must be satisfied that it is appropriate for the applicable Applicant to accept an offer to purchase some or all of its Property prior to the Offer Date having regard to the factors set out in Section 36 of the CCAA.
56. The Monitor supports the terms of the proposed Sale Process.

#### **MONITOR'S RECOMMENDATIONS**

57. For the reasons set out above, the Monitor recommends that:
- (a) the activities of the Monitor as described in the First Report be approved;
  - (b) the Sale Process be approved; and
  - (c) the Companies be authorized to invite offers to purchase the Property pursuant to the Sale Process including, without limitation, the Terms of Sale attached as Exhibit "C".

All of which is respectfully submitted at Toronto, Ontario this 25<sup>th</sup> day of January, 2012.

**DELOITTE & TOUCHE INC.**  
in its capacity as the Monitor  
of the Companies (as defined herein)

Per: P. Casey, for  
Robert J. Bougie, CA-CIRP  
Senior Vice-President

# TAB A

**EXHIBIT "A"**



Court File No. CV-12-9545-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

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THURSDAY, THE 12<sup>th</sup>

JUSTICE NEWBOULD

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DAY OF JANUARY, 2012

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IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF VALLE  
FOAM INDUSTRIES (1995) INC., DOMFOAM  
INTERNATIONAL INC., and A-Z SPONGE & FOAM  
PRODUCTS LTD.

(the "Applicants")

**INITIAL ORDER**

**THIS APPLICATION**, made by Valle Foam Industries (1995) Inc., Domfoam International Inc., and A-Z Sponge & Foam Products Ltd. (hereinafter, collectively referred to as the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Tony Vallecoccia sworn January 11, 2012 and the exhibits thereto (the "Vallecoccia Affidavit"), and on hearing the submissions of counsel for the Applicants, no one else appearing although duly served as appears from the affidavit of service of Victoria Stewart sworn January

11, 2012, and on reading the consent of Deloitte & Touche Inc. to act as the Monitor,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

### **PLAN OF ARRANGEMENT**

3. **THIS COURT ORDERS** that one or more of the Applicants, individually or collectively, shall have the sole authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their respective businesses (collectively, the "Business") and

Property. The Applicants shall each be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, accountants, counsel and such other persons (collectively, "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that, the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, compensation, salaries, employee and pension benefits, vacation pay and expenses (including, but not limited to, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans, and employee assistance programs and employee or employer contributions in respect of pension and other benefits), and similar pension and/or retirement benefit payments, commissions, bonuses and other incentive payments, payments under collective bargaining agreements, and employee and director expenses and reimbursements, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) compensation to employees in respect of any payments made to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers are subsequently dishonoured due to the commencement of these proceedings; and

- (c) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including any payments made to Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings; and
- (d) amounts owing for goods and services actually supplied to the Applicants, or to obtain the release of goods contracted for prior to the date of this Order by other suppliers, solely where such goods were ordered by the Applicants or any of them after November 30, 2011 on the express understanding that such goods or services were to be paid for on a cash on delivery basis and in respect of which such payment has not been made by the Applicants or any of them.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and



- (b) payment, including the posting of letters of credit, for goods or services actually supplied or to be supplied to the Applicants following the date of this Order;

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed, terminated, repudiated or resiliated in accordance with the CCAA, the Applicants

shall pay all amounts constituting rent or payable as rent under their respective real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, and to dispose of non-profitable, redundant or non-material assets and operations, and to dispose and sell such assets or operations not exceeding \$100,000.00 in any one transaction or \$1 million in the aggregate;

- (b) terminate the employment of such of their employees or lay off or temporarily or indefinitely lay off such of their employees as the relevant Applicant deems appropriate on such terms as may be agreed upon between the relevant Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan
- (c) in accordance with paragraphs 10 (a) and (d), vacate, abandon, resiliate, or quit any leased premises and/or disclaim, cancel, terminate or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) disclaim, terminate, repudiate or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements, agreements or contracts of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with Section 32 of the CCAA, with such disclaimers, repudiation, termination, or resiliations to be on such terms as may be agreed upon between the relevant Applicants and such counter-parties, or failing such agreements, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

all of the foregoing to permit the Applicants to proceed with an orderly restructuring or winding down of some or all of the respective Business (the "Restructuring").

11. **THIS COURT ORDERS** that the Applicants shall each provide each of the relevant landlords with notice of the relevant Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Applicant, or by further Order of this Court upon application by the relevant Applicant on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims, resiliates, repudiates or terminates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer, termination or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a lease is repudiated or if a notice of disclaimer or termination or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, termination, repudiation or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant's and the Monitor 24 hours' prior written notice, and

(b) at the effective time of the disclaimer or termination or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

13. **THIS COURT ORDERS** that until and including February 10, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the

Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, authorization, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all waste disposal service providers, all computer software, information technology services, communication and other data services, programming supply, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be

entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

17. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers (or their estates) of the Applicants with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment, performance or breach of such obligations, acts, or actions until a compromise or arrangement in respect of

the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

19. **THIS COURT ORDERS** that the Applicants shall jointly indemnify their directors and officers from and against all claims, costs, charges, expenses, obligations and liabilities that they may incur as directors or officers of the Applicants, after the date hereof except to the extent that, with respect to any officer or director, such claim, cost, charge, expense, obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$1 million as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraph 32 herein.

21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.



## **APPOINTMENT OF MONITOR**

22. **THIS COURT ORDERS** that Deloitte & Touche Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist and advise the Applicants in their development of the Plan or winding down, downsizing and any amendments to the Plan, any restructuring steps taken pursuant to paragraphs 5 and 10 hereof, and the implementation of the Plan;
- (d) advise the Applicants in the preparation of their cash flow statements;

- (e) assist and advise the Applicants, to the extent required by the Applicants, with the negotiations with creditors and the holding and administering of creditors' (or shareholders' meetings) for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) consider, and if deemed advisable by the Monitor, prepare a report as an assessment of the Plan;
- (i) assist the Applicants with their continuing restructuring activities, including the assessment and analysis of any proposed sale of assets or closure of facilities;
- (j) advise and assist the Applicants, as requested, in their negotiations with suppliers, customers and other stakeholders; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder,

be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential,

the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, including completing and implementation of the settlements with the class action plaintiffs. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on an hourly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of \$150,000.00 and \$50,000.00, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

29. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$500,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings, including completing the settlements with the class action plaintiffs. The Administration Charge shall have the priority set out in paragraph 32 hereof.

31. **THIS COURT ORDERS** that Valle Foam Industries (1995) Inc. ("Valle Foam") shall be authorized to advance funds up to, but not exceeding \$1 million to either of A-Z Sponge & Foam Products Ltd. ("A-Z") or Domfoam International Inc. ("Domfoam") to be used for operating purposes of Domfoam or A-Z, as the case may be, provided that i) no such loan shall be advanced without the prior written consent of the Monitor, ii) that any such loan shall be properly documented and subject to such terms, including rates of interest, if any, which the Monitor deems reasonable in the circumstances, and iii) that any such loan shall be secured by way of a general security agreement which shall provide a first in priority charge on the assets of Domfoam subject only to the priority of the charges granted hereunder. The Applicants may, prior to the advance of any funds, attend to seek a further order of this court to grant a specific charge if the Applicants or the Monitor deem it appropriate or necessary to do so.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

32. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$●); 500,000 ✓

Second – Directors' Charge (to the maximum amount of \$●). 1,000,000 ✓

MIT ✓

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administration Charge, (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. **THIS COURT ORDERS** that each of the Directors' Charge or the Administration Charge, (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

35. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or Administration Charge, unless the Applicants also obtains the prior written consent of the Monitor, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

36. **THIS COURT ORDERS** that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s)

for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers, settlements at undervalue, oppressive conduct, or other challengeable or void or voidable transactions or reviewable transactions under any applicable law.

37. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

#### **SERVICE AND NOTICE**

38. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ <sup>the St. John's Star</sup> a notice containing the information

prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

39. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

40. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam).



## **GENERAL**

41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

43. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

44. **THIS COURT ORDERS** that the Monitor is hereby authorized, as the foreign representative of the Applicants, to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.


45. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this

Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

46. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

47. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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RECEIVED AT THE COURT OF QUEBEC  
LE 12 JANVIER 2012  
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JAN 12 2012

RECEIVED AT THE COURT OF QUEBEC  
LE 12 JANVIER 2012



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALLE FOAM INDUSTRIES  
(1995) INC., DOMFOAM INTERNATIONAL INC., and A-Z SPONGE & FOAM PRODUCTS LTD.

Court File No. CV-12-9545-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**INITIAL ORDER**

**MINDEN GROSS LLP**

145 King Street West, Suite 2200  
Toronto ON M5H 4G2

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416-369-4149

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416-864-9223 fax

Lawyers for the Applicants

# TAB B

In the matter of the Companies' Creditors Arrangement Act (Canada) ("CCAA") Administration of Valle Foam Industries (1995) Inc., Domfoam International Inc. and A-Z Sponge & Foam Products Ltd. (collectively, the "Applicants") Notice pursuant to CCAA s. 23(1)

NOTICE is hereby given that on January 12, 2012, the Ontario Superior Court of Justice, judicial District of Toronto, issued an initial order under the CCAA in respect of the Applicants in the proceeding bearing Court file No. CV-12-9545-00CL (the "CCAA Proceeding") declaring that each of the Applicants is a company to which the CCAA applies.

Deloitte & Touche Inc. ("Deloitte") has been appointed Monitor in the CCAA Proceeding. Information regarding the Applicants may be obtained from Ms. Catherine Hristow of Deloitte at: [vallefoam@deloitte.ca](mailto:vallefoam@deloitte.ca) or 1-855-601-6415. Information regarding the CCAA Proceeding is posted on the Monitor's website at [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam).

DATED AT Toronto, Ontario this 19th day of January, 2012

Deloitte & Touche Inc.  
181 Bay Street, Suite 1400  
Toronto, ON M5J 2V1  
Fax: (416) 601-6690

**Deloitte.**

# TAB C

# EXHIBIT <sup>^</sup> C <sup>^</sup>

## CONDITIONS OF SALE

1. The vendors are Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc. (“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z**”) (each a “**Vendor**” and collectively, the “**Vendors**”). In connection with the sale process (the “**Sale Process**”) undertaken by the Vendors with respect to the Property (as defined below) and with any and all matters arising under or in connection with these Conditions of Sale, Deloitte & Touche Inc. acts solely in its capacity as the Court-appointed Monitor (the “**Monitor**”) in the *Companies’ Creditors Arrangement Act* (Canada) proceeding involving the Vendors bearing Court File No. CV-12-9545-00CL.
2. Pursuant to these Conditions of Sale, the Vendors are inviting offers to purchase all of the assets, properties and undertakings of each of Valle Foam (the “**Valle Foam Property**”), Domfoam (the “**Domfoam Property**”) and A-Z (the “**A-Z Property**”). Each of the Valle Foam Property, Domfoam Property and A-Z Property (collectively, the “**Property**”) comprises a separate parcel (each, a “**Parcel**”) of the Property.
3. The Vendors with the assistance of the Monitor have prepared a flyer identifying the opportunity to purchase the Property (the “**Flyer**”). All information contained in the Flyer, including without limitation, any description of the Property, has been prepared solely for the convenience of the party submitting an offer (each, an “**Offer**”) to purchase some or all of the Property (each, an “**Offeror**”) and is not warranted to be complete or accurate and does not form part of these Conditions of Sale.
4. Each of the Vendors may carry on its business prior to closing and the quantity of inventory included in each Parcel may be reduced during such period. The inventory

included in each Parcel will be that on hand and available on the Closing Date (as defined below) of any Approved Sale Agreement (as defined below).

5. Offers may be submitted for individual Parcels or en bloc, provided that en bloc Offers must stipulate a separate price for each Parcel. Offers submitted for more than one Parcel will be considered as a separate Offer for each Parcel unless the Offeror specifically states that the acceptance of one Parcel is conditional upon the acceptance of one or more other Parcels.
6. Sealed Offer marked "Offer – **[name of Vendor as applicable: Valle Foam Industries (1995) Inc./Domfoam International Inc./A-Z Sponge & Foam Products Ltd.]**" shall be delivered or mailed postage prepaid to Deloitte & Touche Inc., 181 Bay Street, Brookfield Place, Suite 1400, Toronto, Ontario, M5J 2V1, to the attention of Catherine Hristow. All Offers must be received by Deloitte & Touche Inc. by 12:00 p.m. Eastern Standard Time on February 22, 2012 (the "**Offer Date**"). The Vendors reserve the right to extend the Offer Date with respect to same or all of the Property at any time for any reason.
7. Every Offer submitted should be in the Form of Offer attached hereto. Offers received by the Vendors which are not in such form may be rejected. Offers shall be opened by the Vendors in the presence of, and reviewed with, representatives of the Monitor. No Offeror or creditor of the Vendors shall be entitled to be present for the opening of Offers.
8. The Vendors shall have no obligation, at law or in equity or otherwise, to any Offeror or any other person or party, to:



- (a) consider any Offer which:
  - (i) specifies a purchase price as an amount or percentage in excess of any other Offer or otherwise as a function of the purchase price offered by any other Offeror;
  - (ii) has not been fully completed and duly executed;
  - (iii) is not accompanied by the Deposit (as defined below) required hereunder;
  - (iv) has not been delivered to and received at the offices of the Monitor as required hereunder; or
- (b) negotiate with any Offeror after the Offer Date with respect to any provision of the Offer or request or agree to any changes therein,

but nothing in these Conditions of Sale shall preclude any of the Vendors from taking any of the foregoing steps if, in its sole and unfettered discretion but with the consent of the Monitor, the applicable Vendor believes that it is in its best interests to do so; however the taking of any such step shall not constitute a waiver by that Vendor of the provisions of this paragraph or an obligation on the part of that Vendor or any of the other Vendors to take any further or other steps referred to above with the same or any other Offeror. The Vendors will be under no obligation to negotiate identical terms with, or extend identical terms to, each Offeror.

- 9. Each Offeror shall, with its Offer, deliver to the Vendor of that part of the Property subject to the Offer the following:

- (a) an amount equal to 10% of the purchase price specified in the Offer which shall be held in a non-interest bearing account by the Monitor. If the Offer is accepted by the Vendor said cheque shall be deemed to be a cash deposit (the “**Deposit**”) against the aggregate offered purchase price (the “**Purchase Price**”) and, subject to Court approval of the Offer, the Offeror (hereinafter called the “**Purchaser**”) under an Approved Sale Agreement (as defined below) shall pay the balance of the Purchase Price to the Monitor, in cash, wire transfer or by bank draft issued by a schedule 1 Canadian chartered bank on the closing date of the transaction under the Approved Sale Agreement;
- (b) an executed copy of the template agreement of purchase and sale prepared by the Vendor (“**Template Sale Agreement**”), amended to reflect that part of the Property subject to the Offer (the Template Sale Agreement as amended, the “**Offeror Sale Agreement**”) and any other matters specific to the Offer, which shall be binding and irrevocable until March 6, 2012. The Vendors require each Offeror to include in its Offeror Sale Agreement transitional provisions regarding the proposed transfer of the Purchased Assets (defined below) to the Offeror including, without limitation, any employees of the Vendors to be hired by the Offeror, assumption of existing contracts and prepaid expenses;
- (c) a comparison of the Template Sale Agreement to the executed and amended Offeror Sale Agreement;
- (d) a representation of the Offeror and written evidence of available cash and/or a commitment for financing to evidence the Offeror’s ability to close the proposed transaction as the Vendor may reasonably request;

- (e) a copy of a board resolution or similar document demonstrating authority to make an irrevocable Offer and to execute the transaction contemplated by the Offeror Sale Agreement; and
  - (f) disclosure of the identity of each entity (including its ultimate shareholders) that has submitted the Offer.
10. Following the Offer Date, each of the Vendors specifically reserves its right to negotiate with any Offeror with respect to any provision of its Offer or to request or agree to any changes in any such Offer. The Vendors may choose to take such steps with respect to one or more Offers but the Vendors shall have no obligation to negotiate identical terms with, or extend identical terms to, each Offeror. Each of the Vendors reserves its right to request some, but not all, Offerors to submit a revised Offer reflecting improved terms or other amendments requested by the Vendor. Each of the Vendors will be under no obligation to provide to each Offeror the opportunity to improve the terms of any Offer submitted to the Vendor following the Offer Date.
11. If a Vendor accepts an Offer and the subject Offeror Sale Agreement, the Vendor shall seek an order of the Court (the “**Approval and Vesting Order**”) approving such Offeror Sale Agreement and vesting title to the Purchased Assets (as defined below) in and to the Purchaser upon closing of the transaction under the Offeror Sale Agreement free and clear of all claims, liabilities and encumbrances. Any Offeror Sale Agreement accepted by the Vendor and approved by the Court is referred to hereafter as an “**Approved Sale Agreement**”.

12. If a Vendor accepts an Offer but the terms of that Offer or the Offeror Sale Agreement are not approved by the Court or if the Court declines to issue the Approval and Vesting Order, then the Vendor may, in its sole and unfettered discretion, terminate the proposed transaction and any Offeror Sale Agreement accepted by the Vendor, whereupon the Deposit shall forthwith be returned to the Offeror without credit for any accrued interest thereon and the Vendor may then accept any other Offer to purchase that part of the Property subject to the terminated Offeror Sale Agreement.
13. Notwithstanding any other provision contained in these Conditions of Sale, nothing herein shall constitute an assignment or attempted assignment of any of the Property subject to an Approved Sale Agreement (“**Purchased Assets**”) which is not assignable without the consent of any person if such consent is not obtained by the Purchaser. It shall be the Purchaser’s sole responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of the sale of the Purchased Assets, including, without limitation, any approvals with respect to the assignment of any of the Purchased Assets not assignable without the consent or action of a third party or parties. Specifically, and without limiting the generality of the foregoing, by submitting an Offer, an Offeror acknowledges that it has conducted its own investigations with respect to any licences, approvals or third party consents which are necessary to purchase any of the Property or to carry on any business or any other activity utilizing or in connection with any of the Property.
14. Bank drafts accompanying Offers that are not accepted will be returned to the Offeror by registered mail addressed to the Offeror at the address set out in its Offer or made

available for pick up not later than fourteen days following the opening of Offers unless otherwise arranged with the Offeror.

15. The closing of each Approved Sale Agreement shall take place at the office of the Vendors' solicitors Minden Gross LLP, 145 King Street West, Suite 2200, Toronto, Ontario, M5H 4G2, at 11:00 a.m. on or before the 45<sup>th</sup> day after approval by the Court of the Approved Sale Agreement accepted by the Vendor (the "**Closing Date**") or such other date as the Vendor and the Purchaser may agree.
16. Upon closing of the sale of the Purchased Assets contemplated by the Approved Sale Agreement, (the "**Closing**"), the Purchaser shall be entitled, upon receipt by the Monitor of the Purchase Price, to possession of the Purchased Assets and to such bills of sale or assignments as may be considered necessary by the Vendor to convey the Purchased Assets to the Purchaser provided that the Purchaser shall remain liable under the Approved Sale Agreement. Any such deeds, bills of sale or assignments shall contain only a release of the Vendor's interest in the Purchased Assets and shall not contain any covenants.
17. The Purchaser shall pay on closing in addition to the Purchase Price:
  - (a) all applicable federal and provincial taxes;
  - (b) costs, if any, of dismantling or removing the Purchased Assets from their present location and restoring such location to a neat and clean condition;
  - (c) the cost of repairing any damage caused by dismantling or removal of the Purchased Assets from their present location; and

- (d) the costs of obtaining mechanical fitness certificates, if necessary, for any motor vehicle(s).
18. The Purchaser shall assume at the Purchaser's cost complete responsibility for compliance with all laws, municipal, provincial or federal in so far as same apply to the Purchased Assets and the use thereof by the Purchaser.
19. The Vendors shall not be required to produce any abstract of title, title deed, or documents or copies thereof or any evidence as to title, other than those in their possession.
20. Prior to the Closing, the Purchased Assets shall be and remain in the possession of and at the risk of the applicable Vendor and each Vendor will hold all policies of insurance effected thereon and the proceeds thereof in trust for the Vendor and the Purchaser as their respective interests may appear. After Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event of "substantial damage" to the Purchased Assets occurring on or before Closing, the Purchaser may either have the proceeds of the insurance and complete the Approved Sale Agreement or may cancel such Approved Sale Agreement and have all monies paid thereunder, returned without interest, costs or compensation of any kind whatsoever. Where any damage is not substantial, the Purchaser shall be obliged to complete the purchase and shall be entitled to the proceeds of insurance referable to such damage, but not to any other costs or compensation whatsoever. For the purpose of this paragraph, "substantial damage" to the Purchased Assets means damage which renders unusable at least 50% by value of the Purchased Assets.

21. All adjustments of such taxes and other items as are specified herein will be made as of Closing under the Approved Sale Agreement. The Purchaser shall arrange its own insurance and there shall be no adjustment of insurance.
22. No adjustments will be allowed by either the applicable Vendor or the Purchaser for changes in the condition or quantity of any of the Property comprising the Purchased Assets. The applicable Vendor shall remain in possession of the Purchased Assets until the Purchase Price therefor has been paid in full. The Purchaser will take possession of the Purchased Assets at Closing.
23. If the Purchaser fails to comply with the Approved Sale Agreement, the Purchaser's Deposit shall be forfeited to the applicable Vendor and the Purchased Assets may be resold by the Vendor and the Purchaser shall pay to the Vendor (i) an amount equal to the amount, if any, by which the Purchase Price under the Approved Sale Agreement exceeds the net purchase price received by the Vendor pursuant to such resale, and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of or occasioned by the Purchaser's failure to comply with the Approved Sale Agreement.
24. By submitting an Offer, a Purchaser acknowledges that it has inspected the Purchased Assets and that the Purchased Assets are sold on an "as is, where is" basis at the time of Closing and that no representation, warranty or condition is expressed or implied as to existence, title, description, fitness for purpose, merchantability, quantity, conditions or quality thereof or in respect of any other matter or thing whatsoever. Each Purchaser acknowledges that the Vendor is not required to inspect or count, or provide any inspection or counting, of the Purchased Assets or any part thereof and each Purchaser

shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. It shall be the Purchaser's sole responsibility to obtain, at its own expense, any consents to such transfer and any further documents or assurances which are necessary or desirable in the circumstances. Without limiting the generality of the foregoing, any and all conditions, warranties and representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) do not apply to the sale of the Purchased Assets and have been waived by the Purchaser.

25. Deloitte & Touche Inc. acts solely in its capacity as the Court-appointed Monitor of the Vendors in the proceeding bearing Court file no. CV-12-9545-00CL and shall have no personal or corporate liability hereunder, under the Sale Process or under any Offer, Offeror Sale Agreement or Approved Sale Agreement.
26. The highest or any Offer will not necessarily be accepted.
27. The acceptance of any Offer and any Offeror Sale Agreement entered into by the applicable Vendor shall be subject to the condition that the sale and the terms thereof be approved by the Court.
28. No Offeror shall be at liberty to withdraw, vary or countermand an Offer once received by the Vendor. Each Offer shall be irrevocable until March 6, 2012
29. Each of the Vendors, at its sole discretion, may waive or vary any or all of the terms and conditions hereof as such relates to its Property. The terms and conditions contained herein shall not merge on the Closing of the transaction contemplated by any Approved



Sale Agreement but shall survive such closing and remain in full force and effect and be binding on the Purchaser thereafter.

30. These Conditions of Sale and the validity and interpretation of any Offer, Offeror Sale Agreement or Approved Sale Agreement shall be governed by the laws of Ontario, and such agreement shall enure to the benefit of and be binding upon the parties thereto, and their respective heirs, executors, administrators, successors or assigns as the case may be.
31. The submission of an Offer by a resident of the province of Quebec shall be deemed to constitute the declaration and acknowledgement by the Offeror that it has requested the Conditions of Sale, the form of the Offer referred to herein, any Offeror Sale Agreement and all other documentation relating to its Offer and to the acceptance thereof to be drawn up in the English language only.
32. All stipulations as to time are strictly of the essence.
33. Any offer of documents or money hereunder may be made upon the Vendor, the Monitor or the Purchaser, or their respective solicitors. Money may be paid by wire transfer or bank draft issued by a schedule 1 Canadian chartered bank or trust company.
34. The obligations of the applicable Vendor to complete an Approved Sale Agreement shall be relieved if, on or before the Closing of such sale, the Order of the Court approving the subject Approved Sale Agreement is subject to appeal or if any of the Purchased Assets subject to the sale have been removed from the control of the Vendor by any means or process, whereupon the only obligation of the Vendor shall be to return the applicable Deposit, without interest, costs or compensation.

35. The Vendors shall not be bound to sell any of the Property until the applicable Vendor is authorized by the Court to accept and enter into an Approved Sale Agreement. The Vendors reserve the right to enter into one or more agreements to sell any or all of the Property at any time prior to the Offer Date or an arrangement to the contrary and to withdraw any or all of the Property from the invitation for offers to purchase such Property. If a Vendor enters into an agreement to sell any of the Property prior to the Offer Date, then the Monitor shall promptly advise any party which has received a Flyer with respect to the Property subject to such agreement that such Property is no longer available to be purchased.

# TAB D

# EXHIBIT "D"

## FORM OF OFFER

To:  **Valle Foam Industries (1995) Inc.**  
 **Domfoam International Inc.**  
 **A-Z Sponge & Foam Products Ltd.**  
[check applicable box]

1. \_\_\_\_\_  
(Name of Offeror)

2. \_\_\_\_\_  
(Address of Offeror)

3. \_\_\_\_\_  
(Telephone Number) (Facsimile Number) (email address)

4. I/We hereby submit this offer for the purchase of the parcels indicated below for the total purchase price of \$ \_\_\_\_\_, excluding applicable taxes:

Parcel 1 Valle Foam Industries (1995) Inc.  
\$ \_\_\_\_\_ (CDN)

Parcel 2 Domfoam International Inc.  
\$ \_\_\_\_\_ (CDN)

Parcel 3 A-Z Sponge & Foam Products Ltd.  
\$ \_\_\_\_\_ (CDN)

4. This Offer is an "en bloc" offer to purchase the following listed parcels (i.e. Vendor can accept all, but not less than all, of the offer for the following parcels):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. We/I agree, that in the event this offer is accepted, to be bound by the Conditions of Sale dated January 13, 2012 which shall form part of this offer.
6. This Offer is irrevocable and shall remain open for the consideration of the Vendor until 12:00 o'clock noon Eastern Time on March 6, 2012.
7. Warranty - We/I represent and warrant to the Vendor that we/I am/are not a non-eligible person as defined by the *Investment Canada Act*.
8. Enclosed is our/my certified cheque payable to Deloitte & Touche Inc., as a deposit in the amount of \$ \_\_\_\_\_ , representing 10% of the total amount of our/my Offer submitted herein.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_

By: \_\_\_\_\_

Name: ●

Title: ●

By: \_\_\_\_\_

Name: ●

Title: ●

I/We have authority to bind the Corporation.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALLE FOAM INDUSTRIES (1995)  
INC., DOMFOAM INTERNATIONAL INC., and A-Z SPONGE & FOAM PRODUCTS LTD.

Court File No.: CV-12-9545-00CL

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at **Toronto**

**FIRST REPORT OF THE MONITOR  
DATED JANUARY 25, 2012**

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