

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 3113736 CANADA LTD., 4362063 CANADA LTD., and
A-Z SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

MOTION RECORD OF THE APPLICANTS
(Re: Stay Extension, Returnable May 29, 2018)

May 22, 2018

BLANEY McMURTRY LLP
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Lawyers for the Applicants

TO: SERVICE LIST

INDEX

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TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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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 3113736 CANADA LTD., 4362063 CANADA LTD., and
A-Z SPONGE & FOAM PRODUCTS LTD.

(the "**Applicants**")

NOTICE OF MOTION
(Re: Stay Extension, Returnable May 29, 2018)

THE MOVING PARTIES, 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995)) ("**Valle Foam**"), 4362063 Canada Ltd. (formerly known as Domfoam International Inc.) ("**Domfoam**"), and A-Z Sponge & Foam Products Ltd. ("**A-Z Foam**") (collectively, the "**Applicants**") will make a motion to a judge presiding over the Commercial List at 10:00 a.m. on May 29, 2018, or as soon thereafter as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

This motion is to be heard orally.

THE MOTION IS FOR:

1. an Order substantially in the form contained at Tab 3 of the Applicants' Motion Record, extending the Stay Period (as that term is defined in the Initial Order of the Honourable Mr. Justice Newbould dated January 12, 2012) to and including November 30, 2018 and approving the Monitor's report, conduct and fees; and

2. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

3. On January 12, 2012, the Applicants sought and were granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), as amended pursuant to the Order of the Honourable Mr. Justice Newbould (the "**Initial Order**");
4. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc., was appointed in the Initial Order to act as monitor in these CCAA proceedings ("**Monitor**");
5. As a result of the sale of assets of the Applicants, Valle Foam changed its name to 3113736 Canada Ltd., and Domfoam changed its name to 4362063 Canada Ltd. The style of cause of these proceedings was changed by the Order of Justice Brown, dated June 15, 2012 to reflect the change of names;
6. The Order of the Honourable Mr. Justice Brown, dated June 15, 2012 established a process to identify pre- and post-filing claims against the Applicants and/or their officers and directors ("**Claims Process Order**")
7. The Meeting Order was approved by the Honourable Mr. Justice Penny on September 6, 2016, accepting Domfoam's Plan of Compromise and Arrangement ("**Plan**") for filing with the Court and authorizing Domfoam to seek approval of the Plan at the meeting of the creditors ("**Creditors' Meeting**");
8. The Creditors Meeting was held on October 19, 2016;

9. The Applicants achieved the required statutory “double majority” needed to approve the Plan. Proven Creditors holding 92% in number and 99% in value voted to approve the Resolution in favour of the Plan;
10. The Plan was sanctioned by way of Order from the Honourable Mr. Justice Hainey, dated January 24, 2017;
11. The conditions precedent to Plan implementation have been satisfied or waived, and the Plan has been implemented;
12. Each of the Applicants are claimants in a U.S. class action proceeding relating to price fixing for a product known as “Polyether Polyol” (the “**US Urethane Proceeding**”). A settlement was entered into with one of the defendants in the US Urethane Proceeding, in which the defendant agreed to pay \$834 million USD for distribution to the class members, including the Applicants (“**Polyols Settlement**”);
13. On or about March 21, 2018, an initial distribution representing 85% of the total recovery from the Polyols Settlement was made to the class members, including the Applicants. A second and final tranche of money representing up to 15% is payable to the Applicants from the Polyols Settlement;
14. The Applicants may also be class members in a certified class action in Ontario relating to the price fixing of polyether polyols products purchased in Canada (“**Canadian Urethane Proceeding**”). Settlement funds are being held in trust for the benefit of the class members in the Canadian Urethane Proceeding, and a claims process will be initiated to determine distribution to the class;

15. Valle Foam continues its collection and enforcement efforts to pursue outstanding receivables;

Extension of Stay Period

16. The Initial Order granted a Stay Period until February 10, 2012;
17. The Stay Period granted under the Initial Order was subsequently extended for all of the Applicants from time to time by orders of this Honourable Court;
18. Most recently, the Stay Period was extended to May 31, 2018, by the Order of the Honourable Mr. Justice Myers, dated November 24, 2017;
19. The Applicants have been acting and continue to act in good faith and with due diligence in these CCAA proceedings;
20. It is just and convenient and in the interests of the Applicants and their stakeholders that the requested Order be granted and the Stay Period extended;
21. Although the Plan has been approved, the continuation of the stay of proceedings in the Domfoam estate is required to ensure the orderly collection and distribution of the remaining assets and settlement funds from the various class actions;
22. The proposed extension of the Stay Period is supported by the Monitor and there is no known opposition;

Approval of Monitor's fees, conduct and report

23. Following the implementation of the Plan, the Monitor made a distribution of funds on hand to the creditors in accordance with the Plan and the Orders of this Court;

24. the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;
25. Rule 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, RSO 1990, c C 43, as amended; and
26. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

27. The Affidavit of Tony Vallecoccia, sworn May 22, 2018;
28. The Eighteenth Report of the Monitor, to be filed; and
29. Such further and other material as counsel may advise and this Court may permit.

May 22, 2018

BLANEY McMURTRY LLP
Barristers and Solicitors
Suite 1500 - 2 Queen Street East
Toronto, ON M5C 3G5

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Lawyers for the Applicants

TO: SERVICE LIST

TAB 2

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

**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 3113736 CANADA LTD., 4362063 CANADA LTD., and
A-Z SPONGE & FOAM PRODUCTS LTD.

(the "**Applicants**")

AFFIDAVIT OF TONY VALLECOCCIA

(Sworn May 22, 2018)

I, TONY VALLECOCCIA, of the Town of Milton, in the Regional Municipality of Halton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and Chief Executive Officer of 3113736 Canada Ltd., formerly known as Valle Foam Industries (1995) Inc. ("**Valle Foam**"), and of 4362063 Canada Ltd., formerly known as Domfoam International Inc. ("**Domfoam**"), and a director of Valle Foam, Domfoam and A-Z Sponge & Foam Products Ltd. ("**A-Z Foam**") (collectively, the "**Applicants**"), and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. To the extent that the matters deposed to in this affidavit are based on my review of documents or information and belief, I have stated the source of my information and belief and do verily believe the information to be true.

3. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the stay of proceedings for all of the Applicants to and including November 30, 2018, and approving the Eighteenth Report of the Monitor, to be filed separately.

Background

4. On January 12, 2012, the Applicants sought and were granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("CCAA"), pursuant to the Order of the Honourable Mr. Justice Newbould (the "**Initial Order**").

5. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc., was appointed in the Initial Order to act as monitor in these CCAA proceedings ("**Monitor**").

6. As a result of the sale of assets of the Applicants, Valle Foam changed its name to 3113736 Canada Ltd., and Domfoam changed its name to 4362063 Canada Ltd. The style of cause of these proceedings was changed by the Order of Justice Brown dated June 15, 2012 to reflect the change of names. For the purpose of this affidavit, the said Applicants will still be referred to as Valle Foam, Domfoam and A-Z Foam.

7. On September 6, 2016, the Honourable Mr. Justice Penny approved the Applicants' order seeking acceptance of Domfoam's Plan of Compromise and Arrangement, dated August 23, 2016 ("**Plan**") for filing with the Court and authorizing Domfoam to seek approval of the Plan at a meeting of the creditors ("**Meeting Order**").

8. Pursuant to the Meeting Order, the meeting of the creditors of Domfoam was held on October 19, 2016 ("**Creditors' Meeting**"). The Plan was approved by an overwhelming majority (92% in number and 99% in value) of creditors at the Creditors' Meeting.

9. The Plan was approved and sanctioned by the Honourable Mr. Justice Hainey on January 24, 2017.

10. The prerequisites to the implementation of the Plan have all now been satisfied, and, on June 23, 2017, the Monitor filed with the Court its Plan Implementation Certificate, a copy of which is attached hereto and marked as **Exhibit “A”**.

11. Following the sanction and implementation of the Plan, the Monitor has the ongoing responsibility to collect funds from the Polyols Settlement (discussed below), and to distribute those funds to creditors with proven claims under the Plan.

Extension of the Stay Period

12. The Initial Order granted a stay of proceedings (“**Stay Period**”) until February 10, 2012.

13. The Stay Period granted under the Initial Order was subsequently extended from time to time by orders of the Court, the most recent being the Order of the Honourable Mr. Justice Myers, dated November 24, 2017, which extended the Stay Period to May 31, 2018.

14. The Applicants are seeking to extend the Stay Period up to and including November 30, 2018.

15. No cash flow is being provided with this affidavit as the Applicants have limited expenses and no employees. I am confident that the Applicants each have sufficient funds on hand to meet their obligations on a go forward basis for the period of the proposed extension.

16. I believe that the Applicants have acted, and continue to act, in good faith and with due diligence in pursuing the orderly wind down of Domfoam and collecting outstanding amounts

owed to Valle Foam (as explained in further detail below). I am informed by the Monitor that it supports the request to extend the Stay Period to November 30, 2018.

17. An extension of the Stay Period is required to allow the Applicants to continue collecting outstanding accounts as well as funds due under the Polyols Settlement (as defined below), and to allow the Monitor to distribute these funds to creditors with proven claims.

Collection of the Polyols Settlement

18. Each of the Applicants are claimants in a U.S. class action proceeding that relates to price fixing for a product known as “Polyether Polyol” (the “**US Urethane Proceeding**”).

19. There was a trial in respect of one of the defendants in the US Urethane Proceeding, the Dow Chemical Company (“**Dow**”), in which a judgment was rendered against Dow in the amount of \$1.06 billion (“**Judgment**”).

20. In March 2016, Dow withdrew its appeal of the Judgment to the United States Supreme Court and accepted a settlement under which it agreed to pay \$834 million USD, for distribution to the class members, including the Applicants (the “**Polyols Settlement**”).

21. Refund Recovery Services LLC (now known as Lex Recovery Group) (“**Lex Recovery**”) was retained as the Applicants’ exclusive agent to assist in filing the necessary documents to secure their share of the Polyols Settlement funds. Lex Recovery has filed claims with the administrator on behalf of the Applicants in accordance with the deadlines set out in the US Urethane Proceeding.

22. A distribution hearing with respect to the Polyols Settlement took place on December 19, 2017 in Kansas City, Kansas, and the Court approved the proposed distribution of the Polyols Settlement funds on that date.

23. On or about March 21, 2018, an initial distribution representing 85% of the total recovery from the Polyols Settlement was made to the creditors. The Applicants each received the following amounts from the Polyols Settlement:

- a) Valle Foam received \$5,542,999.25 USD;
- b) Domfoam received \$3,741,639.62 USD; and
- c) A-Z Foam received \$732,651.37 USD.

Attached hereto and marked as **Exhibit “B”** is a copy of the letters from US class action counsel in the US Urethane Proceeding to the Applicants enclosing the respective cheques. I am advised by my counsel, David Ullmann, that these cheques have been sent to the Monitor.

24. The Applicants are required to pay \$2,504,322.56 USD to Lex Recovery from the funds they received from the Polyols Settlement, which represents the 25% fee owing to Lex Recovery based on the retainer with the Applicants to assist and recover their claims in the US Urethane Proceeding. On May 2, 2018, counsel for the Applicants, Blaney McMurtry LLP, wrote to the Monitor enclosing the invoices for Lex Recovery. Attached hereto and marked as **Exhibit “C”** is a copy of a letter from Stephen Gaudreau of Blaney McMurtry LLP to the Monitor, dated May 2, 2018.

25. The Applicants are set to receive a second and final tranche of money up to 15% that is payable to them from the Polyols Settlement. As of the swearing of this affidavit, there is no projected final payout statement date.

26. An extension of the Stay Period is required to allow for further distributions to be made to the Applicants pursuant to the Polyols Settlement. The funds paid to Domfoam under the Polyols Settlement will be distributed to proven creditors *pro-rata* under the Plan.

Canadian Class Action

27. A similar class action was initiated and certified against Dow and a number of other defendants in Ontario. The class action was certified on behalf of all persons in Canada who purchased polyether polyol products between January 1, 1999 and December 31, 2004 (“**Canadian Urethane Proceeding**”).

28. Settlements have been reached in the Canadian Urethane Proceeding with several defendants wherein the defendants agreed to pay a total of \$13.3 million. Dow agreed to contribute \$5,080,000 CDN into the settlement funds, which are being held in trust for the benefit of the class members.

29. Class counsel for the Canadian Urethane Proceeding, Siskinds LLP, intends to implement a claims process in order to determine the class members entitled to a distribution from the Canadian settlement funds. Attached hereto and marked as **Exhibit “D”** is a copy of a summary of the Canadian Urethane Proceeding from the website of class counsel, and the proposed distribution protocol.

30. The Applicants with the assistance of Lex Recovery are currently in the process of determining whether or not they are class members in the Canadian Urethane Proceeding. The Applicants hope to recover additional funds from the Canadian class action for the benefit of the creditors of the respective estates.

Valle Foam Collection Efforts

31. As set out in my affidavit of November 15, 2017, there were eight actions initiated by Valle Foam to collect various outstanding receivables. Judgment has now been obtained with respect to three of these actions, and Valle Foam has diligently been enforcing these judgments during the stay period. In addition, two of these actions have been settled, and one has been dismissed on consent without costs.

32. With respect to the remaining two pieces of litigation, Valle Foam continues to vigorously pursue these actions, including by conducting examinations for discovery and bringing summary judgment motions, where necessary and appropriate. The Monitor has been advised of the status of each of these actions.

33. Extending the Stay Period will provide Valle Foam with the breathing room required to continue pursuing its collection and enforcement efforts.

A-Z Foam

34. Although the business of A-Z Foam has been ceased for several years at this point in time, it is an affiliated entity of the Applicants, and the continuation of the stay is convenient as there remain amounts to collect from the Polyols Settlement and inter-company accounting to be resolved.

35. No one has at any time during the CCAA Proceedings objected to the continuation of the stay with respect to A-Z Foam, and I am not aware of any objections at this time.

36. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the Stay Period to and including November 30, 2018, and for no improper purpose.

SWORN before me at the Town of)
Milton in the Province of Ontario, this)
22nd day of May, 2018)



Natasha Rambaran)
(A commissioner for taking affidavits))
)



TONY VALLECOCCIA

**Natasha Devi Rambaran, a Commissioner,
etc., Province of Ontario,
while a Student-at-Law,
Expires April 17, 2021.**

EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of Tony Vallecoccia
sworn on the 22nd day of May, 2018.



Commissioner for Taking Affidavits (or as may be)

Natasha Rambaran

**Natasha Devi Rambaran, a Commissioner,
etc., Province of Ontario,
while a Student-at-Law,
Expires April 17, 2021.**

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

**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 3113736 CANADA LTD., 4362063 CANADA LTD., and
A-Z SPONGE & FOAM PRODUCTS LTD.

(the “**Applicants**”)

Plan Implementation Certificate

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Plan of Compromise and Arrangement concerning, affecting and involving 4362063 Canada Ltd., formerly known as Domfoam International Inc. (“**Domfoam**”) dated August 23, 2016 (as amended, varied or supplemented from time to time in accordance with the terms thereof, and together with all schedules thereto, the “**Plan**”), which Plan is attached as Schedule “A” to the Order of the Honourable Justice Hainey made in these proceedings on January 24, 2017 (the “**Sanction Order**”).

Pursuant to section 7.1 of the Plan and paragraph 8 of the Sanction Order, Deloitte Restructuring Inc., in its capacity as the Court-appointed monitor of the Applicants (the “**Monitor**”) delivers this certificate and hereby certifies that:

1. The conditions precedent set out in section 7.1 of the Plan have been satisfied or waived, as applicable.

- 2 -

2. Pursuant to the terms of the Plan, upon the filing of this Plan Implementation Certificate with the Court, the Plan Implementation Date shall occur and the Plan shall become effective.
3. This Plan Implementation Certificate will be filed with the Court.

DATED at the City of Toronto, in the Province of Ontario, this 23rd day of June, 2017.

DELOITTE RESTRUCTURING INC., in its capacity as the Court-appointed Monitor of the Applicants, and not in its personal capacity

Per: 

Name: Catherine Hristow

Title: Vice President - Financial Advisory -
Reorganization Services

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 3113736 CANADA LTD., 4362063 CANADA LTD., 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**

Plan Implementation Certificate

Thornton Grout Finnigan LLP
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100 Wellington Street West
P.O. Box 329, Toronto-Dominion Centre
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Tel: (416) 304-1616
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Grant B. Moffat (LSUC# 32380L)
Tel: 416-304-0599
Email: gmoffat@tgf.ca

Lawyers for the Monitor, Deloitte Restructuring Inc.

EXHIBIT B

This is Exhibit "B" referred to in the Affidavit of Tony Vallecoccia
sworn on the 22nd day of May, 2018.



Commissioner for Taking Affidavits (or as may be)

Natasha Rambaran

**Natasha Devi Rambaran, a Commissioner,
etc., Province of Ontario,
while a Student-at-Law,
Expires April 17, 2021.**

FINE, KAPLAN AND BLACK, R.P.C.

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OF COUNSELAARON M. FINE
1923-2013

March 21, 2018

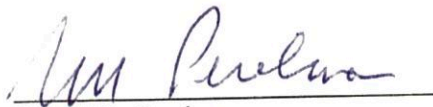
To: Members of the Class in the Urethane Antitrust Litigation

From: The Urethane Litigation Team

Enclosed please find your initial distribution from the \$835 million settlement with The Dow Chemical Company. This distribution represents approximately 85% of your total recovery from this settlement.

It has been our pleasure to represent the class over the last 13+ years, and we are gratified that we were able to successfully conclude the litigation on your behalf.

If you have any questions, do not hesitate to contact us.



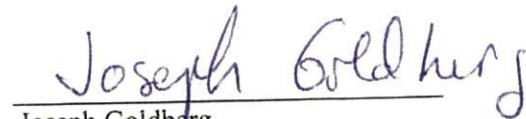
Donald L. Perelman
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20 First Plaza Suite 700
Albuquerque, NM 87102

Lead Trial Counsel



Urethane Antitrust Litigation
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

Claim Number: 00000621
Check Number: 00001728
Check Date: 03/21/18
Check Amount: \$5,542,999.25

VALLE FOAM
ATTN: DAVID ULLMAN
BLANEY-MCMURTRY, LLP,
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5 CANADA

Ref No.: 7364

Dear Class Member:

This check represents your initial payment from the **Dow Settlement** fund in the Urethane Antitrust Litigation – Polyether Polyol Cases. This payment is based on the Claim Form(s) you filed in connection with the Dow Settlement and represents 85% of your Recognized Loss as calculated in accordance with the Court-approved Plan of Allocation. This distribution is being made in accordance with the Court's December 19, 2017 Order Approving Distribution from the Dow Settlement Fund.

We cannot provide individual tax advice. The tax treatment of distributions from the Dow Settlement Fund is the responsibility of each recipient. You should consult your tax advisor to determine the tax consequences, if any, of this distribution to you.

Please cash this check promptly as it becomes void and subject to re-distribution 90 days after the date of issue. If you have changed your address from the address on the accompanying check or if you have any questions, you may contact the Settlement Administrator by phone toll-free at 1-877-741-1226, by email at questions@polyetherpolyolsettlement.com, or by mail at:

Urethane Antitrust Litigation
c/o GCG
P.O. Box 10223
Dublin, OH 43017-5723

Citibank, N.A.

1-8/210

Urethane Litigation Fund
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

CHECK NUMBER: 00001728
CHECK DATE: 03/21/18

Five million five hundred forty two thousand nine hundred ninety nine and 25/100 Dollars

***\$5,542,999.25

CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION
IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.

PAY
TO
THE
ORDER
OF

VALLE FOAM
ATTN: DAVID ULLMAN
BLANEY-MCMURTRY, LLP,
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5 CANADA

BY



AUTHORIZED SIGNATURE

⑈001728⑈ ⑆021000089⑆ 6783779643⑈



Urethane Antitrust Litigation
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

Claim Number: 01007018
Check Number: 00001733
Check Date: 03/21/18
Check Amount: \$3,741,639.62

DOMFOAM INTERNATIONAL INC
ATTM: DAVID ULLMAN
BLANEY-MCMURTY, LLP
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5

Ref No.: 3468

Dear Class Member:

This check represents your initial payment from the **Dow Settlement** fund in the Urethane Antitrust Litigation – Polyether Polyol Cases. This payment is based on the Claim Form(s) you filed in connection with the Dow Settlement and represents 85% of your Recognized Loss as calculated in accordance with the Court-approved Plan of Allocation. This distribution is being made in accordance with the Court's December 19, 2017 Order Approving Distribution from the Dow Settlement Fund.

We cannot provide individual tax advice. The tax treatment of distributions from the Dow Settlement Fund is the responsibility of each recipient. You should consult your tax advisor to determine the tax consequences, if any, of this distribution to you.

Please cash this check promptly as it becomes void and subject to re-distribution 90 days after the date of issue. If you have changed your address from the address on the accompanying check or if you have any questions, you may contact the Settlement Administrator by phone toll-free at 1-877-741-1226, by email at questions@polyetherpolyolsettlement.com, or by mail at:

Urethane Antitrust Litigation
c/o GCG
P.O. Box 10223
Dublin, OH 43017-5723

Urethane Litigation Fund
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

CHECK NUMBER: 00001733
CHECK DATE: 03/21/18

Three million seven hundred forty one thousand six hundred thirty nine and 62/100 Dollars ***\$3,741,639.62

CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION
IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.

PAY
TO
THE
ORDER
OF

DOMFOAM INTERNATIONAL INC
ATTM: DAVID ULLMAN
BLANEY-MCMURTY, LLP
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5

BY  AUTHORIZED SIGNATURE



⑈001733⑈ ⑆021000089⑆ 6783779643⑈



Urethane Antitrust Litigation
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

Claim Number: 01008517
Check Number: 00001736
Check Date: 03/21/18
Check Amount: \$732,651.37

A - Z SPONGE & FOAM PRODUCTS LTD
ATTN: DAVID ULLMAN
BLANEY-MCMURTY, LLP
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5 CANADA

Ref No.: 1935

Dear Class Member:

This check represents your initial payment from the **Dow Settlement** fund in the Urethane Antitrust Litigation – Polyether Polyol Cases. This payment is based on the Claim Form(s) you filed in connection with the Dow Settlement and represents 85% of your Recognized Loss as calculated in accordance with the Court-approved Plan of Allocation. This distribution is being made in accordance with the Court's December 19, 2017 Order Approving Distribution from the Dow Settlement Fund.

We cannot provide individual tax advice. The tax treatment of distributions from the Dow Settlement Fund is the responsibility of each recipient. You should consult your tax advisor to determine the tax consequences, if any, of this distribution to you.

Please cash this check promptly as it becomes void and subject to re-distribution 90 days after the date of issue. If you have changed your address from the address on the accompanying check or if you have any questions, you may contact the Settlement Administrator by phone toll-free at 1-877-741-1226, by email at questions@polyetherpolyolsettlement.com, or by mail at:

Urethane Antitrust Litigation
c/o GCG
P.O. Box 10223
Dublin, OH 43017-5723

Urethane Litigation Fund
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

Citibank, N.A.

1-8/210

CHECK NUMBER: 00001736
CHECK DATE: 03/21/18

Seven hundred thirty two thousand six hundred fifty one and 37/100 Dollars

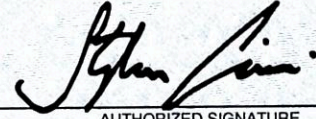
****\$732,651.37

PAY
TO
THE
ORDER
OF

A - Z SPONGE & FOAM PRODUCTS LTD
ATTN: DAVID ULLMAN
BLANEY-MCMURTY, LLP
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5 CANADA

CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION
IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.

BY



AUTHORIZED SIGNATURE



⑈001736⑈ ⑆021000089⑆ 6783779643⑈

EXHIBIT C

This is Exhibit "C" referred to in the Affidavit of Tony Vallecoccia
sworn on the 22nd day of May, 2018.



Commissioner for Taking Affidavits (or as may be)

Natasha Rambaran

**Natasha Devi Rambaran, a Commissioner,
etc., Province of Ontario,
while a Student-at-Law,
Expires April 17, 2021.**

Stephen Gaudreau

D: 416-596-4285 F: 416-594-3594
sgaudreau@blaney.com

May 2, 2018

VIA EMAILCatherine Hristow
Deloitte
8 Adelaide Street West, Suite 200
Toronto, Ontario, Canada M5H 0A9

Dear Ms. Hristow:

Re: Payments by Dom-Foam International Inc., Valle Foam, and A-Z Sponge & Foam Products Inc. (the “Companies”) to Lex Group LLC arising from Urethane Polyether Polyol Antitrust Litigation settlement (the “US Urethane Proceedings”)

We are writing with respect to the amounts due and owing to Lex Group LLC (“**Lex Group**”) arising from its retainer with the Companies to assist and recover their claims in the US Urethane Proceedings (the “**Retainer**”). As a reminder, Lex Group’s fee is equal to 25% of all funds paid to the Companies pursuant to the US Urethane Proceedings. The Companies were recently paid a total of \$USD 10,017,290.20 pursuant to settlements reached in the US Urethane Proceedings.

As a result, the Lex Group has delivered invoices to each of the Companies totalling \$USD 2,504,322.56 (being its 25% fee pursuant to the Retainer):

- Invoice #916 to Dom-Foam International Inc. in the amount \$USD 935,409.91;
- Invoice #920 to Valle Form in the amount of \$USD 1,385,749.81; and,
- Invoice #918 to A-Z Sponge & Foam Products Ltd. in the amount of \$USD 183,162.84.

Copies of the invoices are enclosed with this letter.

By way of brief background, the Retainer was originally with Lex Group’s wholly owned subsidiary Refund Recovery Service LLC, which was then assumed by the Lex Group. The Valle Foam portion of that retainer was then assigned to the Enterprise Law Group. It is our understanding that by way of agreement between Lex Group and the Enterprise Law Group, all funds payable pursuant to the Retainer are to be paid to the Lex Group. In the past, the Companies have paid Lex Group its 25% fee pursuant to previous settlements in the US Urethane Proceedings. Lex Group’s retainer was referenced and approved at paragraphs 38-41 of the Monitor’s Seventh Report executed July 12, 2013.

We trust that the information provided is sufficient to provide your authorization to release the Funds to Lex Group.

- 2 -

However, should you require further information, please do not hesitate to contact myself or CJ Kishish, President and General Counsel at Lex Group. Mr. Kishish can be reached at 952.224.2152 or ckishish@kishishlaw.com.

We look forward to your authorization to release the Funds.

Yours very truly,

Blaney McMurtry LLP



Stephen Gaudreau

SG/sg

Enclosures.

cc: David Ullmann, Grant Moffat

Invoice

Lex Acquisition Group, LLC

1555 Southcross Drive West
Burnsville, MN 55306

Date	Invoice #
4/5/2018	916

Bill To
Dom-Foam International Inc

Terms	Due Date
	4/5/2018

Description	Amount
25% settlement fee - Polyurethane Polyether Polyols ("Dow verdict")	935,409.91

Total	\$935,409.91
Payments/Credits	\$0.00
Balance Due	\$935,409.91

Urethane Litigation Fund
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

Citibank, N.A.

1-8/210

CHECK NUMBER: 00001733
CHECK DATE: 03/21/18

Three million seven hundred forty one thousand six hundred thirty nine and 62/100 Dollars

***\$3,741,639.62

PAY
TO
THE
ORDER
OF

DOMFOAM INTERNATIONAL INC
ATTM: DAVID ULLMAN
BLANEY-MCMURTY, LLP
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5

CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION
IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.

BY 
AUTHORIZED SIGNATURE



⑈001733⑈ ⑆021000089⑆ 6783779643⑈

Invoice

Lex Acquisition Group, LLC

1555 Southcross Drive West
Burnsville, MN 55306

Date	Invoice #
4/5/2018	920

Bill To
Valle Foam

Terms	Due Date
	4/5/2018

Description	Amount
25% settlement fee - Polyurethane Polyether Polyols ("Dow verdict")	1,385,749.81

Total	\$1,385,749.81
Payments/Credits	\$0.00
Balance Due	\$1,385,749.81

Urethane Litigation Fund
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

Citibank, N.A.

1-8/210

CHECK NUMBER: 00001728
CHECK DATE: 03/21/18

Five million five hundred forty two thousand nine hundred ninety nine and 25/100 Dollars

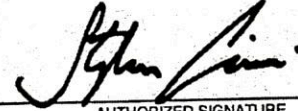
***\$5,542,999.25

CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION
IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.

PAY
TO
THE
ORDER
OF

VALLE FOAM
ATTN: DAVID ULLMAN
BLANEY-MCMURTRY, LLP,
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5 CANADA

BY



AUTHORIZED SIGNATURE



⑈001728⑈ ⑆021000089⑆ 6783779643⑈

Lex Acquisition Group, LLC

1555 Southcross Drive West
Burnsville, MN 55306

Invoice

Date	Invoice #
4/5/2018	918

Bill To
A-Z Sponge & Foam Products Ltd

Terms	Due Date
	4/5/2018

Description	Amount
25% settlement fee - Polyurethane Polyether Polyols ("Dow verdict")	183,162.84
Total \$183,162.84	
Payments/Credits \$0.00	
Balance Due \$183,162.84	

Urethane Litigation Fund
c/o GCG
PO Box 10223
Dublin, OH 43017-5723

Citibank, N.A.

1-8/210

CHECK NUMBER: 00001736
CHECK DATE: 03/21/18

Seven hundred thirty two thousand six hundred fifty one and 37/100 Dollars *****\$732,651.37

CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION
IF NOT CASHED WITHIN 90 DAYS AFTER ISSUE DATE.

PAY
TO
THE
ORDER
OF


A - Z SPONGE & FOAM PRODUCTS LTD
ATTN: DAVID ULLMAN
BLANEY-MCMURTY, LLP
2 QUEEN STREET EAST, SUITE 1500
TORONTO, ONTARIO MSC 3G5 CANADA

BY  _____
AUTHORIZED SIGNATURE 

⑈001736⑈ ⑆021000089⑆ 6783779643⑈

EXHIBIT D

This is Exhibit "D" referred to in the Affidavit of Tony Vallecoccia
sworn on the 22nd day of May, 2018.



Commissioner for Taking Affidavits (or as may be)

Natasha Rambaran

**Natasha Devi Rambaran, a Commissioner,
etc., Province of Ontario,
while a Student-at-Law,
Expires April 17, 2021.**

Polyether Polyols

Active Action

The Polyether Polyols class action alleges that the Defendants unlawfully conspired to fix, increase, and/or maintain prices in the market for Polyether Polyols.

Polyether Polyols means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), toluene diisocyanate (TDI), and polyether polyol systems. Polyether Polyols are used in a variety of manufacturing applications.

The Plaintiff alleges that from at least January 1999 to December 2004, the Defendants and senior executive of the corporate defendants participated in illegal and secretive meetings and made arrangements relating to price targets, specific price increases, and market share divisions for Polyether Polyols.

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[Developments](#) [FAQs](#) [Documents](#)

Developments

Settlements

Settlements have been reached with the following defendants, totaling approximately \$13.3 million:

- Bayer Inc, Bayer AG, Bayer MaterialScience LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation (collectively “Bayer”) (CDN\$2,500,000)
- Lyondell Chemical Company (“Lyondell”) (Up to \$35,000 towards Notice)
- Huntsman International LLC (“Huntsman”) (USD\$1,700,000)
- BASF Canada Inc. (“BASF Canada”) (CDN\$2,000,000)
- BASF Corporation (“BASF Corp”) (CDN\$2,000,000)
- Dow Chemical Company and Dow Chemical Canada Inc. (collectively “Dow”) (CDN\$5,080,000)

The Dow settlement approval hearing will be heard before the Ontario court on March 13, 2018. The other settlements have received court approval.

The settlement funds (plus interest, less court-approved fees and expenses) are being held in trust for the benefit of settlement class members. At the March 13, 2018 hearing, the Ontario court will be asked to approve a method of distributing the settlement funds to settlement class members. Please [click here](#) to view a copy of the [Proposed Distribution Protocol](#).

Contested Litigation

In March 2014, the Ontario action was certified against Dow. The class action was certified on behalf of all persons in Canada (excluding defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors) who purchased Polyether Polyol Products between January 1, 1999 and December 31, 2004. Polyether Polyol Products means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), toluene diisocyanate (TDI), and polyether polyol systems.

Dow was denied leave to appeal the certification decision.

If the Dow settlement is approved, it will resolve the Ontario class action in its entirety.

In light of the certification of a national class in Ontario, the Quebec action was discontinued. Please [click here](#) to view a copy of the [Quebec Discontinue Order](#) and the [Quebec Notice of Discontinuance](#)

Ask a question

First Name
Last Name
Email
Message

<input type="checkbox"/>	I'm not a robot	reCAPTCHA Privacy - Terms
<input type="submit" value="Submit"/>		

polyetherclassaction@siskinds.com

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**DISTRIBUTION PROTOCOL
IN THE MATTER OF THE POLYETHER POLYOL PRODUCTS
CLASS ACTION SETTLEMENTS**

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GENERAL PRINCIPLES

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into with the following Defendants:
 - (a) Bayer Inc., Bayer AG, Bayer Material Science LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation, dated June 6, 2007;
 - (b) Lyondell Chemical Company, dated November 22, 2011;
 - (c) Huntsman International LLC, dated April 11, 2012;
 - (d) BASF Corporation, dated April 12, 2012;
 - (e) BASF Canada Inc., dated April 12, 2012; and
 - (f) Dow Chemical Company and Dow Chemical Canada Inc., dated November 17, 2017 (collectively, the “Settlement Agreements”).

2. The administration shall:
 - (a) implement and conform to the Settlement Agreements, orders of the Ontario Court, and this Distribution Protocol;
 - (b) include the establishment and maintenance of the Settlement Website;
 - (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible;
 - (d) rely on sales information provided by the Defendants wherever possible; and
 - (e) be bilingual in all respects.

- 3 -

3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to Polyether Polyol Products, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

DEFINITIONS

4. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.
5. For the purpose of this Distribution Protocol, the following definitions apply:
 - (a) *Aggregate Purchases* means the aggregate amount paid by a Settlement Class Member for Polyether Polyol Products, less any taxes, delivery or shipping charges, rebates, or other form of discounts.
 - (b) *Claim* means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
 - (c) *Claims Administrator* means the firm appointed by the Ontario Court to administer the Settlement Amounts in accordance with the provisions of the Settlement Agreements and the Distribution Protocol, and any employees of such firm.

- 4 -

- (d) ***Claims Filing Deadline*** means the date by which Claims (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.
- (e) ***Class Period*** means from January 1, 1999 and December 31, 2004.
- (f) ***Decision Notice*** shall have the meaning attributed to it in paragraph 38.
- (g) ***Net Settlement Amount*** means the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements, plus any costs awards and accrued interest, less:
 - (i) Class Counsel Fees as approved by the Ontario Court or Quebec Court;
 - (ii) Administration Expenses;
 - (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties); and
 - (iv) any other deductions approved by the Ontario Court.
- (h) ***Notional Entitlement*** means the total value assigned to Settlement Class Member's purchases of Polyether Polyol Products by the Claims Administrator, in accordance with paragraphs 6 to 13 below.
- (i) ***Online Claim Portal*** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs 23 to 25 below.

- 5 -

- (j) ***Polyether Polyol Products*** means:
 - (i) polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (“MDI”) and toluene Diisocyanate (“TDI”) purchased in Canada during the Class Period; and
 - (ii) polyether polyol systems purchased from the Defendants in Canada during the Class Period.

- (k) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.

- (l) ***Settlement Class Members*** means all persons who purchased Polyether Polyol Products. The following persons are excluded:
 - (i) each Defendant, Rhodia, Rhodia Inc., and Rhodia Canada Inc., and their respective parents, employees, subsidiaries, affiliates, officers and directors; and
 - (ii) persons who validly opted-out of the Proceedings.

- (m) ***Settlement Website*** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreements, the Distribution Protocol, and the claims process, and access to the Online Claim Portal.

DISTRIBUTION OF NET SETTLEMENT FUNDS

Calculation of Payments

6. The Net Settlement Amount will be distributed to qualifying Settlement Class Members *pro rata* (proportionally) based on the value of the qualifying Settlement Class Member’s

- 6 -

Notional Entitlement as against the value of all qualifying Settlement Class Members' Notional Entitlement.

7. For the purposes of the *pro rata* distribution, a Settlement Class Member's Notional Entitlement will be calculated based on:
 - (a) the value of the Aggregate Purchases (see paragraph 8);
 - (b) the categorization of the Settlement Class Member (see paragraphs 9 to 11);
 - (c) the type of Polyether Polyol Products purchased (see paragraph 12); and
 - (d) the date of purchase (see paragraph 13).

(a) The value of the Aggregate Purchases

8. The Claims Administrator will calculate the value of the Settlement Class Member's Aggregate Purchases based on the information disclosed in the Defendants' sales information and/or information provided by the Settlement Class Member as part of the claims process.

(b) The categorization of the Settlement Class Member

9. Settlement Class Members will be categorized into the following purchaser groups based on their position in the distribution chain:
 - (a) ***Direct Purchaser*** means a Settlement Class Member who purchased Polyether Polyol Products from a manufacturer for either (i) its own use and not for commercial resale; or (ii) inclusion in a product for commercial resale;

- 7 -

- (b) ***Distributor*** means a Settlement Class Member who purchased Polyether Polyol Products and resold the Polyether Polyol Products without further processing and without including them in any product; and
 - (c) ***Indirect Purchaser*** means a Settlement Class Member who purchased Polyether Polyol Products from a Distributor.
10. Settlement Class Members may fall into more than one category.
11. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the capacity in which the Polyether Polyol Products were purchased:
- (a) Aggregate Purchases made in the capacity of a Direct Purchaser will be valued at 100%;
 - (b) Aggregate Purchases made in the capacity of a Distributor will be valued at 25%;
and
 - (a) Aggregate Purchases made in the capacity of an Indirect Purchaser will be valued at 75%.

(c) The type of Polyether Polyol Products

12. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the type of Polyether Polyol Product:
- (a) Aggregate Purchases attributable to purchases of MDI, TDI and/or polyether polyols will be valued at 100%; and

- 8 -

- (b) Aggregate Purchases attributable to purchases of polyether polyol systems will be valued at 50%.

(d) The date of purchase

13. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the date the Polyether Polyol Products were purchased:

- (a) Aggregate Purchases made between January 1, 2002 and December 31, 2003 will be valued at 100%; and
- (b) Aggregate Purchases made between January 1, 1999 to December 31, 2001 and January 1, 2004 to December 31, 2004 will be valued at 30%.

Sample Calculations

14. If a Distributor purchased \$1,000,000 of MDI and TDI in 2001, its Notional Entitlement would be calculated as follows.

$$\begin{aligned} & \$1,000,000 \text{ (representing the Aggregate Purchases of MDI and} \\ & \text{TDI)} \times 0.25 \text{ (representing the categorization of the purchaser as a} \\ & \text{Distributor)} \times 1.0 \text{ (representing the type of Polyether Polyol} \\ & \text{Product purchased)} \times 0.3 \text{ (representing the timing of the purchase)} \\ & = \$75,000 \end{aligned}$$

15. If an Indirect Purchaser purchased \$2,000,000 worth of polyether polyol systems in 2002 and \$5,000,000 worth of polyether polyols in 2004, its Notional Entitlement would be calculated as follows.

$$\begin{aligned} & \$2,000,000 \text{ (representing the Aggregate Purchases of polyether} \\ & \text{polyol systems)} \times 0.75 \text{ (representing the categorization of the} \\ & \text{purchaser as an Indirect Purchaser)} \times 0.5 \text{ (representing the type of} \end{aligned}$$

- 9 -

Polyether Polyol Product purchased) x 1.0 (representing the timing of the purchase) = \$750,000

plus

\$5,000,000 (representing the Aggregate Purchases of polyether polyols) x 0.75 (representing the categorization of the purchaser as an Indirect Purchaser) x 1.0 (representing the type of Polyether Polyol Product purchased) x 0.3 (representing the timing of the purchase) = \$ 1,125,000

Distribution

16. All eligible Settlement Class Members will receive a minimum payment of \$20. The \$20 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.
17. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of the Net Settlement Amount to ensure a fair and cost effective distribution of the Net Settlement Amount.

THE CLAIMS PROCESS

The Claim

All Settlement Class Members

18. All Settlement Class Members will be required to provide the following information:
 - (a) name and contact information;
 - (b) purchase information in accordance with paragraphs 19 to 20 or 21, as applicable;
 - (c) disclosure about whether the Settlement Class Member or any entity related to the Settlement Class Member has received compensation through other proceedings

- 10 -

or private out-of-class settlements and/or provided a release in respect of any of Polyether Polyol Products, and provide details of the compensation received and the claims released;

- (d) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate for more information and/or to audit the Claim;
- (e) a declaration that the information submitted in the Claim is true and correct; and
- (f) if the Claim is submitted by a third-party on behalf of a Settlement Class Member (including a parent company claiming on behalf of a subsidiary or affiliate), the third-party must provide a signed statement from that Settlement Class Member at the time the Claim is filed authorizing the third-party to file the Claim on its behalf.

Settlement Class Members relying on Defendant sales data

19. Where the Defendants have provided sales information in respect of the Settlement Class Member, the required fields in the Online Claim Portal will be pre-populated with the information provided by the Defendants. The following categories of information shall be provided separately:

- (a) for the period between January 1, 2002 and December 31, 2003:
 - (i) the value of Aggregate Purchases attributable to polyether polyol systems;
 - (ii) the value of Aggregate Purchases attributable to MDI, TDI or Polyols;
- (b) for the remainder of the Class Period:

- 11 -

- (i) the value of Aggregate Purchases attributable to polyether polyol systems;
and
 - (ii) the value of Aggregate Purchases attributable to MDI, TDI or Polyols.
20. The Settlement Class Member will be given the opportunity to agree with the purchase information provided by the Defendants. Where the Settlement Class Member agrees with the purchase information provided by the Defendants, no further purchase information is required from the Settlement Class Member. However, the Settlement Class Member must identify which purchases it made in the capacity of a Direct Purchaser or a Distributor.

Settlement Class Members claiming for purchases not substantiated by Defendant sales data

21. Where the Defendants have not provided sales information in respect of a Settlement Class Member and/or the Settlement Class Member is claiming for purchases of Polyether Polyol Products in addition to those substantiated by the Defendants' data, the Settlement Class Member must provide a declaration attesting to the information described in paragraph 19(a) and (b) above. The Settlement Class Member must also identify which purchases it made in the capacity of a Direct Purchaser, Distributor or Indirect Purchaser.
22. Where a Settlement Class Member has purchase records for at least two years during the Class Period, or sales information from the Defendant Bayer, the Settlement Class Member can use such records to extrapolate its purchases of Polyether Polyol Products for the remainder of the Class Period.

The Online Claim Portal

23. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administration support to enable Settlement Class Members to do so.
24. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraphs 18 to 22.
25. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is entered into the Online Claim Portal or provided by Settlement Class Members who file hardcopy Claims in accordance with paragraph 28 below:
 - (a) names, addresses, and purchase data of the Settlement Class Members;
 - (b) supporting documents provided by Settlement Class Members as part of the audit process; and
 - (c) any other information that might be useful in the claims administration process.

The Claims Filing Process

26. Where a Settlement Class Member has been identified by the Defendants, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the Online Claim Portal.

- 13 -

27. Settlement Class Members will be encouraged to complete and submit a Claim electronically using the Online Claim Portal. Subject to paragraphs 28 and 36, or further order of the Ontario Court, Claims must be submitted on the Online Claim Portal on or before the Claim Filing Deadline.
28. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to paragraph 36 or further order of the Ontario Court, the completed and executed hardcopy Claim must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.

Assistance in Filing a Claim

29. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.
30. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Members will be responsible for any and all expenses incurred in doing so.

Audits

31. Where the Settlement Class Member purchased Polyether Polyol Products directly from a Defendant and the Defendant provided sales information in respect of that Settlement

- 14 -

Class Member, the Defendant's sales information shall be *prima facie* proof of the Settlement Class Member's Polyether Polyol Product purchases and those purchases shall not be subject to an audit.

32. Where the Settlement Class Member was not identified by Defendants and/or is claiming for additional purchasers, the Claims Administrator shall audit:
 - (i) a random selection of at least 10% of Claims; and
 - (ii) Claims representing the top 15% of Claims (measured by Notional Entitlement).

33. The Claims Administrator shall notify the Settlement Class Member, by email or by regular mail, that the Settlement Class Member's Claim is the subject of an audit and the requirement to provide documentary proof:
 - (a) Proof of purchase might include invoices, receipts, delivery or packing slips, purchase records, historical accounting records, credit card statements, bank statements, cancelled cheques, wire transfer confirmations, or comparable verification that is acceptable to the Claims Administrator.
 - (b) where a Settlement Class Member has extrapolated its purchase records in accordance with paragraph 22 above, the Settlement Class Member must provide a declaration explaining the basis for and calculation of the extrapolation of purchases.

34. At its sole discretion, the Claims Administrator can elect to audit any Claim and can reject a Claim, in whole or in part, where, in the Claims Administrator's view, the

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Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

Deficiencies

35. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other required information, the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator may reject the Claim. The Online Claim Portal shall be designed so as to minimize the possibility of deficient claims.

Adjustments to Claims Process and Extension of the Claims Filing Deadline

36. By agreement between the Claims Administrator and Class Counsel, the Claims Filing Deadline may be extended and the Claims Administrator may adjust the claims process. Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the claims process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Amount and it is in the best interests of the Settlement Class Members to do so.

Claims Administrator's Decision

37. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:
- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the

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Settlement Agreements, orders of the Ontario Court and this Distribution Protocol; and

- (b) make a determination of the value of the Settlement Class Member's Notional Entitlement in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Ontario Court and this Distribution Protocol.

- 38. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Notional Entitlement (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim of the Settlement Class Member (or recategorized any purchases), the Claims Administrator shall include in the Decision Notice its grounds for rejecting or recategorizing all or part of the Claim.
- 39. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 40 to 47 below.

Appeal of the Claims Administrator's Decision

- 40. The right to appeal is limited to circumstances where the dispute as to the value of the Notional Entitlement is greater than \$100,000.
- 41. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.
- 42. The following grounds shall not be grounds for appeal:

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- (a) the refusal of the Claims Administrator to accept a Claim postmarked or electronically submitted after the Claims Filing Deadline;
 - (b) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member has not cooperated with the Claims Administrator in respect of any audit conducted by the Claims Administrator in respect of that Settlement Class Member's Claim; or
 - (c) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member did not declare that the information submitted in the Claim is true and correct.
43. Appeals will be determined by the Ontario Court or a third party designated by the Ontario Court.
44. Appeals will be on the basis of written submissions, supported by the documentation provided by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Ontario Court or its designee for consideration.
45. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Settlement Class Member as a part of the claims process, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court or its designee as is reasonably necessary.

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46. Notwithstanding the foregoing, the Ontario Court or its designee, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court or its designee) from the Settlement Class Member and/or Claims Administrator.
47. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

Payment of Claims

48. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:
- (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
 - (b) make arrangements to pay approved Claims by cheque.
49. To the extent that the full Net Settlement Amount is not paid out due to uncashed cheques, residual interest or otherwise, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000. For distribution of any amount above \$10,000, further direction of the Ontario Court shall be sought.
50. The payment to Pro Bono Canada shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (1°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount

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payable to the Fonds d'aide aux actions collectives, 23.6%¹ of the payment to Pro Bono Canada will be notionally allocated to Quebec.

THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

Supervisory Powers of the Ontario Court

51. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

Investment of Settlement Amounts

52. The Settlement Amounts shall be held in guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution.

Communication, Languages and Translation

53. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
54. The Claims Administrator shall establish a toll-free number for calls from Canada.
55. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.

¹ 23.6% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

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56. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

Undeliverable Mail

57. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
58. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from that Settlement Class Member's settlement benefits.
59. Where a Settlement Class Member who is entitled to payment of greater than \$20 requests a cheque be reissued, \$15 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$20 will not be reissued.

Fraudulent Claims

60. The Claims Administrator shall develop and implement processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address.

Taxes

61. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Amount and shall pay any taxes imposed on such monies out of the Net Settlement Amount.

Reporting

62. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
63. The Claims Administrator shall provide any reports requested by the Ontario Court.

Preservation and Disposition of Claim Submissions

64. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until two (2) years after all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

Assistance to the Claims Administrator

65. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol, provided that related expenses are paid out of the Claims Administrator's fees or approved by the Ontario Court in advance.

Confidentiality

66. All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreements, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreements. The information provided by the Settlement Class Member is strictly private and confidential and will not be

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disclosed without the express written consent of the Settlement Class Member, except in accordance with the Settlement Agreements, orders of the Ontario Court and/or this Distribution Protocol.

TAB 3

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Eighteenth Report is hereby abridged and validated and this Motion is properly returnable today without further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning set out in the Eighteenth Report.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period granted under the Initial Order of Justice Newbould dated January 12, 2012 (the “**Initial Order**”) and as subsequently extended by, *inter alia*, the Order of the Honourable Mr. Justice Myers, dated November 24, 2017, is hereby extended from May 31, 2018 to and including November 30, 2018.

MONITOR’S REPORT, ACTIONS AND FEES

4. **THIS COURT ORDERS** that the Eighteenth Report and actions, decisions and conduct of the Monitor as set out in the Eighteenth Report are hereby authorized and approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel as set out in the Eighteenth Report, the Affidavit of ●, sworn ●, and the exhibits attached thereto, are hereby authorized and approved.

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 3113736 CANADA LTD., 4362063 CANADA LTD., 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

ORDER

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SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

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**MOTION RECORD OF THE APPLICANTS
(Re: Stay Extension, Returnable May 29, 2018)**

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