

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE )  
MR. JUSTICE HAINEY )

TUESDAY, THE 24<sup>th</sup> DAY  
OF JANUARY, 2017

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")

**SANCTION ORDER**

**THIS MOTION** made by the Applicants for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "CCAA"), *inter alia* sanctioning the Plan of Compromise and Arrangement filed by 4362063 Canada Ltd. (formerly 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"** hereto, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Tony Vallecoccia sworn January 13, 2017 and the exhibits thereto (the "**Vallecoccia Affidavit**") and the Fifteenth Report of Deloitte & Touche Inc., now known as Deloitte Restructuring Inc., (the "**Fifteenth Report**") in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants, and on hearing the submissions of counsel for the Applicants, the Monitor and all other counsel listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Beverly Rusk sworn January 13, 2017, filed:

**DEFINED TERMS**

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meaning ascribed to such terms in the Plan.

**SERVICE, NOTICE AND MEETING**

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

3. **THIS COURT ORDERS** that there has been good and sufficient notice, service and delivery of the Creditors' Information Package (as defined in the Meeting Order granted by this Court on September 6, 2016 (the "**Meeting Order**")), and that the Creditors' Meeting was duly called, convened, held and conducted, all in conformity with the CCAA and the Orders of this Court made in the CCAA Proceedings, including, without limitation, the Meeting Order.

**SANCTION OF THE PLAN**

4. **THIS COURT ORDERS AND DECLARES** that:

- (a) the Plan has been approved by the requisite majorities of Creditors present and voting, either in person or by proxy, at the Approval Meeting, all in conformity with the CCAA, the terms of the Initial CCAA Order and the Meeting Order;
- (b) Domfoam has complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects;
- (c) Domfoam has not done or purported to do (nor does the Plan do or purport to do) anything that is not authorized by the CCAA; and
- (d) Domfoam has acted in good faith and with due diligence and the Plan, together with all of the compromises, arrangements, transactions, releases, discharges, bar orders, injunctions and results provided for therein and effected thereby are fair,

reasonable and in the best interests of the Creditors and does not unfairly disregard the interests of any Person (whether a Creditor or otherwise).

5. **THIS COURT ORDERS** that the Plan is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

**PLAN IMPLEMENTATION**

6. **THIS COURT ORDERS** that each of Domfoam, its directors and officers, and the Monitor is authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries, allocations, instruments and agreements contemplated pursuant to the Plan, and such steps and actions are hereby authorized, ratified and approved. Domfoam, its directors and officers and the Monitor shall not incur any liability as a result of acting in accordance with the terms of the Plan or this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of such parties.

7. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are hereby approved, shall be deemed to be implemented and shall be binding and effective as of the Effective Time in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon Domfoam, all Creditors, the Domfoam Released Parties and all other Persons and parties named or referred to in, affected by, or subject to the Plan.

8. **THIS COURT ORDERS** that upon fulfillment or waiver of the conditions precedent to implementation of the Plan as set out in section 7.1 of the Plan, the Monitor shall file with the Court a certificate signed by the Monitor substantially in the form attached as **Schedule "B"** hereto confirming that all of the conditions precedent set out in section 7.1 of the Plan have been satisfied or waived, as applicable, in accordance with the terms of the Plan (the "**Monitor's Plan Implementation Date Certificate**") and, with the filing of such certificate by the Monitor, the Plan Implementation Date shall occur and the Plan shall be effective in accordance with its terms

and the terms of this Order. The Monitor is hereby directed to post a copy of the Monitor's Plan Implementation Date Certificate, once filed, on the Website and provide a copy to the Service List.

9. **THIS COURT ORDERS** that upon the Plan Implementation Date occurring, the charge in the amount of \$1,000,000 upon the Property of Domfoam in favour of the Directors and Officers created by the Initial CCAA Order and as subsequently amended by Order of this Court dated September 29, 2015, shall be permanently discharged.

10. **THIS COURT ORDERS** that upon the Plan Implementation Date occurring, the Monitor is hereby directed and authorized to complete the distributions contemplated under the Plan.

#### **COMPROMISE OF CLAIMS AND EFFECT OF PLAN**

11. **THIS COURT ORDERS** that, pursuant and in accordance with the terms of the Plan, on the Plan Implementation Date, all Claims and D&O Claims which are released pursuant to Article 9 of the Plan or discharged, compromised or terminated pursuant to the Plan shall be fully, finally, irrevocably and forever compromised, discharged and released with prejudice, and the ability of any Person to proceed against the Domfoam Released Parties in respect of or relating to any such Claim or D&O Claim shall be and shall be deemed forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Claims and D&O Claims shall permanently be stayed against the Domfoam Released Parties, subject only to the right of Proven Creditors to receive the distributions pursuant to the Plan and this Order in respect of their Proven Claims, in the manner and to the extent provided for in the Plan. Notwithstanding the foregoing or any other provision of this order, the Competition Act Claim shall not be compromised or released by the Plan.

12. **THIS COURT ORDERS** that no Person who is a party to any obligation or agreement with Domfoam shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of:

- (a) any event(s) that occurred on or prior to the Plan Implementation Date that would have entitled any other Person thereto to enforce those rights and/or remedies (including defaults or events of default arising as a result of the CCAA Proceedings);
- (b) the fact that relief under the CCAA has been sought or obtained in respect of Domfoam or that the CCAA Proceedings have been commenced or completed; and
- (c) any compromises or arrangements effected pursuant to the Plan.

13. **THIS COURT ORDERS** that the determination of Proven Claims in accordance with the Claims Procedure Order, the Order of the Court dated September 6, 2016 admitting certain late filed Claims against Domfoam (the “**Domfoam Late Claims Order**”) and the Plan shall be final and binding on Domfoam and all Creditors.

14. **THIS COURT ORDERS** that a Creditor holding a Claim that is subject to a Notice of Revision or Disallowance (as defined in the Claims Procedure Order) shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Claim becomes a Proven Claim in accordance with the Claims Procedure Order and the Plan.

15. **THIS COURT ORDERS** that nothing in the Plan extends to or shall be interpreted as extending or amending the Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order. Any Claim for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims Procedure Order or admitted as a Proven Claim pursuant to the Domfoam Late Claims Order, whether or not the holder of such a Claim has received personal notification of the claims process established by the Claims Procedure Order, shall be and is hereby forever barred, extinguished and released with prejudice.

16. **THIS COURT ORDERS** that each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have consented and agreed to all of the provisions in the Plan, in its entirety, and each Person named or referred to in, or subject to, the Plan shall be and

is hereby deemed to have executed and delivered to Domfoam all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

17. **THIS COURT ORDERS AND DECLARES** that all distributions or payments by the Monitor to Creditors with Proven Claims under the Plan are for the account of Domfoam and the fulfillment of its obligations under the Plan.

18. **THIS COURT ORDERS** that section 95 and 101 of the *Bankruptcy and Insolvency Act* and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply to the Plan or to any transactions, distributions or settlement payments implemented pursuant to the Plan.

19. **THIS COURT ORDERS AND DECLARES** that Domfoam shall be authorized, in connection with the making or any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Person, including but not limited to a government department, agency or regulatory body ("**Government Authority**") for any consent, authorization, certificate or approval in connection therewith.

20. **THIS COURT ORDERS AND DECLARES** that any distributions, disbursements or payments made under the Plan or this Order (including without limitation distributions made to or for the benefit of the Proven Creditors and the Crown with respect to the Competition Act Claim) shall not constitute a "distribution" by any person and the Monitor shall not constitute a "legal representative" or "representative" of the Applicants for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 14 of the *Tax Administration Act* (Quebec), section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act, 2007* (Ontario), section 23 of the *Canada Pension Plan*, section 86 of the *Employment Insurance Act* or any other similar federal, provincial or territorial tax legislation (collectively the "**Tax Statutes**"), nor a "receiver" within the meaning of *An Act Respecting the Quebec Sales Tax*, and the Monitor, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under the Plan, and is not exercising any discretion in making payments under the Plan and no person

is “distributing”, nor shall be considered to “distribute” nor to have "distributed", such funds for the purpose of the Tax Statutes.

21. **THIS COURT ORDERS** that the Monitor shall not incur any liability under the Tax Statutes in respect of any distributions, disbursements or payments made by it pursuant to the Plan or this Order and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of distributions, disbursements or payments made by it in accordance with the Plan and this Order and any claims of this nature are hereby forever barred.

### **RELEASES**

22. **THIS COURT ORDERS AND DECLARES** that the compromises and releases set out in Article 9 of the Plan are approved and shall be binding and effective as at the Plan Implementation Date.

23. **THIS COURT ORDERS** that from and after the Plan Implementation Date any and all Persons (other than the Crown with respect to the Competition Act Claim) shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Domfoam Released Party in respect of all Claims, D&O Claims and matters which are released pursuant to paragraph 11 of this Order and Article 9 of the Plan or discharged, compromised or terminated pursuant to the Plan.

24. **THIS COURT ORDERS** that the Crown shall be stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, in respect of the Competition Act Claim until such time as the stay of proceedings against Domfoam created by the Initial CCAA Order expires or is terminated by the Court.

**THE MONITOR**

25. **THIS COURT ORDERS** that in addition to its prescribed rights and obligations under the CCAA and the Orders of the Court made in these CCAA Proceedings, the Monitor is granted the powers, duties and protections contemplated by and required under the Plan and that the Monitor be and is hereby authorized, entitled and empowered to perform its duties and fulfill its obligations under the Plan to facilitate the implementation thereof, including without limitation:

- (a) to receive on behalf of Domfoam the proceeds of the Polyols Settlement and any remaining Liquidation Proceeds and distribute same in accordance with the terms of the Plan and this Order; and
- (b) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other Order granted by this Court including for advice and directions with respect to any matter arising from or under the Plan.

26. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order or the provisions of any other Order granted in the CCAA Proceedings, including this Order, the Applicant shall remain in possession and control of its Property (as defined in the Initial Order) and that the Monitor shall not take possession or be deemed to be in possession and/or control of any of the Property.

27. **THIS COURT ORDERS AND DECLARES** that the Monitor shall be authorized, in connection with the taking of any step or transaction or performance or any function under or in connection with the Plan, to apply to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith.

28. **THIS COURT ORDERS AND DECLARES** that: (i) in carrying out the terms of this Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, and as an officer of the Court, including the Stay of Proceedings in its favour; (ii) the Monitor shall not be or become liable for any obligations of Domfoam as a result of carrying out the provisions of this Order and/or the Plan; (iii) the Monitor (including its affiliates, directors, officers, employees, associated individuals, agents and representatives) and all of its professional



advisors and legal counsel shall have no liability or obligation to any Person for their role, or any act or omission, in connection with their appointments as Monitor or advisors or counsel thereto, the CCAA Proceedings, activities undertaken in preparation for or in anticipation of the CCAA Proceedings, the Plan, the pursuit of sanctioning of the Plan, the consummation and implementation of the Plan, the administration of the Plan or the property to be distributed under the Plan, from the date of their appointments to the earlier of the date of their discharges from those appointments, or the Plan Completion Date; (iv) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by them without independent investigation; and (v) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

29. **THIS COURT ORDERS** that the form of Monitor's Plan Completion Certificate attached as **Schedule "C"** hereto is hereby approved and, upon the Monitor being satisfied that there is no likelihood of additional funds becoming available for distribution to the Creditors under the Polyols Settlement or otherwise, authorizes and directs the Monitor to file the Monitor's Plan Completion Certificate with this Court stating that all of its duties and Domfoam's duties under the Plan and the Orders have been completed, and thereafter the Monitor shall seek an Order, *inter alia*, (a) approving its final fees and disbursements and those of its counsel; (b) discharging the Monitor from its duties as Monitor in the CCAA Proceedings; and (c) releasing Domfoam, the Monitor and any Directors and Officers holding such office following the Plan Implementation Date and their advisors, from all claims relating to the implementation of the Plan.

30. **THIS COURT ORDERS** that the Monitor is hereby directed to post a copy of the Monitor's Plan Completion Certificate, once filed, on the Website and provide a copy to the Service List.

31. **THIS COURT ORDERS** that, upon the Plan Completion Date, the Monitor shall be discharged and released with respect to Domfoam and shall have no further obligations, duties or responsibilities pursuant to the Plan.

**GENERAL**

32. **THIS COURT ORDERS** that:

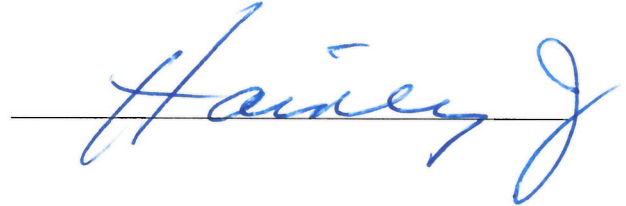
- (a) except to the extent that the Initial CCAA Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial CCAA Order shall remain in full force and effect; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date; and
- (b) other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or are inconsistent with, this Order or any further Order of this Court in the CCAA Proceedings; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date.

33. **THIS COURT ORDERS** that any of the Applicants or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions with respect to any matter arising from or under the Plan or this Order.

34. **THIS COURT ORDERS** that Domfoam (in its sole discretion) is hereby authorized to seek an order of any court of competent jurisdiction to recognize the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist Domfoam, the Monitor and their respective agents in carrying out the terms of the Plan and this Order.

35. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to recognize and give effect to the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist Domfoam, the Monitor and their respective agents in carrying out the terms of the Plan and this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Domfoam and the Monitor, as

an officer of the 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 Domfoam and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read "Hainey J", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 25 2017.

PER / PAR 

## SCHEDULE "A"

### PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)

#### ARTICLE 1 - INTERPRETATION 1.1

##### 1.2 Definitions

In this Plan:

"**Applicant**" means 4362063 Canada Ltd. (formerly Domfoam International Inc.);

"**Approval Meeting**" means a meeting of Creditors, held pursuant to the Meeting Order, to vote on the Plan, and includes any meeting or meetings resulting from the adjournment thereof;

"**A-Z Foam**" means the applicant A-Z Sponge & Foam Products Ltd, in these proceedings;

"**Business**" means the business and operations carried on by or formerly carried on by the Applicant;

"**Business Day**" means a day other than a Saturday or Sunday on which banks are generally open for business in Toronto, Ontario, and Montreal, Quebec;

"**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

"**CCAA Proceedings**" means the proceedings under the CCAA commenced by the Applicant on January 12, 2012 at Toronto under Court File No. CV-12-9545-00CL;

"**Claim**" means any right or claim of any Person, or class of Persons or representative Person, against the Applicant whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of the Applicant in existence on the Filing Date, or which has arisen since the Filing Date, any accrued interest thereon and costs payable in respect thereof to and including the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, and includes any other claims that would have been claims provable in bankruptcy had the Applicant become bankrupt on the Filing Date;

"**Claims Bar Date**" means the 5:00 PM August 31, 2012 bar date referred to at paragraphs 5(b) and (f) of the Claims Process Order;

"**Claims Process Order**" means the Order of Justice Brown in the CCAA Proceedings dated June 15, 2012;

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

"**Competition Act Claim**" means the proof of claim filed by Her Majesty the Queen in Right of Canada (the "**Crown**") in respect of fines owed to the Crown by Domfoam International Inc. and

Valle Foam Industries (1995) Inc. as a result of their participation in offences under ss. 45(1)(a) and 45(1)(c) of the *Competition Act*, RSC 1985, c C-34, and in accordance with the Sentencing Order of Justice Ratushny of the Superior Court of Justice, dated January 5, 2012.

**"Creditor"** means any Person with a Claim or a D&O Claim regardless of whether such Person has filed a Proof of Claim in the CCAA Proceedings;

**"D&O Claim"** means any right of any Person against one or more of the Directors and Officers (as defined below) which arose as a result of their position, supervision, management or involvement as Director and Officer, where such right arose on, before or after June 15, 2012, and whether enforceable in any civil, administrative or criminal proceedings, including, without limitation, any person (including the crown) who filed a claim against the Directors and Officers pursuant to the Claims Process Order, including, without limitation any possible D&O Claim related to or derived from the facts alleged against the Applicant in the Revenu Quebec Action;

**"DIP Loan"** means any loans made between or among the Applicant, Valle Foam and A-Z Foam on or after January 12, 2012 which were expressly authorized to be considered a DIP loan by an Order of the Court;

**"Directors and Officers"** means (i) the current and former directors of the Applicant; and (ii) the current and former officers of the Applicant;

**"Effective Time"** means the first moment in time on the Plan Implementation Date;

**"Equity Claim"** means an equity claim as defined by the *Bankruptcy Insolvency Act*, R.S.C. 1985, c. B-3;

**"Excepted Claim"** has the meaning given to that term in Section 9.5 hereof;

**"Filing Date"** means January 12, 2012;

**"Holdback Amount"** means that amount from the cash on hand from the Applicant which the Monitor, in consultation with the Applicant, elects to hold back from the distribution of the Liquidation Proceeds, for future administration costs of these CCAA Proceedings;

**"HST Pre and Post Filing Dispute"** means the outstanding dispute between the Applicant and the Monitor as to the treatment of certain outstanding claims for payment of HST by Revenu Quebec as either a pre or post Filing Date obligation of the Applicant as further described in the Affidavit of Tony Vallecoccia sworn August 23, 2016;

**"Initial CCAA Order"** means the initial order of the Ontario Court dated January 12, 2012, pursuant to which, among other things, the Ontario Court granted a stay of proceedings with respect to the Applicant, as same may be further amended from time to time;

**"Intercompany Claims"** means any Claims, including the DIP Loan, owing among or between the Applicant and A-Z Foam or Valle Foam or any of them;

**"Liquidation Proceeds"** means the proceeds realized from the Business or collected by the

Applicant or the Monitor on behalf of the Business since the Filing Date;

**"Meeting"** means an Information Meeting or an Approval Meeting;

**"Meeting Order"** means the Order of the Ontario Court dated September 6, 2016, regarding, *inter alia*, the calling and holding of the Meeting;

**"Monitor"** means Deloitte Restructuring Inc. (previously known as Deloitte & Touche Inc.), in its capacity as monitor of the Applicant, appointed pursuant to the Initial CCAA Order;

**"Ontario Court"** means the Superior Court of Justice (Ontario);

**"Order"** means an order of the Ontario Court in the CCAA Proceedings;

**"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, trust, trustee, corporation, unincorporated organization, government, agency, regulatory body or instrumentality thereof, legal personal representative or litigation guardian, or any other entity howsoever designated or constituted;

**"Plan"** means this plan of compromise or arrangement and all schedules hereto, as same may be amended hereafter in accordance with Section 11.1 herein;

**"Plan Completion Date"** means the Business Day on which the Monitor has completed and filed a certificate in accordance with Section 10.1 of this Plan;

**"Plan Implementation Date"** means the Business Day on which the conditions precedent to implementation of this Plan as set out in Section 7.1 hereof have been satisfied or fulfilled, and the Monitor has completed and filed its certificate in accordance with Section 7.2 of this Plan;

**"Polyols Settlement"** means the settlement as described in the affidavit of Tony Vallecoccia, sworn August 23, 2016, between the Applicant, as a member of a class of plaintiffs, and Dow Chemical Inc. in the United States;

**"Proof of Claim"** means the form attached as Schedule B to the Claims Process Order;

**"Proven Claim"** means a Creditor Claim that was properly filed with the Monitor, to the extent that it was allowed in whole or in part by (a) the Monitor, or (b) the Ontario Court, following an appeal from the determination of the Monitor;

**"Proven Creditor"** means a Creditor having a Proven Claim;

**"Revenu Quebec Action"** means the outstanding action by the Applicant against each of Revenu Quebec and Canada Revenue Agency with respect to certain amounts assessed as due and owing by Revenu Quebec and Canada Revenue Agency against the Applicant, before each of the Superior Court of Quebec and the Tax Court of Canada;

**"Sanction Order"** means an order of the Ontario Court approving this Plan;

**"Unaffected Claim"** has the meaning given to that term in Section 3.3 hereof;

**"Unaffected Creditor"** means any Person holding Unaffected Claims, to the extent of those Unaffected Claims;

**"Unconfirmed Vote"** means a vote cast at the Approval Meeting and marked by the Monitor as relating not to a Proven Claim, but to a Claim which the Monitor revised or disallowed in whole or in part and which remains in dispute;

**"Unconfirmed Voting Claim"** means a Creditor Claim in respect of which the Creditor's vote is an Unconfirmed Vote;

**"Valle Foam"** means Valle Foam Industries (1995) Inc. one of the applicants in the CCAA Proceedings; and

**"Website"** means the website established by the Monitor for purposes of the Plan and having the following address: [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam).

## 1.2 Certain Rules of Interpretation

In this Plan and all schedules hereto:

- (a) the division of this Plan into articles, sections, subsections and clauses and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Plan. The terms "this Plan", "hereof", "hereunder", "herein" and similar expressions refer to this Plan and not to any particular article, section, subsection or clause and include any plan supplemental hereto. Unless otherwise indicated, any reference in this Plan to an article, section, subsection, clause or schedule refers to the specified article, section, subsection, clause or schedule of or to this Plan;
- (b) the use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;
- (c) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes without limitation" and "including without limitation", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (d) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day. Unless otherwise specified, the time period within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day; and
- (e) unless otherwise provided, any reference to a statute, or other enactment of parliament or a legislature includes all regulations made thereunder, all enactments to or re-enactments

of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation.

## **ARTICLE 2 - PURPOSE AND EFFECT OF THE PLAN**

### **2.1 Purpose**

The purpose of this Plan is to enable the Applicant to efficiently distribute the Liquidation Proceeds and the proceeds of the Polyols Settlement to its Proven Creditors on a pro-rated basis, and to provide for releases for the Directors and Officers.

### **2.2 Affected Persons**

This Plan will be implemented pursuant to the CCAA. On the Plan Implementation Date, subject to Section 3.3 hereof and subject to the satisfaction of the conditions contained in Section 7.1 herein, this Plan will be binding upon all Creditors and all other Persons in accordance with its terms.

## **ARTICLE 3 - CLASSIFICATION OF CREDITORS**

### **3.1 Class of Creditors**

The sole class for the purpose of considering and voting on this Plan shall be a single class consisting of Creditors.

### **3.2 Creditor Identification Procedure**

Creditor Claims which have been delivered by Proof of Claim by the Claims Bar Date shall be as if they had been filed in respect of the Plan, and Creditors need not deliver to the Monitor a further Proof of Creditor Claim in respect thereof.

### **3.3 Unaffected Claims**

This Plan does not compromise, release or otherwise affect any rights or claims:

- (a) for fees and expenses authorized pursuant to paragraph 6 of the Initial CCAA Order, incurred in the provision of goods and services relating to the CCAA Proceedings;
- (b) of the Applicant, the Monitor and of its counsel;
- (c) that fall within Section 6(3), 6(5) or 6(6) of the CCAA;
- (d) that arise from the DIP Loan; or
- (e) any outstanding Intercompany Claims.

Each of the foregoing rights and claims set out in this Section 3.3 is referred to herein as an "**Unaffected Claim**".

### **3.4 Equity Claims**



All Persons holding Equity Claims shall not be entitled to vote at or attend the Approval Meeting, and shall not receive any distributions under the Plan or otherwise receive any other compensation in respect of their Equity Claims.

## **ARTICLE 4 - TREATMENT OF CREDITORS**

### **4.1 Treatment of Claims**

On the Plan Implementation Date, the Claims will be compromised, released and otherwise affected in accordance with the terms of this Plan.

Notwithstanding the foregoing and anything else in the Plan, the Competition Act Claim shall not be compromised or released by the Plan. For greater certainty, the Crown is entitled to participate in any distributions under the Plan with respect to the Competition Act Claim, and any funds distributed on account of the Competition Act Claim will reduce the amount outstanding thereunder.

### **4.2 Voting Rights of Creditors**

Subject to this Plan and the Meeting Order, each Proven Creditor shall be entitled to one vote in an amount equal to such Proven Claim. Furthermore, votes in respect of Unconfirmed Voting Claims will be recorded by the Monitor, subject to further determination in accordance with the Meeting Order. The procedure for determining the validity and quantum of the Claims for voting purposes shall be governed by the Meeting Order.

### **4.3 Unaffected Creditors**

Notwithstanding anything to the contrary herein, each Person who has an Unaffected Claim shall not be entitled to vote or to receive any distribution under this Plan in respect of such Unaffected Claim. All Unaffected Claims shall be unaffected by the CCAA Proceedings and principal and interest shall continue to accrue notwithstanding the CCAA Proceedings.

## **ARTICLE 5 - DISTRIBUTIONS**

### **5.1 Employees (Section 6(5) CCAA)**

To the best of the Company's knowledge, there are no amounts owing to employees of the Applicant generally, or which would be captured by section 6(5) of the CCAA. However, in the event any such claims exist, immediately after the rendering of the Sanction Order and the expiry of all appeal periods relating thereto or the affirmation of the Sanction Order in such appeals, employees and former employees of the Applicant shall receive payment of:

- (a) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the Applicant had become bankrupt on the day on which proceedings commenced under the CCAA; and
- (b) wages, salaries, commissions or compensation for services rendered after the Initial CCAA Order and before the Sanction Order, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Applicant's

business during the same period.

The inclusion of this Section 5.1 herein does not constitute any admission or acknowledgment by the Applicant as to the existence of any employees or former employees claims.

## **5.2 Crown claims (Section 6(3) CCAA)**

Within six (6) months after the date of the Sanction Order and the expiry of all appeal periods relating thereto or the affirmation of the Sanction Order in such appeals, all amounts that were outstanding at the time of the Applicant's application for an order under Section 11 or 11.02 of the CCAA and that are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the *Income Tax Act*;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
  - (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;

shall be paid in full to Her Majesty in right of Canada or a Province, as applicable, but expressly not including any claims as may be due under the Excise Tax Act or any analogous statute in any province.

The inclusion of this Section 5.2 herein does not constitute any admission or acknowledgment by the Applicant as to the existence of any such outstanding amounts.

## **5.3 Payment of Professional and Administrative Expenses**

On the Plan Implementation Date, all outstanding fees and disbursements payable under any Order shall be fully paid, or a reserve for such amount fully funded, as determined by the Monitor. Parties entitled to be paid hereunder shall have sixty (60) days from the Plan Implementation Date, or such later date as may be agreed with the Monitor, to submit final invoices to the Monitor for payment. Any reserve shall be administered by the Monitor.

## **5.4 Initial Distribution**

Within thirty (30) days of the Plan Implementation Date, the Monitor shall distribute to the

Proven Creditors the Liquidation Proceeds, less any amounts required to be paid pursuant to this Article 5 as determined by the Monitor in its sole discretion, and less the Holdback Amount.

### **5.5 Subsequent Distribution(s)**

From time to time, the Monitor shall distribute to the Proven Creditors any other amounts in the possession or coming into the possession of the Monitor which will be available from other sources, including amounts paid to the Applicant pursuant to the Polyols Settlement, less the Holdback amount, if any, as determined by the Monitor in its sole discretion.

### **5.6 Distributions *Pro Rata* and *Pari Passu***

All distributions made to Proven Creditors pursuant hereto shall be made on a *pro rata, pari passu basis* among such Proven Creditors, considering the amounts of their respective Proven Claims.

All distributions made by the Monitor are made as agent for and on behalf of the Applicant, and not in its personal capacity.

## **ARTICLE 6 - SANCTION ORDER**

### **6.1 Application for Sanction Order**

The application for the Sanction Order shall be brought by the Applicant as soon as reasonably practicable following the approval of this Plan by the requisite majorities of Creditors voting at the Approval Meeting.

### **6.2 Effect of Sanction Order**

In addition to sanctioning this Plan, and subject to the discretion of the Ontario Court, the Sanction Order shall, among other things and without limitation:

- (a) direct and authorize the distributions contemplated under this Plan;
- (b) order and declare that any distributions under the Plan shall not constitute a "distribution" and the Monitor shall not constitute a "legal representative" or "representative" of the Applicants for the purposes of section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), section 14 of the Tax Administration Act (Quebec), section 107 of the Corporations Tax Act (Ontario), section 22 of the Retail Sales Tax Act (Ontario), section 117 of the Taxation Act, 2007 (Ontario), section 23 of the Canada Pension Plan, section 86 of the Employment Insurance Act or any other similar federal, provincial or territorial tax legislation (collectively the "Tax Statutes"), nor a "receiver" within the meaning of An Act Respecting the Quebec Sales Tax, given that the Monitor is only a disbursing agent under the CCAA Plan, and the Monitor in making such payments is not "distributing", nor shall be considered to "distribute" nor to have "distributed", such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of it making any payments ordered or permitted hereunder, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of payments made under the Plan and this Order and any claims of this nature are hereby forever barred.

- (c) declare that the compromises and releases effected hereby are approved, binding and effective as of the Plan Implementation Date upon all Creditors, the Monitor and all other Persons affected by this Plan;
- (d) provide that no Person who is a party to any obligation or agreement with the Applicant shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason:
  - (i) of any event(s) that occurred on or prior to the Plan Implementation Date that would have entitled any other Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicant);
  - (ii) of the fact that relief under the CCAA has been sought or obtained in respect of the Applicant or that the CCAA Proceedings have been commenced or completed; or
  - (iii) of any compromises or arrangements effected pursuant to this Plan;
- (d) confirm the effect of the Meeting Order;
- (e) provide that the Monitor shall be discharged and released from its role as Monitor on the Plan Completion Date, save and except with respect to any remaining duties or powers required to implement and give effect to the terms of this Plan.

## ARTICLE 7 - CONDITIONS PRECEDENT

### 7.1 Conditions Precedent to Implementation of Plan

The implementation of this Plan shall be conditional upon the fulfillment of the following conditions on or before the Plan Implementation Date:

- (a) **Approval by Creditors:** The Plan shall have been approved pursuant to the CCAA by the Proven Creditors;
- (b) **Granting of Sanction Order:** The Sanction Order shall have been granted by the Ontario Court in a form acceptable to the Applicant and the Monitor;
- (c) **Expiry of Appeal Periods:** The appeal periods and any periods for leave to appeal with respect to the Sanction Order shall have expired without an appeal or application for leave to appeal of such Order having been commenced or, in the event of an appeal or application for leave to appeal, a final determination denying leave to appeal or dismissing such appeal and affirming and recognizing the sanctioning of this Plan, as the case may be, shall have been made by the applicable appellate court, with no further right of appeal;
- (d) **Revenu Quebec Action:** The Applicant and the Directors and Officers shall have provided a binding undertaking to discontinue, settle or withdraw the Revenu Quebec Action on terms satisfactory to the Monitor and the Court, upon the Plan Implementation Date;
- (e) **HST Pre and Post Filing Dispute:** The Applicant and the Directors and Officers shall have provided

a binding undertaking to settle or withdraw from further contesting the position of the Monitor with respect to this issue upon the Plan Implementation Date;

- (f) **Completion of Necessary Documentation:** The execution and delivery by all relevant Persons of all agreements, settlements, resolutions, indentures, releases, documents and other instruments that are necessary to be executed and delivered to implement and give effect to all material terms and provisions of this Plan;

## **7.2 Monitor's Certificate**

Upon the satisfaction of the conditions set out in Section 7.1 hereof, the Monitor shall file with the Ontario Court in the CCAA Proceedings a certificate that states that all conditions precedent set out in Section 7.1 of this Plan have been satisfied and that the Plan Implementation Date has occurred.

## **7.3 Termination of Plan for Failure to Become Effective**

If the Plan Implementation Date shall not have occurred on or before one hundred and twenty (120) days following the date of the Sanction Order, or such later date as the Applicant may stipulate, then, subject to further Order of the Ontario Court, this Plan shall automatically terminate and be of no further force or effect; provided that this Plan shall not automatically terminate pursuant to this section if the sole basis for the nonoccurrence of the Plan Implementation Date is the pendency of any appeal or application for leave to appeal with respect to the Sanction Order.

# **ARTICLE 8 - EFFECT OF PLAN**

## **8.1 Effect of Plan Generally**

The Plan (including, without limitation, the releases and injunctions contained in the Plan), upon being sanctioned and approved by the Ontario Court pursuant to the Sanction Order, shall be binding on the Plan Implementation Date on the Creditors and all other Persons (and each of their respective heirs, executors, administrators, guardians, legal personal representatives, successors and assigns) irrespective of the jurisdiction in which such Creditors and other Persons reside, or in which the Claims arose.

On the Plan Implementation Date, the Directors and Officers shall and shall be deemed to resign without the requirement of further action on the part of such Directors and Officers. The Directors and Officers shall also consent to the discharge of the Directors and Officer's Charge, as created by and defined in the Initial Order.

Notwithstanding the foregoing and anything else in the Plan, the Competition Act Claim shall not be compromised or released by the Plan. For greater certainty, the Crown is entitled to participate in any distributions under the Plan with respect to the Competition Act Claim, and any funds distributed on account of the Competition Act Claim will reduce the amount outstanding thereunder.

## **8.2 Consents and Agreements**

On the Plan Implementation Date, each Creditor shall be deemed to have consented and agreed to all of the provisions of this Plan in its entirety. In particular, each Creditor shall be deemed:

- (a) to have executed and delivered to the Monitor all consents, releases or agreements required to implement and carry out this Plan in its entirety; and
- (b) to have agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Applicant at the Plan Implementation Date (other than those entered into by the Applicant in writing on or after the date hereof) and the provisions of this Plan, the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

### 8.3 Exculpation

The Monitor (including its affiliates, directors, officers, employees, associated individuals, agents and representatives) and all of its professional advisors and legal counsel shall have no liability or obligation to any Person for their role, or any act or omission, in connection with their appointments as Monitor or advisors or counsel thereto, the CCAA Proceedings, activities undertaken in preparation for or in anticipation of the CCAA Proceedings, the Plan, the pursuit of sanctioning of the Plan, the consummation and implementation of the Plan, the administration of the Plan or the property to be distributed under the Plan, from the date of their appointments to the earlier of the date of their discharges from those appointments, or the Plan Completion Date.

## ARTICLE 9 - RELEASES AND INJUNCTIONS

### 9.1 Plan Releases

- (a) On the Plan Implementation Date, the Applicant, the Directors, Officers, current and former employees, advisors, legal counsel and agents, (being referred to individually as a “**Domfoam Released Party**”) shall be released and discharged from the D&O Claims, the Claims and any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Unaffected Creditor, Her Majesty the Crown or other Person may be entitled to assert, including any and all Claims in respect of the payment and receipt of proceeds, statutory liabilities of the Directors and Officers and employees of the Applicant and any alleged fiduciary or other duty (whether such employees are acting as a Director and Officer or employee), whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or

extinguished by the Claims Process Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Applicant's obligations under the Plan or any related document), all to the full extent permitted by applicable law, provided that nothing herein shall release or discharge (i) any Domfoam Released Party if such Domfoam Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct or (ii) the Directors with respect to matters set out in section 5.1(2) of the CCAA. For clarity, a D&O Claim with respect to the Revenu Quebec Action is not a claim to which section 5.1(2) applies and is to be released hereunder.

- (b) The Sanction and Vesting Order will enjoin on the Plan Implementation Date the prosecution, whether directly, derivatively or otherwise, of any Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.
- (c) Nothing in the Plan shall be interpreted as restricting the application of Section 21 of the CCAA.
- (d) Notwithstanding the foregoing and anything else in the Plan, the Competition Act Claim shall not be compromised or released by the Plan. For greater certainty, the Crown is entitled to participate in any distributions under the Plan with respect to the Competition Act Claim, and any funds distributed on account of the Competition Act Claim will reduce the amount outstanding thereunder.

## **9.2 Injunction**

- (a) On the Plan Implementation Date, all Persons (regardless of whether or not such Persons are Creditors, but expressly excluding the Crown with respect to the enforcement of the Competition Act Claim), together with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitees, agents, dependents, heirs, representatives and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, with respect to all Claims against the Monitor and the Domfoam Released Parties, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature of kind whatsoever against the Monitor and the Domfoam Released Parties; (ii) levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Monitor and the Domfoam Released Parties; (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, or damages, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral,

administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim in any manner or forum, against one or more of the Domfoam Released Parties or the Monitor; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or (v) taking any actions to interfere with the implementation or consummation of this Plan

- (b) Notwithstanding its exclusion from section 9.2(a) hereof, the enforcement of the Competition Act Claim by the Crown against the Applicant shall continue to be stayed until such time as the stay of proceedings created by the Initial Order in the CCAA Proceedings expires.

## **ARTICLE 10 - COMPLETION OF PLAN**

### **10.1 Monitor's Certificate**

Upon the Monitor being satisfied that there is no likelihood of additional funds becoming available for distribution to Creditors under the Polyols Settlement or otherwise, the Monitor shall file with the Ontario Court a certificate confirming that there are no further distributions to be made to Creditors, and that the Plan is completed to the satisfaction of the Monitor.

### **10.2 Discharge and release of the Monitor**

On the Plan Completion Date, and subject to the Sanction Order and any other Orders, the Monitor shall be discharged and released and shall have no further obligations or responsibilities. For clarity, nothing in this Plan shall discharge the Monitor from its duties related to Valle Foam or A-Z Foam.

## **ARTICLE 11 - GENERAL PROVISIONS**

### **11.1 Plan Amendment**

The Applicant reserves the exclusive right to amend this Plan, in a written document filed with the Ontario Court, at any time prior to the Plan Implementation Date, provided that:

- (a) if the amendment is made before or during the Meetings, prior to the vote being taken to approve the Plan, the Applicant shall, subject to the Meeting Order:
- (i) give notice to all Proven Creditors of the details of any amendment that renders the Plan less favourable to such Proven Creditors; and
  - (ii) may, in its entire discretion, give notice to Proven Creditors absent from a Meeting, of the details of any amendment that does not render the Plan less favourable to them.
- (b) if the Monitor, acting reasonably and in good faith, determines that the amendment is of a technical or administrative nature that would not be materially prejudicial to the interests of any of the Proven Creditors under the Plan, subject to the Meeting Order, and is necessary in order to give effect to the substance of the Plan or the Sanction Order, the Applicant need not give notice to Proven Creditors or obtain a further Order in connection therewith, regardless of whether the amendment is made prior to or subsequent to the vote



on the Plan, or prior to or subsequent to the Sanction Order, if granted;

- (c) after the Approval Meeting, any other amendment may only be made if approved by the Ontario Court; and
- (d) any supplementary plan or plans of compromise or arrangement filed by the Applicant with the Ontario Court and, if required by this Section 11.1, approved by the Ontario Court, shall, for all purposes be a part of and incorporated into this Plan.

## **11.2 Severability**

In the event that any provision in this Plan is held by the Ontario Court to be invalid, void or unenforceable, this Plan shall be null and void in all respects, with effect in accordance with Section 11.3 hereof.

## **11.3 Termination**

At any time prior to the Plan Implementation Date, the Applicant may, subject to further order of the Ontario Court, determine not to proceed with this Plan notwithstanding any prior approvals given at the Meeting or the obtaining of the Sanction Order.

If the conditions precedent to implementation of this Plan are not satisfied, if the Applicant determines not to proceed with this Plan, if the Ontario Court holds any provision of this Plan to be invalid, void or unenforceable or if the Sanction Order is not issued by the Ontario Court:

- (a) this Plan shall be null and void in all respects;
- (b) any document or agreement executed pursuant to this Plan shall be deemed null and void; and
- (c) nothing contained in this Plan, and no act taken in preparation for the consummation of this Plan, shall:
  - (i) constitute or be deemed to constitute a waiver or release of any Creditor Claims or any defenses thereto by or against the Applicant or any other Person;
  - (ii) prejudice in any manner the rights of any of the Creditors, or any other Person in any further proceedings involving the Applicant or the Domfoam Released Parties; or
  - (iii) constitute an admission of any sort by any of the Creditors, the Applicant, the Monitor, or any other Person.

## **11.4 Paramountcy**

From and after the Plan Implementation Date, any conflict between: (a) this Plan; and (b) any information statement or summary in respect of this Plan, or the covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between the Applicant and any Creditor or other Person as at the Plan Implementation Date will

be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

### **11.5 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings, and it will not be responsible or liable for any obligations of the Applicant hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the Ontario Court in the CCAA Proceedings, including the Initial CCAA Order.

### **11.6 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **11.7 Notices**

Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan and may, subject as hereinafter provided, be made or given by personal delivery or by fax addressed to the respective parties as follows:

(a) if to the Applicant or to the Monitor:

(b) if to a Creditor:

to the address specified in the Proof of Claim, or Proof of Creditor Claim filed by that Creditor or, if none has been specified, to such other address at which the notifying party may reasonably believe that the Creditor may be contacted;

or to such other address as any party may from time to time notify the others in accordance with this Section 11.7. All such notices and communications that are personally delivered shall be deemed to have been received on the date of delivery. Any such notices and communications that are faxed shall be deemed to be received on the date faxed if sent before 5:00 p.m. Eastern Time on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such fax was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing. The unintentional failure to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to this Plan.

### **11.8 Successors and Assigns**

The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, trustee, administrator, successor or assign of such Person.

### **11.9 Further Assurances**

Notwithstanding that the transactions and events set out in this Plan shall be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected hereby shall make, do and execute or cause to be made, done or executed all such further acts, deeds, agreements, transfers, assurances, instruments, documents or discharges as may be

reasonably required by the Monitor in order to implement and give effect to this Plan.

**11.10 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. In the event of any dispute or issue in connection with, or related to, the interpretation, application or effect of this Plan, such dispute or issue shall be subject to the exclusive jurisdiction of the Ontario Court.

Dated at Toronto, Ontario, as of this 23<sup>rd</sup> day of August, 2016.

**IN THE MATTER OF THE COMPANIES' CREDITORS** and

**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**

Applicants

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SANCTION ORDER**

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