

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 October 28, 2021)

Date: October 25th, 2021

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(as at October 31, 2020)

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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”)

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TAB 1

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**")

NOTICE OF MOTION
(Re: Stay Extension Returnable October 28, 2021)

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 The Honourable Justice Pattillo at 9:30 a.m. on Thursday, October 28, 2021, or as soon thereafter as the motion can be heard, by Zoom video conference at 330 University Avenue, Toronto, Ontario, and filed electronically through the Civil Submissions Online portal of the Justice Services Online website pursuant to the Supplementary Notice to the Profession of Justice Morawetz dated June 17, 2021 due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING:

This motion is to be heard orally by way of Zoom.

THE MOTION IS FOR:

1. An Order substantially in the form contained at **Tab 3** hereto:
 - a) abridging and validating the time for service of this Notice of Motion and Motion Record and the Twenty-Sixth Report of the Monitor;
 - b) extending the Stay Period (as that term is defined in the Initial Order of the Honourable Justice Newbould dated January 12, 2012) to and including January 31, 2022;
 - c) approving the Monitor's report, and conduct; 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 Hailey dated January 24, 2017;

11. 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;

12. The conditions precedent to Plan implementation have been satisfied or waived, and the Plan has been implemented;

13. 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**”);

14. 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. The final distribution from the Polyols Settlement authorizing the distribution of the holdback was approved by the US Court on November 5, 2018 (“**Final Distribution Order**”). Per the Final Distribution Order, the funds will be disbursed once the appeal period with respect to the order expires;

15. The company that purchased the assets of Domfoam, Domfoam Inc. (formerly known as 4037047 Canada Inc.) (the “**Purchaser**”), brought a motion directing the Applicants to pay the proceeds recovered from the Polyols Settlement to the Purchaser. Also in dispute were additional settlement proceeds received by the Applicants relating to a Canadian class action involving the same price fixing scheme, wherein the Applicants are claimants. Domfoam took the position that the Purchaser’s motion is without merit, and opposed the motion. This motion was scheduled to be heard by the Court beginning on September 13, 2021, before the Honourable Justice Cavanagh. Shortly before the hearing, Domfoam and the Purchaser reached a global settlement of the dispute, including the disputed amounts arising from both the U.S. and the Canadian class action settlements.

16. The purchaser of the assets of A-Z Foam (the “**A-Z Foam Purchaser**”) write to the Monitor to advise that it would make a claim similar to the claim advanced by the Purchaser (i.e. the Domfoam Purchaser) for payment of a portion of the Polyols Settlement funds that were received by the A-Z Foam Purchaser. A-Z Foam is currently in settlement discussions with the A-Z Foam Purchaser, with a view to hopefully resolving the issue, however, more time is required for the settlement discussions to continue.

Extension of Stay Period

17. The Initial Order granted a Stay Period until February 10, 2012;

18. The Stay Period granted under the Initial Order was subsequently extended for all of the Applicants from time to time by orders of the Court;

19. Most recently, the Stay Period was extended to October 29, 2021, by the Order of the Honourable Justice Cavanagh dated April 20, 2021;

20. The Applicants have been acting and continue to act in good faith and with due diligence in these CCAA proceedings;

21. 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;

22. Although the Plan has been approved, the continuation of the stay of proceedings is required to ensure the resolution of the remaining issue with A-Z Foam,

and once that issue is resolved, to make distribution of the Estate to the creditors o the Applicants;

23. The proposed extension of the Stay Period is supported by the Monitor and there is no known opposition, nor is there any known opposition to the other relief sought on this motion;

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*, RSO 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 the Chief Restructuring Officer, Linc Rogers, sworn October 25, 2021 and Exhibits thereto;

28. The Twenty-Sixth Report of the Monitor, to be separately filed; and

29. Such further and other material as counsel may advise and this Court may permit.

Date: October 25, 2021

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To: Service List

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

Email addresses of recipients: See Service List

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

Proceeding commenced at **Toronto**

**NOTICE OF MOTION
(Stay Extension)**

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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.

**STAY EXTENSION AFFIDAVIT OF LINC ROGERS
CHIEF RESTRUCTURING OFFICER**

I, **LINC ROGERS**, of the City of Toronto in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am a lawyer and partner in the Restructuring and Insolvency Group in the Toronto office of Blake, Cassels & Graydon LLP. Pursuant to the Order of the Honourable Justice Conway dated June 8, 2020 (the “**Appointment Order**”), I was appointed as the Chief Restructuring Officer (“**CRO**”) of 3113736 Canada Ltd., formerly known as Valle Foam Industries (1995) Inc. (“**Valle Foam**”), 4362063 Canada Ltd., formerly known as Domfoam International Inc. (“**Domfoam**”), and A-Z Sponge & Foam Products Ltd. (“**A-Z Foam**” and together with Valle Foam and Domfoam, the “**Applicants**”), and as such have knowledge of the matters to which I hereinafter depose.

2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief, and do verily believe it to be true.

3. To the extent that any of the information set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.

4. I swear this affidavit in support of the Applicants' motion for an order extending the stay of proceedings for all of the Applicants to and including January 31, 2022, and approving the Twenty-Sixth Report of the Monitor, to be filed separately.

Background

5. The Applicants were in the business of manufacturing and distributing flexible polyurethane foam products. Following significant Competition Bureau charges and fines levied against them for their alleged participation in a price fixing scheme in the polyurethane foam industry, the Applicants sought and obtained protection under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA") on January 12, 2012, pursuant to an Order of the Court granted the same day (the "**Initial Order**").

6. Pursuant to the Initial Order, Deloitte Restructuring Inc. (as it is now called) was appointed as monitor in respect of the Applicants (in such capacity, the "**Monitor**"). During these proceedings, the Applicants have sold substantially all of their operating assets pursuant to various sale approval and vesting orders issued by this Court. Any remaining proceeds of such sales are being held by the Monitor.

7. As noted in the Twenty-Second Report of the Monitor dated April 22, 2020 (the "**Twenty-Second Report**") filed in support of my appointment as CRO, the Monitor was advised by Applicants' counsel, Blaney McMurtry LLP, that counsel was unable to obtain instructions from the sole remaining director of Domfoam, Anthony Vallecoccia. On April 16, 2020, Mr. Vallecoccia advised that he no longer felt capable of continuing his duties as a director. At the

request of the Monitor, I was appointed by this Court as CRO to fill the corporate governance void, primarily to resolve the Domfoam Dispute (as defined below), either by way of consensual resolution or by adjudication. As noted above, the Appointment Order was issued on June 8, 2020.

8. The stay of proceedings provided for in the Initial Order has been extended many times by this Court, most recently on April 20, 2021, by the Order of Justice Cavanagh, and is currently set to expire on October 29, 2021. A copy of Justice Cavanagh's Order is attached hereto and marked as **Exhibit "A"**.

Dispute with Domfoam Purchaser Recently Resolved

9. The operating assets of Domfoam were sold to Domfoam Inc. (formerly 4037057 Canada Inc.) (the "**Domfoam Purchaser**") in 2012. A dispute over entitlement to certain proceeds from the settlement of class action litigation in both US and Canada (the "**Class Action Proceeds**"), in which Domfoam was a claimant, arose in 2018. It was at this time the Domfoam Purchaser brought a motion to set aside a distribution order providing for, among other things, the distribution of the Class Action Proceeds to proven creditors of the Domfoam estate. In short, the Domfoam Purchaser took the position that it acquired the Class Action Proceeds in connection with the purchase of the Domfoam business. Domfoam disputed that the class action proceeds had been sold to the Domfoam Purchaser and in any event, asserted that the Domfoam Purchaser was estopped from asserting a claim at the present time.

10. The hearing of the motion regarding the Domfoam Dispute was scheduled to be heard by Justice Cavanagh starting on September 13, 2021. However, Domfoam and the Domfoam Purchaser reached a settlement of the Domfoam Dispute, so no hearing was necessary. The settlement is global and includes a resolution of the Domfoam Purchaser's claims to both the US

and Canadian class action proceeds. The settlement was approved by an Order of the Court dated September 17, 2021. The specific economic terms of the settlement are subject to a temporary sealing order, as negotiations regarding a similar dispute with the A-Z Foam Purchaser (defined below) were ongoing at the time. The distribution of the remaining funds held in Domfoam's estate to its creditors, after the payment of the settlement amounts to the Domfoam Purchaser, remains to be completed.

Similar Dispute with A-Z Foam

11. The purchaser of the assets of A-Z Foam (the "**A-Z Foam Purchaser**") wrote to the Monitor in November of 2018 to advise that it would make a claim on similar grounds to the claim advanced by the Domfoam Purchaser. The A-Z Foam Purchaser asserted that it was entitled to any undistributed class action proceeds held by the Monitor on behalf of A-Z Foam. The sale to the A-Z Foam Purchaser was completed in 2012. The amount at issue in this estate is approximately \$325,000. Following negotiations, the Applicants and the A-Z Foam Purchaser have reached a deal in principle that is supported by the Monitor and the major creditors of A-Z Foam. The deal is in the process of being memorialized. The Applicants anticipate returning to Court shortly to seek Court approval of the settlement.

12. In addition, although the business of A-Z Foam has been ceased for several years at this point in time there remains inter-company accounting to be resolved, as described in the Twenty-Second Report of the Monitor.

Request for Stay Extension

13. The Applicants request a further extension of the stay of proceedings until January 31, 2022, on the basis that:

- a) the stay extension ought to allow sufficient time for the memorialization of the settlement reached with the A-Z Foam Purchaser;
- b) the stay extension will allow time for the distribution of the remaining proceeds of the Applicants' estate to their creditors;
- c) the stay extension will allow sufficient time to reconcile intercompany accounts between A-Z Foam and the other Applicants;
- d) the Monitor supports the relief requested, and counsel to the Monitor has advised me that that the Monitor is of the view that the Applicants have access to sufficient funds to cover anticipated post-filing expenses during the extended stay period; and
- e) no creditor will be materially prejudiced by the requested relief and the Applicants are acting in good faith and with due diligence.

14. The Applicants are cautiously optimistic that no further extensions of the stay will be required.

15. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the stay period to and including January 31, 2022, and for no improper purpose.

SWORN by Linc Rogers of the City of Toronto in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 25, 2021 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.



Commissioner for Taking Affidavits
VAROUJAN ARMAN



LINC ROGERS

This is Exhibit "A" referred to in the Affidavit of Linc Rogers
sworn remotely in the same city before me this 25th day of October
2021.



Commissioner for Taking Affidavits (or as may be)

Varoujan Arman

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 20 th DAY
)	
JUSTICE CAVANAGH)	OF APRIL, 2021

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**”)

**ORDER
(Stay Extension)**

THIS MOTION made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, extending the stay of proceedings in respect of the Applicants to and including October 29, 2021, was heard this day by Zoom and is hereby submitted electronically through the Civil Submissions Online portal of the Justice Services Online website pursuant to the Supplementary Notice to the Profession of Justice Morawetz dated September 2, 2020, due to the COVID-19 pandemic.

ON READING the Notice of Motion, the Affidavit of Linc Rogers sworn April 14, 2021 and exhibits thereto, the Affidavit of Linc Rogers sworn April 15, 2021 and exhibits thereto, the Twenty-Fourth Report of Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) (the “**Twenty-Fourth 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

Domfoam Inc., no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service of Ariyana Botejue sworn April 15, 2021, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Fourth 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 Twenty-Fourth 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 Justice Conway, dated October 26, 2020, is hereby extended from April 30, 2021 to and including October 29, 2021.

CHIEF RESTRUCTURING OFFICER’S FEES

4. **THIS COURT ORDERS** that the fees and disbursements of the Chief Restructuring Officer, Linc Rogers, of Blake, Cassels & Graydon LLP, are hereby authorized and approved.

MONITOR’S REPORT, ACTIONS AND FEES

5. **THIS COURT ORDERS** that the Twenty-Fourth Report and the actions, decisions and conduct of the Monitor as set out in the Twenty-Fourth Report are hereby authorized and approved.

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel as set out in the Twenty-Fourth Report, the Affidavit of Catherine A. Hristow, sworn April 15, 2021, and the Affidavit of Grant Moffat, sworn April 15, 2021, are hereby authorized and approved.

EFFECTIVENESS OF ORDER

7. **THIS COURT ORDERS** that, due to the COVID-19 pandemic, this Order is immediately effective and enforceable without the need for entry and filing until further direction from this Court.



Digitally signed by
Mr. Justice Cavanagh

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**

**ORDER
(Stay Extension)**

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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.

Applicants

Email addresses of recipients: See Service List

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

Proceeding commenced at Toronto

**STAY EXTENSION AFFIDAVIT OF LINC ROGERS
(Re: Stay Extension, Returnable October 28, 2021)**

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TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 28 th DAY
)	
JUSTICE PATTILLO)	OF OCTOBER, 2021

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**")

**ORDER
(Stay Extension)**

THIS MOTION made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, *inter alia*, extending the stay of proceedings in respect of the Applicants to and including January 31, 2022, was heard this day by Zoom and is hereby submitted electronically through the Civil Submissions Online portal of the Justice Services Online website pursuant to the Supplementary Notice to the Profession of Justice Morawetz dated June 17, 2021 due to the COVID-19 pandemic.

ON READING the Notice of Motion, the Affidavit of Linc Rogers sworn October 25, 2021 and exhibit thereto, the Twenty-Sixth Report of Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) (the "**Twenty-Sixth Report**") in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants, and on hearing the submissions of counsel for the Applicants and the Monitor, no one appearing for any other person on the Service List, although

properly served as appears from the Affidavit of Service of Ariyana Botejue sworn October 25, 2021, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Sixth 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 Twenty-Sixth 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 Justice Cavanagh, dated April 20, 2021, is hereby extended from October 29, 2021 to and including January 31, 2022.

MONITOR’S REPORT AND ACTIONS

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

EFFECTIVENESS OF THIS ORDER

5. **THIS COURT ORDERS** that, due to the COVID-19 pandemic, this Order is immediately effective and enforceable without the need for entry and filing until further direction from the Court.

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

Email addresses of recipients: See Service List

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

Proceeding commenced at **Toronto**

**ORDER
(Stay Extension)**

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

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**MOTION RECORD OF THE APPLICANTS
(Stay Extension)**

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