

**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.**

APPLICANTS

**TWENTY-SECOND REPORT OF THE MONITOR
DATED APRIL 22, 2020**

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INTRODUCTION

1. By Order of the Court dated January 12, 2012 (the “**Initial Order**”), Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc. (“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z Foam**”) (collectively, the “**Applicants**” or the “**Companies**”), obtained protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The CCAA proceeding with respect to the Applicants is referred to herein as the “**CCAA Proceeding**”.
2. Pursuant to the Initial Order, Deloitte & Touche Inc. was appointed monitor of the Applicants as part of the CCAA Proceeding (the “**Monitor**”). Pursuant to the Initial Order, all proceedings against the Applicants were stayed until February 10, 2012, or until such later date as this Court would order (the “**Stay Period**”). A copy of the Initial Order is attached hereto as Exhibit “**A**”.
3. On July 1, 2013, Deloitte & Touche Inc. changed its name to Deloitte Restructuring Inc. (hereafter, “**Deloitte**”).
4. All of the assets utilized by the Companies in connection with operation of their businesses have been sold. As described below, certain of the proceeds of the Companies’ assets (collectively, the “**Proceeds**”) have been distributed to the Companies’ creditors. Following the sale of its assets, Valle Foam changed its name to 3113736 Canada Ltd. and Domfoam changed its name to 4362063 Canada Ltd. Throughout this Report, references to Valle Foam mean 3113736 Canada Ltd. and references to Domfoam mean 4362063 Canada Ltd.
5. By Order of the United States Bankruptcy Court, Northern District of Ohio (Western Division) (the “**U.S. Bankruptcy Court**”) dated February 24, 2012 (the “**U.S. Recognition Order**”), the CCAA Proceeding was recognized as a foreign main proceeding. A copy of the U.S. Recognition Order is attached hereto as Exhibit “**B**”.

6. The Court has periodically extended the Stay Period, most recently by order dated October 23, 2019. Unless extended, the Stay Period will expire on April 30, 2020.
7. Pursuant to the Order of the Court dated June 15, 2012 (the “**Claims Solicitation Procedure Order**”), the Monitor conducted and completed a claims process with respect to the Companies (the “**Claims Solicitation Procedure**”). The claims bar date under the Claims Solicitation Procedure was August 31, 2012 (the “**Claims Bar Date**”). A copy of the Claims Solicitation Procedure Order is attached hereto as Exhibit “**C**”.
8. By Order of the Court dated September 29, 2015 (the “**Distribution Order**”), the Monitor was authorized and directed to make an interim distribution of the Valle Foam Proceeds and A-Z Foam Proceeds on a *pro rata, pari passu* basis to the Valle Foam Creditors and A-Z Foam Creditors holding Proven Claims (the “**First Distribution**”), subject to the holdbacks described in the Distribution Order in respect of amounts secured by the Administration Charge and Directors’ Charge. A copy of the Distribution Order is attached hereto as Exhibit “**D**”.
9. By Order dated September 6, 2016 (the “**Meeting Order**”), the Court authorized Domfoam to file a Plan of Compromise and Arrangement pursuant to the CCAA dated August 23, 2016 (as amended, varied or supplemented from time to time in accordance with the terms thereof, the “**Plan**”) and authorized Domfoam to call, hold and conduct a meeting of one class of unsecured creditors for the purpose of considering and voting on a resolution to approve the Plan (the “**Meeting**”).
10. The Meeting was held on October 19, 2016 in Toronto, Ontario. The Plan was approved by the requisite majorities of creditors present in person or by proxy at the Meeting. By Order dated January 24, 2017 (the “**Sanction Order**”), the Court approved and sanctioned the Plan and authorized the Monitor, Domfoam and its directors and officers to take all steps necessary to implement the Plan. A copy of the Sanction Order is attached hereto as Exhibit “**E**”.

11. The conditions precedent to implementation of the Plan were satisfied and the Monitor filed its Plan Implementation Certificate with the Court on June 23, 2017. As described in more detail below, the Monitor carried out the distribution to the Creditors of Domfoam (the “**First Domfoam Distribution**”) within 30 days of the June 23, 2017 Plan Implementation Date as required by the Plan.
12. By Order of the Court dated May 29, 2018 (the “**Second Distribution Order**”), the Monitor was authorized and directed to make a second interim distribution of the Valle Foam Proceeds, A-Z Foam Proceeds and Domfoam Proceeds on a *pro rata, pari passu* basis to the Valle Foam Creditors, A-Z Foam Creditors and Domfoam Creditors respectively holding Proven Claims. A copy of the Second Distribution Order is attached hereto as Exhibit “**F**”.
13. As described below, the Monitor has not carried out the second interim distribution of the Domfoam Proceeds pending resolution of the claim to the Dow Settlement Funds (as defined below) asserted by Domfoam Inc. (formerly 4037057 Canada Inc.) (the “**Domfoam Purchaser**”).
14. The Initial Order together with related Court documents, the Notice to Creditors dated January 17, 2012 and the Monitor’s First through Twenty-First Reports to the Court (collectively, the “**Prior Reports**”) have been posted on the Monitor’s website at www.deloitte.com/ca/vallefoam (the “**Monitor’s Website**”). The Monitor has also established a dedicated e-mail address at vallefoam@deloitte.ca for creditors and other interested parties to contact the Monitor with questions or concerns regarding the CCAA Proceeding.

PURPOSE OF REPORT

15. The purpose of this report (the “**Twenty-Second Report**”) is to provide the Court with information on the following:
 - (a) the Monitor’s activities since the filing of the Twenty-First Report;

- (b) the status of the claim to the Dow Settlement Funds asserted by the Domfoam Purchaser;
- (c) the need for the appointment of a chief restructuring officer (“**CRO**”) of the Companies;
- (d) the status of the Companies’ claims to certain additional settlement funds described below; and
- (e) the need for an extension of the Stay Period from April 30, 2020 to October 30, 2020.

TERMS OF REFERENCE

- 16. In preparing the Twenty-Second Report, the Monitor has relied upon unaudited financial information, the Companies’ books and records, the financial information prepared by the Companies and discussions with legal counsel for the Companies. As described below, in preparing the Twenty-Second Report, the Monitor has been unable to discuss the contents hereof with management of the Companies (“**Management**”).
- 17. Unless otherwise stated, all dollar amounts contained in the Twenty-Second Report are expressed in Canadian dollars.
- 18. Capitalized terms not otherwise defined in the Twenty-Second Report are as defined in the Initial Order, the Claims Solicitation Procedure Order or the Plan.

BACKGROUND

- 19. The Companies operated together as one of Canada’s leading and largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. The operations of Valle Foam and Domfoam historically comprised substantially all of the Companies’ operations. A-Z Foam and Valle Foam are wholly owned subsidiaries of Domfoam.

20. Mr. Anthony Vallecoccia is the President and Chief Executive Officer of Domfoam, President of Valle Foam, and the sole officer and director of A-Z Foam. Although the records maintained by Corporations Canada indicate that Mr. Vallecoccia and Dale McNeill are directors of both Valle Foam and Domfoam, the Monitor understands that Mr. Vallecoccia is the only remaining director and officer of the Companies. The records maintained by B.C. Registry Services disclose that A-Z Foam is active but in the process of being dissolved. The records maintained by Corporations Canada disclose that Domfoam and Valle Foam were dissolved for non-compliance on December 7, 2019.

CLAIMS SOLICITATION PROCEDURE

21. Listed below is a summary of the Prefiling Claims and Postfiling Claims which have been admitted by the Monitor in accordance with the Claims Solicitation Procedure Order and the Distribution Order (which authorized the Monitor to admit certain late filed Proofs of Claim).

Company	Pre-Filing (Admitted)	Post-Filing (Admitted)	Total
Valle Foam Industries (1995) Inc.	\$ 27,822,834.03	\$ 168,255.98	\$ 27,991,090.01
Domfoam International Inc.	\$ 27,037,315.86	\$ 54,241.01	\$ 27,091,556.87
A-Z Sponge & Foam Products Ltd.	\$ 4,084,071.70	\$ 135,372.59	\$ 4,219,444.29

22. As described in the Prior Reports, the Applicants were named as Defendants in certain class action lawsuits in Canada and the United States (collectively, the “**Class Actions**”), based upon allegations of price fixing by certain of the Applicants and other manufacturers in the slab foam industry. The Canadian Class Actions consisted of two proceedings commenced in each of British Columbia and Ontario and a proceeding commenced in Quebec. The Canadian Class Actions advanced joint and several claims against the Companies and certain other defendants or respondents on behalf of proposed classes comprised of all persons or entities who purchased polyurethane foam and polyurethane foam products in Canada from and after January 1, 1999 (collectively, the “**Class**”).

23. The most significant Proven Claims against the Companies were filed in respect of the Canadian Class Actions in the total amount of \$40.0 million (allocated to each of Valle Foam and Domfoam in the amount of \$18.0 million, and to A-Z Foam in the amount of \$4.0 million), and by the Competition Bureau against both Valle Foam and Domfoam each in the amount of \$6.0 million.

RECEIPTS FROM THE US URETHANE PROCEEDINGS

24. The Companies had previously advised the Monitor that they each were claimants in a class action proceeding before the United States District Court for the District of Kansas under the caption In Re Urethane AntiTrust Litigation (the “**US Urethane Proceedings**”).
25. As previously reported in the Monitor’s Seventh Report to the Court dated July 12, 2013 (the “**Seventh Report**”), pursuant to a 2008 services agreement (the “**Services Agreement**”) between the Companies and Refund Recovery Services, LLC (“**RRS**”), the Companies retained RRS to assist in asserting and recovering their claims in the US Urethane Proceedings in consideration of a fee equal to 25% of all funds paid to the Companies. Thereafter, Enterprise Law Group (“**ELG**”) was retained by RRS to assist in recovering the Valle Foam claim only in the US Urethane Proceedings. Subsequently, Lex Group, LLC (“**Lex Group**”), the successor to RRS, assigned to ELG its rights under the Services Agreement to receive the 25% commission in respect of any funds paid to Valle Foam only pursuant to the US Urethane Proceedings. The Monitor has been advised by Lex Group that it assigned its rights under the Services Agreement to Lex Acquisition Group, LLC (“**Lex Acquisition**”) on January 7, 2015.
26. In 2013, the Companies received initial distributions with respect to their claims in the US Urethane Proceedings related to two separate settlements with BASF Corporation and Huntsman International LLC. The net amount of these settlement funds, after deduction of the 25% fee payable to ELG and Lex Group (the “**Agent**”

Fee”), was distributed to the creditors of Valle Foam and A-Z Foam as part of the First Distribution and to the creditors of Domfoam as part of the First Domfoam Distribution.

27. A further settlement was reached in the US Urethane Proceedings with The Dow Chemical Company (“**Dow**”). By letter dated March 21, 2018, class counsel delivered to the Companies their share of the initial distribution of 85% of the USD\$835 million settlement reached with Dow in the US Urethane Proceedings (the “**Dow Settlement**”) as follows: USD\$732,651.37 to A-Z Foam, USD\$5,542,999.25 to Valle Foam and USD\$3,741,639.62 to Domfoam (collectively, the “**Initial Dow Settlement Funds**”). Each of these cheques was deposited to the applicable account maintained by the Monitor for each of the Companies, following which the Monitor paid the Agent Fee from such funds.
28. In December 2018, the Monitor received from class counsel the Companies’ remaining 15% share of the Dow Settlement as follows: USD\$130,519.67 to A-Z Foam, USD\$987,486.91 to Valle Foam and USD\$666,562.02 to Domfoam (collectively, the “**Residual Dow Settlement Funds**” and together with the Initial Dow Settlement Funds, the “**Dow Settlement Funds**”). Each of these cheques was deposited to the applicable account maintained by the Monitor for each of the Companies, following which the Monitor paid the Agent Fee from such funds.

SECOND INTERIM DISTRIBUTION TO CREDITORS OF VALLE FOAM AND A-Z FOAM

29. In accordance with the Second Distribution Order, the Monitor carried out an interim distribution in June 2018 of Valle Foam’s share of the Initial Dow Settlement Funds in the amount of \$5,600,000 to the Valle Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the “**Second Valle Foam Distribution**”). Each Creditor holding a Prefiling Claim against Valle Foam received approximately \$0.20 for each dollar of its Proven Claim. As described below, Valle Foam’s share of the

Residual Dow Settlement Funds after payment of the Agent Fee is currently being held by the Monitor.

30. In accordance with the Second Distribution Order, the Monitor carried out an interim distribution in June 2018 of A-Z Foam's share of the Initial Dow Settlement Funds in the amount of \$707,950 to the A-Z Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the "**Second A-Z Foam Distribution**"). Each Creditor holding a Prefiling Claim against A-Z Foam received approximately \$0.15 for each dollar of its Proven Claim. As described below, A-Z Foam's share of the Residual Dow Settlement Funds after payment of the Agent Fee is currently being held by the Monitor.

SECOND INTERIM DISTRIBUTION TO DOMFOAM CREDITORS

31. Pursuant to the Second Distribution Order, the Monitor was authorized to distribute Domfoam's share of the Initial Dow Settlement Funds in the amount of \$3,470,000 on a *pro rata, pari passu* basis to the Domfoam Creditors holding Proven Claims (the "**Second Domfoam Distribution**"). This would have resulted in each Creditor holding a Prefiling Claim against Domfoam receiving approximately \$0.13 for each dollar of its Proven Claim.
32. However, prior to the Monitor carrying out the Second Domfoam Distribution, the Domfoam Purchaser asserted a proprietary claim to Domfoam's share of the Initial Dow Settlement Funds. The Domfoam Purchaser claims that Domfoam's interest in the Dow Settlement Funds is included in the "Purchased Assets" conveyed to the Domfoam Purchaser pursuant to the Asset Purchase Agreement dated March 8, 2012 between Domfoam as vendor and the Domfoam Purchaser as purchaser (the "**Domfoam APA**").
33. As noted in the Monitor's Seventh Report, the affidavit of Mr. Vallecoccia sworn July 11, 2013 provides that each of Domfoam, Valle Foam and A-Z Foam did not intend to sell to the purchaser of its assets its claim in the US Urethane Proceedings

(the “**Domfoam US Urethane Claim**”, the “**Valle Foam US Urethane Claim**”, the “**A-Z Foam US Urethane Claim**” respectively and, collectively, the “**US Urethane Claims**”), and that the US Urethane Claims remain assets of the Companies’ estates. The Monitor was not involved in any of the negotiations between the Companies and the purchasers of their assets.

34. Pursuant to a notice of motion dated September 14, 2018, the Domfoam Purchaser sought an order setting aside the Second Distribution Order and directing Domfoam and the Monitor to pay to the Domfoam Purchaser the Dow Settlement Funds attributable to Domfoam. The foregoing motion was returnable on November 29, 2018. However, at the hearing of the motion, Domfoam sought leave to examine the President and an employee of the Domfoam Purchaser.
35. By reasons dated February 13, 2019, Justice Wilton-Siegel granted Domfoam’s motion to examine the President of the Domfoam Purchaser (which examination has been conducted), but denied its motion to examine the employee of the Domfoam Purchaser.
36. Domfoam later consented to the Second Distribution Order being set aside with respect to the second interim distribution of the Domfoam Proceeds. However, it is Domfoam’s position that the Domfoam Purchaser’s proprietary claim to Domfoam’s share of the Dow Settlement Funds should proceed as a trial rather than as a motion.
37. A case conference was held before Justice Conway on October 7, 2019 to address the manner in which the Domfoam Purchaser’s claim to Domfoam’s share of the Dow Settlement Funds shall be determined. Following submissions by the parties, the Court ordered that: (i) the parties shall exchange affidavits of documents within 45 days, relating only to the issues of surrounding circumstances (i.e., what each party knew about the US Urethane Proceedings at the time – not what their subjective intentions were or prior drafts of the Domfoam APA) and the “estoppel issue” (i.e., Domfoam’s position that the Domfoam Purchaser’s claim may be subject to an estoppel argument or the expiry of an applicable limitation period); (ii)

thereafter, the parties will proceed to mediation; and (iii) if the dispute regarding entitlement to Domfoam's share of the Dow Settlement Funds is not resolved at mediation, a further case conference shall be held for directions regarding the manner in which the dispute will be heard by the Court, including what evidence (both written and oral) will be admissible.

38. The Monitor has agreed that it will not distribute any further amount from Domfoam's share of the Dow Settlement Funds pending disposition of the Domfoam Purchaser's motion.
39. The mediation was originally scheduled for April 17, 2020. Given the effects of the COVID-19 pandemic, it has been rescheduled for May 25, 2020.

A-Z FOAM PURCHASER'S CLAIM TO RESIDUAL DOW SETTLEMENT FUNDS

40. 0932916 BC Ltd. (the "**A-Z Purchaser**") purchased certain of A-Z Foam's assets pursuant to the Asset Purchase Agreement between A-Z Foam as vendor and the A-Z Purchaser as purchaser dated February 21, 2012 (the "**A-Z Foam APA**"). Mr. Vallecoccia's affidavit sworn July 11, 2013 indicates that A-Z Foam did not intend to sell the A-Z Foam US Urethane Claim to the A-Z Purchaser. In the Monitor's Seventh Report, which was served upon the A-Z Purchaser, the Monitor noted that, barring any claim to the A-Z Foam US Urethane Claim by the A-Z Purchaser, it appears that the net proceeds thereof should be available for distribution to the creditors of A-Z Foam.
41. On November 5, 2018, subsequent to the Second A-Z Foam Distribution (but prior to receipt of the Residual Dow Settlement Funds), the A-Z Purchaser contacted the Monitor to advise of its position that the A-Z Foam US Urethane Claim was conveyed to the A-Z Purchaser pursuant to the A-Z APA. The A-Z Purchaser remains on the Service List in this proceeding and was served with the Monitor's Eighteenth Report in connection with the Companies' motion for the Second Distribution Order. The A-Z Purchaser has retained new legal counsel who

confirmed with the Monitor on November 22, 2018 the above noted position of the A-Z Purchaser. The Monitor will continue to review this issue with the A-Z Purchaser and will update the Court as appropriate. To date, the A-Z Purchaser has not filed any motion materials with respect to its purported entitlement to the Residual Dow Settlement Funds. It is the Monitor's view that the A-Z Purchaser is waiting for the resolution of the Domfoam Purchaser's entitlement to the Dow Settlement Funds. In the meantime, the Monitor will not distribute any further amount from A-Z Foam's share of the Residual Dow Settlement Funds.

STATUS OF VALLE FOAM'S SHARE OF THE RESIDUAL DOW SETTLEMENT FUNDS

42. Fybon Industries Limited ("**Fybon**") purchased certain of Valle Foam's assets pursuant to the Asset Purchase Agreement between Valle Foam as vendor and Fybon as purchaser dated February 22, 2012 (the "**Valle Foam APA**"). As noted in the Seventh Report, which was served upon Fybon, it appeared that the Valle Foam assets purchased by Fybon did not include the Valle Foam US Urethane Claim since Valle Foam's accounts receivable were not included as purchased assets under that transaction. As far as the Monitor is aware, Fybon has not asserted any claim to the Valle Foam US Urethane Claim. Fybon was removed from the Service List following the Applicants' motion for the Distribution Order.
43. By email dated March 5, 2019, a copy of which is attached hereto as Exhibit "**G**", the Monitor advised Fybon of (i) the claim to the Dow Settlement Funds asserted by the Domfoam Purchaser; and (ii) the claim to the Residual Dow Settlement Funds asserted by the A-Z Purchaser. Fybon advised the Monitor that it sold the assets it purchased from Valle Foam and confirmed that it did not have any concerns at that time. The Monitor has not yet distributed to Valle Foam's creditors Valle Foam's share of the Residual Dow Settlement Funds.

RECEIPTS FROM CANADIAN POLYOLS CLASS PROCEEDING

44. As described in the Affidavit of Mr. Vallecoccia sworn on November 16, 2018 (“**November 2018 Affidavit**”) in connection with the Companies’ motion for an extension of the Stay Period, a class proceeding was commenced before the Ontario Superior Court of Justice under the style of cause *Crosslink Technology Inc. v BASF Canada et al*, Ontario Superior Court of Justice, London (Court File No. 50305CP) (the “**Canadian Polyols Proceeding**”), seeking similar relief to that sought in the US Urethane Proceedings. A copy of the November 2018 Affidavit (with only Exhibit E included) is attached hereto as Exhibit “**H**”.
45. Exhibit E to the November 18 Affidavit is a summary of the Canadian Polyols Proceeding extracted from the website maintained by class counsel, Siskinds LLP (the “**Siskinds Polyols Site**”). As described on the Siskinds Polyols Site, the Canadian Polyols Proceeding alleges that the defendants unlawfully conspired to fix, increase, and/or maintain prices in the market for Polyether Polyols, defined as polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), toluene diisocyanate (TDI), and polyether polyol systems.
46. As disclosed on the Siskinds Polyols Site, settlements were reached in the Canadian Polyols Proceeding with Bayer Inc. and certain related entities, Lyondell Chemical Company, Huntsman International LLC, BASF Corporation, BASF Canada Inc. and most recently with the Dow Chemical Company and Dow Chemical Canada Inc.
47. As described in paragraph 32 of the November 2018 Affidavit, Mr. Vallecoccia advised that the Applicants, with the assistance of Lex Acquisition, were in the process of determining whether or not they are class members in the Canadian Polyols Proceeding.
48. Counsel to the Companies advised the Monitor that it was retained by Lex Acquisition to file the Companies’ claims in the Canadian Polyols Proceeding. As set out in Mr. Vallecoccia’s affidavit sworn April 18, 2019, counsel to the

Companies filed placeholder claims in February 2019. Counsel to the Companies have confirmed to the Monitor that the claims were submitted through the on-line claim portal administered by RicePoint Administration Inc. as the claims administrator in the Canadian Polyols Proceeding (the “**Claims Administrator**”).

49. By letter dated November 1, 2019, counsel for the Domfoam Purchaser advised that the Domfoam Purchaser had received a cheque in the amount of \$1,399,002.24 (the “**Domfoam Canadian Polyols Funds**”) from the Claims Administrator. Counsel to Domfoam has advised counsel to the Domfoam Purchaser that Domfoam asserts an interest in the foregoing funds and requested that such funds be held by counsel to the Domfoam Purchaser pending resolution of the competing claims to such funds. The Monitor understands that counsel to the Domfoam Purchaser has not yet confirmed if it is holding the Domfoam Canadian Polyols Funds in trust, or if the Domfoam Purchaser is in receipt of same.
50. Prior to receipt of the foregoing correspondence from counsel to the Domfoam Purchaser, the Monitor was not aware that the Domfoam Canadian Polyols Funds had been paid to Domfoam. Thereafter, the Monitor contacted the Claims Administrator on multiple occasions to determine the status of payments that may have been issued to Valle Foam and A-Z Foam.
51. In December 2019, the Monitor received from the Claims Administrator copies of two cheques dated October 11, 2019, the first payable to “Valle Foam Industries 1995 Inc.” in the amount of \$1,892,110.59 (the “**Valle Foam Canadian Polyols Funds**”) and the second payable to “A-Z Sponge & Foam Ltd.” in the amount of \$239,277.74 (the “**A-Z Canadian Polyols Funds**”). Based on the address details included on each cheque, it appears that the cheques were delivered to the premises occupied by each of Valle Foam and A-Z Foam prior to the sale of their assets.
52. The information on each of the cheques references the Polyether Polyol Price Fixing Settlement and *Crosslink Technology v BASF Canada et al.* Each cheque face includes a statement that, “Based on the value of your Aggregate Purchases and

other information you provided in your claim form we have determined that your 'Notional Entitlement' is" \$42,053,748.69, \$31,094,001.00, and \$5,318,082.18 for Valle Foam, Domfoam and A-Z Foam respectively. The Notional Entitlement was used to calculate the prorated distribution of the Canadian Polyols Funds.

53. The Monitor immediately contacted VPC Group Inc., which the Monitor was advised is the party to whom Fybon sold the assets it had purchased from Valle Foam (the "**New Valle Foam Purchaser**"), as well as counsel to the A-Z Foam Purchaser, in each case requiring the immediate delivery of such funds to the Monitor.
54. Counsel to the A-Z Purchaser advised that the A-Z Purchaser had not received the cheque for the A-Z Canadian Polyols Funds. The Monitor was then advised by the Claims Administrator that the cheque had been negotiated. The Monitor again followed up with counsel to the A-Z Purchaser, who again confirmed that the A-Z Purchaser did not receive that cheque. The Monitor has requested a copy of the negotiated cheque from the Claims Administrator on three occasions and will continue its efforts to determine the status of these funds. Upon the appointment of a CRO as discussed in paragraphs 61 to 66 in this Report, the Monitor will work with the CRO to investigate commencing legal against the Claims Administrator and/or any party in possession of the A-Z Canadian Polyols Funds.
55. The New Valle Foam Purchaser requested that the Monitor provide a copy of the agreement of purchase and sale between Valle Foam and the Valle Foam Purchaser to verify that the Valle Foam Canadian Polyols Funds were excluded from that transaction. The Monitor directed the New Valle Foam Purchaser to the copy of the APA posted on the Monitor's website. However, despite several follow up emails, the New Valle Foam Purchaser did not deliver the Valle Foam Canadian Polyols Funds to the Monitor.
56. By letter dated February 13, 2020, counsel to Valle Foam demanded the return of the Valle Foam Canadian Polyols Funds by no later than February 26, 2020, failing

which counsel reserved the right to seek the necessary injunctive relief from the Court. Exchanges between counsel continued thereafter.

57. On March 19, 2020, counsel to the New Valle Foam Purchaser advised counsel to Valle Foam that the Valle Foam Canadian Polyols Funds would be sent to the Monitor.
58. On March 26, 2020, the Monitor received a wire transfer in the amount of the Valle Foam Canadian Polyols Funds.
59. Thereafter, Lex Acquisition delivered to the Monitor its invoice for the 25% Agent Fee payable by Valle Foam in connection with collection of the Valle Foam Canadian Polyols Funds, which counsel to the Companies has confirmed is payable to Lex Acquisition in accordance with the retainer of Lex Acquisition by Valle Foam. The Monitor paid the Agent Fee of \$473,027.65 to Lex Acquisition on April 17, 2020.
60. Lex Acquisition has also issued an invoice to Domfoam in the amount of \$349,750.56 for the applicable 25% Agent Fee in connection with the claims filed on behalf of Domfoam in the Canadian Polyols Proceeding. As noted above, the Monitor is not in possession of the Domfoam Canadian Polyols Funds or the A-Z Canadian Polyols Funds. Lex Acquisition will issue the invoice for the A-Z Foam Agent Fee once it has been determined who is in possession of the A-Z Canadian Polyols Funds.

APPOINTMENT OF CRO

61. As noted above, Mr. Vallecoccia is the sole remaining director and officer of the Companies. The Monitor has previously been advised by counsel to the Companies that counsel to the Companies is unable to obtain instructions from the Companies through Mr. Vallecoccia. On April 16, 2020, counsel to Mr. Vallecoccia advised that he no longer feels capable of continuing his duties as a director. Counsel to Mr.

Vallecoccia advised that it will be difficult to obtain a signed resignation from Mr. Vallecoccia and that Mr. Vallecoccia has requested that he be removed as a director of the Companies.

62. Mr. Vallecoccia's affidavit sworn January 11, 2012 in support of the application for the Initial Order in this proceeding provides that Valle Foam and A-Z Foam are subsidiaries of Domfoam and that Mr. Vallecoccia is one of the shareholders of Domfoam. The other shareholders of Domfoam are not identified and the Monitor is not aware of who the other shareholders of Domfoam may be.
63. The substantive issues that remain to be addressed in the within proceeding are the entitlement of the Domfoam Purchaser to the Dow Settlement Funds and the Domfoam Canadian Polyols Funds and the entitlement of the A-Z Purchaser to A-Z Foam's share of the Residual Dow Settlement Funds and the A-Z Canadian Polyols Funds. These issues will either be addressed through litigation or possibly settlement with these parties. Given that counsel to the Companies is unable to obtain instructions from Mr. Vallecoccia, the Monitor recommends that an independent third party be appointed by the Court as the Chief Restructuring Officer ("CRO") of the Companies with the mandate and powers necessary to resolve the foregoing issues and take any other steps necessary to complete the administration of the Companies' estates in this proceeding.
64. The Monitor has identified Linc Rogers, a partner with Blake, Cassels & Graydon LLP in Toronto, as a recommended candidate for this role. Mr. Rogers is recognized as a leading insolvency lawyer and appears regularly before the Court. A copy of Mr. Rogers' website bio is attached hereto as Exhibit "I".
65. As with the Monitor and counsel to the Monitor, the Monitor recommends that the fees of the CRO be based on the amount of professional time required multiplied by the CRO's hourly rate, plus applicable taxes and disbursements. If appointed as CRO, Mr. Rogers has requested a retainer and the Monitor has agreed to same in the amount of \$25,000. The hourly fee chargeable by Mr. Rogers will be \$875.00. As

with the Monitor and counsel to the Monitor, all fees charged by the CRO will be subject to approval by the Court.

66. Given the pending expiry of the Stay Period on April 30, 2020 and the upcoming mediation with the Domfoam Purchaser, it is essential that the CRO be appointed as soon as possible to provide the necessary instructions to counsel for the Companies to address these issues.

ALLOCATION OF CRO FEES

67. As noted in the Monitor's Eleventh Report to the Court, the Applicants, with the concurrence of the Monitor, determined that the appropriate *pro rata* allocation of professional fees to Valle Foam, Domfoam and A-Z Foam should be 45%, 45% and 10%, respectively. In its Sixteenth Report to the Court, the Monitor recommended that since the great majority of the professional fees and disbursements incurred by the Monitor, its counsel and counsel to the Applicants for the periods referenced in the Sixteenth Report related to the Plan alone, that all such fees and disbursements should be paid entirely from the Domfoam Proceeds. As noted in the Monitor's Seventeenth Report to the Court, the 45%/45%/10% professional fee allocation was reinstated following implementation of the Plan.
68. As reported in the Monitor's Twenty-First Report, given the claims advanced by the Domfoam Purchaser and the A-Z Purchaser described above, the Monitor has suspended payment of professional fees attributable to Domfoam and A-Z Foam from the Dow Settlement Funds held by the Monitor attributable to Domfoam and the Residual Dow Settlement Funds attributable to A-Z Foam pending determination by the Court of entitlement to those funds. In the meantime, professional fees will continue to be paid from Valle Foam's share of the Residual Dow Settlement Funds held by the Monitor and will be reimbursed by Domfoam and A-Z Foam if appropriate.

STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

69. The following chart summarizes the cash on hand in the Companies' estates as at April 17, 2020

	As at April 17, 2020		
	Valle Foam	Domfoam	A-Z Foam
Cash on hand as at April 17, 2020	\$ 2,052,687.93	\$ 4,397,131.76	\$ 138,636.40
Directors' Charge Holdback	115,281.34	-	-
Balance of Administration Charge Holdback	-	-	6,179.75
Total cash available as at April 17, 2020	<u><u>\$ 2,167,969.27</u></u>	<u><u>\$ 4,397,131.76</u></u>	<u><u>\$ 144,816.15</u></u>

70. Attached hereto as Exhibit "J" is the Statement of Receipts and Disbursements for Valle Foam for the period March 29, 2012 to April 17, 2020. Total cash receipts from the sale of assets, the collection of accounts receivable, settlement funds, reimbursement of legal fees and other receipts are \$18,037,209.72. Total disbursements are \$15,984,521.79 which includes the First Distribution payment of \$5,585,546.00 and the Second Valle Foam Distribution of \$5,602,260.97 (which includes a distribution of \$2,271.97 made to an additional creditor after the First Distribution was completed), and the accruals for the Administration Charge and the Valle Foam Directors' Charge in the amounts of \$225,000.00 and \$200,000.00, respectively, of which nil and \$115,281.34 remain. Net cash on hand as of April 17, 2020 is \$2,052,687.93. This amount excludes any possible recovery of funds that may not be required to pay amounts secured by the Valle Foam Directors' Charge.

71. Attached hereto as Exhibit "K" is the Statement of Receipts and Disbursements for Domfoam for the period March 29, 2012 to April 17, 2020. Total cash receipts from the sale of assets, the collection of accounts receivable, settlement funds and other receipts are \$10,532,901.17. Total disbursements are \$6,135,769.41 which includes the First Distribution payment of \$1,524,785.47. Net cash on hand as at April 17, 2020 is \$4,397,131.76.

72. Attached hereto as Exhibit “L” is the Statement of Receipts and Disbursements for A-Z Foam for the period March 29, 2012 to April 17, 2020. Total cash receipts from the sale of assets, the collection of accounts receivable, settlement funds and other receipts are \$2,342,276.50. Total disbursements are \$2,203,640.10 which includes the First Distribution payment of \$624,054.25, the Second A-Z Foam Distribution of \$707,950.00 and the accrual for the Administration Charge in the amount of \$50,000.00, of which \$6,179.75 remains. Net cash on hand as at April 17, 2020 is \$138,636.40, which excludes any possible recovery for funds that may not be required for the Administration Charge.
73. The Monitor anticipates that the only meaningful disbursements during an extension of the Stay Period will be on account of professional fees in connection with (i) the claims advanced by the Domfoam Purchaser to Domfoam’s share of the Dow Settlement Funds and the Domfoam Canadian Polyols Funds, and by the A-Z Purchaser to A-Z Foam’s share of the Residual Dow Settlement Funds and the entitlement to the A-Z Canadian Polyols Funds; and (ii) once those claims are resolved, a final distribution to be carried out by the Monitor to the Companies’ Proven Creditors.

PROFESSIONAL FEES

74. The Monitor and its independent legal counsel, Thornton Grout Finnigan LLP (“TGF”), have maintained detailed records of their professional time and costs since the issuance of the Initial Order. Pursuant to paragraph 29 of the Initial Order, the Monitor and TGF were directed to pass their accounts from time to time before this Court.
75. The total fees of the Monitor during the period from October 1, 2019 to March 31, 2020 amount to \$16,557.50, together with disbursements of nil and harmonized sales tax (“HST”) in the amount of \$2,152.49, totalling \$18,709.99 (the “**Monitor Fees**”). The time spent by the Monitor is more particularly described in the Affidavit of

Catherine A. Hristow of Deloitte sworn on April 16, 2020 in support hereof and attached hereto as Exhibit “M”.

76. The total legal fees incurred by the Monitor during the period October 1, 2019 to March 31, 2020 for services provided by TGF as the Monitor’s independent legal counsel amount to \$28,122.50, together with disbursements in the amount of \$126.18 and HST in the amount of \$3,672.33, totalling \$31,921.01. The time spent by TGF personnel is more particularly described in the Affidavit of Grant Moffat, a partner of TGF, sworn on April 16, 2020 in support hereof and attached hereto as Exhibit “N”.

ALLOCATION OF PROFESSIONAL FEES

77. As noted in the Monitor’s Eleventh Report to the Court, the Applicants, with the concurrence of the Monitor, determined that the appropriate *pro rata* allocation of professional fees to Valle Foam, Domfoam and A-Z Foam should be 45%, 45% and 10%, respectively. In its Sixteenth Report to the Court, the Monitor recommended that since the great majority of the professional fees and disbursements incurred by the Monitor, its counsel and counsel to the Applicants for the periods referenced in the Sixteenth Report related to the Plan alone, that all such fees and disbursements should be paid entirely from the Domfoam Proceeds. As noted in the Monitor’s Seventeenth Report to the Court, the 45%/45%/10% professional fee allocation was reinstated following implementation of the Plan.
78. Given the claims advanced by the Domfoam Purchaser and the A-Z Purchaser described above, the Monitor has suspended payment of professional fees attributable to Domfoam and A-Z Foam from the Dow Settlement Funds held by the Monitor attributable to Domfoam and the Residual Dow Settlement Funds attributable to A-Z Foam pending determination by the Court of entitlement to those funds. In the meantime, all such fees will be paid from the Valle Foam estate and reimbursed by Domfoam and A-Z Foam if appropriate.

EXTENSION OF THE STAY PERIOD

79. Unless otherwise extended, the Stay Period will expire on April 30, 2020. An extension of the Stay Period is required to resolve the claims of the Domfoam Purchaser and the A-Z Purchaser described above and, if appropriate, for the Monitor to carry out further distributions to the Companies' Proven Creditors. However, if the CRO is not appointed or the inability of counsel to the Companies to obtain instructions is not otherwise addressed, it will not be possible to continue this proceeding and a bankruptcy would likely be required. In the Monitor's view, the appointment of the CRO is the most cost effective and timely method to resolve the corporate governance challenge facing the Companies, particularly given the limited number of remaining issues in this proceeding.
80. The Monitor believes that the Companies have acted in good faith and with due diligence and, provided that the CRO is appointed for the reasons set out above, the Monitor supports an extension of the Stay Period to October 30, 2020.

MONITOR'S RECOMMENDATIONS

81. For the reasons set out above, the Monitor recommends that:
- (a) the Twenty-Second Report and the activities of the Monitor as described in the Twenty-Second Report be approved;
 - (b) the CRO be appointed on the terms set out in the draft appointment order;
 - (c) the Stay Period be extended until October 30, 2020;
 - (d) the professional fees and disbursements of the Monitor and TGF be approved and the Monitor be authorized to pay all such fees and disbursements in the manner described above.

All of which is respectfully submitted at Toronto, Ontario this 22nd day of April, 2020.

DELOITTE RESTRUCTURING INC.

solely in its capacity as the Monitor
of the Companies (as defined herein),
and without personal or corporate liability

A handwritten signature in black ink that reads "P. Casey". The signature is written in a cursive style with a small flourish at the end.

Paul M. Casey, CPA, CA, FCIRP, LIT
Senior Vice-President