

Exhibit B

(consisting of the following 48 pages)

Affidavit of Tony Vallecoccia

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

**AFFIDAVIT OF TONY VALLECOCCIA
(sworn January 11, 2012)**

I, **TONY VALLECOCCIA**, of the City of Brampton, Province of Ontario,

MAKE OATH AND SAY:

1. I am the President and CEO of Valle Foam Industries (1995) Inc. and of Domfoam International Inc. and a director of each of the Applicants, and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated. Where my evidence is based on information and belief, I have stated the source of that information and believe it to be true.

I. INTRODUCTION

2. This affidavit is sworn in support of an application by Valle Foam Industries (1995) Inc. (“**Valle Foam**”), and its affiliated companies, Domfoam International Inc. (“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z**”) (collectively, the “**Applicants**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

3. The Applicants collectively operate as one of Canada’s largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. As described in greater detail below, as a result of declining sales, fines imposed by the Competition Bureau of Canada, and class action lawsuits commenced against the Applicants in Canada and the United States, the Applicants are both not able to meet their liabilities as they come due and their liabilities exceed the value of their assets, and are therefore insolvent.

4. This application has been authorized by the Board of Directors of each of the Applicants.

II. APPLICANTS

Corporate Structure

5. At all material times, the business and affairs of Valle Foam and Domfoam have been operated under my control as CEO, a shareholder and director. I was a principal shareholder and CEO of Valle Foam from the period of 1986 to and until 1994. In 1994, the major shareholders of Domfoam, including a CIBC Wood Gundy Capital Fund (“**Wood Gundy**”), entered into an agreement whereby Domfoam would purchase Valle Foam. I, and other Valle Foam shareholders, would become shareholders in Domfoam, and I would become its President and CEO. In this way, Valle Foam and Domfoam became affiliated. In 1997, Wood Gundy was bought out as were others with interests in Domfoam. In 1999, A-Z Foam was acquired by Domfoam.

6. The head office for Valle Foam is located in Brampton, Ontario. The head office for Domfoam was located in the Valle Foam office until May 22, 2007 when it was transferred from the Valle Foam office to the St. Leonard office of Domfoam. The transfer of the head office was done on the advice of Valle Foam’s corporate counsel, but did not impact the fact that I remained in control of the

Applicants from my office in Brampton. The head office for A-Z is located in Annacis Island, Delta, British Columbia.

7. All major decisions for the Applicants have always been made principally by me, or with the Board of Directors and by the officers for all three companies. The board members and substantially all the shareholders are located in the Greater Toronto Area.

Overview of Business

8. The foam used in the Applicants' business is manufactured by the reaction resulting from the combination of two main chemicals: an isocyanate, such as Methylene Diphenyl Di-isocyanate ("MDI") or Toluene Di-isocyanate ("TDI"), and a polyurethane polymer called Polyol. The resultant foam can be made into a variety of densities and hardness, from flexible foam to rigid foam, depending on the mixing ratio of the chemicals.

9. Due to the versatility of foam, the foam manufactured by the Applicants is used in a variety of industries and applications, including, but not limited to:

- Furniture Manufacturing: used in cushions, upholstered furniture, office chairs, stadium seating and auditorium seating;

- Carpet Cushion (or underlay): used to improve the comfort and lifespan of carpets;
- Bedding: used as the primary material for adding support and comfort to padded bedding products;
- Packaging: provides protection and cushioning to packaged products. Polyurethane foams are often used to package highly sensitive equipment such as electronics, printed circuit boards, jewellery and delicate foods; and
- Textiles and Fibres: used as insulation for fabric products including clothing. It provides thermal insulation, tear resistance, fire resistance and light weight to a variety of textiles and fibres including leather products, shoe uppers, tents, life rafts, labels, hand bags and insulation liners.

Employees

10. Currently, the Applicants collectively employ between 525 to 550 people.

11. Valle Foam is the largest employer, employs 278 full time employees plus between 15 and 20 temporary employees at four locations in and around Brampton, Ontario. The Valle Foam employees are not unionized.

12. Domfoam employs 172 full time employees and between 15 and 45 temporary employees at three locations in and around Montreal, Quebec. The 127 factory floor employees of Domfoam are members of Teamsters Local 973 (the “**Domfoam Union**”).

13. A-Z employs 34 employees in Annacis Island, Delta, British Columbia. Certain of the employees of A-Z are members of Pulp and Paper Workers Local #5 (the “**A-Z Union**”).

Premises

14. Each of the Applicants lease their respective business premises at the following locations:

a) Valle Foam:

- 4 West Drive, Brampton, Ontario;
- 170 Glidden Road, Brampton, Ontario;
- 317 Orenda Road, Brampton, Ontario;
- 11 Finley Road, Brampton, Ontario;

b) Domfoam:

- 8785 Langelier Boulevard, (Saint-Leonard) Montreal, Québec;
- 6675 Bombardier Avenue, (Saint-Leonard) Montreal, Québec;
- 7525 Henri Bourassa East, Montreal, Québec;

c) A-Z:

- 811 Cundy Avenue, Annacis Island, Delta, British Columbia.

15. The Applicants are in arrears of their rental obligations at several locations, including the principal Valle Foam and Domfoam location where rent is two months in arrears.

16. The business of the Applicants involves the use of chemicals in the course of manufacturing its products. Some of these products are hazardous and all of these products have to be carefully managed. The premises of each of the Applicants have been specifically designed or modified to allow for the use of these chemical agents.

17. The facilities operated by the Applicants include special exhaust gas activated charcoal scrubbers to deal with waste products from the manufacturing

process. Hazardous chemicals are also stored on site or are picked up and disposed of by companies under license who have agreements with the Applicants.

18. In order to properly dispose of these chemicals in the event the business of the Applicants, or any of them were to cease, the Applicants would require a detailed disposal plan to be implemented under supervision and in keeping with environmental guidelines. The premises cannot be safely abandoned or rendered inoperative without such efforts.

Supply Chain and Customers

19. The Applicants purchase their principal supplies separately, but often from the same suppliers.

20. Chemicals and other production inputs are delivered to the Applicants through different methods. Valle Foam takes delivery by way of tank truck whereas Domfoam and A-Z take the majority of their delivery by way of railcar directly into their facility.

21. As a result, Valle Foam is unable to accumulate much inventory of some products, and at any point in time never has more than 8 to 10 days worth of certain key chemicals.

22. Domfoam, on the other hand, can have as much as 6 to 8 weeks worth of supply of certain products at certain points in time by being able to take larger volume deliveries.

23. A-Z typically has as much as six or more weeks of inventory.

24. Many suppliers, most notably Bayer, the Applicants' largest supplier of Polyol, have contacted the Applicants in order to determine the status of their outstanding accounts. Bayer in particular is owed in excess of approximately \$2.7 million from the Applicants collectively. Since December 1, 2011, we have been paying suppliers, including Bayer, on a COD basis. Although the Applicants have sufficient cash flow to order supply on a COD basis, the Applicants' cash flow is insufficient to pay the accrued arrears owing to these suppliers along with paying COD for new supply.

25. For each of the Applicants, over 40% of their business is done with their key customers. In the case of Domfoam, these key customers account for receivables currently owing to the company in excess of \$2 million. In the case of Valle Foam, these 25 key customers account for 60% of the receivables. In the case of A-Z, these key customers account for 80%.

26. A large number of these customers, for example in the case of Domfoam over 30%, buy 100% of their needs of foam directly from Domfoam. In the event there is any cessation of supply to these customers, these customers will need to seek alternative arrangements immediately. It would be similar for the other Applicants.

27. Other than those customers who purchase the Applicants' proprietary visco-elastic foam product, there is nothing unique about the products provided by the Applicants which could not be replaced by one of the Applicants' competitors should such customers seek to source their supply from those competitors and would be unlikely to return to the Applicants even if supply was later restored

28. In the last several days since the Competition Act plea discussed below became public, several customers have contacted the Applicants to express concerns about their future supply from the Applicants and have indicated their intent to seek supply elsewhere. Several customers have not placed orders of their usual size this week and I believe they have already begun to seek new sources of supply as a result of their concerns.

29. Other customers have contacted the Applicants seeking confirmation that rebates which they assert are owed to them pursuant to volume purchasing

arrangements they have with the Applicants will be paid to them when due on January 15, 2012.

Assets

30. Attached hereto and marked as **Exhibits "A"** and **"B"** are the Audited Financial Statements for the year ending April 30, 2011 for Valle Foam and Domfoam. The April 30, 2011 Financial Statements of A-Z which are on a review engagement basis are attached as **Exhibit "C"**.

31. While the financials demonstrate the book value of the Applicants, I am of the view that these book values, while reasonable for accounting purposes, are not likely to be realized in the event of a forced or even orderly sale of the business as a result of its insolvency.

32. When added to the ordinary liabilities to trades, which are substantial and are increasing, as detailed below, the out of the ordinary course liabilities to the Competition Bureau described below and possible exposure to class action liability greatly exceeds the realizable value of the assets.

III. FINANCIAL DIFFICULTIES AND THE NEED FOR CCAA PROTECTION

Causes of Financial Difficulties

33. The Applicants are involved in an industry that is in transition. Certain products which were formerly the backbone of the Applicants' sales are no longer widely consumed. In particular, the demand for carpet under-padding has been eroded by a move in construction and consumers away from carpeting in favour of hardwood flooring and tile.

34. The industry is also experiencing significant pressures from overseas production sources, most notably China, which are able to produce the foam at greater margins due to lower labour costs or other geographic advantages. That Chinese manufactured foam is supplied to the Chinese manufacturing industry who then manufacture finished product which includes this foam, which products used to be finished or manufactured in Canada using Canadian produced foam.

35. These systemic factors have led to a decline in the Applicants' financial performance over the past several years.

36. Each of Valle Foam and Domfoam suffered a loss in excess of \$5 million in fiscal 2011. A-Z Foam also suffered a loss in excess of \$57,000.00. The following

is a chart setting out the operating results for the fiscal years ended April 30, 2009 to 2011 for each of the Applicants:

Valle Foam Industries (1995) Inc.
Operating Results for the Fiscal Years Ended April 30, 2009 to 2011
(in \$000's)

	30-Apr-09 (audited)		30-Apr-10 (audited)		30-Apr-11 (audited)	
	\$	%	\$	%	\$	%
Sales	48,612	100.0%	43,651	100.0%	40,466	100%
Costs of sales	44,078	90.7%	39,331	90.1%	38,141	94.3%
Gross profit	4,534	9.3%	4,321	9.9%	2,324	5.7%
Expenses						
Administrative and General	2,289	4.7%	2,171	5.0%	3,035	6.8%
Selling and Delivery	2,829	5.8%	2,681	6.1%	2,710	6.7%
	5,118	10.5%	4,852	11.1%	5,474	13.5%
Income (loss) from operations	(584)	-1.2%	(531)	-1.2%	(3,350)	-7.8%
Other income (expenses)						
Gain (loss) on disposal of assets	(6)	0.0%	(6)	0.0%	3	0.0%
Investment tax credits earned	-	0.0%	14	0.0%	-	0.0%
Government grant	-	0.0%	197	0.5%	-	0.0%
Impairment loss to goodwill	-	0.0%	-	0.0%	(2,702)	-6.7%
	(590)	-1.2%	(325)	-0.7%	(5,849)	14.5%
Income (before income taxes)	(590)	-1.2%	(325)	-0.7%	(5,849)	14.5%
Income taxes (recovered)	(57)	-0.1%	(40)	-0.1%	(314)	-0.8%
	(533)	-1.1%	(285)	-0.7%	(5,535)	13.7%

Domfoam International Inc.
Operating Results for the Fiscal Years Ended April 30, 2009 to 2011
(in \$000's)

	30-Apr-09 (audited)		30-Apr-10 (audited)		30-Apr-11 (audited)	
	\$	%	\$	%	\$	%
Sales	45,182	100.0%	39,665	100.0%	37,153	100%
Cost of Sales	39,144	86.6%	34,311	86.5%	33,875	91.2%
Gross profit	6,038	13.4%	5,354	13.5%	3,278	8.8%
Expenses						
Administrative and General	908	2.0%	2,092	5.3%	2,889	7.8%
Selling and Delivery	3,643	8.1%	3,704	9.3%	3,821	10.3%

	30-Apr-09 (audited)		30-Apr-10 (audited)		30-Apr-11 (audited)	
	\$	%	\$	%	\$	%
	4,551	10.1%	5,796	14.6%	6,711	18.1%
Income (loss) from operations	1,487	3.3%	(442)	-1.1%	(3,432)	-9.2%
Other income (expenses)						
Dividend Income	-	0.0%	-	0.0%	-	0.0%
Gain (loss) on disposal of assets	-	0.0%	-	0.0%	-	0.0%
Interest Income	143	0.3%	10	0.0%	4	0.0%
Investment tax credits earned	55	0.1%	23	0.1%	-	0.0%
Legal settlement	-	0.0%	-	0.0%	560	1.5%
Impairment to goodwill	-	0.0%	-	0.0%	(3,605)	-9.7%
					-	
Income (before income taxes)	1,684	3.7%	(410)	-1.0%	(6,473)	17.4%
Income taxes (recovered)	648	1.4%	91	0.2%	(693)	-1.9%
					-	
Net income for the year	1,036	2.3%	(500)	-1.3%	(5,781)	15.6%

A-Z Sponge & Foam Products Ltd.
Operating Results for the Fiscal Years Ended April 30, 2009 to 2011
(in \$000's)

	30-Apr-09 (unaudited)		30-Apr-10 (unaudited)		30-Apr-11 (unaudited)	
	\$	%	\$	%	\$	%
Sales	6,453	100.0%	5,419	100.0%	5,285	100%
Cost of Sales	5,132	79.5%	4,525	83.5%	4,524	85.6%
Gross profit	1,321	20.5%	894	16.5%	761	14.4%
Expenses						
Administrative and General	499	7.7%	555	10.2%	478	9.0%
Selling and Delivery	351	5.4%	360	6.6%	368	7.0%
	850	13.1%	915	16.8%	846	16.0%
Income (loss) from operations	471	7.3%	(21)	-0.3%	(85)	-1.6%
Other income (expenses)						
Dividend Income	-	0.0%	-	0.0%	-	0.0%
Gain (loss) on disposal of assets	-	0.0%	-	0.0%	-	0.0%
Interest Income	-	0.3%	-	0.0%	-	0.0%
Investment tax credits earned	28	0.4%	18	0.3%	19	0.4%
Legal settlement	-	0.0%	-	0.0%	-	0.0%
Impairment to goodwill	-	0.0%	-	0.0%	0.0%	
					-	
Income (before income taxes)	499	7.7%	(3)	-0.1%	(65)	-1.3%
Income taxes (recovered)	139	2.2%	16	0.3%	(8)	-0.2%
					-	
Net income for the year	360	5.5%	(19)	-0.4%	(57)	-1.1%

37. The Applicants, excluding A-Z, are forecast to suffer an aggregate \$8.4 million net loss before taxes in fiscal 2012, without accounting for any payment of Competition Bureau fines or costs of any of the outstanding litigation. The operating loss, prior to interest, taxes, depreciation and amortization and professional fees, is forecast to total \$4.5 million. Fiscal 2012 net sales are forecast to be \$71.5 million, which is a decrease of approximately \$6.1 million or 7.9% compared to fiscal 2011.

38. For the Applicants, other than A-Z, the fiscal 2012 net cash outflow is forecast to be \$8.4 million, which includes payment of legal fees of \$2.4 million associated with the matter regarding the Competition Bureau (Canada) and the class action lawsuits in the United States and Canada (discussed in greater detail below).

39. Based on the current cost structure of the Applicants, excluding A-Z, in order to break even, the aggregate net sales for Domfoam and Valle Foam for fiscal 2012 would have to be approximately \$81.4 million or \$9.9 million greater than the current level of forecast sales, again, without accounting for the payment of any fines or settlement amounts. I do not believe the Applicants can reach this

threshold. There is also full impact of the fines and significant costs and other exposure to class action litigation discussed below without restructuring.

Valle Foam

40. Valle Foam's annual sales decreased by approximately \$37 million from fiscal 2007 to 2011. The decrease in or elimination of sales related to two customers, Spin Master and DHU, accounted for approximately 52% of the decrease and Valle Foam has not been able to replace these sales.

41. Valle Foam's sales of carpet underlay have decreased by 62% (\$13.1 million to \$5 million) from fiscal 2007 to 2011. Valle Foam internally generates all the scrap it requires to manufacture carpet underlay. Gross margins generated on the sale of carpet underlay are significantly higher than on foam products and as such, the loss of a large portion of the carpet underlay business has considerably decreased Valle Foam's gross margins. Due to competition and changes in the market place, the price for foam scrap upon which Valle Foam relied for profit has dropped by nearly 50% against historic levels. The overall market for underlay as reported by an industry group in which we are a member has declined by 50%. Although Domfoam also profited from the sale of scrap, it was not to the same

degree as Valle Foam, and therefore they are not impacted as severely by this market change.

42. Valle Foam is projected to lose approximately \$100,000.00 per week if it continues to operate in keeping with its current circumstances and market trends.

43. Attached hereto and marked as **Exhibit "D"** is a copy of an internal Statement of Income for the 6 month period ending October 31, 2011 for Valle Foam.

Domfoam

44. Since fiscal 2007, Domfoam's sales for carpet underlay and the other slab foam products have decreased from \$13.5 million to \$4.1 million and \$44.3 million to \$33 million, respectively, and the selling price per board foot ("BF"), a standard measure in the industry, for carpet underlay has decreased by 32% resulting in a substantial deterioration Domfoam's gross margin.

45. Domfoam continues to lose money on a monthly basis, although I believe it could operate at a break even basis if properly restructured and ultimately return to profitability in the future. Attached hereto and marked as **Exhibit "E"** is a copy of

an internal Statement of Income for the six month period ending October 31, 2011 for Domfoam.

A-Z

46. For similar reasons to those suffered by the other Applicants, A-Z is also declining. Since fiscal 2009, A-Z's income from operations has dropped from \$471,000.00 to a loss of \$21,000.00 in 2010 to a loss of \$85,000.00 in 2011. Over that same period the gross profit margin of their products have declined from 20.5% to 16.5% to 14.4% .

47. Attached hereto and marked as **Exhibit "F"** is a copy of an internal Statement of Income for the six month period ending October 31, 2011 for A-Z.

Competition Bureau Fines

48. Both Domfoam and Valle Foam were recently charged with, and on January 5, 2012, pled guilty to certain offences under the *Competition Act*, R.S.C. 1985, c C-34 (the "*Competition Act*"). Although not charged, A-Z also participated, to a lesser extent in the underlying events. Through agreement with the Director of Public Prosecutions, the resolution of the charges under the *Competition Act* included A-Z.

49. From January 1, 1999 to March 11, 2010, Domfoam and Valle Foam committed an indictable offence contrary to s. 45(1)(c) of the *Competition Act* by conspiring, combining, agreeing or arranging to prevent or lessen, unduly, competition in the sale or supply of slab foam and carpet cushion (underlay) foam products within Canada. From March 12, 2010 to July 27, 2010, Domfoam and Valle Foam also engaged in conduct contrary to ss. 45(1) (a) of the *Competition Act*, R.S.C. 2009, Chap C-2. s. 410 by conspiring, agreeing or arranging to fix, maintain, increase or control the price for the supply of slab foam and carpet cushion (underlay) foam products within Canada, thereby committing an indictable offence contrary to s.45(2) of the *Competition Act*, R.S.C. Chap C-2, s.410.

50. This conduct by Domfoam and Valle Foam, in collusion with other major manufacturers in their industry, enabled the manufacturers to coordinate and implement price increases to their respective customers (i.e. customers received price increase letters on or near the same day, with similar or identical percentage increases and effective implementation dates).

51. In July, 2010, search warrants were executed by the Competition Bureau at the business premises of Domfoam and Valle Foam. Consequently, Domfoam and Valle Foam learned that the Competition Bureau was in possession of wiretap and

documentary evidence detailing the alleged conspiracy. Additionally, it became known that the Competition Bureau had secured the cooperation of one of the alleged co-conspirators, in building its case against the others, including Domfoam and Valle Foam.

52. Domfoam and Valle Foam engaged counsel to review the matter. As a consequence of that review, Domfoam and Valle Foam undertook to participate in the Competition Bureau's Leniency Programme. In doing so, Domfoam and Valle Foam agreed to cooperate fully in the investigation; plead guilty; and, continue to provide cooperation on a going forward basis. In return, no current or future directors, officers, agents, independent contractors or employees would be charged; the fines to be imposed on the companies would be 50% of what they would otherwise have been; and, all matters under the *Competition Act* involving the conduct of Domfoam and Valle Foam, as well as A-Z and other affiliates, subsidiaries and predecessors, would be deemed to have been resolved. Domfoam and Valle Foam provided the expected pre-charge cooperation and then negotiated the details of their guilty pleas. This entire process took over 17 months to complete. I strongly believe that this plea was reasonable and am satisfied that Domfoam and Valle Foam were culpable of the alleged violations under the *Competition Act*.

53. As such, on the advice of counsel and as authorized by a specific resolution of the Board of Directors of each of Domfoam and Valle Foam, on January 5, 2012, the companies entered pleas of guilty before the Ontario Superior Court to the above-noted offences under s.45(1) (c) of the *Competition Act* for the period of January 1999 to March 2010, and ss.45(1) (a) and 45(2) of the amended *Competition Act* (as enacted by S.C. 2009, Chap. C- 2, s. 410), for the period of March 2010 to July 2010. Attached hereto and marked as **Exhibit "G"** is a copy of the Statement of Admissions and Indictment.

54. As noted previously, A-Z was released from all possible liability in conjunction with this matter as a result of the plea arrangement.

55. Domfoam was fined a total of \$6 million and Valle Foam was fined a total of \$6.5 million. No fine was assessed against A-Z as no charges were laid against A-Z. In accordance with the terms of the sentence imposed, on the day of the guilty pleas, Valle Foam paid \$500,000.00 in partial payment of the fines imposed against it.

56. As a result of the foregoing, Valle Foam has an outstanding liability of \$6 million in outstanding fines, and Domfoam has an outstanding liability of \$6

million. Attached hereto and marked as **Exhibit “H”** is a copy of the Competition Bureau Press Release dated January 6, 2012.

57. These liabilities are to be paid in accordance with the terms of the sentences imposed. Specifically, Domfoam and Valle Foam are to each pay \$1 million on the 1st of January of each year, commencing 2013 and ending in 2018.

58. Full disclosure of the Applicants’ financial difficulties was made to the Crown prior to finalizing the Statement of Admissions and entry of the pleas. The Crown was specifically advised of the Applicants’ precarious financial condition, and were advised of the Applicants’ intention to file for protection under the provisions of a Canadian insolvency regime.

59. The Applicants cannot make the fine payments from their cash flow and remain solvent given the forecasted losses and pressures on their industry. They will also be unable to secure new or additional financing in the circumstances.

Class Actions

60. The existence of the search warrants came to the attention of various classes of customers of the Applicants in 2010. In addition, certain of the wiretap evidence became available to the proposed class action counsel. As a result of

these disclosures, class counsel in the US and Canada initiated a number of proposed class proceedings against the Applicants in the US and in Canada in 2010, and afterwards on behalf of purchasers of polyurethane foam and products containing polyurethane foam products for lengthy class period. Some or all of the Applicants have been named as a defendant in at least five class action lawsuits in Canada, and over two dozen class action lawsuits in the United States (together, the “**Class Actions**”). Although not named in these actions, it is likely that A-Z could be added to such actions as a defendant given that A-Z was to some extent complicit or involved in the prohibited acts.

US Class Action Litigation

61. Our lawyers in New York, Skadden Arps, have successfully negotiated, on behalf of the Applicants, a settlement with the three different groups of plaintiffs in the United States which are part of a multi-district litigation proceeding styled *In re Polyurethane Foam Antitrust Litigation* in the United States District Court for the Northern District of Ohio. The settlement agreements are to be executed during the week of January 9, 2012.

62. The Applicants have reached agreement with the Direct Class and Indirect Class plaintiffs. The settlements have been signed by all relevant parties, and

pursuant to those agreements, both classes agreed to file with the United States District Court for the Northern District of Ohio on January 11, 2012, a notice that provides for the suspension of their cases as against Domfoam and Valle Foam. In both cases, the settlements are conditional upon Domfoam, Valle Foam and A-Z filing for some form of bankruptcy, restructuring or creditor protection by January 31, 2012. Attached hereto and marked as **Exhibit "I"** is a copy of the Direct Class Agreement and the Indirect Class Agreement.

63. In exchange for cooperation by certain current and former Domfoam, Valle Foam and A-Z employees (in the form of interviews, depositions, and testimony), and the production of certain available documents by the companies (to the extent practicable), these plaintiffs have agreed, subject to Court approval, to voluntarily dismiss their complaints as against the companies and to fully and forever release any of the companies' current or former employees, shareholders, or owners from any and all liability in this and potentially related matters. Pursuant to these settlement agreements, neither the companies nor any related individuals are required to pay any sum of money whatsoever to these plaintiffs or their counsel.

64. In each of these actions, the proposed plaintiff classes allege that Domfoam and Valle Foam are jointly and severally liable with other foam manufacturers.

Although they have not specified potential damage amounts (they are not required to do so at this point), such alleged damages may be in the hundreds of millions of dollars. These claims, if left outstanding, represent massive exposure for the companies, an exposure they could not possibly hope to cover in part or in full given their current financial situation. The settlement agreements described herein contemplate the dismissal of such claims without any payment whatsoever by the Applicants.

65. Pursuant to *United States Federal Rules of Civil Procedure*, these agreements are subject to both preliminary and final approval by the US court. While preliminary approval may occur within 30-60 days of filing of these agreements with that Court, final approval can take substantially longer. In any and all events, the suspension of the actions as to Domfoam and Valle Foam will remain in effect while such motions are pending.

66. Domfoam and Valle Foam have also reached settlement agreements with certain "opt-out" plaintiffs in the United States. In each case, a foam purchaser or group of purchasers filed an individual lawsuit against Domfoam, Valle Foam and other foam manufacturers alleging certain antitrust violations. The settlements have been signed by all relevant parties, and pursuant to those agreements, each

plaintiff must file with the Court a notice that provides for the suspension of their cases as against Domfoam and Valle Foam by January 11, 2012.

67. Attached hereto and marked as **Exhibit "J"** is a copy of the Opt-Out Agreement entered into with Sealy Corporation and others; it is identical in form to the other four Opt-Out Agreements.

68. In all cases, the settlements are contingent upon Domfoam, Valle Foam and A-Z filing for some form of bankruptcy, restructuring or creditor protection by January 31, 2012.

69. A CCAA order would also prove beneficial to address any new claims that may be issued as the Applicants intend to seek recognition of the order, if granted, in the United States to provide for a stay of proceedings. We have recently learned of a new claim issued on December 19, 2011, out of the United States District Court for the Northern District of Mississippi, which has not been served, but names Valle Foam and Domfoam as defendants.

70. The suspension and/or dismissal of the actions are without prejudice to the class action claimants asserting their claims as creditors within the proposed CCAA proceedings in amounts to be determined.

Canadian Class Action Litigation

71. To the knowledge of the Applicants, there are currently five class action proceedings in Canada that are pending before the courts in Ontario, Quebec and British Columbia in connection with the Competition Bureau's investigation of price-fixing allegations in the polyurethane foam industry. The Applicants have been named (or one or more of the Applicants have been named) in four of these class proceedings. These proceedings have been brought by a coordinated group of plaintiffs (the "**Class Plaintiffs**") against a number of manufacturers of polyurethane foam in Canada and elsewhere, as well as certain individuals, and the Class Plaintiffs collectively seek to represent a broad class consisting of all purchasers of polyurethane foam and products containing polyurethane foam during a period generally ranging from 1999 to the present. The Class Plaintiffs allege that the Applicants and the other manufacturers, along with certain individuals, are jointly and severally liable for damages to the proposed class members under the *Competition Act*, at common and under civil law, and they seek millions of dollars of damages along with other relief.

72. After extended negotiations, our lawyers at Oslers LLP have reached a proposed national class settlement on behalf of the Applicants with the Class

Plaintiffs in respect of all of the Canadian Class Proceedings. The settlement agreement was executed by the Applicants and the Class Plaintiffs on January 11, 2012. Attached hereto and marked as **Exhibit “K”** is a redacted copy of the Canadian Polyurethane Foam Class Actions National Settlement Agreement. The schedule to the agreement provides the detail of the actions.

73. Under the terms of this proposed national settlement, in exchange for cooperation from certain current and former Domfoam, Valle Foam and A-Z officers, employees and agents (in the form of interviews, depositions, and testimony), and the production of certain available documents by the companies (to the extent practicable), the Class Plaintiffs have agreed, subject to separate court approvals by the Ontario Superior Court, the B.C. Supreme Court and the Quebec Superior Court, to discontinue their proceedings as against the companies and to fully and forever release any of the companies' current or former officers, employees, agents, shareholders, or owners from any and all liability in this and potentially related matters. The proposed settlement also provides for certain “bar order” protection in favour of such releasees in the event of future contribution claims by other defendants or other third parties that have been involved in this matter. The Class Plaintiffs in Canada have also agreed to dismiss proceedings

against one employee of Valle Foam that was individually named in the class proceedings in Ontario.

74. Pursuant to this proposed settlement, the companies are not required to make a contribution of cash to a settlement fund. However, the proposed settlement does provide for an assignment of certain proceeds of an unrelated class action proceeding known as the *U.S. Urethane Antitrust Litigation* up to \$200,000.00. The assignment is made expressly subject to any order of this Honourable Court. Under the terms of the settlement, the Class Plaintiffs have agreed to bear any risk relating to the validity or enforceability of the assignment. In addition, the proposed settlement also provides for the payment of \$1.2 million by certain individuals who are parties to the settlement agreement.

75. The proposed settlement specifically contemplates that the Applicants may file for protection under the CCAA, and under the terms of the proposed settlement, the discontinuance of the Canadian Class Proceedings against the companies is without prejudice to the ability of the Class Plaintiffs and putative class members to asserting their claims as creditors within the proposed CCAA proceedings in amounts to be determined. It is a condition of the proposed

settlement that the Applicants make an application under the CCAA or other insolvency legislation within 30 days of execution of the proposed settlement.

76. This proposed settlement is without any admission of liability by the Applicants, and it is subject to independent court approval under the Ontario *Class Proceedings Act, 1992* and related legislation in Quebec and B.C. The process for obtaining court approval in three provinces may take a number of months. During this period, the Class Plaintiffs have agreed to suspend the active pursuit of proceedings as against the Applicants while the motions for court approval are pending.

77. As noted above, the proposed settlement does contemplate that the Applicants will be actively seeking court approval while a potential restructuring is being pursued under CCAA protection. In addition, the proposed settlement contemplates that the Applicants and certain current officers of the Applicants will be providing ongoing cooperation to the Class Plaintiffs while a potential restructuring is being pursued under CCAA protection.

78. In each of these Canadian Class Proceedings where the Applicants have been named, the class plaintiffs allege that the Applicants are jointly and severally liable with other foam manufacturers for damage to Class Members. In the Ontario

class proceedings alone, the Class Plaintiffs are seeking damages as against Dom Foam and Valle Foam and other manufacturers in the amount of \$100 million or more. These claims, if left outstanding, represent massive exposure for the companies, an exposure they could not possibly hope to cover in part or in full given their current financial situation. The proposed settlement described herein contemplates the discontinuance of these contested proceeding as against the Applicants, subject to future rights of the Class Plaintiffs and putative class members to be pursued in the restructuring process under the CCAA.

79. I have been informed by Christopher Naudie at Oslers, lead counsel for the Applicants in the Canadian Class Proceedings, regarding the potential risks and exposures for the Applicants in the Canadian Class Proceedings if liability is established at trial. Without waiving any applicable privilege and without admitting any liability or waiving any defences that the Applicants may have in the event that the settlement is terminated, I am advised by Christopher Naudie at Oslers as follows:

- Certain of these civil actions seek full joint and several liability, and if they are successful, the Applicants will be exposed to a

potentially massive liability arising from all sales of all defendants.

- While the Applicants have a number defences to the civil claims, the Applicants have admitted the underlying offence in the plea and as a result, face a significant risk of civil liability.
- During the class period, the Applicants had approximately \$975 million in sales in Canada.
- In the Competition Bureau process, the Applicants agreed to a fine of \$12.5 million based on a number of factors, including the Bureau's practice of assuming a 20% overcharge, the statutory maximum fine and a significant 50% leniency reduction.
- In the absence of settlement or restructuring, civil plaintiffs will likely seek significantly higher damages at trial – since there is no statutory maximum on damages or leniency reduction in civil cases.

- If this matter proceeds to trial in the absence of settlement or restructuring, even if the Applicants are only exposed to several liability and the Court calculates damages based on a modest 5% overcharge, the Applicants could be exposed to damages of \$48.75 million. If the Applicants are exposed to joint and several liability, their damages would be substantially higher.
- In short, while the Applicants deny civil liability and have a number of defences, they still face a significant risk of exposure that greatly exceeds their available assets.
- The discontinuance of the Canadian Class Proceedings are without prejudice to the Class Plaintiffs and putative class members asserting their claims as creditors within the proposed CCAA proceedings.

80. As noted above, the Applicants have expended in excess of \$2.4 million in professional fees for the year ending April, 2011, both in Canada and in the United States to deal with both the Competition Bureau and Class Action claims. Since April, a further \$1.1 million has been expended. These professional costs have had a significant impact on the financial performance of the Applicants and are not

sustainable. By filing for protection from their creditors and bringing to an end these actions, the Applicants will be able to minimize this burden and be able to focus instead on restructuring.

Liabilities

Secured Creditors

81. The only material unrelated secured creditor of the Applicants was Royal Bank of Canada (“RBC”).

82. Attached hereto and marked as **Exhibit “L”** are *Personal Property Security Act* searches conducted against each of the Applicants, conducted in each of British Columbia, Ontario and Quebec. RBC has registered financing statements against Domfoam, A-Z and Valle Foam in Ontario, Quebec and British Columbia.

83. The only other creditors with registered security interests under the relevant *Personal Property Security Act* legislation against the Applicants are, Domfoam with respect to A-Z Foam, and various leasing companies for various equipment used in the Applicants’ operations.

84. The Applicants are reviewing their leases with these entities to determine the status of those leases and also to ascertain whether or not they require any of the equipment subject to lease in their ongoing restructuring.

85. RBC had provided the Applicants with an operating loan in the amount of \$4.5 million. In the ordinary course, the Applicants provided their year end financial statements to RBC when they became available from the Applicants' auditors at the end of September 2011. The company met with RBC on November 25, 2011 to review these financial statements. In light of the financial condition of the Applicants, they were advised at that meeting that RBC was immediately terminating its lending arrangement with the Applicants, and that no further overdrafts or use of the revolving loan would be tolerated by RBC.

86. The Applicants repaid the entire amount in respect of their facility to RBC at the end of November, 2011. To my knowledge, there is no further amount owing to RBC at this time. The Applicants continue to do regular banking at RBC and maintain a positive cash balance.

87. The absence of a revolving facility is putting a strain on the Applicants' cash flow and their ability to meet their day-to-day obligations.

Other Liabilities

88. In addition to the foregoing, as at December 1, 2011, the Applicants have, in the aggregate, approximately \$9,018,000.00 of accrued and unpaid liabilities, including:

Liability	Valle Foam	Domfoam	A-Z
Trade Payables	\$3,100,000.00	\$2,778,000.00	\$92,000.00
Accrued Payroll (including statutory liabilities) and Accrued Vacation Pay	\$725,000.00	\$400,000.00	\$143,000.00
Accrued Sales Taxes	\$164,000.00	\$33,000.00	\$21,000.00
Other Payables and Accrued Liabilities	\$40,000.00	\$1,516,000.00	\$6,000.00
Total	\$4,029,000.00	\$4,727,000.00	\$262,000.00

The Applicants are Insolvent

89. In summary, for the reasons described above, the Applicants are insolvent and have debts which are in excess of \$5 million. The Applicants require the protection of the CCAA in order to restructure, complete the Sales Process described below and to have the orderly shut down of its non-core business.

Restructuring Plan

90. Although the Applicants have suffered a variety of setbacks as set out in this Affidavit, it is my view that the business carried on by the Applicants can be salvaged.

91. The business of Valle Foam experiences different market conditions than does Domfoam. In particular, it is a characteristic of the products produced by the Applicants that the products must be produced relatively close to its marketplace. The Toronto marketplace in which Valle Foam operates has several competitors, the main previous competitor in Quebec, being Foamex International Inc. filed for creditor protection in 2009 and has not recommenced operation at their previous levels. It is no longer a competitor of Domfoam and it no longer manufactures

foam. As such, Domfoam has a geographic advantage in its current marketplace. A-Z has a similar advantage out west.

92. There is a predatory pricing environment being experienced by Valle Foam in Ontario which is not being experienced to the same extent by Domfoam in Quebec or by A-Z in British Columbia.

93. Domfoam has recently been contacted by an entity familiar with its business who is proposing to purchase the business of Domfoam on a going concern basis subject to Domfoam entering into a restructuring scenario which properly manages the creditors of Domfoam and allows for the acquisition of Domfoam on a free and clear basis. The Company and this party have not been able to reach an agreement on this offer at this time, although I believe we will be able to do so.

94. The entity referred to in paragraph 93 is the landlord of the principal Domfoam premises. This entity was formerly an owner of the Domfoam business before my involvement with the business. I am aware that this entity is therefore familiar with the business and has an interest in seeing the business continue in that premises.

95. The Applicants are of the view that a period of protection from its creditors and a period of stability to allow for the marketing and sale of its businesses, either to this entity or another, is the best available scenario for all stakeholders.

96. There have been a number of other preliminary expressions of interest to purchase various parts of the Applicants. The uncertainty surrounding the Competition charges and the class action proceedings have made it difficult to move any of those discussions forward. Now that they have been resolved, and subject to any order of this Honourable Court, I am hopeful that the Applicants will be in a position to explore various alternatives to restructure, sell or wind down operations.

97. In the event that an Initial Order is granted, the Applicants will, with assistance from the proposed Monitor, undertake a review of the various options available in light of the stabilization of the business. It is anticipated the Applicants will report back to Court to make any proposed sale or sale process available to the Court for consideration and approval.

98. However, I am also aware that it may be that the Applicants, particularly Domfoam, may not be able to sustain their market position without quickly announcing a sale of the business or some other injection of capital to assure the

market that Domfoam will be able to continue to supply its customers. Domfoam may have to quickly return to Court to seek the approval of the best available sale in order to preserve the maximum number of jobs and capitalize on the enterprise value of its business.

99. A principal goal of the restructuring is to protect as many of the temporary and full time jobs and to secure the greatest possible value to be realized from the assets.

100. The Applicants will work with the Monitor to put forward a plan of arrangement in order to distribute the proceeds from the restructuring to the creditors of the Applicants. Given the absence of any material secured creditor debt, it is anticipated that there will be funds available to the unsecured creditors which could then be dealt with through a plan, which could address the various categories of creditors.

101. As at November 30, 2011, mindful of the possible restructuring, the Applicants began paying their major suppliers on a cash on delivery (“COD”) basis and have been making payments as such. The Applicants intend to pay the COD amount owing in respect of the most recent deliveries or any deliveries in transit that are outstanding as of the date of this filing.

IV. PROPOSED INITIAL ORDER

Directors' and Officers' Charge

102. The Applicants require the continued participation of their officers and other executives who manage the business, commercial activities and internal affairs of the Applicants. These individuals are essential to the ongoing stability of the Applicants business while these proceedings are underway.

103. As of January 6, 2012, the Applicants are liable for unpaid accrued wages, vacation pay, statutory employee deductions and unpaid sales and services taxes of approximately:

Valle Foam	\$700,000.00
Domfoam	\$351,000.00
A-Z	\$135,000.00

104. The Applicants maintain directors' and officers' liability insurance (the "**D&O Insurance**") for the directors and officers of the Applicants. The current D&O Insurance policy provides a total of \$5 million in coverage. The deductible for certain claims is \$50,000.00 and the presence of a large number of exclusions

creates a degree of uncertainty, especially in light of the possible environmental issues which may be director or officers liabilities.

105. The proposed Initial Order contemplates the establishment of a charge (the “**Directors’ Charge**”) on the Property in the amount of \$1 million to protect the directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the CCAA proceedings, except to the extent that the obligation or liability was incurred as a result of the individual’s gross negligence or wilful misconduct.

106. It is expected that the D&O Insurance will provide sufficient coverage to protect the directors and officers from all of the above costs and expenses, and the proposed Initial Order provides that the charge shall only apply to the extent that the D&O Insurance is not adequate.

107. The continued involvement of the directors and officers is required in order to implement the restructuring plan.

Administration Charge

108. The Applicants are also seeking a first-ranking charge on the Property (the “**Administration Charge**”) to rank ahead of all other charges and ahead of all

other existing security interests of any persons, except for any person who is a “secured creditor”, as defined in the CCAA, as of the date of the Initial Order and who has not received notice of this application, in the maximum amount of \$500,000.00 to secure the fees and disbursements incurred in connection with services rendered to the Applicants both before and after the commencement of the CCAA proceedings by counsel to the Applicants, the Monitor, and the Monitor’s counsel.

109. The Applicants believe it to be reasonable and appropriate in view of the complexities of the Applicants’ CCAA proceedings and the services to be provided by the beneficiaries of the Administration Charge.

Summary of the Proposed Rankings of the Court-Ordered Charges

110. The effect of the proposed Court-ordered charges in relation to each other:

- a) First – the Administration Charge; and,
- b) Second – the Directors’ Charge.

111. It is proposed that the Court-ordered charges will rank ahead of all other existing security interests of any persons, except for any person who is a “secured creditor”, as defined in the CCAA, as of the date of the Initial Order and who has

not received notice of this application. As stated above, the only secured creditors of the Applicants are the equipment lessors and related parties.

V. OVERVIEW OF THE 13-WEEK CASH FLOW FORECAST

112. As at January 7, 2012, the Applicants' cash balance was as follows on a company by company basis:

Valle Foam	\$2,661,720.00
Domfoam	\$1,616,213.00
A-Z	\$449,285.00

113. The Applicants have prepared a company by company Cash Flow Forecast for the period of January 7, 2012 to March 31, 2012 (the "**Cash Flow Forecast**") which each forecasts the Applicants' receipts and disbursements and cash position.

114. The cash flows have been prepared by the Chief Financial Officers of the Applicants, in consultation with me, the management of the Applicants and with some input from Deloitte & Touche LLP., and in accordance with generally accepted accounting methods and principles.

115. Copies of the Cash Flow Forecasts are attached as **Exhibit "M"**.

116. The principal assumptions used in determining the Cash Flow Forecast were as follows:

- a) That the Applicants will be granted the order being sought herein on January 12, 2011;
- b) That Valle Foam will cease operations in the near future while Domfoam and A-Z continue to operate on a business as usual basis, subject to the terms of the order being sought or as set out below;
- c) That the business being conducted by Domfoam after January 12, 2012 will service certain underlay customers of Valle Foam;
- d) That there will be no disbursements of accrued liabilities post filing other than those authorized by the order being sought;
- e) That customers continue to pay as usual with respect to Domfoam and A-Z but that there will be greater difficulty in collecting the receivables of Valle Foam if it ceases operating;
- f) That Valle Foam will continue to pay any outstanding pre filing debts owing to Domfoam as and when due; and,

g) That certain customers will set off their accrued customer rebates against receivables owing to the Applicants from those customers. (Many customers accrued rebates under arrangements with the company throughout 2011 which rebates would, in the ordinary course be paid as credit notes against future purchases by those customers. It is anticipated many customers will set off those anticipated rebates against receivables owing to the Applicants. The Applicants have not determined whether or not this is a valid set off.

117. As set out in the cash flows, each of the Applicants anticipate being cash positive for the entire period forecast by the cash flow.

118. In addition, Valle Foam has advised Domfoam that it is prepared to provide a loan to Domfoam, on a secured basis, of up to \$1 million, to provide additional stability to the cash position of Domfoam, if requested by Domfoam. A condition of any such loan will be that the security for such a loan will be a first priority charge on the assets of Domfoam, subject only to such then existing court ordered charges. As set out in the cash flow, Valle Foam has the available cash in hand now in order to be able to do this now or at any time during the cash flow period.

As set out above, there are no material secured creditors of Domfoam who would be prejudiced by such security being granted to Valle Foam.

VI. MONITOR

119. On or about June 15, 2011, Deloitte & Touche Inc. was retained by the Applicants to provide advice on their issues with the Competition Bureau, which assignment also involved the discussion of the restructuring options available to the Applicants.

120. Those discussions included the proposal that Deloitte & Touche Inc. (“Deloitte”) would act as Monitor in CCAA proceedings should such proceedings be necessary and if appointed by the Court.

121. In the course of fulfilling its mandate, Deloitte has become intimately familiar with the Applicants’ business and their current financial difficulties. Deloitte is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

122. Deloitte has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval.

VII. PURPOSE OF AFFIDAVIT

123. This affidavit is sworn in support of the Applicants' application for protection pursuant to the CCAA and for no improper purpose.

SWORN before me at the City)
)
of Toronto, in the Province of)
)
Ontario, this 11th day of)
)
January, 2012.)



TONY VALLECOCCIA



Commissioner For Taking Affidavits

#1829678 | 4079509

**Benjamin Young Bloom, a
Commissioner etc., Province of Ontario,
while a Student-at-Law.
Expires August 18, 2014.**