

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 3113736 CANADA LTD., 4362063
CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS
LTD.

(the "Applicants")

MOTION RECORD OF THE APPLICANTS
(returnable December 17, 2013)
(re Extension of Stay Period)

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 3113736 CANADA LTD., 4362063
CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD

(the "Applicants")

**NOTICE OF MOTION
(returnable December 17, 2013)
(Re Extension of Stay Period)**

THE APPLICANTS will make a motion to a judge presiding over the Commercial List on Tuesday, December 17, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THIS MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A":
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record, declaring that the motion is properly

returnable today, and validating service of this Notice of Motion and Motion Record;

- (b) extending the stay of proceedings from the Initial Order of Justice Newbould dated January 12, 2012 (the “**Initial Order**”), and subsequently extended by, *inter alia*, the Order of Justice Brown dated July 17, 2013, to and including April 30, 2014;
- (c) approving the Amended Sixth Report of the Monitor, the conduct of the Monitor and the fees of its and its counsel as set out therein ;
- (d) approving the Eighth Report of the Monitor (the “**Eighth Report**”), the conduct of the Monitor and the fees of it and its counsel as set out therein;

2. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- 1. On January 12, 2012, the Applicants sought and were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order.

2. The Order of Justice Brown dated July 17, 2013 extended the stay period under the Initial Order to December 31, 2013 (the “**Stay Period**”).
3. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (the “**Monitor**”) was appointed as monitor of the Applicants.
4. The Monitor, in conjunction with the Applicants, has solicited claims from the creditors, issued Notices of Disallowance where appropriate, and received Notices of Dispute from certain creditors.
5. The Applicant, 3113736 Canada Ltd., is engaged in pursuing several parties in respect of outstanding accounts totalling in excess of \$2 million. Litigation has been commenced in connection with many of these claims, some of which have already settled.
6. The Applicants have funds available for distribution to creditors.
7. The Monitor has issued a revised Sixth Report in accordance with the Endorsement of Justice Newbould dated February 28, 2013.
8. A further extension of the Stay Period is necessary and appropriate to allow the Applicants and the Monitor to, among other things, finalize the settlement of the claims filed by the Class Action claimants, allow for a

resolution of the disputed claims with Revenu Quebec, collect outstanding amounts owed to 3113736 Canada Ltd. and to attend to the possible development of a plan for the distribution of proceeds.

9. The Monitor is supportive of the relief sought herein.
10. The Applicants are operating in good faith and with due diligence.
11. Section 11 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.
12. Rules 1.04, 1.05, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

	DATE	DESCRIPTION
1.	December 12, 2013	Affidavit of Tony Vallecoccia together with exhibits attached thereto

DATE	DESCRIPTION
2. December, 2013	Eighth Report of the Monitor together with exhibits attached thereto, filed separately
3. January 12, 2012	Initial Order of Justice Newbould
4. July 17, 2013	Extension Order of Justice Brown
5. Such other material as counsel may advise and this Honourable Court may permit.	

December 12, 2013

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SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 17th DAY
JUSTICE) OF DECEMBER, 2013

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 3113736 CANADA LTD., 4362063
CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**ORDER
(Extension of Stay Period)**

THIS MOTION made by the Applicants for an Order extending the stay of proceedings was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Tony Vallecoccia sworn December [INSERT], 2013, and the exhibits thereto, the Eighth Report of Deloitte Restructuring Inc. (formerly known as Deloitte & Touche Inc.), in its capacity as Court-appointed monitor of the Applicants (the "**Monitor**") and the appendices

attached thereto (the “**Eighth Report**”), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor,

no one appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Victoria Stewart sworn December [INSERT], 2013,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Stay Period of the Initial Order of Justice Newbould dated January 12, 2012 and as subsequently extended by, *inter alia*, the Order of Justice Brown dated July 17, 2013, is hereby extended from December 31, 2013 to and including April 30, 2014.
3. **THIS COURT ORDERS** that the conduct of the Monitor and the fees and disbursements of it and its counsel as set out in the Amended Sixth Report are hereby authorized and approved.
4. **THIS COURT ORDERS** that the conduct of the Monitor and the fees and disbursements of it and its counsel as set out in the Eighth Report are hereby authorized and approved.

5. **THIS COURT HEREBY** requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 3113736 CANADA LTD.,
4362063 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

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

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(Extension Order)**

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TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF 3113736 CANADA LTD., 4362063
CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**AFFIDAVIT OF TONY VALLECOCCIA
(sworn December 12, 2013)**

I, **TONY VALLECOCCIA**, of the City of Brampton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and CEO of 3113736 Canada Ltd. formerly known as Valle Foam Industries (1995) Inc. and of 4362063 Canada Ltd. formerly known as 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.

2. This affidavit is sworn in support of a motion by 3113736 Canada Ltd. ("**Valle Foam**"), and its affiliated companies, 4362063 Canada Ltd.

(“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z**”) (collectively, the “**Applicants**”) i) to seek an extension of the stay granted pursuant to the Initial Order from December 31, 2013 to April 30, 2014; ii) to report to the Court on the status of the claims process; iii) to report to the Court on the ongoing collection efforts of the Applicants; and iv) to report to Court on the proposed settlement of the Class Action Claims against the Applicants.

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

BACKGROUND and STATUS OF THE COMPANIES

4. On January 12, 2012, the Applicants sought and were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Order of Justice Newbould (the “**Initial Order**”).

5. The Applicants collectively operated as one of Canada's largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia.

6. As reported in my previous affidavits in this proceeding, 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 required protection under the CCAA.

7. All three of the Applicants have completed court approved going concern sales of their businesses.

DOMFOAM

8. The transaction for the sale of the assets of Domfoam to 8032858 Canada Inc. closed on March 26, 2012. The entire purchase price payable has been provided to the Monitor.

9. Other than matters related to the collection of funds, minor administrative filings (such as attending to annual corporate filings) and the review of outstanding claims (in particular with respect to certain tax claims discussed below), there are no further ongoing activities of Domfoam.

VALLE FOAM

10. The Valle Foam transaction to sell its assets to Fybon Industries Limited (“Fybon”) closed in escrow on March 30, 2012, with escrow released on April 10, 2012 upon the filing of the Monitor’s Certificate.

11. Fybon was exclusively empowered to collect the receivables owing to Valle Foam for a period of 90 days after closing.

12. Following the expiration of the 90 day period, Valle Foam was thereafter entitled to collect the outstanding amounts.

13. Since the date of my last affidavit, Valle Foam has also pursued further collection efforts. In total, including the ten largest receivables noted above, 26 separate collection files have been opened by our counsel.

14. Valle Foam is aggressively pursuing all of these claims. Several defences or other defence filings or responses are due from the various defendants in the next few weeks. Valle Foam intends to pursue judgment in these matters if such filings are not made and to otherwise continue to push these matters forward.

A-Z FOAM

15. The A-Z transaction closed on April 2, 2012. There are no remaining issues on the A-Z transaction. The proceeds of sale have been paid to the Monitor.

COMPETITION ACT ISSUE

16. Both Domfoam and Valle Foam were charged with, and on January 5, 2012, pled guilty to certain offences relating to a price fixing conspiracy under the *Competition Act*, R.S.C. 1985, c C.34 (the "*Competition Act*"). Through agreement with the Director of Public Prosecutions, the resolution of the charges under the *Competition Act* included A-Z.

17. Domfoam was fined a total of \$6 million and Valle Foam was fined a total of \$6.5 million. Valle Foam paid \$500,000.00 in partial payment of the fines imposed against it. The details of the plea were set out in my previous affidavits.

18. Full disclosure of the Applicants' financial difficulties was made to the Crown prior to finalizing the statement of admissions and the entry of the pleas. The Crown was specifically advised of the Applicants' intention to file for protection under the provisions of the CCAA.

19. As part of the plea arrangement, certain officers and directors, including myself, agreed to cooperate with the continuing investigations being undertaken by the Competition Bureau. Interviews by counsel for the Competition Bureau were undertaken with the assistance of criminal counsel for the Applicants.

CLASS ACTIONS

20. Class counsel in the U.S. and Canada initiated a number of proposed class proceedings against the Applicants on behalf of purchasers of polyurethane foam and products containing polyurethane foam products. Some or all of the Applicants have been named as a defendant in at least six class action lawsuits in Canada, and over two dozen class action lawsuits in the United States (together, the “**Class Actions**”). The Canadian actions have been stayed as a result of the Initial Order.

21. The Applicants, through the Monitor, sought and received recognition of the CCAA proceeding in the United States Bankruptcy Court for the Northern District of Ohio. Attached hereto and marked as **Exhibit “A”** to this my affidavit is a copy of the Recognition Order of Judge Whipple dated February 24, 2012. The Order recognizes the CCAA proceedings as a forum main proceeding pursuant to the U.S. Bankruptcy Code. The Order of Judge Whipple also provides that any extension or amendment of the Canadian Orders will be given full force and effect in the United States to the same extent that it is given effect in Canada.

STATUS OF U.S. LITIGATION

22. Immediately prior to the Initial Order, our lawyers in New York, Skadden, Arps, successfully negotiated on behalf of the Applicants a settlement with the three different groups of class action plaintiffs in the United States.

23. The agreements specifically provided that they were contingent upon the Applicants filing for creditor protection. No payment was contemplated by the settlements. The settlements did provide that the class action plaintiffs reserved the right to file claims in these proceedings. No such claims have been filed by the U.S. class action claimants. Certain officers and employees of the Applicants agreed to provide information in connection with the issues raised in the litigation.

24. The class settlements have been approved by the court. Attached hereto and marked as **Exhibit "B"** is a copy of Judge Zouhary's Order dated June 21, 2013. The class action plaintiffs have voluntarily dismissed Domfoam and Valle Foam from the lawsuits.

25. As part of the implementation of the settlement agreements, various officers and employees of the Applicants have been examined by the class action plaintiffs' counsel. Among those examined were myself, John Howard, Dean

Brayiannis, Robert Vale and Fred Zickmantel. The examinations involved over a dozen counsel for the class action plaintiffs.

STATUS OF CANADIAN LITIGATION

26. There are currently six class action proceedings in Canada that are pending before the courts in Ontario, Quebec and British Columbia. The Applicants have been named (or one or more of the Applicants have been named) in each of these class proceedings. The claims allege that the Applicants and the other manufacturers are jointly and severally liable for damages to the proposed class members for price-fixing under the *Competition Act*. They seek in excess of \$100 million dollars of damages along with other relief.

27. On January 10, 2012, shortly before the Initial Order, the Applicants and various current and former officers and employees of the Applicants including myself (the “**Individual Settling Parties**”), entered into a settlement agreement with the Canadian class action plaintiffs. Attached hereto and marked as **Exhibit “C”** is a copy of the Settlement Agreement made as of January 10, 2012.

28. The settlement agreement provided that the Applicants would provide some cooperation in the form of documentary production, and that the Individual Settling Parties would provide cooperation in the forms of interviews, depositions and testimonies. Under the settlement agreement, and subject to court approval,

the class action plaintiffs agreed to discontinue the proceedings against the Applicants, and to provide certain releases and other protections in favour of the Individual Settling Parties.

29. Certain of the Individual Settling Parties, including myself, paid a total of \$1.2 million as part of the settlement. The settlement agreement also provided for the proposed assignment by the Applicants of a portion of the proceeds of certain U.S. class action settlements of up to \$200,000.00, described in more detail below.

30. In July 2013, each of Courts of Ontario, Quebec and British Columbia certified the Canadian class actions for the purposes of implementing the settlement agreement.

31. On October 28, 2013, Justice Lalonde of the Quebec Superior Court approved the settlement. A hearing was held on December 9, 2013, jointly of the Ontario Superior Court and the British Supreme Court to approve the settlement. The decision is under reserve.

32. The various class action claimants in Canada have filed proofs of claim in these proceedings. The claims were disallowed, but are subject to discussion and negotiation as described below. The claims against each of the Applicants total \$97.5 million.

STATUS OF FUNDS

33. As a result of completing the transactions and consolidating the remaining bank accounts and other amounts outstanding, the Applicants have significant funds available for distribution to the creditors.

34. In particular, the Monitor holds funds in approximately the following amounts as at December 6, 2013:

Valle Foam	\$5,492,596.48
Domfoam	\$3,149,125.40
A-Z	\$846,757.23

Urethane Antitrust Litigation

35. The Applicants are each claimants in a U.S. class action proceeding that relates to price fixing for a product known as "Polyether Polyol" ("Polyol").

36. The Applicants, as purchasers of the Polyol product are part of the litigation class, and are entitled to payment from that litigation. To date there have been two separate settlements approved by the United States District Court for the District of Kansas. The settlements provide for payment in instalments.

37. The first instalment has been paid. By order dated November 7, 2013, the U.S. Court authorized a second distribution of settlement funds. If that order is

not appealed, we anticipate receipt of the second distribution by the end of December 2013.

38. I am advised by David Ullmann that there has now been a trial in respect of one of the defendants, The Dow Chemical Company (“**Dow**”), in which a judgment has been rendered against Dow in the amount of \$1.2 Billion. The Applicants could receive a further significant payment from this judgment, or any related settlements. Dow is appealing the jury verdict and the judgment.

39. The right to receive the amounts due with respect to the Polyol claims remains an asset of the Applicants’ estates.

40. The Applicants entered into an agreement with a U.S. entity known as Refund Recovery Services, LLC (“**RRS**”) in 2008 with respect to the administration of the claim. The agreement appointed RRS as the Applicants’ exclusive agent to assist in filing the necessary documents to secure its share of the U.S. Polyol settlement funds.

41. It is anticipated at this time that, net of fees to RSS, the aggregate of the payments to the Applicants should be approximately \$140,000.00 (A-Z - \$8,000.00, Domfoam - \$58,000.00, Valle Foam - \$73,000.00).

CLAIMS PROCESS

42. The Order in these proceedings of Justice Brown dated June 15, 2012 (the “**Claims Process Order**”), established a process to identify pre and post-filing claims against the Applicants and/or their officers and directors. The process was meant to solicit claims from all parties, including the Crown and the various Class Action claimants in Canada and in the United States. Claims were due by August 31, 2012. Claims not made by August 31, 2012 would be barred and extinguished.

43. The Monitor received claims in the aggregate amount of approximately \$900 million, of which approximately \$810,000.00 were post-filing claims.

44. The significant claims were as follows: i) Revenu Quebec in the amount of \$2.9 million against Domfoam; ii) Competition Bureau in the amount of \$6 million against each of Domfoam and Valle Foam; and iii) the Canadian class actions in the amount of \$97.5 million.

45. The Applicants, with the assistance of the Monitor and its counsel, have engaged in extensive discussions and negotiations with the class action plaintiffs with a view to settling the quantum of the class action claim in these proceedings. The Monitor in its Eighth Report will provide detail of these discussions and the factors that resulted in a tentative agreement, subject to court approval, to accept the class action claims at a total of \$40 million. There will be no set-off for the

amounts paid by the individual defendants, which include myself. The class will waive any claim to the proceeds of the Polyol settlements.

46. There has been one additional significant claim filed in December from Canada Revenue Agency against Valle Foam in the amount of approximately \$310,000.00.

47. The extent of the anticipated distribution by the Applicants will be determined once the negotiation and/or adjudication of the claims have been completed. At this time the claims of Revenu Quebec and Canada Revenue Agency remain outstanding.

Contested Claims

48. As reported in my last affidavit in these proceedings, the Monitor has, in accordance with the Claims Process Order, disallowed the claims of Revenu Quebec.

Venue for Review of Claim

49. Revenu Quebec issued Notices of Assessment in connection with Quebec Sales Tax and GST after the date of the Initial Order and Claims Process Order. In July 2012, it filed a proof of claim against Domfoam in accordance with the Claims Process Order seeking payment of those amounts.

50. The claims of Revenu Quebec were disallowed by the Monitor, which disallowance was contested by Revenu Quebec which filed a Notice of Dispute.

51. Revenu Quebec took the position that Domfoam was required to file a Notice of Objection under the *Quebec Taxation Act* and the *Excise Tax Act* to the Notices of Assessment from which the claims arose, and had failed to do so. Domfoam, in consultation with the Monitor, filed a Notice of Objection to the assessment, without prejudice to its position that the matter should be resolved in these proceedings.

52. The Notice of Objection asserts, among other things, that the vast majority of the amount claimed by Revenu Quebec was not in fact due and owing. This position is supported by certain elections made by the Applicants and accounting records now located which were not available to the Revenu Quebec at the time of their review. It also asserts that Revenu Quebec was bound by the process set out in the Claims Process Order.

53. The Revenu Quebec matter has been assigned to a claims officer at Revenu Quebec. In its letter of May 29, 2013 (a copy of which is attached hereto as **Exhibit "D"**) Revenu Quebec set out its position.

54. Neither that correspondence, nor other subsequent correspondence from Revenu Quebec, addresses the position taken by the Applicants and the Monitor

with respect to the proper forum in which to resolve this matter. That matter remains outstanding. The Applicants have reserved their rights to contest the proper venue for the trial of this matter, if the negotiations become deadlocked.

Issues in Dispute

55. The Applicants and Revenu Quebec have exchanged several letters and have had telephone conversations to attempt to resolve this issue. Documents have been delivered to Revenu Quebec in this regard as recently as December 4, 2013. The matters remain unresolved.

56. Beyond the question of venue, there are three categories of dispute with Revenu Quebec which are:

- a) Intercompany Accounts: Whether or not the Applicants are related parties, and therefore entitled to an exemption with respect to the collection of GST for intercompany accounts
- b) Temp Agencies: Whether or not Domfoam paid GST to various Temp Agencies for services rendered and the nature of those services
- c) Pre-filing Credits: Whether or not Domfoam now owes GST in respect of various GST credits claimed prior to the CCAA filing for goods delivered prior to the CCAA filing but subsequently not paid for due to

the CCAA filing.

Intercompany Accounts

57. Revenu Quebec's claim with respect to this issue amounts to approximately \$1.6 million (before penalties and interest). Domfoam has contested this claim. It is my understanding that, due to elections made by the Applicants, they are exempt from requiring the collection of HST/GST for inter-corporate transactions among the Applicants.

58. Our counsel has provided a variety of materials, including share registries, corporate records, financial reports and my initial affidavit in these proceedings to demonstrate that the parties are related and that this claim by Revenu Quebec should be dismissed.

Temp Agencies

59. Revenu Quebec's claim with respect to this issue is in the amount of approximately \$400,000.00 (before interest and penalties) in relations to GST paid to seven different Temporary Employment Agencies (the "**Temp Agencies**") hired by Domfoam to provide additional labour to Domfoam's operations prior to the CCAA filing.

60. Revenu Quebec has advised that the six of the seven Temp Agencies are

known to Revenu Quebec as “suppliers of false invoices” and that Revenu Quebec is of the view that the Temp Agencies could not have delivered the services in respect of which GST is asserted to have been paid by Domfoam. Domfoam disputes this position.

61. I have reviewed this matter with the former CFO of Domfoam, Mr. Glenn Ross, and he has advised me, and I believe it to be true, that Domfoam hired the Temp Agencies in question to provide the services in question and that those Temp Agencies provided the services to the best of our knowledge. Further, he advised me, and I believe it to be true, that GST was paid in good faith to the Temp Agencies which were hired in the ordinary course.

Pre-Filing Credits

62. With respect to this issue, Revenu Quebec takes the position that Domfoam owes a further approximately \$500,000.00 (before penalties and interest) in respect of GST credits which are now in dispute. This amount arises in respect of GST credits which Domfoam may have applied for in respect of goods or services it ordered and presumably took delivery of prior to the CCAA filing, and in respect of which, due to the prohibition in the Court order to pay those pre-filing debts after the CCAA proceeding commenced, the GST was likely ultimately never paid to Revenu Quebec.

63. At this time, I understand it is undetermined whether or not these amounts, if due, will be payable as a post-filing obligation. We are reviewing how these amounts arose.

Claim against Valle Foam

64. The new claim filed by Canada Revenue Agency against Valle Foam, referenced above, also arises from the same pre-filing credit issue which has been raised by Revenu Quebec against Domfoam.

65. It is my understanding that the Monitor is prepared to accept the new claim from Canada Revenue Agency, with respect to the quantum claimed as owing by Valle Foam. As in the Domfoam case, the question of the priority of this claim is undecided and is not being decided at this time.

66. It is my understanding, that there are no similar claims filed against A-Z. The Monitor has previously reported to the Court that there were post-filing HST amounts owing by A-Z, but that the Monitor intended to pay those amounts.

67. The Applicants and the Monitor are engaged in further review with respect to these claims. In the event a resolution cannot be reached with Revenu Quebec, the Applicants may bring a motion before this Court to resolve this issue.

PROPOSED EXTENSION

68. The Applicants propose that the stay of the proceeding be extended from December 31, 2013 to April 30, 2014.

69. The extension sought herein will provide the Applicants with the time necessary to attend to the finalization of the settlement of the claims filed by the class action claimants, to allow for a resolution of the disputed claim with Revenu Quebec, to collect outstanding amounts owed to Valle Foam, to attend to the collection of the further instalments of the Polyol settlement funds, and otherwise to attend to the possible development of a plan for the distribution of the sale proceeds.

70. I am not aware of any party who objects to the proposed extension.

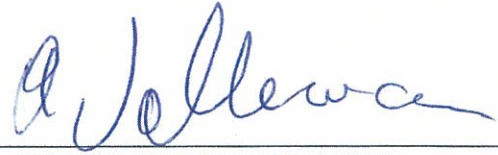
71. No cash flow is being provided with this affidavit as the Applicants have limited expenses and no employees. I am confident that the Applicants each have sufficient funds on hand to meet these obligations on a go forward basis for the period of the proposed extension.

72. I have been advised that the Monitor will support the proposed extension of the stay.

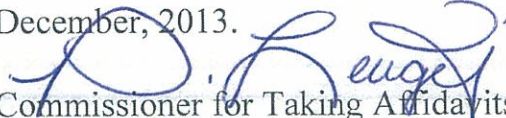
73. The Applicants are operating with good faith and with due diligence.

74. This affidavit is sworn in support of the Applicants' motion and for no other improper purpose.

SWORN before me at the City)
)
of Brampton, in the Province of)
)
Ontario, this 12th day of)
)
December, 2013.)



TONY VALLECOCCIA


Commissioner for Taking Affidavits

#2124655 | 4079509

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors.
Expires July 4, 2015.

TAB A

This is Exhibit "A" referred to
in the Affidavit of Tony Vallecoccia
Sworn this 12th
day of December, 2013.


A Commissioner for Taking Affidavits

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors.
Expires July 4, 2015.

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Mary Ann Whipple
United States Bankruptcy Judge

Dated: February 24 2012

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:)	Case Nos. 12-30214
)	(Jointly Administered)
VALLE FOAM INDUSTRIES (1995))	
INC., et. al. ¹)	Chapter 15
)	
Foreign Applicants in Foreign)	Judge Mary Ann Whipple
Proceedings.)	

ORDER GRANTING RECOGNITION OF FOREIGN MAIN PROCEEDINGS AND OTHER CHAPTER 15 RELIEF

Upon the Verified Chapter 15 Petitions (the "Chapter 15 Petitions") filed by Deloitte & Touche Inc., the court appointed Monitor (the "Monitor") of Valle Foam Industries (1995) Inc. ("Valle Foam"), Domfoam International Inc. ("Domfoam"), and A-Z Sponge & Foam Products Ltd. ("A-Z" and, together with

¹ The Foreign Applicants include Valle Foam Industries (1995) Inc., Domfoam International, Inc., and A-Z Sponge & Foam Products Ltd.
² Capitalized terms not defined herein shall have the meanings given to them in the Declaration

(K0289088.1)

Valle Foam and Domfoam, the "Valle Foam Group") in proceedings (the "Canadian Proceedings") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pending before the Ontario Superior Court of Justice (Commercial List) (the "Ontario Court"), and upon the statements and affirmations made and contained therein, and the Court having reviewed the Chapter 15 Petitions and the Declarations filed contemporaneously with the Chapter 15 Petitions and the exhibits attached thereto, including a certified copy of the Initial Order entered by the Ontario Court on January 12, 2012 (the "Canadian Order for Relief"); and a hearing having been held on the 23rd day of February, 2012 (the "Recognition Hearing"); and upon the oral statements of counsel for the Monitor; and the Court having reviewed the Notice of the filing of the Chapter 15 Petitions and of the Recognition Hearing and its certificate of service [Dkt No. 15], which notice is deemed adequate for all purposes such that no other or further notice need be given; and the Court having determined that the legal and factual bases set forth in the Chapter 15 Petitions and all other pleadings and proceedings in this case establish just cause to grant the relief ordered herein, and after due deliberation therefore,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as

such. To the extent that any conclusions of law constitute finds of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 1334 and 157(a) of the Bankruptcy Code and General Order 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F). Venue is proper before this Court pursuant to 28 U.S.C. § 1410(2).

C. The Monitor is a "person" within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed "foreign representative" of the Valle Foam Group within the meaning of section 101(24) of the Bankruptcy Code.

D. The Chapter 15 cases of Valle Foam, Domfoam and A-Z (the "Chapter 15 Cases") were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

E. The Monitor has satisfied the requirements of section 1515 of the Bankruptcy Code and Rule 2002(q) of the Federal Rules of Bankruptcy Procedure.

F. The Canadian Proceedings are a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code.

G. The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

H. The Canadian Proceedings are pending in Canada, which is the location of each member of the Valle Foam Group's center of main interests, and

accordingly, the Canadian Proceedings are a "foreign main proceeding" pursuant to section 1502(4) of the Bankruptcy Code and are entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

I. The Monitor is entitled to all the automatic relief provided by section 1520 of the Bankruptcy Code, without limitation.

J. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

NOW, THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:

1. The Canadian Proceedings are hereby recognized as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

2. All relief afforded foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to each member of the Valle Foam Group, including, without limitation, the stay under section 362 throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

3. The stay pursuant to section 362(a)(1) of the Bankruptcy Code is hereby modified and limited in the following respects:

- (a) The stay shall not stay any act pertaining to finalizing the Settlements;² and
- (b) The stay shall not stay the filing of a new complaint against any member of the Valle Foam Group, but shall stay any act to continue such litigation after the filing of the complaint, including service of process on any member of the Valle Foam Group.

4. The Canadian Order for Relief (and any extensions, amendments or modifications thereof as may be granted from time to time by the Ontario Court) shall be granted comity and is hereby given full force and effect in the United States to the same extent that it is given effect in Canada.

5. The Monitor is hereby recognized as the "foreign representative" in these bankruptcy proceedings, and may exercise the rights and powers of a trustee under and to the extent provided by section 1520 of the Bankruptcy Code.

6. The Monitor, the members of the Valle Foam Group, and each of their successors, agents, representatives, advisors or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

7. A copy of this Order, conformed to be true and correct, shall be served, within three business days of the entry of this Order, by facsimile, electronic mail or overnight express delivery, upon all persons or bodies authorized to administer foreign proceedings of the Valle Foam Group, all

² Capitalized terms not defined herein shall have the meanings given to them in the Declaration in Support of the Chapter 15 Petitions [Dkt. No. 2].

entities against whom provisional relief was granted under section 1519 of the Bankruptcy Code, all parties to litigation pending in the United States in which any member of the Valle Foam Group was a party at the time of the filing of the Chapter 15 Petitions, the United States Trustee, and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for present purposes.

8. The Chapter 15 Petitions and any supporting papers shall be made available by the Monitor through its website at <http://www.deloitte.com/ca/Vallefoam> or upon request at the offices of Kohrman Jackson & Krantz P.L.L., One Cleveland Center, 20th Floor, 1375 East 9th St., Cleveland, Ohio, 44114, to the attention of Mary K. Whitmer or James W. Ehrman, (216) 686-8700, mky@kjk.com or jwe@kjk.com.

9. This Court shall have continuing jurisdiction to the fullest extent permitted by law with respect to: (i) the enforcement, amendment or modification of this Order; (ii) any requests for further or additional relief or any adversary proceeding filed by the Monitor or any other party in interest; and (iii) any request by a person or entity for relief from the provisions of this Order, for cause shown.

10. This Order shall be immediately effective and enforceable upon its entry, and upon its entry shall become final and appealable, notwithstanding Bankruptcy Rule 7062 made applicable to chapter 15 cases by Bankruptcy Rule 1018.

###

Prepared and Submitted by:

KOHORMAN JACKSON & KRANTZ P.L.L.

/s/ Mary K. Whitmer

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the Foreign Representative of Valle
Foam Industries (1995) Inc.,
Domfoam International Inc., and
A-Z Sponge & Foam Products Ltd.*

{K0280066.1}

7

TAB B

This is Exhibit "B" referred to
in the Affidavit of Tony Vallecoccia

Sworn this 12th

day of December, 2013.


A Commissioner for Taking Affidavits

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors.
Expires July 4, 2015.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:	Case No. 1:10 MD 2196
Polyurethane Foam Antitrust Litigation	ORDER GRANTING FINAL APPROVAL OF VOLUNTARY DISMISSAL AND SETTLEMENT WITH DEFENDANT <u>DOMFOAM AND OTHERS</u>
This document related to: ALL CASES	
	JUDGE JACK ZOUHARY

INTRODUCTION

This matter is before this Court on Direct Purchaser (Class) Plaintiffs' Motion for Final Approval of Settlement with Defendants Vitafoam, Inc. and Vitafoam Products Canada Limited ("Vitafoam"), and for Final Approval of Voluntary Dismissal and Settlement with: Defendants Domfoam International Inc. ("Domfoam"), Valle Foam Industries (1995) Inc. ("Valle Foam"), and A-Z Sponge & Foam Products Ltd. (collectively, "Voluntary Dismissal Defendants"); and non-defendants Bruce Bradley, Dean Brayannis, Michael Cappuccino, Peter Foti, Duke Greenstein, John Howard, Dale McNeill, James William Sproule, Robert Rochiotti-Valle, Tony Vallecoccia, and Fred Zickmantel (collectively, "Individual Settling Parties") (Doc. 538).

Class Plaintiffs Ace Foam, Inc., Adams Foam Rubber Co., a/k/a Adams Foam Rubber Company, Inc., Cambridge of California, Inc., GCW Carpet Wholesalers, Inc. t/a Floors USA, Foam Factory, Inc., J&S Packaging, Inc., VFP Acquisitions d/b/a Vanguard Foam and Packaging Company entered into a settlement agreement with Vitafoam on October 19, 2011, and with the Voluntary Dismissal Plaintiffs and Individual Settling Parties on January 3, 2013 (together, the "Settlement

Agreements”). Notice was provided to the Class pursuant to the Preliminary Approval Orders and the November 29, 2012 Order (Doc. 457). The 90-day period for federal officials to request a hearing under the Class Action Fairness Act expired on February 19, 2012 for the Vitafoam Settlement, and on June 12, 2012 for the Domfoam Settlement. This Court held a Fairness Hearing on May 7, 2013.

This Court, having reviewed the Motion, the Settlement Agreements, and related filings, finds this Court has jurisdiction over the subject matter of this Action (and all actions and proceedings consolidated in this Action). Terms used in the Order that are defined in the Settlement Agreements are, unless noted, as defined in the Settlement Agreements.

NOTICE SATISFIES DUE PROCESS

1. The Preliminary Approval Orders and November 29, 2012 Order outlined the form and manner by which Plaintiffs would provide the Settlement Classes with notice of the settlement, the fairness hearing, and related matters. The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. Proof that the mailing and publication conformed with this Court’s prior Orders has been filed with this Court. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice. *See Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 422–23 (6th Cir. 2012).

FINAL APPROVAL OF SETTLEMENT AGREEMENT

2. After an analysis of the appropriate factors, this Court has determined that the Settlement Agreements are “fair, reasonable, and adequate” to the Settlement Classes. *IUE-CWA v. Gen. Motors Corp.*, 238 F.R.D. 583, 593 (E.D. Mich. 2006); *In re Packaged Ice Antitrust Litig.*, 2011

WL 6209188, at *7 (E.D. Mich. Dec. 13, 2011). Final approval of the Settlement Agreements, therefore, is granted pursuant to Federal Civil Rule 23(e).

CERTIFICATION OF THE SETTLEMENT CLASSES

3. Pursuant to Rule 23, and in light of the proposed Settlements, this Court finds that the prerequisites for a class action have been met for settlement purposes and certifies the following settlement class in connection with the Vitafoam settlement (the "Vitafoam Settlement Class"):

All Direct Purchaser Plaintiffs that purchased flexible polyurethane foam in the United States directly from a Defendant or Co-conspirator from January 1, 1999 to August 2010. Excluded from the Settlement Class are (1) Defendants and Co-conspirators and their respective parents, subsidiaries, and affiliates; and (2) any Direct Purchaser Plaintiff who timely elects to be excluded from this settlement.

4. Pursuant to Rule 23, and in light of the proposed Settlements, this Court finds that the prerequisites for a class action have been met for settlement purposes and certifies the following settlement class in connection with the Domfoam settlement (the "Domfoam Settlement Class," collectively with the Vitafoam Settlement Class, the "Settlement Classes"):

All persons who purchased polyurethane foam in the United States directly from the Defendants in the Action and/or an Alleged Co-Conspirator (as defined above) from January 1, 1999 through the present (defined as the "Class Period"). As reflected in the class notices approved by this Court, excluded from the Class are the Voluntary Dismissal Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees, and the Non-Settling Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees. Also excluded from the Class are all federal, state, and local governmental entities, judicial officer and judicial staffs presiding over this matter and the members of their immediate families.

5. This Court finds that the certification of the Settlement Classes is warranted in light of the Settlement Agreements because: (a) the Settlement Classes are so numerous that joinder is impracticable; (b) Plaintiffs' claims present common issues and are typical of the Settlement Classes; (c) Plaintiffs and Lead Counsel (defined below) will fairly and adequately represent the Settlement

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Classes; and (d) common issues predominate over any individual issues affecting the members of the Settlement Classes. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 560 (6th Cir. 2007). This Court further finds that Plaintiffs' interests are aligned with the interests of all other members of the Settlement Classes, and that settlement on a class basis is superior to other means of resolving the matter. *See Beattie*, 511 F.3d at 563, 567.

6. The persons and entities identified in Exhibit A (attached) have timely and validly requested exclusion from the specified Settlement Classes and therefore are excluded from the Settlement Class and not bound by this Order, and may not make any claim or receive any benefit from the settlement(s), whether monetary or otherwise. These excluded persons and entities may not pursue any Released Claims on behalf of those who are bound by this Order. Each Settlement Class member who has not requested to be excluded from the Settlement Class(es), and is not listed in Exhibit A, is bound by this Order, and will remain forever bound.

APPOINTMENT OF LEAD COUNSEL AND CLASS REPRESENTATIVES

7. This Court hereby appoints Stephen Neuwirth of Quinn Emanuel Urquhart & Sullivan, LLP and William Isaacson of Boies, Schiller & Flexner LLP as Lead Counsel for the Settlement Class, having previously determined that the requirements of Federal Civil Rule 23(g) are fully satisfied by this appointment. *See Stanich v. Travelers Indem. Co.*, 259 F.R.D. 294, 320-22 (N.D. Ohio 2009).

8. Plaintiffs Ace Foam, Inc., Adams Foam Rubber Co., a/k/a Adams Foam Rubber Company, Inc., Cambridge of California, Inc., GCW Carpet Wholesalers, Inc. t/a Floors USA, Foam Factory, Inc., J&S Packaging, Inc., VFP Acquisitions d/b/a Vanguard Foam and Packaging Company will serve as Class Representatives on behalf of the Settlement Classes.

RELEASE AND COVENANT NOT TO SUE

9. As to the Released Parties, as defined in the Settlement Agreements, any and all currently pending class action lawsuits directly related to the subject matter of this litigation are dismissed with prejudice and in their entirety, on the merits, and, except as provided for in the Settlement Agreements, without costs. This dismissal shall not affect, in any way, Plaintiffs' right to pursue claims, if any, outside the scope of the Releases set forth in the Settlement Agreements.

10. The Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Claims released in the Settlement Agreements against any Released Party, either directly, individually, representatively, derivatively, or in any other capacity, by whatever means, in any local, state, or federal court, or in any agency or other authority or arbitral or other forum wherever located.

11. The Releasing Parties release, forever discharge, and covenant not to sue the Released Parties from and for Claims as set forth in the Settlement Agreements.

12. This Order does not settle or compromise any claims by Class Representatives or the Settlement Classes against the Defendants or other persons or entities other than the Released Parties, and all rights against any other Defendant or other person or entity are specifically reserved. The sales of Polyurethane Foam to members of the Settlement Classes by the Released Parties shall remain against the non-settling Defendants as a basis for damage claims, and shall be part of any joint and several liability claims against any non-settling Defendant or other person or entity other than the Released Parties.

FINAL JUDGMENT

13. Pursuant to Federal Civil Rule 54(b), this Court directs the entry of final judgment of dismissal as to the Released Parties.

OTHER PROVISIONS

14. Without affecting the finality of this Order, this Court retains exclusive jurisdiction over the Actions and the Settlement Agreements, including the administration, interpretation, consummation, and enforcement of the Settlement Agreements.

15. The escrow account established by certain of the parties, and into which Vitafoam has deposited the amounts required by the Vitafoam Settlement and into which it will deposit the remainder of the settlement amounts upon this Order, plus accrued interest, is approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and related Treasury Regulations.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

June 21, 2013

**EXHIBIT A – INTENTIONALLY
DELETED**

TAB C

This is Exhibit "C" referred to
in the Affidavit of Tony Vallecoccia

Sworn this 12th

day of December, 2013.



A Commissioner for Taking Affidavits

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors,
Expires July 4, 2015.

**CANADIAN POLYURETHANE FOAM CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of January 10, 2012

Between

**“HI! NEIGHBOR” FLOOR COVERING CO. LIMITED, MAJESTIC MATTRESS MFG.
LTD, TRILLIUM PROJECT MANAGEMENT LTD., OPTION CONSOMMATEURS
and KARINE ROBILLARD**

(the “Plaintiffs”)

and

**DOMFOAM INTERNATIONAL, INC., VALLE FOAM INDUSTRIES (1995) INC.,
A-Z SPONGE & FOAM PRODUCTS LTD.**

(the “Domfoam Defendants”)

and

DEAN BRAYIANNIS

(the “Brayiannis Defendant”)

and

**BRUCE BRADLEY, MICHAEL CAPPUCCHINO, PIETRO (PETER) FOTI,
DUKE GREENSTEIN, JOHN HOWARD, DALE MCNEILL,
JAMES WILLIAM SPROULE, ROBERT VALLE,
TONY VALLECOCIA and FRED ZICKMANTEL**

(the “Individual Settling Parties”)

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CANADIAN POLYURETHANE FOAM CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT

RECITALS

A. WHEREAS the Ontario Plaintiffs and the B.C. Plaintiffs have respectively commenced the Ontario Proceedings and the B.C. Proceedings which allege that the Defendants, including the Domfoam Defendants, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and common law;

B. AND WHEREAS the Ontario Plaintiffs have named the Brayianis Defendant, an employee of the Domfoam Defendants, as an individual defendant in the Ontario Proceedings;

C. AND WHEREAS the Quebec Plaintiffs have commenced the Quebec Proceeding which alleges that one Defendant and other unnamed co-conspirators participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and the civil law, but whereas the Quebec Plaintiffs have not pleaded the Domfoam Defendants or the Brayianis Defendant as named parties to the Quebec Proceeding;

D. AND WHEREAS the Domfoam Defendants believe that they are not liable in respect of the claims as alleged in the Proceedings, and whereas the Domfoam Defendants believe that they have good and reasonable grounds to oppose certification/authorization of the Proceedings as class proceedings and have good and reasonable defences in respect of the merits of the Proceedings;

E. AND WHEREAS the Domfoam Defendants assert that they would actively pursue and vindicate their defences in respect of certification/authorization and the merits during the course of the certification/authorization process, during the course of

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discovery and during the course of trial if the Plaintiffs continued the Proceedings against them in the respective Courts;

F. AND WHEREAS the Domfoam Defendants are currently facing very difficult financial circumstances and are currently operating in a precarious and unprofitable financial position, and whereas the Domfoam Defendants intend to file for creditor protection and/or insolvency relief in Canada and/or the U.S. in the near future, including but not limited to a filing under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or under related legislation in Canada and/or the U.S.;

G. AND WHEREAS in light of the anticipated filing by the Domfoam Defendants for creditor protection and/or insolvency relief in Canada and/or the U.S., the Plaintiffs and Class Counsel have determined that it is in the best interests of the Settlement Class to reach a resolution with the Domfoam Defendants whereby the Proceedings will be discontinued without prejudice as against the Domfoam Defendants, whereby the Plaintiffs and the Settlement Class Members will preserve their rights to assert claims in respect of the Domfoam Defendants in the Restructuring Process, whereby the Plaintiffs and the Settlement Class Members will secure access to cooperation and discovery from the Domfoam Defendants and whereby the Plaintiffs and the Settlement Class Members will otherwise preserve their rights to pursue full joint and several liability as against the Non-Settling Defendants in the ongoing Proceedings;

H. AND WHEREAS in addition, the Plaintiffs and Class Counsel have determined that there would be substantial benefits for the Settlement Class in securing access to cooperation from the Brayiannis Defendant and the Individual Settling Parties who are current and/or former officers, employees and agents of the Domfoam Defendants, and whereas the Plaintiffs and Class Counsel have determined that it is in the best interests of the Plaintiffs and the Settlement Class to reach a resolution with the Brayiannis Defendant and the Individual Settling Parties as part of a settlement with the Domfoam Defendants;

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I. AND WHEREAS, despite their belief that they have good and reasonable grounds to oppose certification/authorization of the Proceedings as class proceedings, and have good and reasonable defences in respect of the merits, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and to achieve a resolution of all claims asserted or which could have been asserted against them by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy involving the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, subject to the preservation of certain ongoing rights of the Plaintiffs and the Settlement Class Members in respect of the discontinuance as against the Domfoam Defendants and in respect of the Restructuring Process as specifically set out in this Settlement Agreement;

J. AND WHEREAS as part of this resolution, the Domfoam Defendants have agreed to cooperate with the Plaintiffs and Class Counsel by providing truthful information (to the extent that such information is in the possession, custody or control of the Domfoam Defendants and/or is accessible to the Domfoam Defendants following a filing for creditor protection and/or insolvency protection in Canada or in the U.S.) related to the sale and distribution of Foam Products in Canada and/or the claims that have been asserted by the Plaintiffs and Class Counsel against the Non-Settling Defendants and other named or unnamed co-conspirators in the Proceedings;

K. AND WHEREAS, as part of this resolution, certain of the Individual Settling Parties, namely the Contributing Individual Settling Parties, have agreed to make a settlement payment for the benefit of the Settlement Class in exchange for a full and final release, in light of their potential risks of personal liability as residents of Canada that are subject to the jurisdiction of the Courts, the risks inherent in uncertain, complex and protracted litigation, and to avoid the further expense, inconvenience, and burden of this litigation, on the condition that the Individual Settling Parties receive a full and final release of all claims asserted or which could have been asserted against them by the

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Plaintiffs on their own behalf and on behalf of the classes they seek to represent in the Proceedings;

L. AND WHEREAS, as part of this resolution, the Brayianis Defendant and the Individual Settling Parties have agreed to cooperate with the Plaintiffs and Class Counsel by providing truthful information related to the sale and distribution of Foam Products in Canada and/or the claims that have been asserted by the Plaintiffs and Class Counsel against the Non-Settling Defendants and other named or unnamed co-conspirators in the Proceedings;

M. AND WHEREAS, as part of this resolution, in recognition of the existence of certain notice costs related to the implementation of this Settlement Agreement, the Domfoam Defendants have agreed to assign their potential interest in respect of certain limited and future distribution proceeds arising from a claim of the Domfoam Defendants in connection with the U.S. Urethane Proceedings up to a fixed maximum amount, on the understanding that any and all risk related to the validity or enforceability of such assignment or the collectability of such proceeds shall be borne entirely by the Plaintiffs and/or the Settlement Class and any failure of the assignment or any inability to recover such proceeds shall not give rise to any right of termination under this Settlement Agreement;

N. AND WHEREAS counsel for the Domfoam Defendants, counsel for the Brayianis Defendant, counsel for the Individual Settling Parties and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

O. AND WHEREAS as a result of these settlement discussions and negotiations, the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of the Courts;

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P. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed discontinuance of proceedings against the Domfoam Defendants, the implications of a filing by the Domfoam Defendants for creditor protection and/or insolvency relief, the value of the Settlement Amount to be paid by the Individual Settling Parties, the potential value of the Assignment, the value of cooperation to be provided by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals and the risks associated with recovery and collectability of any potential judgment, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent in the Proceedings;

Q. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the significant value of the cooperation of the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree to render or make available to the Plaintiffs and/or Class Counsel as "first-in" settling defendants at an early stage of these Proceedings pursuant to this Settlement Agreement, as well as the attendant litigation and other risks in light of the potential defences that may be asserted by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties and the anticipated filing by the Domfoam Defendants for creditor protection and/or insolvency relief in Canada and/or the U.S.;

R. AND WHEREAS the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties are entering into this Settlement Agreement in order to achieve a nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs and the classes that they seek to represent in the Proceedings in the Courts in respect of this matter, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

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S. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without any admission of liability, all of the Proceedings as against the Domfoam Defendants and the Brayiannis Defendant and any potential claims against the Individual Settling Parties relating to these Proceedings;

T. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings;

U. AND WHEREAS the Quebec Plaintiffs shall amend the Quebec Proceeding to name the Domfoam Defendants as Defendants in the Quebec Proceeding;

V. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the B.C. and Ontario Plaintiffs have agreed to consent to a discontinuance of the B.C. and Ontario Proceedings as against the Domfoam Defendants, and the Quebec Plaintiffs have agreed to the settlement out of court of the Quebec Proceeding with the Domfoam Defendants subject to the terms of this Settlement Agreement and subject to the Final Orders;

W. AND WHEREAS for the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Ontario Plaintiffs have agreed to consent to a dismissal of the Ontario Proceedings as against the Brayiannis Defendant in the Ontario Courts;

X. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in the respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the B.C. and Ontario Proceedings shall be discontinued without prejudice as to the Domfoam Defendants, shall be settled with prejudice as to the Brayiannis Defendant and the Individual Settling Parties, without

costs as to the Plaintiffs, the classes they seek to represent, the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties, and that the Quebec Proceeding shall be settled out of court and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) *Administration Expenses* mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices, the Escrow Agent, the Opt Out Administrator, the opt out process and claims administration but excluding Class Counsel Fees.
- (2) *Approval Hearings* mean the hearings to approve the motions brought by Class Counsel before each of the Courts for orders:
 - (a) certifying or authorizing the Proceedings as class proceedings in accordance with the *Ontario Class Proceedings Act*, the *B.C. Class Proceedings Act* and the *Quebec Code of Civil Procedure*; and
 - (b) approving the settlement provided for in this Settlement Agreement in accordance with the *Ontario Class Proceedings Act*, the *B.C. Class Proceedings Act* and the *Quebec Code of Civil Procedure*.
- (3) *Assignment* means an assignment, in the form executed and attached hereto as Schedule "C", whereby the Domfoam Defendants shall absolutely and unconditionally assign and transfer to the Plaintiffs, in trust for the Settlement Class, any potential right, title and interest that the Domfoam Defendants, or any one or more of them, may have in respect of the potential distribution proceeds arising from the U.S. Urethane Settlement as a result of a claim or claims that any

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Domfoam Defendants have filed or may file as part of the U.S. Urethane Settlement that has been approved by the U.S. Courts as of the Execution Date, provided that any such assignment shall be strictly limited to a maximum amount or sum of the first two hundred thousand Canadian dollars (CAD \$200,000) that any Domfoam Defendants may receive as distribution proceeds as part of the U.S. Urethane Settlement.

- (4) *Bankruptcy and Insolvency Act* means the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.
- (5) *Brayiannis Defendant* means Dean Brayianis.
- (6) *B.C. Class Counsel* means Branch MacMaster LLP and Camp Fiorante Matthews Mogerma.
- (7) *B.C. Class Proceedings Act* means the *Class Proceedings Act*, RSBC 1996, c. 50.
- (8) *B.C. Court* means the British Columbia Supreme Court.
- (9) *B.C. Plaintiffs* mean Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd.
- (10) *B.C. Proceedings* mean the proceedings commenced by Majestic Mattress Mfg. Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. VLC-S-S-106362, filed on September 24, 2010, and by Trillium Project Management Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. S-106213, filed on September 15, 2010.
- (11) *B.C. Settlement Class* means: all Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons.
- (12) *B.C. Settlement Class Members* mean: all Persons included in the B.C. Settlement Class who do not validly opt out of the B.C. Proceedings.

- (13) *Canadian Polyurethane Foam Class Actions National Settlement* means the national settlement contemplated by this Settlement Agreement.
- (14) *Claims Administrator* means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims process, in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (15) *Class Counsel* means B.C. Class Counsel, Quebec Class Counsel and Ontario Class Counsel who act as class counsel in the Proceedings.
- (16) *Class Counsel Fees* include the fees, disbursements, costs, interest, HST and/or GST, and other applicable taxes or charges of Class Counsel.
- (17) *Common Issue* in each Proceeding means: Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?
- (18) *Companies' Creditors Arrangement Act* means the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended.
- (19) *Competition Act* means the *Competition Act*, RSC 1985, c. C-34, as amended.
- (20) *Confidential Opt Out Agreement* means the confidential agreement which sets out the Confidential Opt-Out Threshold.
- (21) *Confidential Opt Out Threshold* means a threshold in respect of Opt Outs as agreed upon by the Plaintiffs and the Domfoam Defendants in a separate document delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (22) *Confidentiality Order* means any order with respect to confidentiality or the sealing of information that is issued by the Ontario Court, the Quebec Court

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and/or the B.C. Court, and any amendments thereto, and any other confidentiality order and undertaking relating to the Proceedings.

- (23) *Contributing Individual Settling Parties* mean John Howard, Robert Valle, Tony Vallecoccia and Fred Zickmantel.
- (24) *Courts* mean the Ontario Court, the Quebec Court and the B.C. Court.
- (25) *Defendants* mean the individuals and entities named as defendants in the Proceedings as set out in Schedule "A", as well as any named or unnamed co-conspirator who may be added as a defendant in the Proceedings in the future.
- (26) *Distribution Protocol* means the plan developed by Class Counsel for holding or distributing the Settlement Proceeds and accrued interest, in whole or part, for or to Settlement Class Members, as approved by the Courts which may, if directed by the Courts, permit the Plaintiffs and Class Counsel to use the Settlement Proceeds for the continued prosecution of the Proceedings or to protect against adverse costs awards, or require the Settlement Proceeds to be held in trust until the resolution of the Proceedings, in whole or in part.
- (27) *Documents* mean all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (28) *Domfoam Defendants* means Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd.
- (29) *Effective Date* means the date when (i) the Final Orders have been received from all the Courts approving this Settlement Agreement, and (ii) the Opt Out Deadline has expired and any rights to terminate this Settlement Agreement under section 6.3 of this Settlement Agreement have expired.
- (30) *Escrow Agent* means the Person reasonably agreed to by the Domfoam Defendants and Class Counsel to hold and administer the Trust Account.

- (31) *Excluded Person* means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest, the Domfoam Defendants and the Individual Settling Parties, and the legal representatives, heirs, successors and assigns of each of the foregoing, any judge of a Court who has heard or will hear any motion or application in respect of the Proceedings and his or her immediate family.
- (32) *Execution Date* means the date that this Settlement Agreement is executed by all parties as indicated on the cover page of this Settlement Agreement.
- (33) *Final Order* means a final order, judgment or equivalent decree entered by a Court in respect of the certification or authorization of a Proceeding as a class proceeding for the purposes of this settlement and/or the approval of this Settlement Agreement and implementing it in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the order, judgment or equivalent decree upon a final disposition of all appeals.
- (34) *Foam Products* mean polyurethane foam and any and all products that contain polyurethane foam.
- (35) *Individual Settling Parties* mean the Contributing Individual Settling Parties and Bruce Bradley, Michael Cappuccino, Pietro (Peter) Foti, Duke Greenstein, Dale McNeill and James William Sproule.
- (36) *ISP Release Payment* means the amount of 20% of the Plaintiffs' purchases of polyurethane foam from the Domfoam Defendants in Canada during the Settlement Class Period, to a maximum of six hundred thousand Canadian dollars (CAD \$600,000).
- (37) *Non-Settling Defendant* means a Defendant in the Proceedings that is not a Domfoam Defendant or a Brayiannis Defendant.

- (38) *Notice of Approval Hearings* mean the form or forms of notice, reasonably agreed to by the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this Settlement Agreement; and (ii) the dates and locations of the Approval Hearings.
- (39) *Notice of Certification and Settlement Approval* means the form or forms of notice, reasonably agreed to by the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or authorization of the Proceedings as class proceedings; (ii) the approval of this Settlement Agreement by the Courts; (iii) the process for opting out of the Proceedings; (iv) the Opt Out Deadline; and (v) if applicable, the process by which Settlement Class Members may apply to obtain compensation from the Settlement Proceeds.
- (40) *Notices* mean the Notice of Approval Hearings, the Notice of Certification and Settlement Approval, and notice of termination.
- (41) *Ontario Class Counsel* means Sutts, Strosberg LLP.
- (42) *Ontario Class Proceedings Act* means the *Class Proceedings Act*, S.O. 1992, c. 6.
- (43) *Ontario Court* means the Ontario Superior Court of Justice.
- (44) *Ontario Plaintiff* means "Hi! Neighbor" Floor Covering Co. Limited.
- (45) *Ontario Proceedings* mean the proceeding commenced by "Hi! Neighbor" Floor Covering Co. Limited by Statement of Claim filed in the Ontario Superior Court (Windsor Registry), Court File No. CV-10-15164, filed on September 15, 2010 and the proceeding commenced by "Hi! Neighbor" Floor Covering Co. Limited by Statement of Claim filed in the Ontario Superior Court (Windsor Registry), Court File No. CV-11-17279, filed on December 30, 2011.

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- (46) *Ontario Settlement Class* means: all Persons resident in Canada who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the B.C. Settlement Class and the Quebec Settlement Class.
- (47) *Ontario Settlement Class Members* mean: all Persons included in the Ontario Settlement Class who do not validly opt out of the Ontario Proceedings.
- (48) *Opt Out* means a member of a Settlement Class who has submitted a timely and valid written election to opt out of the Proceedings in accordance with orders of the Courts.
- (49) *Opt Out Administrator* means the Person proposed by Class Counsel and appointed by the Courts to receive the Opt Out Forms and report on the opt out process.
- (50) *Opt Out Deadline* means the date which is sixty (60) days after the date on which the Notice of Certification and Settlement Approval is first published, or such other date that has been agreed by the Parties and ordered by the Courts.
- (51) *Opt Out Form* means the form, to be reasonably agreed to by the Parties after the Settlement Agreement is executed, that shall be used for the purpose of implementing the opt out procedure set out in section 6 of this Settlement Agreement.
- (52) *Other Actions* mean actions or proceedings, other than the Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (53) *Party and Parties* mean the Plaintiffs, the Settlement Class Members, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties.
- (54) *Person* means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative,

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trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives or assignees.

- (55) *Plaintiff or Plaintiffs* mean "Hi! Neighbor" Floor Covering Co. Limited, Majestic Mattress Mfg. Ltd, Trillium Project Management Ltd., Option Consommateurs and Karine Robillard, individually and collectively.
- (56) *Proceedings* mean the B.C. Proceedings, the Ontario Proceedings and the Quebec Proceeding.
- (57) *Proportionate Liability* means the proportion of any judgment that, had they not settled, a Court would have apportioned to the Releasees.
- (58) *Purchase Price* means the purchase price actually paid by Settlement Class Members for Foam Products purchased during the Settlement Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.
- (59) *Quebec Class Counsel* means Belleau Lapointe.
- (60) *Quebec Code of Civil Procedure* means the *Code of Civil Procedure*, RSQ, c. C-25.
- (61) *Quebec Court* means the Superior Court of Quebec.
- (62) *Quebec Plaintiffs* mean Option Consommateurs and Karine Robillard.
- (63) *Quebec Proceeding* means the proceeding commenced by Karine Robillard in the form of a motion for authorization to institute a class proceeding (Requête pour autorisation d'exercer un recours collectif) in the Quebec Court, Court File No. 500-06-000524-104, filed on October 1, 2010.
- (64) *Quebec Settlement Class* means: all Persons resident in Quebec who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and any legal person established for a private interest, partnership or

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association which at any time between October 1, 2009 and October 1, 2010 had under its direction or control more than 50 persons bound to it by contract of employment or that is not dealing at arm's length with Option Consommateurs or Karine Robillard.

- (65) *Quebec Settlement Class Members* mean: all Persons included in the Quebec Settlement Class who do not validly opt out of the Quebec Proceeding.
- (66) *Released Claims* mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from January 1, 1999 to the date hereof in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Foam Products, or relating to any conduct alleged (or which could have been alleged) in the Proceedings or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada and including, without limitation, any claim for harm, damage or other relief in connection with oppressive or wrongful conduct under federal or provincial corporate statutes or at common or civil law arising from or in connection with

any unlawful horizontal or vertical anti-competitive conduct alleged (or which could have been alleged) in the Proceedings or the Other Actions. For greater certainty, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, breach of warranty or similar claims between the Parties relating to Foam Products.

- (67) *Releasees* mean, jointly and severally, individually and collectively, the Individual Settling Parties and the Brayiannis Defendant together with the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders, whether as direct or indirect shareholders), attorneys, trustees, servants and legal representatives of the Domfoam Defendants, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding the Domfoam Defendants and excluding the Non-Settling Defendants. For greater certainty, the term Releasees as defined for purposes of this Settlement Agreement shall include Global Upholstery Co. Limited and Valdomco Ltd., both of which are shareholders of Domfoam International Inc.
- (68) *Releasers* mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members on behalf of themselves and any Person claiming by or through them as a present or former, direct or indirect parent, subsidiary, division, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or legal representative of any kind.
- (69) *Restructuring Court* means the Ontario Court that is appointed to oversee the Restructuring Process in Canada.
- (70) *Restructuring Process* means the process associated with the filing and implementation for creditor protection and/or insolvency relief in Canada and/or in the U.S., including but not limited to the process of filing a claim as a creditor under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S..

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- (71) *Settlement Agreement* means this agreement, including the recitals and schedules.
- (72) *Settlement Amount* means the sum of one million two hundred and twenty-six thousand Canadian dollars (CAD \$1,226,000).
- (73) *Settlement Class* means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the B.C. Settlement Class.
- (74) *Settlement Class Members* mean the Ontario Settlement Class Members, Quebec Settlement Class Members and B.C. Settlement Class Members.
- (75) *Settlement Class Period* means the period from January 1, 1999 to the Execution Date.
- (76) *Settlement Proceeds* mean the Settlement Amount and any proceeds from the Assignment.
- (77) *Trust Account* means an interest bearing trust account at a Canadian Schedule 1 bank under the control of the Escrow Agent for the benefit of Settlement Class Members.
- (78) *U.S. Plaintiff* means the plaintiffs in the U.S. Proceedings.
- (79) *U.S. Proceedings* mean the class action proceedings pending before the United States District Court for the Northern District of Ohio under the caption *In re Polyurethane Foam Antitrust Litigation*, Master File No.: 10-MLS-2196 (JZ), MDL No. 2196, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to Foam Products that are pending or that may be commenced before the federal or state courts of the U.S.
- (80) *U.S. Settlement* means the settlement of any direct purchaser class actions in the U.S. Proceedings, the settlement of any indirect purchaser class actions in the

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U.S. Proceedings, the settlement of any direct purchaser actions or opt out actions and any other settlement of the U.S. Proceedings.

- (81) *U.S. Urethane Proceedings* mean the class action proceedings pending before the United States District Court for the District of Kansas under the caption *In re Urethane Antitrust Litigation*, Master File No.: 04-MD-01616-JWL, MDL No. 1616, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to urethane products that are pending or that may be commenced before the federal or state courts of the U.S.
- (82) *U.S. Urethane Settlement* means the settlement of any direct purchaser class actions in the U.S. Urethane Proceedings and/or the settlement of any indirect purchaser class actions in the U.S. Urethane Proceedings that exists as of the Execution Date.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall respectively take all reasonable steps to expeditiously effectuate this settlement and to secure the prompt discontinuance of the Proceedings as against the Domfoam Defendants, including cooperating in the Domfoam Defendants' efforts to obtain any approvals required by the Restructuring Court regarding the approval and implementation of this Settlement Agreement, and cooperating in the Plaintiffs' efforts to obtain any approval or orders required from the Courts regarding the approval or implementation of the Settlement Agreement, including orders certifying the Settlement Class for settlement purposes and approving the form and distribution of the Notices contemplated by section 11 of this Settlement Agreement.
- (2) Following the Execution Date and prior to, or in conjunction with, the motions contemplated by section 2.3 of this Settlement Agreement, the Quebec Plaintiffs shall

amend the Quebec Proceeding to name the Domfoam Defendants as defendants to the Quebec Proceeding.

2.2 Motions for Approval from Restructuring Court

At a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs and/or the Domfoam Defendants shall bring any motions before the Restructuring Court which are reasonably necessary to obtain an order permitting the obtaining of approval and implementation of this Settlement Agreement. The Domfoam Defendants shall cooperate with the Plaintiffs in respect of any such motions and in respect of obtaining any such relief from the Restructuring Court.

2.3 Motions to Approve the Notice of Approval Hearings

(1) Following receipt of any orders referred to in section 2.2 or in the event such relief is not required from the Restructuring Court, at a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs shall bring motions before each of the Courts for orders approving the Notice of Approval Hearings described in section 11.1.

(2) The British Columbia, Quebec and Ontario orders approving the Notice of Approval Hearings shall be in the form reasonably agreeable to the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties.

2.4 Motions for Certification/Authorization and for Approval of the Settlement

(1) As soon as practicable after the orders referred to in section 2.3 are granted, after the Notice of Approval Hearings has been published, the Plaintiffs shall bring motions before each of the Courts for orders certifying or authorizing the Proceedings commenced in their respective jurisdictions as a class proceeding for settlement purposes and for orders approving this Settlement Agreement.

(2) The Ontario order approving this Settlement Agreement referred to in section 2.4(1) shall be in the form attached hereto as Schedule "B1" except that paragraphs 2, 4,

5, 6, 7, 12, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 31, 32, 33 and 34 of the Ontario order need only be substantially in the form set out in Schedule "B1".

(3) The Quebec and British Columbia orders approving the Settlement Agreement referred to in section 2.4(1) shall be in the form attached hereto respectively in Schedules "B2" and "B3", except that paragraphs 1, 2, 3, 4, 5, 6, 9, 10, 11, 15, 24, 25, 26, 28 and 29 of the Quebec order and paragraphs 2, 4, 5, 6, 7, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32 and 35 of the British Columbia order need only be substantially in the form set out in Schedules "B2" and "B3". The Quebec and British Columbia orders shall mirror the substance and, where possible, the form of the Ontario order.

(4) The failure of any Court to approve the content of the orders as contemplated herein shall give rise to a right of termination by the Domfoam Defendants and/or any or all of the Individual Settling Parties pursuant to section 14 of this Settlement Agreement.

2.5 Pre-Motion Confidentiality

Until the Plaintiffs serve and file the materials for the first of the motions required by sections 2.2 and/or 2.3, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Domfoam Defendants, the Individual Settling Parties and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law. Once the first of the motions required by section 2.2 has been brought, the Parties shall otherwise remain subject to the other provisions of this Settlement Agreement governing confidentiality, including without limitation the provisions of the Confidential Schedule "C" and the Confidential Opt Out Agreement.

2.6 Sequence of Motions

(1) The Plaintiffs in Quebec and British Columbia shall not proceed with the respective hearings of the motions to approve the Notice of Approval Hearings unless and until the Ontario Court approves the Notice of Approval Hearings. The motions to

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approve the Notice of Approval Hearings may be filed in Quebec and British Columbia, but, if necessary, Quebec Class Counsel and B.C. Class Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision in respect of the approval of the Notice of Approval Hearings. The Domfoam Defendants may agree to waive this provision.

(2) The Plaintiffs in Quebec and British Columbia shall not proceed with the respective hearings of motions to certify and/or authorize the Quebec and B.C. Settlement Class and approve this Settlement Agreement unless and until the Ontario Court certifies the Ontario Settlement Class and approves the Settlement Agreement. The approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec Class Counsel and B.C. Class Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision in respect of certification of the Ontario Settlement Class and approval of the Settlement Agreement. The Domfoam Defendants may agree to waive this provision.

(3) Notwithstanding section 2.6 of this Settlement Agreement, in the event that the Plaintiffs and Domfoam Defendants reasonably agree and the Courts determine that it is appropriate to conduct coordinated or simultaneous Approval Hearings in respect of the Proceedings before each of the Courts, the motions to approve the Notice of Approval Hearings and/or the motions to certify and/or authorize the Settlement Class and approve this Settlement Agreement may be heard in a coordinated or simultaneous manner by the Courts.

SECTION 3 - SETTLEMENT EFFECT

3.1 Settlement Has Continuing Effect in Event of Creditor Protection

(1) In the event that the Domfoam Defendants file for and/or obtain any form of creditor protection and/or insolvency relief in Canada and/or the U.S., including but not limited to a filing or granting of protection under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation, the Parties agree that this Settlement Agreement shall remain in full effect. For greater certainty, the existence of such a filing or the granting of creditor protection

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in favour of the Domfoam Defendants shall not give rise to any right of termination by any Party under section 14 of this Settlement Agreement provided the Domfoam Defendants are not otherwise in breach of this Settlement Agreement.

(2) Notwithstanding the existence of any automatic or other stay of proceedings entered or otherwise triggered by the filing for any form of creditor protection and/or insolvency relief in Canada and/or the U.S., and subject to any Order issued by the Courts or the Restructuring Court, the Parties shall fully and completely perform the terms of this Settlement Agreement, except that all motion practice, discovery rights, trial proceedings and other proceedings in the Proceedings shall be indefinitely stayed as against the Domfoam Defendants and the Brayiannis Defendant. The Domfoam Defendants and the Brayiannis Defendant shall engage their reasonable efforts to ensure that any Restructuring Process shall not impede the hearings or implementation of this Settlement Agreement, and will make any applications that are reasonably required within the Restructuring Process in order to implement this Settlement Agreement. Notwithstanding anything in this Settlement Agreement to the contrary, including but not limited to this Settlement Agreement's provisions relating to the release of the Released Claims granted by the Releasers in favour of the Releasees and the discontinuance of proceedings as against the Domfoam Defendants, nothing in this Settlement Agreement shall preclude the Plaintiffs, or any member of the Settlement Class, individually or collectively, from filing against the Domfoam Defendants a claim in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada and/or the U.S. to the extent that such claim is based upon, arising out of or relating to facts, occurrences, transactions or other matters alleged in the Proceedings. To the extent permitted by law, the Domfoam Defendants shall not object to the filing by the Plaintiffs, or any member of the Settlement Class, of any such claim against the Domfoam Defendants in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada or the U.S., and further agree that nothing in this Settlement Agreement shall in any way impair or limit such claim against the Domfoam Defendants or the ability of such claimant(s) to seek recovery in any such creditor protection, restructuring or other bankruptcy proceeding in Canada or the U.S. for any such claim(s) against the Domfoam Defendants.

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(3) Notwithstanding the provisions of sections 3.1(1) and (2), the Plaintiffs, Class Counsel and the Settlement Class Members, individually or collectively, shall not be permitted to file a claim or otherwise challenge the validity, legality, or continuing effect of the release of the Released Claims granted by the Releasors in favour of the Releasees pursuant to this Settlement Agreement or the discontinuances of the Proceedings as against the Domfoam Defendants provided, however, that the Domfoam Defendants shall not rely on such release of the Released Claims and/or discontinuances as a defence to or limitation on any claim filed on behalf of Plaintiffs, Class Counsel or any Settlement Class Member in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada or in the U.S. as against the Domfoam Defendants, and the Domfoam Defendants covenant and agree that no such defence or limitation will be asserted against such a claim against the Domfoam Defendants. For purposes of clarity, the release of the Released Claims granted by the Releasors pursuant to this Settlement Agreement shall remain in effect in favour of the Releasees in any creditor protection, restructuring, insolvency and/or other bankruptcy proceeding in Canada and/or the U.S. or in any other proceeding in Canada, the U.S. or elsewhere, and the Releasees shall be fully entitled to assert and rely upon the release of the Released Claims as a defence to or limitation on any claim in any proceeding in Canada, the U.S. or elsewhere.

SECTION 4- SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) Within thirty (30) business days of the Execution Date, the Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent for deposit into the Trust Account, in full satisfaction of the Released Claims against the Releasees.

(2) The Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent in accordance with the applicable contribution shares set out in Confidential Schedule "C" to this Settlement Agreement.

4.2 Assignment of Certain Claims relating to the U.S. Urethane Settlement

- (1) On the Execution Date, and subject to any order of the Restructuring Court or the Courts, the Domfoam Defendants shall deliver the Assignment to the Escrow Agent or shall otherwise make arrangements to place the Assignment in escrow until such time as the Final Orders have been granted and the Effective Date has occurred.
- (2) The Domfoam Defendants shall notify the administrator of the U.S. Urethane Settlement of the existence of the Assignment. The Parties agree that to the extent that there is a distribution of funds payable to the Domfoam Defendants prior to the Effective Date, and subject to any order of the Restructuring Court or the Courts, the Parties shall jointly request that the administrator of the U.S. Urethane Settlement forward any such funds up to the maximum amount of the Assignment to the Escrow Agent for deposit into the Trust Account. To the extent necessary or to the extent required by law, the Domfoam Defendants may seek advance directions or an order from the Restructuring Court or the Courts in respect of any such communications or requests of the administrator of the U.S. Urethane Settlement, and the Parties agree to be bound by any such directions or order from the Restructuring Court or the Courts.
- (3) The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties do not make any representation, covenant or promises in respect of the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment, and the Plaintiffs and the Settlement Class shall bear any and all risk relating to the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment. In the event that the Assignment is terminated, is not approved or otherwise fails to come into effect, the Parties agree that such event shall not give rise to any right of termination under this Settlement Agreement. However, nothing in this section shall be treated as a waiver, forbearance, or abandonment of the Plaintiffs' rights and/or interests accruing under the Assignment. The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree to make reasonable efforts and provide cooperation to assist in the implementation of the Assignment.

4.3 No Further Settlement Payments, Transfers or Assignments

(1) Subject to sections 4.1 and 4.2, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall have no obligation to pay any amount in addition to the Settlement Amount or to pay, assign or transfer any amount beyond the proceeds contemplated by the Assignment, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall have no responsibility or liability as a result of any decrease or depreciation of the value of the funds in the Trust Account or any inability or failure of the Plaintiffs to receive the proceeds contemplated by the Assignment, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased by the Escrow Agent or the Claims Administrator, or the payment of any Class Counsel Fees or any Administration Expenses.

(2) The Escrow Agent shall maintain the Trust Account as provided for in this Settlement Agreement. The Escrow Agent shall not pay out all or part of the monies in the Trust Account, nor deliver the Assignment, except in accordance with the Settlement Agreement or in accordance with an order of the Courts, and if necessary an order of the Restructuring Court, obtained on notice to the Domfoam Defendants and the Individual Settling Parties, and in any event, after all appeals related thereto have been disposed of.

4.4 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Proceeds shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to section 4.4(3), all taxes payable on any interest which accrues on the Settlement Proceeds in the Trust Account or otherwise in relation to the Settlement Proceeds shall be the responsibility of the Settlement Class. The Escrow Agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Proceeds in the Trust Account, including any obligation to report taxable

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income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Proceeds shall be paid from the Trust Account.

(3) The Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case: (i) the applicable interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Contributing Individual Settling Parties who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Escrow Agent, and (ii) the applicable interest earned on the proceeds from the Assignment in the Trust Account or otherwise shall be paid to the Domfoam Defendants, or such other party that the Restructuring Court may direct, who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Escrow Agent or such other applicable third party that is supervising the escrow.

4.5 Cooperation – Scope of Cooperation

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Settlement Agreement, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree to provide cooperation to Class Counsel in accordance with the requirements of this section of the Settlement Agreement.

(2) The Parties respectively acknowledge and agree that all information and Documents provided by the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or their respective counsel to Class Counsel, the Plaintiffs and the Plaintiffs' experts under this Settlement Agreement may be used by Class Counsel, the Plaintiffs and the Plaintiffs' experts in connection with the investigation, prosecution and settlements of the claims in the Proceedings including, without limitation, the prosecution of the claims in the Proceedings against the Non-Settling Defendants and

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named or unnamed co-conspirators, provided that such information and Documents shall not be used directly or indirectly for any other purpose, including the prosecution of any claim against the Releasees. The Parties further acknowledge and agree that all information and Documents provided by the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or their respective counsel to Class Counsel, the Plaintiffs, and the Plaintiffs' experts under this Settlement Agreement shall be held and treated in strict confidence in accordance with this Settlement Agreement and any applicable Confidentiality Order, and shall not be otherwise disclosed to any person in any manner, directly or indirectly, by Class Counsel, the Plaintiffs or the Plaintiffs' experts in any way for any reason except in accordance with this Settlement Agreement and any applicable Confidentiality Order or with the express prior written consent of the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or their respective counsel. Class Counsel, the Plaintiffs and the Plaintiffs' experts shall take all reasonable steps and precautions to ensure and maintain the confidentiality of information and Documents and any related work product of Class Counsel and the Plaintiffs' experts.

(3) The cooperation that is to be provided by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties under this Settlement Agreement shall be limited to the allegations contained in the Proceedings, including an alleged unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act*, civil and/or common law.

(4) On the Execution Date or at a later time mutually agreed upon by Class Counsel and the Domfoam Defendants, the Domfoam Defendants shall instruct counsel for the Domfoam Defendants to preserve the following Documents and to maintain a copy of such Documents that will remain in the possession of counsel for the Domfoam Defendants for the purpose of compliance by the Domfoam Defendants with section 4.3 of this Settlement Agreement: (i) all pre-existing business Documents that have been produced as of the Execution Date to any governmental authority in Canada in connection with that governmental authority's investigation of potential price-fixing

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relating to the sale of Foam Products in Canada or elsewhere, and (ii) all pre-existing business Documents that have been produced as of the Execution Date to the U.S. Plaintiffs in the U.S. Proceedings as part of their discovery obligations in the U.S. Class Proceedings or as part of a U.S. Settlement and that relate to the allegations in the Proceedings.

(5) Within ten (10) days of the Execution Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

- (a) through a meeting or meetings between or among counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to be scheduled at a reasonable time and place and for a total duration that does not exceed five (5) hours in the aggregate, provide a preliminary verbal evidentiary proffer, which will include information relating to a general description of the polyurethane foam industry and information relating to participation of the Domfoam Defendants and the Individual Settling Parties in the events that are the subject matter of the Proceedings (the "Initial Proffer"). The Domfoam Defendants, the Individual Settling Parties, Class Counsel and the Plaintiffs shall reach agreement in advance with respect to the participants at the Initial Proffer, and Class Counsel and the Plaintiffs acknowledge in advance that the information that will be provided by the Domfoam Defendants and the Individual Settling Parties during the Initial Proffer shall be limited in light of the fact that the Courts have not considered nor approved Final Orders. During the course of the Initial Proffer, counsel for the Domfoam Defendants and the Individual Settling Parties may use or refer to certain Documents. Class Counsel shall be entitled to view these Documents during the Initial Proffer, but Class Counsel agree that they shall not be permitted to make or retain a copy of such Documents at such time. The Parties further agree that there shall be no audio or video recording and no written transcription or record of any statements made or information

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provided by counsel for the Domfoam Defendants and the Individual Settling Parties at the Initial Proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the Initial Proffer are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings.

(6) At a reasonable time after the Execution Date, and upon reasonable advance notice, and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

- (a) subject to the receipt of any necessary consent by governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, produce to Class Counsel all pre-existing business Documents produced to any governmental authority in Canada in connection with that governmental authority's investigation of potential price-fixing relating to the sale of Foam Products in Canada or elsewhere, and all pre-existing business Documents produced to the U.S. Plaintiffs in the U.S. Proceedings as part of their discovery obligations in the U.S. Proceedings or as part of a U.S. Settlement and that relate to the allegations in the Proceedings.

(7) Within thirty (30) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

- (a) through a meeting or meetings between counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to

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be scheduled at a reasonable time and place and for a total duration that does not exceed fifteen (15) hours in the aggregate, provide a verbal evidentiary proffer, which will include information relating to the allegations in the Proceedings including, without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada (the "Second Proffer"). The Domfoam Defendants, the Individual Settling Parties, Class Counsel and the Plaintiffs shall reach agreement in advance with respect to the participants at the Second Proffer. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information provided by counsel for the Domfoam Defendants or counsel of the Individual Settling Parties at the Second Proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the Second Proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the Second Proffer are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings;

- (b) make reasonable efforts to provide existing electronic transactional data relating to sales of Foam Products during the Settlement Class Period by the Domfoam Defendants to direct purchasers that involved a billing address or a shipping address in Canada. The Domfoam Defendants represent that they are in the possession of some electronic transactional data relating to various sales of Foam Products by the Domfoam Defendants relating to Canada for part of the Settlement Class Period, which data includes Purchase Price information in respect of purchases by putative members of the Settlement Class who purchased Foam Products directly from the Domfoam Defendants during part of the Settlement Class Period. Counsel for the Domfoam

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Defendants agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the set(s) of electronic transactional data produced by the Domfoam Defendants. If counsel for the Domfoam Defendants is unable to provide an adequate response to Class Counsel's questions, the Domfoam Defendants shall direct that a current employee of the Domfoam Defendants be reasonably available to Class Counsel to respond to Class Counsel's questions. The inability of the employee to respond to Class Counsel's questions or the failure of the current employee to agree to make him or herself available to or otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the Domfoam Defendants' obligations under this Settlement Agreement; and

- (c) subject to the receipt of any necessary consent by governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, produce any further Documents that fall within the description of section 4.5(6) of this Settlement Agreement and that have been identified as of the Effective Date, and make reasonable efforts to produce further pre-existing business Documents that have been identified, collected and organized by the Domfoam Defendants as of the Effective Date relating to the allegations in the Proceedings. The Domfoam Defendants represent that they have identified, collected and organized certain Documents relating to the Proceedings, but the Domfoam Defendants have not conducted or completed a comprehensive Document collection or review in light of the fact that the Proceedings remain at an early stage and discovery has not commenced in the Proceedings. The inability or failure of the Domfoam Defendants to conduct or complete a comprehensive Document collection or review as of the Effective Date shall not constitute a breach or violation of the Domfoam Defendants' obligations under this Settlement Agreement.

- (8) Within sixty (60) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and the Individual

Settling Parties, and subject to the other provisions of this section, the Brayianis Defendant and the Individual Settling Parties shall:

- (a) at the request of Class Counsel and upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, make themselves available for interviews to provide information, including Documents that are in the personal possession, power or control of the Brayianis Defendant or the Individual Settling Parties, relating to the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the Proceedings, at a location chosen by the Individual Settling Parties in their sole discretion. Each such interview shall take place on a single day and shall last no more than eight (8) hours, including reasonable breaks, except for good cause, and counsel for the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall be entitled to attend such interviews. The reasonable costs incurred by, and the reasonable expenses of, the Brayianis Defendant and the Individual Settling Parties in relation to such interviews shall be the responsibility of the Brayianis Defendant and the Individual Settling Parties. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information during such interview, and that Class Counsel may only make written notes of their own thoughts and impressions at such interviews for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the interview are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings.

(9) Within sixty (60) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants shall:

- (a) at the request of Class Counsel and upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, and subject to any order of the Restructuring Court, engage reasonable efforts to make available up to three (3) current directors, officers or employees of the Domfoam Defendants (other than the Brayianis Defendant and the Individual Settling Parties) who have knowledge of the allegations in the Proceedings to provide information relating to the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the Proceedings, at a location chosen by the Domfoam Defendants in their sole discretion or, in the alternative, if no such choice is made, at a location to be reasonably agreed between Class Counsel and the director, officer or employee being interviewed. Each such interview shall take place on a single day and shall last no more than eight (8) hours, including reasonable breaks, except for good cause, and counsel for the Domfoam Defendants and the Individual Settling Parties shall be entitled to attend such interviews. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information during such interview, and that Class Counsel may only make written notes of their own thoughts and impressions at such interviews for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such interviews shall be the responsibility of the Domfoam Defendants. The Parties agree that any such written notes and any other communications, information and Documents relating to the interview are privileged, shall be kept strictly

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confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings. If any such current directors, officers or employees of the Domfoam Defendants (other than the Brayianis Defendant or the Individual Settling Parties) refuses to provide information, or otherwise cooperate, the Domfoam Defendants shall engage their reasonable efforts to make such person available for an interview but the failure or refusal of any such current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such a failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(10) At a time following the Effective Date and to be mutually agreed upon by Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties, and subject to the other provisions of this section, the Brayianis Defendant and the Individual Settling Parties shall, at the request of Class Counsel and upon reasonable notice in circumstances where there is a reasonable necessity for the evidence of the Brayianis Defendant and/or Individual Settling Parties in the prosecution of the Proceedings, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, make themselves reasonably available to provide evidence at trial of the Proceedings in Canada, or to be reasonably available to provide an affidavit or declaration and attend at a cross-examination in support of the certification or authorization motion in the Proceedings or in the event of a summary judgment motion brought against the Plaintiffs in the Proceedings.

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(11) At a time following the Effective Date and to be mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants shall, at the request of Class Counsel and upon reasonable notice in circumstances where there is a reasonable necessity for the evidence of the current directors, officers or employees of the Domfoam Defendants in the prosecution of the Proceedings, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, and subject to any order of the Restructuring Court, engage reasonable efforts to make three (3) current directors, officers or employees of the Domfoam Defendants (other than the Brayiannis Defendant and the Individual Settling Parties) who have knowledge of the allegations in the Proceedings reasonably available to provide evidence at trial of the Proceedings in Canada, or to be reasonably available to provide an affidavit or declaration and attend at a cross-examination in support of the certification or authorization motion in the Proceedings or in the event of a summary judgment motion brought against the Plaintiffs in the Proceedings. If any current director, officer or employee of the Domfoam Defendants (other than the Brayiannis Defendant or the Individual Settling Parties) refuses to cooperate under this section, the Domfoam Defendants shall engage their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Plaintiffs. The failure or refusal of any such current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

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(12) Subject to the rules of evidence, the other provisions of this Settlement Agreement and any Confidentiality Order, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties further agree to engage in reasonable efforts to produce acceptable affidavits or other testimony in the Proceedings from the Individual Settling Parties, the Brayianis Defendant and/or up to three (3) current directors, officers or employees of the Domfoam Defendants who are qualified to establish for admission into evidence any information or Documents produced by the Individual Settling Parties, the Brayianis Defendant and/or the Domfoam Defendants in accordance with this section of this Settlement Agreement, provided that Class Counsel, counsel for the Domfoam Defendants, counsel for the Brayianis Defendant, and counsel for the Individual Settling Parties, acting reasonably, agree that such evidence from such Individual Settling Parties, the Brayianis Defendant and/or such current directors, officers or employees of the Domfoam Defendants is reasonably necessary for the prosecution of the Proceedings and may be presented to the Courts. The reasonable costs incurred by, and the reasonable expenses of, such Individual Settling Parties, the Brayianis Defendant and/or such current directors, officers or employees of the Domfoam Defendants in relation to such cooperation shall be the responsibility of the Individual Settling Parties, the Brayianis Defendant, the Domfoam Defendants and/or the current directors, officers or employees. If any such current director, officer or employee of the Domfoam Defendants (other than the Brayianis Defendant or the Individual Settling Parties) refuses to cooperate under this section, the Domfoam Defendants shall engage their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Plaintiffs. The failure or refusal of any such current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or

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employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(13) If, in the course of the Proceedings, the Plaintiffs, the Settlement Class Members and/or Class Counsel conclude that it is reasonably necessary to disclose or provide information or Documents obtained from the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties which are not otherwise publicly available to the Non-Settling Defendants or any affiliates of the Non-Settling Defendants, or to file such information or Documents in the Proceedings, and such disclosure is not otherwise prohibited by this Settlement Agreement or a Confidentiality Order, then the Plaintiffs, the Settlement Class Members and/or Class Counsel shall provide the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties with an advance written description of the information or Documents that is to be provided to the Non-Settling Defendants or their affiliates or filed with the Courts within a reasonable amount of time in advance of the proposed disclosure, in order that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may take steps to protect their interests in respect of such information or Documents in accordance with this Settlement Agreement and/or any Confidentiality Order. For greater certainty, the rights of the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties under this section are in addition to and shall not derogate from any rights that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may have under any Confidentiality Order relating to the Proceedings.

(14) The provisions set forth in section 4.5 of this Settlement Agreement shall constitute the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery and/or evidentiary disclosure from the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and the Releasees for the purposes of any certification and/or authorization motion and/or any other motion, for discovery and/or for trial in connection with the Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery and/or evidentiary disclosure as against the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and/or the Releasees in connection with the

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Proceedings, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(15) The obligations of the Domfoam Defendants under section 4.5 of this Settlement Agreement, including but not limited to any subsequent requests by the Plaintiffs and/or Class Counsel for the production or access to information and Documents relating to the Domfoam Defendants shall be contingent upon the ability of the Domfoam Defendants to lawfully and/or practically meet such obligations or requests subject to the filing or granting of creditor protection and/or insolvency relief under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S. In particular but without limitation, none of the obligations in this section shall obligate the Domfoam Defendants to provide access to, produce or otherwise make available information or Documents that the Domfoam Defendants are no longer able or permitted to access as a result of the filing or granting of creditor protection and/or insolvency relief in Canada and/or the U.S. The Domfoam Defendants agree that they shall not seek any limitations or restriction from the Restructuring Court on their ability to cooperate in accordance with this Settlement Agreement, provided that the Parties agree that the Domfoam Defendants remain subject to any order from the Restructuring Court. The Plaintiffs and the Domfoam Defendants may, if necessary, respectively seek advance directions or an order from the Restructuring Court or the Courts in respect of compliance with these cooperation provisions during or after the Restructuring Process, and the Parties agree to be bound by any such directions or order from the Restructuring Court or the Courts.

(16) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties to disclose or produce (i) any communications, discussions or agreements between the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties and government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain, (ii) any information or Documents created for or by government authorities in Canada or elsewhere in connection with any regulatory or

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criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain and (iii) any notes, transcripts, testimony or other information or Documents relating to meetings or interviews with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain, however, for greater certainty, this section shall not detract or derogate from any obligation of the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties under section 4.5 of this Settlement Agreement to produce pre-existing business Documents that belong to the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties and that were created prior to and independently from any regulatory or criminal investigation relating to Foam Products.

(17) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or any Releasees to perform any act which would violate any provincial, federal or foreign law, to disclose or produce any information or Documents prepared by or for counsel for the Domfoam Defendants or the Brayiannis Defendant or the Individual Settling Parties or the Releasees, or to disclose or produce any information or Documents in breach of any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Domfoam Defendant or a Brayiannis Defendant. If any information or Documents protected by any privilege and/or by any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction are accidentally or inadvertently produced by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties, the Plaintiffs and Class Counsel shall promptly return such information and/or Documents to the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties and such information and/or Documents shall not be disclosed or used, directly or

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indirectly, except with the express prior written consent of the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties, and the production of such information and/or Documents shall in no way be construed to constitute a waiver of privilege or protection by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties in connection with such information and/or Documents.

(18) Notwithstanding their obligations to cooperate as set forth in section 4.5 of this Settlement Agreement, if the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties reasonably believe that any of their applications or agreements with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products (without admitting that any such applications or agreements exist) would be endangered by the production or disclosure of information or Documents which would otherwise be required to be produced to Class Counsel or the Plaintiffs pursuant to the terms of this Settlement Agreement, the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties may withhold such information or Documents. To the extent that the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties withhold such information or Documents, pursuant to this section of this Settlement Agreement, the Domfoam Defendants and/or the Individual Settling Parties shall, within thirty (30) days from the date that such information or Documents would otherwise be produced to Class Counsel pursuant to this Settlement Agreement, provide to Class Counsel a description of the type of information or Document to be withheld, and the basis for withholding such information or Documents. The Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties shall work in good faith with such government authorities to obtain permission to disclose the information or Documents being withheld. If, on the date which is twelve (12) months from the execution of this Settlement Agreement and sixty (60) days from the date that such information or Documents would otherwise be produced to Class Counsel pursuant to this Settlement Agreement, information or Documents continue to be withheld by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties pursuant to this section, the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties shall forthwith provide such information or Documents to Class Counsel

and/or the Plaintiffs, unless any of the Courts, pursuant to motions filed by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties or otherwise, orders to the contrary.

(19) Subject to the other provisions of section 4.5 of this Settlement Agreement, the obligations of the Brayianis Defendant and the Individual Settling Parties to produce Documents pursuant to section 4.5 shall be a continuing obligation to make reasonable additional productions to the extent that the Brayianis Defendant and the Individual Settling Parties collect and identify further Documents following the initial production milestones set out above and that fall within the categories of documentary cooperation that are set out in section 4.5 of this Settlement Agreement.

(20) A material factor influencing the Domfoam Defendants', the Brayianis Defendant's and the Individual Settling Parties' decision to execute this Settlement Agreement is their desire to limit the burden and expense of the Proceedings. Accordingly, Class Counsel and the Plaintiffs agree to exercise good faith in seeking cooperation from the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties, and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties.

(21) The Plaintiffs may seek directions and/or orders from the Ontario Court relating to their rights under section 4.5 should the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Defendants not act reasonably in terms of its/their obligations under section 4.5 or act in a manner that is inconsistent with the spirit and intent of section 4.5.

(22) The Domfoam Defendants', the Brayianis Defendant's and the Individual Settling Parties' obligation to cooperate as particularized in section 4.5 of this Settlement Agreement shall not be affected by the release provisions contained in section 7 of this Settlement Agreement.

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(23) The Domfoam Defendants', the Brayianis Defendant's and the Individual Settling Parties' obligation to cooperate under this Settlement Agreement shall cease at the date of final judgment in the Proceedings as against all Defendants. Following the Effective Date, in the event the Plaintiffs allege a material breach by the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties of their obligations under section 4.5 of this Settlement Agreement, the non-breaching Party shall have the right to apply to the Ontario Court for specific performance in respect of such obligation. If the Ontario Court finds that a Party, including the Brayianis Defendant or any Individual Settling Parties, has materially breached section 4.5 of this Settlement Agreement and orders specific performance as to that Party, and that Party nonetheless fails to comply with such order, this Settlement Agreement shall be terminated as to that, and only that, Party. In the event that the Ontario Court finds the Brayianis Defendant or any Individual Settling Parties not to have materially breached section 4.5 of this Settlement Agreement, then this Settlement Agreement shall remain in effect as to that Brayianis Defendant or as to that Individual Settling Party. Following the Effective Date, in no event shall any Party be permitted to unilaterally terminate this Settlement Agreement on the basis of actual or alleged breach of section 4.5 of this Settlement Agreement. Furthermore, in no event shall the Brayianis Defendant's or any Individual Settling Party' actual or alleged breach of any of the obligations of section 4.5 of this Settlement Agreement in any way apply, alter, negate or have any effect whatsoever on (i) the discontinuance of the Proceedings with respect to the Domfoam Defendants, or (ii) the full and final release of Released Claims contemplated by this Agreement as to any other Releasees.

**SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT,
ASSIGNMENT PROCEEDS, AND ACCRUED INTEREST**

5.1 Distribution Protocol

(1) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties acknowledge that the Settlement Class includes Persons who purchased Foam Products directly from the Defendants as well as Persons who purchased Foam Products indirectly from third parties, and that this Settlement Agreement makes no determination as to

which Settlement Class Members are entitled to distribution from the Trust Account or as to the formula for determining the allocation of the monies in the Trust Account.

(2) After the Effective Date, at a time wholly within the discretion of Class Counsel, Class Counsel shall seek orders from the Courts approving the Distribution Protocol. Class Counsel shall engage in reasonable consultation with counsel for the Domfoam Defendants and the Individual Settling Parties regarding the terms of the Distribution Protocol. Subject to any amendments by the Courts, the Settlement Class Members shall be compensated pursuant to the Distribution Protocol. After the Effective Date and after the Courts have approved the Distribution Protocol, the remaining monies in the Trust Account shall be transferred by the Escrow Agent to the Claims Administrator for payment in accordance with the Distribution Protocol.

5.2 No Responsibility for Administration or Fees

The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

SECTION 6 – OPTING OUT

6.1 Procedure for Opting Out

(1) A Person may opt out of the Proceedings by completing and signing the Opt Out Form, and by sending the Opt Out Form, by pre-paid mail, courier or fax to the Opt Out Administrator at an address and coordinates to be identified in the Notice of Certification and Settlement Approval contemplated by section 11.1 of this Settlement Agreement.

(2) A Person who wishes to opt out of the Proceedings must provide the following to the Opt Out Administrator as part of the Opt Out Form:

- (a) an executed statement requesting that the Person opting out be excluded from the Settlement Class in the Canadian Polyurethane Foam Class Actions National Settlement;

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- (b) the full name, current address and telephone number of the Person who is opting out and any former names which are relevant to its purchase of Foam Products in Canada during the Settlement Class Period;
 - (c) the name(s), if known, of each entity from whom the Person purchased Foam Products in Canada during the Settlement Class Period; and
 - (d) particulars of the Purchase Price, if known, and volume, if known, of Foam Products purchased from each such entity during the Settlement Class Period.
- (3) An election to opt out will only be effective if the Opt Out Form is postmarked on or before the Opt Out Deadline.

6.2 Opt Out Report

The Opt Out Administrator shall use the information provided by the Domfoam Defendants pursuant to section 12.2(2) to supplement and confirm the information received pursuant to section 6.1(2) of this Settlement Agreement. Within thirty (30) days of the Opt Out Deadline, the Opt Out Administrator shall provide to counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to the extent that such information is known by the Opt Out Administrator, the following information in respect of each Person, if any, who has opted out of the Proceedings:

- (a) the Person's full name, current address and telephone number;
- (b) the reasons for opting out, if given;
- (c) the name(s), if known, of each entity from whom the Person purchased Foam Products during the Settlement Class Period;
- (d) for each such entity, the Purchase Price, if known, and volume, if known, of Foam Products purchased during the Settlement Class Period; and
- (e) a copy of all information provided in the opt out process by the Person electing to opt out.

6.3 Right to Terminate Based on Opt Outs

(1) The Domfoam Defendants and/or the Individual Settling Parties may terminate this Settlement Agreement in the event that the volume of Foam Products purchased by members of the Settlement Class who opt out of the Proceedings or the number and identity of members of the Settlement Class who opt out of the Proceedings exceeds the Confidential Opt Out Threshold.

(2) To terminate this Settlement Agreement based on Opt Outs, the Domfoam Defendants and/or the Individual Settling Parties shall give a written notice of termination to Class Counsel no later than twenty-one (21) days after the receipt of the report contemplated by section 6.2 of this Settlement Agreement.

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims.

7.2 Covenant Not To Sue

Notwithstanding section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant not to sue and undertake not to make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.3 No Further Claims

The Releasers shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand

against any Releasees or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasees in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

7.4 Discontinuance of Proceedings against the Domfoam Defendants

The B.C. Proceedings and the Ontario Proceedings shall be discontinued without costs as against the Domfoam Defendants. The Quebec Proceeding shall be settled, without costs and without reservation as against the Domfoam Defendants, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court. The Parties agree that any such discontinuance and/or declaration of settlement out of court shall not alter, negate or otherwise have any effect on the releases in favour of the Releasees that are set out in section 7 of this Settlement Agreement. For greater certainty, the Parties agree that such discontinuances and/or declarations of settlement out of court shall not impair the Settlement Class' ability to file claims in any creditor protection or insolvency proceedings in Canada and/or the U.S. relating to the Domfoam Defendants, or to seek to enforce the Assignment as against the Domfoam Defendants or any legal representative of the Domfoam Defendants.

7.5 Discontinuance of Other Actions against the Domfoam Defendants

(1) Upon the Effective Date, all Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any Settlement Class Member who does not opt out shall be deemed discontinued against the Domfoam Defendants.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the B.C. Settlement Class who does not opt out shall be deemed to irrevocably consent to the discontinuance of his, her or its Other Actions against the Domfoam Defendants.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without

cost and without reservation, of his, her or its Other Actions against the Domfoam Defendants.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Domfoam Defendants without costs and without reservation.

7.6 Tolling of Limitation Periods as against the Domfoam Defendants

Following the discontinuance and settlement of the Proceedings set out in section 7.4, all applicable limitation periods for the filing of claims, defences, counterclaims and/or third party claims by the Plaintiffs or the Settlement Class Members shall be suspended or tolled as to the Domfoam Defendants. For greater certainty, the Parties do not agree to the tolling or suspension of any applicable limitation periods that may govern potential claims by the Non-Settling Defendants or named or unnamed co-conspirators as against the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or any other party.

7.7 Dismissal of the Ontario Proceedings against the Brayiannis Defendant

The Ontario Proceedings shall be dismissed, without costs and with prejudice as against the Brayiannis Defendant.

7.8 Dismissal of Other Actions against the Releasees

(1) Upon the Effective Date, all Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any member of the Settlement Class who does not opt out shall be deemed dismissed against the Brayiannis Defendant, the Individual Settling Parties or the Releasees without costs and with prejudice.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the B.C. Settlement Class who does not opt out shall be deemed to irrevocably consent to the dismissal of his, her or its Other Actions against the Brayiannis Defendant, the Individual Settling Parties or the Releasees.

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(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without cost and without reservation, of his, her or its Other Actions against the Brayiannis Defendant, the Individual Settling Parties or the Releasees.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Brayiannis Defendant, the Individual Settling Parties or the Releasees, without costs and without reservation.

7.9 Impact of Discontinuance and Dismissals

The Parties agree that the discontinuances, declarations of settlement, dismissals, and consents set out in section 7.4, 7.5, 7.6, 7.7 and 7.8 of this Settlement Agreement shall not alter, negate or otherwise have any impact or effect on the releases of the Released Claims by the Releasers in favour of the Releasees that are set out in sections 7.1, 7.2 and 7.3 of this Settlement Agreement.

7.10 Releases and Covenants Not to Sue

The form and content of the releases and covenants not to sue contemplated in sections 7.1, 7.2 and 7.3 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties and the failure of any Court to approve the releases or covenants not to sue contemplated herein shall give rise to a right of termination by the Domfoam Defendants and the Individual Settling Parties pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the releases and/or covenants not to sue contemplated herein, or if any Court approves the releases and/or covenants not to sue contemplated herein in a materially modified form.

SECTION 8 - BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS

8.1 British Columbia and Ontario Bar Orders

The Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree that the British Columbia and Ontario orders approving this Settlement Agreement must include a bar order in respect of the B.C. Proceedings and the Ontario Proceedings. The bar order shall be in a form reasonably agreed to by the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties, and shall include:

- (a) a provision that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by an Opt Out);
- (b) a provision governing the rights of the Plaintiffs and the Settlement Class Members to assert claims against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees in respect of the Proceedings or otherwise, provided that under such a provision, if a Court determines there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise between co-conspirators, the Plaintiffs and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the Proceedings or

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otherwise, and the Court shall have full authority to determine the Proportionate Liability of the Releasees at trial or other disposition of the Proceedings, whether or not the Releasees appear at trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceedings and shall not be binding on the Releasees in any other proceedings; and

- (c) a provision governing the ability of the Non-Settling Defendants to bring a motion to seek discovery of the Brayiannis Defendant for the purposes of the continuation of the Proceedings, provided that under such a provision, the Brayiannis Defendant shall retain and reserve all of his rights to oppose such a motion.

8.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties agree that the Quebec order approving this Settlement Agreement must include an order that provides for a waiver or renunciation of solidarity. The waiver or renunciation of solidarity order shall be in a form reasonably agreed to by the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties, provided that the Quebec Court must take notice of the following undertaking and the order must include the following terms:

- (a) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity with respect to any share of liability, including without limitation liability arising from *in solidum* obligations, that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interest and/or costs;
- (b) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce, to the Releasees' exclusive benefit, to claim or receive payment from the Non-Settling Defendants or any other

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person of any amount representing any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and/or costs;

- (c) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members release the Non-Settling Defendants and any other person in respect of any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and costs; and
- (d) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members will bear the Releasees' share in the contribution in respect of the Quebec Proceeding (if any) that would result from the insolvency of a Non-Settling Defendants or any other Person.

(2) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties further agree that the Quebec order approving this Settlement Agreement must also include a provision that in the event that any person brings an action in warranty or any other claim to obtain from the Releasees an amount representing the share of liability attributed to the Releasees in the Quebec Proceeding (if any) and the Plaintiffs, the Domfoam Defendants, the Individual Settling Parties and the other Releasees are not able to obtain the dismissal of such an action or claim through a preliminary motion at first instance before the Quebec Court, then the Plaintiffs in Quebec and the Quebec Settlement Class Members shall undertake to indemnify the Releasees and to save the Releasees harmless in respect of any damage, harm, loss or cost reasonably incurred in respect of such action or claim, provided that any such indemnity will only be paid out of any present or future undistributed settlement or judgment amount collected from the Non-Settling Defendants or named or unnamed co-conspirators or any other person for the benefit of the Plaintiffs and the Quebec Settlement Class Members in respect of the Quebec Proceeding. This indemnity shall not affect the ability of the Plaintiffs to seek interim distributions of settlement funds subject to court approval.

8.3 Material Term

The form and content of the bar orders and the waiver or renunciation of solidarity order contemplated in sections 8.1 and 8.2 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Domfoam Defendants and the Individual Settling Parties and the failure of any Court to approve the bar orders or the waiver or renunciation of solidarity order contemplated herein shall give rise to a right of termination by the Domfoam Defendants and the Individual Settling Parties pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the bar order and/or waiver or renunciation of solidarity order contemplated herein, or if any Court approves the bar order and/or waiver or renunciation of solidarity order contemplated herein in a materially modified form.

SECTION 9 – EFFECT OF SETTLEMENT

9.1 No Admission of Liability

The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties or by any Releasee, or of the truth of any of the claims or allegations contained in the Proceedings, the Other Actions or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

9.2 Agreement Not Evidence

The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

9.3 No Further Litigation

(1) No Plaintiff and no Class Counsel may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued investigation and prosecution of the Proceedings, or any new proceedings, as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees. However, this subsection shall not be operative to the extent that it is inconsistent with B.C. Class Counsel's obligations under Rule 4.7 of the British Columbia Professional Conduct Handbook.

(2) For greater certainty, section 9.3(1) does not apply to the involvement of any Person in the continued investigation and prosecution of the Proceedings as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees. In addition, section 9.3(1) does not apply in respect of any claim in respect of the Domfoam Defendants that may be filed in any creditor protection, restructuring or other bankruptcy proceeding in Canada or the U.S. relating to the Domfoam Defendants pursuant to section 3 of this Settlement Agreement.

SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

10.1 Settlement Class and Common Issue

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Domfoam Defendants and the Brayiannis Defendant solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that the Plaintiffs will seek to define is the Common Issue and the only classes that they will assert are the Settlement Class. The Plaintiffs acknowledge that the Domfoam Defendants and the Brayiannis Defendant agree to the definition of the Common Issue for purposes of settlement only.

10.2 Certification or Authorization Without Prejudice in the Event of Termination

In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that any prior certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, or any amended certification of a Proceeding as a class proceeding pursuant to this Settlement Agreement, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation.

SECTION 11 – NOTICE TO SETTLEMENT CLASS

11.1 Notice Required

The proposed Settlement Class shall be given the following Notices: (i) Notice of Approval Hearings; (ii) Notice of Certification and Settlement Approval; and (iii)

termination of this Settlement Agreement if it is terminated after notice provided in accordance with (i) above or as otherwise ordered by the Courts.

11.2 Form, Publication and Distribution of Notice

(1) The form of the Notices referred to in section 11.1 and the manner of publication and distribution shall be as reasonably agreed to by the Plaintiffs and the Domfoam Defendants or in such form or manner as approved by the Courts.

(2) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties shall engage in reasonable efforts to work with the parties to the U.S. Settlement and with the Non-Settling Defendants to the Proceedings to coordinate the form, publication and distribution of the Notices pursuant to this Settlement Agreement with the provision of notice for any other settlements that have or may be reached in the Proceedings or the U.S. Proceedings so that, to the extent possible, the Settlement Class receives effective notice on a timely basis and at a reasonable cost.

11.3 Notice of Distribution

Except to the extent provided for in this Settlement Agreement, the form of notice in respect to the administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

SECTION 12 – ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

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12.2 Information and Assistance

- (1) The Domfoam Defendants will make reasonable efforts to compile a list of the names and addresses of Persons in Canada who purchased Foam Products from the Domfoam Defendants in Canada during the Settlement Class Period.
- (2) The information required by section 12.2(1) shall be delivered to Class Counsel within thirty (30) business days of the Execution Date.
- (3) Class Counsel may use the information provided under section 12.2(2) to advise Persons in Canada who purchased Foam Products from the Domfoam Defendants in Canada during the Settlement Class Period of this Settlement Agreement and the date of the Approval Hearings before the Courts.
- (4) If this Settlement Agreement is not approved, terminated, or otherwise fails to come into effect, all information provided by the Domfoam Defendants pursuant to section 12.2(2) shall be returned or destroyed forthwith in accordance with section 14.2(1)(f), no record of the information so provided shall be retained by Class Counsel in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

SECTION 13- CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

- (1) The Escrow Agent shall pay the reasonable costs of the notices referred to in section 11 of this Settlement Agreement, any reasonable costs associated with receiving the written elections to opt out and the costs of the Escrow Agent from the Trust Account.
- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement, or at such other time as they shall determine in their sole discretion, provided that Class Counsel agree that they shall not be paid Class Counsel Fees from the Settlement Amount in the event this Settlement Agreement is not approved, is terminated

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or otherwise fails to take effect, provided that they may seek payment of professional fees in respect of their representation of the Plaintiffs from the ISP Release Payment contemplated by sections 14.2(1)(g)(A) and 14.4 of this Settlement Agreement. The Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties shall take no position with respect to Class Counsel's motion for payment of Class Counsel Fees.

(3) Except as provided in sections 13(1) and 13(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties shall not be liable for any fees, disbursements or taxes, including but not limited to Class Counsel Fees and any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or the Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

SECTION 14 - TERMINATION OF SETTLEMENT AGREEMENT

14.1 Right of Termination

(1) The Plaintiffs and Class Counsel shall have the right to terminate this Settlement Agreement, in the event that:

- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Class, and the Court's order or judgment has become a Final Order;
- (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;
- (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order;

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- (d) the Domfoam Defendants do not make an application for creditor protection and/or insolvency relief in Canada and/or in the U.S., including but not limited to an application under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S., within thirty (30) days of the Execution Date; or
 - (e) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders.
- (2) The Domfoam Defendants and/or the Individual Settling Parties shall further have the right to terminate this Settlement Agreement in the event:
- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Class, and the Court's order or judgment has become a Final Order;
 - (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;
 - (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order;
 - (d) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders;
 - (e) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 2.4(2) and 2.4(3) of this Settlement Agreement;
 - (f) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 7.1, 7.2, 7.3, 8.1 and 8.2 of this Settlement Agreement; or

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- (g) the Confidential Opt Out Threshold is exceeded and the Domfoam Defendants and/or the Individual Settling Parties provide written notice of termination in accordance with section 6.3(2) of this Settlement Agreement.
- (3) To exercise a right of termination under section 14.1(1) or 14.1(2), a terminating party shall deliver a written notice of termination pursuant to section 15.18 of this Settlement Agreement. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 14.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in the Proceedings or any litigation.
- (4) Subject to section 14.1(5), any order, ruling or determination made by any Court that is not substantially in the form of its respective order annexed as Schedule "B1", "B2" or "B3" shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the Domfoam Defendants' termination and/or the Individual Settling Parties' termination of this Settlement Agreement, provided however that the Domfoam Defendants and/or the Individual Settling Parties may agree to waive this provision.
- (5) Any order, ruling or determination made by any Court with respect to Class Counsel Fees and/or Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.
- (6) For greater certainty, the Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties acknowledge and agree that they shall not rely on any future ruling or proceedings arising from or in connection with the pending appeals before the Supreme Court of Canada in respect of *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* (Supreme Court of Canada File #34283) and *Pro-Sys Consultants Ltd. v. Microsoft Corporation* (Supreme Court of Canada File #34282) as a ground or basis for terminating this Settlement Agreement pursuant to sections 14.1(1) and 14.1(2) or otherwise at law.

14.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree:

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying or authorizing any of the Proceedings as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of any Proceedings as a class proceeding that has occurred after the date of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue, and any prior procedural or substantive ruling in respect of the ongoing Proceedings that has occurred after the date of this Settlement Agreement, shall be without prejudice to any position that the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties may later take on any procedural or substantive issue in the ongoing Proceedings or any other litigation;
- (d) any appearance, attendance, filing or any other action or step taken by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties may later take in respect of the jurisdiction of the Courts or any other court (with the exception of the jurisdiction of the B.C. Court), including a motion by one or more of

the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties seeking to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over such defendant in the Proceedings or any other litigation;

- (e) the Parties shall negotiate in good faith to determine a new timetable, if the Proceedings are to continue against the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties;
- (f) within ten (10) days of such termination or failure having occurred, Class Counsel shall destroy all Documents or other information provided by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties as cooperation under this Settlement Agreement, or containing or reflecting information derived from such Documents or other information, and to the extent that Class Counsel has disclosed any Documents or other information provided by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties to any other person (including Plaintiffs' experts), shall recover and destroy such Documents and other information. Class Counsel shall provide the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties with a written certification by Class Counsel of such destruction. Nothing contained in this subsection shall be construed to require Class Counsel to destroy any of their work product; and
- (g) each Class Counsel shall forthwith deliver consents in writing to counsel for the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties authorizing the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties to bring motions before each of the Courts for orders:
 - (A) directing that the balance of the Settlement Amount in the Trust Account less the ISP Release Payment shall be paid to the Contributing Individual Settling Parties, in accordance with section

14.3 of this Settlement Agreement, and that, subject to any contrary order of the Courts, the ISP Release Payment be paid to or held for the benefit of the Plaintiffs (individually in their capacity as named Plaintiffs only);

- (B) directing that the balance of the proceeds from the Assignment in the Trust Account shall be paid to the Domfoam Defendants, in accordance with section 14.3 of this Settlement Agreement;
- (C) declaring that this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 14.4 of this Settlement Agreement); and
- (D) setting aside any order certifying or authorizing the Proceedings as a class proceedings on the basis of this Settlement Agreement.

14.3 Allocation of Monies in the Trust Account Following Termination

(1) For greater certainty, if this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that the Assignment shall be terminated and shall have no legal effect.

(2) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Escrow Agent shall return to the Contributing Individual Settling Parties all monies from the Settlement Amount in the Trust Account including all accrued interest less the ISP Release Payment, and shall return to the Domfoam Defendants all monies from the proceeds of the Assignment received in the Trust Account as of the applicable date including all accrued interest but less the costs of the Escrow Agent and the Opt Out Administrator and the Notices that have been incurred but not paid to date, provided however, if the proceeds of the Assignment received as of the applicable date including all accrued interest are not sufficient to cover such costs, then the Escrow Agent may apply or deduct any such remaining costs (up to a maximum amount of three-hundred and seventy-five thousand Canadian dollars (CAD \$375,000)) against the Settlement Amount including all accrued

interest less the ISP Release Payment. The Escrow Agent shall remit such monies to the Contributing Individual Settling Parties and/or the Domfoam Defendants within thirty (30) business days of such termination or event having occurred. The ISP Release Payment shall be held or distributed pursuant to the Court's discretion under section 14.2(1)(g)(A).

14.4 Survival of Certain Releases Following Termination

Notwithstanding sections 14.2 and 14.3 of this Settlement Agreement, in the event that the Contributing Individual Settling Parties comply with their obligations of payment under section 4.1 of this Settlement Agreement and the Individual Settling Parties and the Brayiannis Defendant comply with their obligations of cooperation set out in section 4.5 of this Agreement prior to the Approval Hearings, but this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason that does not arise as a result from a breach of the Individual Settling Parties or the Brayiannis Defendant, and the Courts approve an order under section 14.2(1)(g)(A) directing that the ISP Release Payment can be paid to, or held for the benefit of, the Plaintiffs (individually in their capacity as named Plaintiffs only), the provisions of sections 14.2, 14.3, 14.4 and 14.5 shall apply and bind the Parties, but the Plaintiffs excluding Option Consommateurs (individually in their capacity as named Plaintiffs only) shall still be deemed to have fully, finally and forever released, relinquished and discharged all Released Claims against the Releasees, shall covenant not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting any such Released Claims against the Releasees so long as the Individual Settling Parties and the Brayiannis Defendant continue to provide cooperation pursuant to section 4.5 of this Agreement. Section 7.2 applies to any release under this section. For greater certainty, nothing in this section purports to affect the rights of any other Settlement Class Members as against the Individual Settling Parties and the Brayiannis Defendant, and the Individual Settling Parties and the Brayiannis Defendant will not object to the addition or substitution of plaintiffs to allow for the continuation of the Proceedings as proposed class proceedings, will not raise limitations or estoppel arguments as against any other putative member of

the Settlement Class arising from this section, nor will they raise conflict of interest arguments as against the Plaintiffs or Class Counsel arising from this section, provided the Plaintiffs (including Option Consommateurs) and Class Counsel shall not in any circumstance use any information or Documents obtained or derived in respect of the Individual Settling Parties and the Brayannis Defendant pursuant to section 4.5 of this Settlement Agreement for the purpose of asserting any claims relating to the Released Claims against any Releasees in any proceeding or other forum, unless such information or Documents are lawfully obtained through other means.

14.5 Survival of Provisions after Termination

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the provisions of sections 4.5(2), 4.5(11), 9, 10.2, 11, 12.2(4), 13(1), 14 and 15(18) (and any additional provisions governing confidentiality and any addition provisions governing cooperation to the extent that there is continuing cooperation) shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of sections 4.5(2), 4.5(11), 9, 10.2, 11, 12.2(4), 13(1), 14 and 15(18) (and any additional provisions governing confidentiality and any additional provisions governing cooperation to the extent that there is continuing cooperation) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 15 - MISCELLANEOUS

15.1 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or the Distribution Protocol.

15.2 Motions for Directions

(1) Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties may apply to the Courts for directions in respect of this Settlement Agreement.

(2) Class Counsel may apply to the Courts for directions in respect of the Distribution Protocol.

(3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

15.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

15.4 Computation of Time

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

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- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

15.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Proceeding.
- (2) No Party shall ask a Court to make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other relevant Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding sections 15.5(1) and 15.5(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Quebec Settlement Class Member or a B.C. Settlement Class Member shall be determined by the Ontario Court.
- (4) For the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree to submit to the jurisdiction of the Courts solely for the purpose of implementing, administering and enforcing this Settlement Agreement. The Parties acknowledge and confirm that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties do not attorn to the Courts for any other purpose or proceeding and that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties otherwise reserve all of their other existing jurisdictional rights.
- (5) The Plaintiffs, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

15.6 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

15.7 Entire Agreement

This Settlement Agreement, including the Confidential Opt Out Agreement, constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

15.8 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

15.9 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall be binding upon all of the Releasees.

15.10 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

15.11 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

15.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by law or by the Courts, the Domfoam Defendants and the Individual Settling Parties shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

(2) The cost of translating the Notices, claims forms, Opt Out Forms or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required by law or by the Courts, be paid by the Domfoam Defendants and the Individual Settling Parties.

15.13 Transaction

The Parties agree that this Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

15.14 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

15.15 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

15.16 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

15.17 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

15.18 Notice

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Proceedings:

Harvey T. Strosberg, Q.C. and
Heather Rumble Peterson

Ward Branch and
Luciana Brasil

SUTTS, STROSBURG LLP
600-251 Goyeau Street
Windsor, ON N9A 6V4

BRANCH MACMASTER
1410 – 777 Hornby Street
Vancouver, BC V7G 3E2

Tel: 519-258-9333
Fax: 519-258-9527
Email: harvey@strosbergco.com
hpeterson@strosbergco.com

Tel: 604-654-2966
Fax: 604-684-3429
Email: wbranch@branmac.com
lbrasil@branmac.com

Daniel Belleau and
Maxime Nasr

J.J. Camp, Q.C. and
Reidar Mogergerman

BELLEAU LAPOINTE
306 Place d'Youville, Suite B-10
Montreal, QC H2Y 2B6

CAMP FIORANTE MATTHEWS
MOGERGERMAN
400 – 856 Homer St.
Vancouver, B.C. V6B 2W1

Tel: 514-987-6700
Fax: 514-987-6886
Email: dbelleau@belleaulapointe.com
mnasr@belleaulapointe.com

Tel: 604-689-7555
Fax: 604-689-7554
Email: jjcamp@cfmlawyers.ca
rmogerman@cfmlawyers.ca

For the Domfoam Defendants:

Christopher P. Naudie

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8
Tel: 416-862-6811
Fax: 416-862-8666
Email: cnaudie@osler.com

- 72 -

For Tony Vallecoccia and John Howard:

Robert Tanner

TANNER & GUINEY
130 Adelaide Street West, Suite 3425
P.O.Box 34
Toronto, Ontario
M5H 3P5
Tel: 416-862-7745
Fax: 416-862-7874
Email: rgtanner@tannerguiney.com

**For Bruce Bradley, Dean Brayiannis,
Michael Cappuccino, Pietro (Peter) Foti,
Duke Greenstein, Dale McNeill, James
William Sproule, Robert Valle and Fred
Zickmantel:**

Jack Berkow

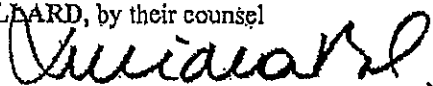
BERKOW COHEN LLP
141 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 3L5
Tel: 416-364-4900
Fax: 416-364-3865
Email: jberkow@berkowcohen.com

15.19 Date of Execution

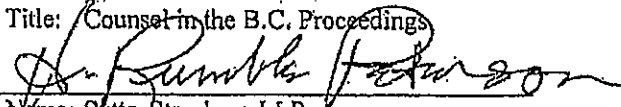
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**"HI NEIGHBOR" FLOOR COVERING CO.
LIMITED, MAJESTIC MATTRESS MFG. LTD,
TRILLIUM PROJECT MANAGEMENT LTD.,
OPTION CONSOMMATEURS and KARINE
ROBILLARD, by their counsel**

By:


Name: Branch MacMaster LLP
Title: Counsel in the B.C. Proceedings

By:


Name: Sutte, Strosberg LLP
Title: Counsel in the Ontario Proceedings

By:

Name: Camp Fiorante Matthews Mogerman
Title: Counsel in the B.C. Proceedings

By:

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

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Name: Sutts, Strosberg LLP
Title: Counsel in the Ontario Proceedings

By:

Name: Camp Fiorante Matthews Mogenman
Title: Counsel in the B.C. Proceedings

By:

Belleau Lapointe

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

DOMFOAM INTERNATIONAL, INC., by its counsel

By: *P. P. Pander*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

VALLE FOAM INDUSTRIES (1995) INC., by its counsel

By: *P. P. Pander*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

A-Z SPONGE & FOAM PRODUCTS LTD., by its counsel

By: *P. P. Pander*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

BRUCE BRADLEY

By: _____

DEAN BRAYIANNIS

By: _____

15.19 Date of Execution

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By: _____
Name: Branch MacMaster LLP
Title: Counsel in the B.C. Proceedings

By: _____
Name: Sutts, Strosberg LLP
Title: Counsel in the Ontario Proceedings

By: _____
Name: Camp Fiorante Matthews Mogeran
Title: Counsel in the B.C. Proceedings

By: _____
Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

By: Andrew Morganti
Name: Andrew Morganti
Title: Counsel in the Ontario Proceedings

- 74 -

DOMFOAM INTERNATIONAL, INC., by its counsel

By:

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

VALLE FOAM INDUSTRIES (1995) INC., by its
counsel

By:

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

A-Z SPONGE & FOAM PRODUCTS LTD., by its
counsel

By:

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

BRUCE BRADLEY

By:

Bruce Bradley

DEAN BRAYLIANNIS

By:

DOMFOAM INTERNATIONAL, INC., by its counsel

By: _____

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

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counsel

By: _____

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

A-Z SPONGE & FOAM PRODUCTS LTD., by its
counsel

By: _____

Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

BRUCE BRADLEY

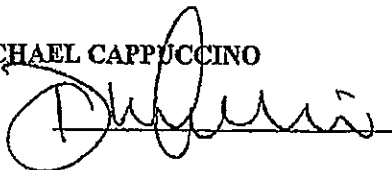
By: _____

DEAN BRAYIANNIS

By: _____

A handwritten signature in black ink, appearing to read 'DB', is written over a horizontal line.

MICHAEL CAPPUCCINO

By:  _____

PIETRO (PETER) FOTI

By: _____

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: _____

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: Pietro (Peter) Foti

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: _____

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

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DALE MCNEIL

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MICHAEL CAPPUCCINO

By: _____

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By: _____

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: John C Howard

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: _____

DUKE GREENSTEIN

By: _____

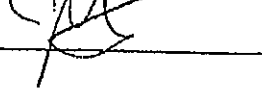
JOHN HOWARD

By: _____

^{DA}
DALE MCNEILL

By: Dale McNeill

JAMES WILLIAM SPROULE

By:  _____

ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By: _____

JAMES WILLIAM SPROULE

By: _____

ROBERT VALLE

By: Robert Valle

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By: _____

JAMES WILLIAM SPROULE

By: _____

ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: *T. Vallecoccia*

FRED ZICKMANTEL

By: _____

.....

- 76 -

JAMES WILLIAM SPROULE

By: _____

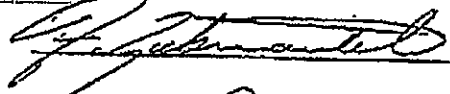
ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By: 
Jan 12, 2012

- 77 -

SCHEDULE "A"

Proceedings

#	Court and File No.	Plaintiffs' Counsel	Style of Cause	
1	Supreme Court of British Columbia (Vancouver Registry) (Court File No. VLC-S-S-106362)	Branch MacMaster LLP	<i>Majestic Mattress Mfg., Ltd. v. Vitafoam Products Canada Limited et al.</i>	Vitafoam Products Canada Limited, Vitafoam Incorporated, Hickory Springs Manufacturing Company, Valle Foam Industries (1995) Inc., Domfoam International, Inc., A-Z Sponge & Foam Products Ltd., The Carpenter Company, Woodbridge Foam Corporation, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc., and Future Foam, Inc.
2	Supreme Court of British Columbia (Vancouver Registry) (Court File No. S-106213)	Camp Fiorante Matthews Mogerman	<i>Trillium Project Management Ltd. v. Hickory Springs Manufacturing Company et al.</i>	Hickory Springs Manufacturing Company, Valle Foam Industries, Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., The Woodbridge Group, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations Canada, Inc., Future Foam, Inc., Vitafoam Products Canada Limited and Vitafoam, Inc.

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#	Court and File No.	Plaintiffs' Counsel	Style of Cause	
3	Ontario Superior Court of Justice (Windsor) (Court File No. CV-10-15164)	Sutts, Strosberg	<i>"Hit Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company</i>	Hickory Springs Manufacturing Company, Valle Foam Industries (1995), Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., Woodbridge Foam Corporation, Flexible Foam Products, Inc., Foamex Innovations, Inc., Future Foam, Inc., Leggett & Platt, Inc., Vitafoam Products Canada Limited, Vitafoam, Inc., Dean Brayianis, Bruce Schneider, Robert Magee and Michael Lajambe
4	Ontario Superior Court of Justice (Windsor) (Court File No. CV-11-17279)	Sutts Strosberg	<i>"Hit Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company</i>	Hickory Springs Manufacturing Company, Valle Foam Industries (1995), Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., Flexible Foam Products, Inc., Foamex Innovations, Inc., Future Foam, Inc., Leggett & Platt, Inc., Mohawk Industries Inc., Vitafoam Products Canada Limited, Vitafoam, Inc., Woodbridge Foam Corporation, David Carson, Louis Carson, Dean Brayianis, Bruce Schneider, Michael Lajambe and Robert Magee

#	Court and File No.	Plaintiffs' Counsel	Style of Cause	
5	Superior Court of Québec (Montreal) (Court File No. 500-06-000524- 104)	Belleau Lapointe	<i>Karine Robillard c. Produits Vitafoam Canada Limitée et al., et Vitafoam Inc.</i>	Produits Vitafoam Canada Limitée, and Vitafoam Inc.

**SCHEDULES B1, B2 B3, C –
INTENTIONALLY DELETED**

ASSIGNMENT AND ASSUMPTION AGREEMENT

Made as of January 10, 2012

Between

**DOMFOAM INTERNATIONAL, INC.,
VALLE FOAM INDUSTRIES (1995) INC. and
A-Z SPONGE & FOAM PRODUCTS LTD.**

(the "Domfoam Defendants")

**"HI NEIGHBOR" FLOOR COVERING CO. LIMITED,
MAJESTIC MATTRESS MFG. LTD.,
TRILLIUM PROJECT MANAGEMENT LTD.,
OPTION CONSOMMATEURS and KARINE ROBILLARD**

(the "Plaintiffs")

ASSIGNMENT AND ASSUMPTION AGREEMENT


1. **Definitions.** The definitions and recitals set out in the Settlement Agreement apply to and are incorporated into this Assignment and Assumption Agreement.
2. **Assignment.** The Domfoam Defendants hereby absolutely and unconditionally grant, assign, convey and set over unto the Plaintiffs, in trust for the Settlement Class, as of the date of this Assignment and Assumption Agreement, any potential rights, interests and title that the Domfoam Defendants, or any one or more of them, may have in respect of the potential distribution proceeds arising from the U.S. Urethane Settlement as a result of a claim or claims that any Domfoam Defendant have filed or may file as part of the U.S. Urethane Settlement that has been approved by the U.S. Courts as of the Execution Date, provided that any such assignment shall be strictly limited to a maximum amount or sum of the first two hundred thousand Canadian dollars (CAD \$200,000) that any Domfoam Defendant may receive as distribution proceeds as part of the U.S. Urethane Settlement.
3. **Severability.** Any provision of this Assignment and Assumption Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Assignment and Assumption Agreement, all without affecting the remaining provisions of this Assignment and Assumption Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
4. **Governing Law.** This Assignment and Assumption Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
5. **Successors and Assigns.** This Assignment and Assumption Agreement enures to the benefit of, and is binding on, the Plaintiffs and their successors and assigns, and enures to the benefit of, and is binding on, the Domfoam Defendants and their successors and assigns.

-ii-

6. Execution. This Assignment and Assumption Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same document, and a facsimile signature shall be deemed an original signature for purposes of this agreement.

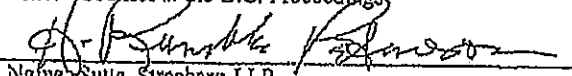
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TRILLIUM PROJECT MANAGEMENT LTD, and
KARINE ROBILLARD, by their counsel



Name: Branch MacMaster LLP

Title: Counsel in the B.C. Proceedings



Name: Sutta, Strosberg LLP

Title: Counsel in the Ontario Proceedings

Name: Camp Fiorante Matthews Mogerman

Title: Counsel in the B.C. Proceedings

Name: Belleau Lapointe

Title: Counsel in the Quebec Proceeding

-ii-

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Name: Branch MacMaster LLP
Title: Counsel in the B.C. Proceedings

Name: Suttis, Strosberg LLP
Title: Counsel in the Ontario Proceedings

Name: Camp Fiorante Matthews Megarhan
Title: Counsel in the B.C. Proceedings

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

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KARINE ROBILLARD, by their counsel

Name: Branch MacMaster LLP
Title: Counsel in the B.C. Proceedings

Name: Suits, Strosberg LLP
Title: Counsel in the Ontario Proceedings

Name: Camp Florante Matthews Mogeran
Title: Counsel in the B.C. Proceedings

Belleau Lapointe
Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

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By: _____
Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

By: Andrew Morganti
Name: Andrew Morganti
Title: Counsel in the Ontario Proceedings

DOMFOAM INTERNATIONAL, INC., by its counsel

By: *C.P. Mauder*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

VALLE FOAM INDUSTRIES (1995) INC., by its counsel

By: *C.P. Mauder*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

A-Z SPONGE & FOAM PRODUCTS LTD., by its counsel

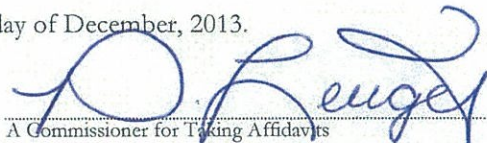
By: *C.P. Mauder*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

TAB D

This is Exhibit "D" referred to
in the Affidavit of Tony Vallecoccia

Sworn this 12th

day of December, 2013.



A Commissioner for Taking Affidavits

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors,
Expires July 4, 2015.

**REVENU
QUÉBEC**



Direction des oppositions - Montréal

Montreal, May 29, 2013

David T. Ullman
MINDEN GROSS LLP
145, King Street West, suite 2200
Toronto ON M5H 4G2

Subject: DOMFOAM INTERNATIONAL INC.
Notice of objection
Ref No: 315238 and 315244

Sir,

We wish to inform you that the above mentioned file has been assigned to the undersigned for consideration.

We read the motives provided with the notice of objection and we want to bring to the attention of your client the following facts.

Intercompany Accounts

GST : \$1 664 824.52

A person making the election under section 156 of the Excise Tax Act (ETA) must be a specified member of a qualifying group.

A "qualifying group" means a group of corporations, each member of which is closely related, within the meaning assigned by section 128 ETA, to each other member of the group :

For the purposes of this Part, a particular corporation and another corporation are closely related to each other at any time if at that time

(a) not less than 90% of the value and number of the issued and outstanding shares of the capital stock of the other corporation, having full voting rights under all circumstances, are owned by

- (i) the particular corporation,*
- (ii) a qualifying subsidiary of the particular corporation,*

Compté Desjardins, secteur D29110
C.P. 5000, succursale Desjardins
Montréal (Québec) H5H 1A7
Tél : 514-287-8324 ou 1 888 830-8808 (poste 2878324)

- (iii) a corporation of which the particular corporation is a qualifying subsidiary,
- (iv) a qualifying subsidiary of a corporation of which the particular corporation is a qualifying subsidiary, or
- (v) any combination of the corporations or subsidiaries referred to in subparagraphs (i) to (iv), or
- (vi) (Repealed by 1993, c. 27, s. 12(1).)
- (b) the other corporation is a prescribed corporation in relation to the particular corporation.

Your client must prove that he is a specified member of a qualifying group.

Temp services

CTI : \$154 686.14

RTI : \$ 245 286.03

Your client must prove that he acquired the goods and services of suppliers who issued the invoices.

The copies of the invoices are not sufficient to prove that your client acquired goods and services from the suppliers. The decision of the Federal Court of Appeal in the case *Amiante Spec Inc. c. Canada*, 2009 CAF 139 confirm the judgment of first instance *Amiante Spec Inc. c. La Reine*, 2008 CCI 89.

[79] Based on the testimonial and documentary evidence, the Appellant has not shown that the transactions referred to in the invoices were genuine services in view of the record as a whole. The shifting of the burden of proof is not justified in this case because the Appellant adduced no *prima facie* evidence that it was supplied with the services.

[88] The facts of the instant case are very similar to those described in *Les Constructions L.J.P. Inc. and Équipements S.P.M. Inc. v. The Queen*, 2005 TCC 508 (CanLII), 2005 TCC 508. Even though the Minister did not show collusion, connivance or common intent between the Appellants and their subcontractors, the Court nonetheless disallowed the ITC claims because "the appellants did not show on a preponderance of the evidence that the Minister erred in determining that the suppliers in question did not genuinely render services to the appellants in exchange for payment by the appellants." (paragraph 18). Just as in the instant case, the invoices contained few details, the subcontractors were incapable of supplying the services requested because they were not engaged in any commercial activity, and the cheques adduced in evidence to show that the invoices were paid were negotiated at a cheque-cashing business, which suggests that the invoices were purely invoices of convenience.

(our emphasis)

¹ *Amiante Spec Inc. c. La Reine*, 2008 CCI 89.

Pre-filing goods

CTI : \$185 667.56

RTI : \$348 868.20

We would appreciate if you could provide the details motives of the objection with regards to the amount contested.

We invite you to submit additional documentation and representation with respect to the above issues to the undersigned either by mail or by fax at:

3 Complexe Desjardins
Tour Nord, 23^{ème} étage
SECTEUR D231 LO Montréal, Québec H1B 1 A7
FAX : 514 285-5487

Therefore, we would appreciate receiving your reply and all representation and material evidence before June 26th 2013. At that date the file will be studied and a decision will be rendered with the information on file.

Yours sincerely,



Claudie Michaud
Objection officer
Phone : 514 287-3110
Fax : 514 285-5487

TAB 3



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 12 th
)	
JUSTICE NEWBOULD)	DAY OF JANUARY, 2012

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")

INITIAL ORDER

THIS APPLICATION, made by Valle Foam Industries (1995) Inc., Domfoam International Inc., and A-Z Sponge & Foam Products Ltd. (hereinafter, collectively referred to as the "Applicants"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Tony Vallecoccia sworn January 11, 2012 and the exhibits thereto (the "Vallecoccia Affidavit"), and on hearing the submissions of counsel for the Applicants, no one else appearing although duly served as appears from the affidavit of service of Victoria Stewart sworn January

- 2 -

11, 2012, and on reading the consent of Deloitte & Touche Inc. to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that one or more of the Applicants, individually or collectively, shall have the sole authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their respective businesses (collectively, the "Business") and

Property. The Applicants shall each be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, accountants, counsel and such other persons (collectively, "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that, the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, compensation, salaries, employee and pension benefits, vacation pay and expenses (including, but not limited to, employee medical, dental, disability, life insurance and similar benefit plans or arrangements, incentive plans, share compensation plans, and employee assistance programs and employee or employer contributions in respect of pension and other benefits), and similar pension and/or retirement benefit payments, commissions, bonuses and other incentive payments, payments under collective bargaining agreements, and employee and director expenses and reimbursements, payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) compensation to employees in respect of any payments made to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers are subsequently dishonoured due to the commencement of these proceedings; and

- 4 -

- (c) the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges, including any payments made to Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings; and
- (d) amounts owing for goods and services actually supplied to the Applicants, or to obtain the release of goods contracted for prior to the date of this Order by other suppliers, solely where such goods were ordered by the Applicants or any of them after November 30, 2011 on the express understanding that such goods or services were to be paid for on a cash on delivery basis and in respect of which such payment has not been made by the Applicants or any of them.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment, including the posting of letters of credit, for goods or services actually supplied or to be supplied to the Applicants following the date of this Order;

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed, terminated, repudiated or resiliated in accordance with the CCAA, the Applicants

shall pay all amounts constituting rent or payable as rent under their respective real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA have the right to:

- 5036(1)
- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, and to dispose of non-profitable, redundant or non-material assets and operations, and to dispose and sell such assets or operations not exceeding \$100,000.00 in any one transaction or \$1 million in the aggregate;

- (b) terminate the employment of such of their employees or lay off or temporarily or indefinitely lay off such of their employees as the relevant Applicant deems appropriate on such terms as may be agreed upon between the relevant Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan
- (c) in accordance with paragraphs 10 (a) and (d), vacate, abandon, resiliate, or quit any leased premises and/or disclaim, cancel, terminate or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) disclaim, terminate, repudiate or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements, agreements or contracts of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with Section 32 of the CCAA, with such disclaimers, repudiation, termination, or resiliations to be on such terms as may be agreed upon between the relevant Applicants and such counter-parties, or failing such agreements, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

- 8 -

all of the foregoing to permit the Applicants to proceed with an orderly restructuring or winding down of some or all of the respective Business (the "Restructuring").

11. **THIS COURT ORDERS** that the Applicants shall each provide each of the relevant landlords with notice of the relevant Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Applicant, or by further Order of this Court upon application by the relevant Applicant on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant disclaims, resiliates, repudiates or terminates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer, termination or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

12. **THIS COURT ORDERS** that if a lease is repudiated or if a notice of disclaimer or termination or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, termination, repudiation or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant's and the Monitor 24 hours' prior written notice, and

(b) at the effective time of the disclaimer or termination or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. **THIS COURT ORDERS** that until and including February 10, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the

Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, authorization, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all waste disposal service providers, all computer software, information technology services, communication and other data services, programming supply, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be

entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers (or their estates) of the Applicants with respect to any claim against such directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment, performance or breach of such obligations, acts, or actions until a compromise or arrangement in respect of

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the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. **THIS COURT ORDERS** that the Applicants shall jointly indemnify their directors and officers from and against all claims, costs, charges, expenses, obligations and liabilities that they may incur as directors or officers of the Applicants, after the date hereof except to the extent that, with respect to any officer or director, such claim, cost, charge, expense, obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$1 million as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraph 32 herein.

21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

APPOINTMENT OF MONITOR

22. **THIS COURT ORDERS** that Deloitte & Touche Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist and advise the Applicants in their development of the Plan or winding down, downsizing and any amendments to the Plan, any restructuring steps taken pursuant to paragraphs 5 and 10 hereof, and the implementation of the Plan;
- (d) advise the Applicants in the preparation of their cash flow statements;

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- (e) assist and advise the Applicants, to the extent required by the Applicants, with the negotiations with creditors and the holding and administering of creditors' (or shareholders' meetings) for voting on the Plan;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) consider, and if deemed advisable by the Monitor, prepare a report as an assessment of the Plan;
- (i) assist the Applicants with their continuing restructuring activities, including the assessment and analysis of any proposed sale of assets or closure of facilities;
- (j) advise and assist the Applicants, as requested, in their negotiations with suppliers, customers and other stakeholders; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder,

- 15 -

be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential,

the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

27. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, including completing and implementation of the settlements with the class action plaintiffs. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on an hourly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the amounts of \$150,000.00 and \$50,000.00, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

29. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$500,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings, including completing the settlements with the class action plaintiffs. The Administration Charge shall have the priority set out in paragraph 32 hereof.

31. **THIS COURT ORDERS** that Valle Foam Industries (1995) Inc. ("Valle Foam") shall be authorized to advance funds up to, but not exceeding \$1 million to either of A-Z Sponge & Foam Products Ltd. ("A-Z") or Domfoam International Inc. ("Domfoam") to be used for operating purposes of Domfoam or A-Z, as the case may be, provided that i) no such loan shall be advanced without the prior written consent of the Monitor, ii) that any such loan shall be properly documented and subject to such terms, including rates of interest, if any, which the Monitor deems reasonable in the circumstances, and iii) that any such loan shall be secured by way of a general security agreement which shall provide a first in priority charge on the assets of Domfoam subject only to the priority of the charges granted hereunder. The Applicants may, prior to the advance of any funds, attend to seek a further order of this court to grant a specific charge if the Applicants or the Monitor deem it appropriate or necessary to do so.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

32. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$~~500,000~~; 500,000 ✓

Second – Directors' Charge (to the maximum amount of \$~~1,000,000~~; 1,000,000 ✓

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or the Administration Charge, (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect. ✓

34. **THIS COURT ORDERS** that each of the Directors' Charge or the Administration Charge, (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person. ✓

35. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or Administration Charge, unless the Applicants also obtains the prior written consent of the Monitor, and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court. ✓

36. **THIS COURT ORDERS** that the Directors' Charge and the Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s)

for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers, settlements at undervalue, oppressive conduct, or other challengeable or void or voidable transactions or reviewable transactions under any applicable law.

37. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

38. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in ^{the Globe and Mail} ~~[newspapers specified by the Court]~~ a notice containing the information

prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

39. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

40. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.deloitte.com/ca/vallefoam.

GENERAL

41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.
43. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
44. **THIS COURT ORDERS** that the Monitor is hereby authorized, as the foreign representative of the Applicants, to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.
45. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

INITIAL ORDER

MINDEN GROSS LLP
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Lawyers for the Applicants

TAB 4

no one appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Victoria Stewart sworn July 11, 2013,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Stay Period of the Initial Order of Justice Newbould dated January 12, 2012 and as subsequently extended by, *inter alia*, the Order of Justice Newbould dated February 28, 2013, is hereby extended from July 31, 2013 to and including December 31, 2013.
3. **THIS COURT ORDERS** that the Report and the actions, decisions and conduct of the Monitor as set out in the Report are hereby authorized and approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Report and the affidavits of Catherine Hristow and Grant Moffat, and the exhibits attached thereto, are hereby authorized and approved.

5. **THIS COURT ORDERS** that the Applicants are hereby authorized and directed to pay the fees and disbursements of the Monitor and of its legal counsel and agents in the amounts set out in the Report.

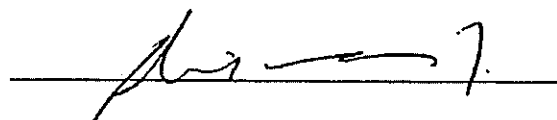
6. **THIS COURT HEREBY** requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and are hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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

JUL 17 2013
MB

#2002116 | 4079509

A handwritten signature in black ink, appearing to be "A. J.", written over a horizontal line.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 3113736 CANADA LTD.,
4362063 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

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

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(Extension Order)**

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Lawyers for the Applicants

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 3113736 CANADA LTD., 4362063
CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

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

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**MOTION RECORD OF THE APPLICANTS
(returnable December 17, 2013)
(re Extension of Stay Period)**

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