

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 July 17, 2013)
(re Extension of Stay Period)

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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

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

THE APPLICANTS will make a motion to a judge presiding over the Commercial List on Wednesday, July 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 on July 17, 2013, 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 Newbould dated February 28, 2013, to and including December 31, 2013;
- (c) approving the Seventh Report of the Monitor (the “**Report**”) and the conduct of the monitor as set out therein.
- (d) approving the fees and disbursements of the monitor and its counsel;

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 Newbould dated October 25, 2012 extended the stay period under the Initial Order to February 28, 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 Order of Justice Brown dated March 16, 2012, authorized and directed each of the Applicants to enter into agreements of purchase and sale. Each of the Applicants has sold its business on a going concern basis.
5. The Applicants have funds from these sales and their operations to distribute to their creditors.
6. By Order of Justice Brown dated June 15, 2012, a Claims Solicitation Procedure was authorized and approved.
7. The Monitor in conjunction with the Applicants have solicited claims from the creditors, issued Notices of Disallowance where appropriate, and received Notices of Dispute from certain creditors.

8. The Applicants are in discussions with certain of its major creditors, including the proposed class action creditors and Revenu Quebec/Canada Revenue Agency.

9. The Applicants continue to facilitate the payments to them for certain U.S. class action litigation known as the “Polyol Claims”.

10. The Applicants are also engaged in pursuing several parties in respect of outstanding accounts totalling in excess of \$1.5 million. The Applicants have commenced litigation in connect with many of these claims.

11. A further extension of the Stay Period is necessary and appropriate to allow the Applicants and the Monitor to complete various post-closing issues and the Claims Process.

12. The Monitor is supportive of the relief sought herein.

13. The Applicants are operating in good faith and with due diligence.

14. Section 11 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.

15. 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.

16. 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.	July 11, 2013	Affidavit of Tony Vallecoccia together with exhibits attached thereto
2.	July, 2013	Seventh Report of the Monitor together with exhibits attached thereto, filed separately
3.	January 12, 2012	Initial Order of Justice Newbould
4.	June 15, 2012	Order of Justice Brown (Claims Solicitation Procedure)
5.	February 28, 2013	Extension Order of Justice Newbould
6.	Such other material as counsel may advise and this Honourable Court may permit.	

July 11, 2013

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SCHEDULE "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE M) WEDNESDAY, THE 17th DAY
)
 JUSTICE) OF JULY, 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 July 11, 2013, and the exhibits thereto, the Seventh Report of Deloitte Restructuring Inc. (formally known as Deloitte & Touche Inc.), in its capacity as Court-appointed monitor of

the Applicants (the “**Monitor**”) and the appendices attached thereto (the “**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 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.

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 July 11, 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 July 31, 2013 to December 31, 2013; ii) to report to the Court on the status of the claims process; and iii) to report to Court on the status 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. Certain administrative steps have been taken since my last affidavit to close the remaining Domfoam bank accounts and consolidate all funds with the Monitor.

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. The total amount of the receivables is in excess of \$2 million. In conjunction with the Monitor, we have compiled a list of the material receivables which remain outstanding.

14. Valle Foam’s counsel made demand on the ten largest receivables in respect of which the aggregate amount owing was about \$1.5 million.

15. In order to pursue the larger accounts, it was decided, in conjunction with the Monitor, that Valle Foam would commence legal proceedings. Valle Foam has issued 10 Statements of Claim in respect of same. Two of the defendants did not file any defences and have been noted in default. One defendant which retained counsel was to file a defence on July 8, 2013. However, no defence on

that matter has been received as at the present date. The remainder of the defendants have filed defences.

16. In one case, the defendant responded with a Defence and Counterclaim. Counsel for Valle Foam has advised this party that any counterclaim is either barred by the stay imposed by the Initial Order, or is extinguished by the June 15, 2012, by Order of Justice Brown (the "**Claims Process Order**"), which established that claims not made by August 31, 2012 would be barred and extinguished.

A-Z FOAM

17. 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

18. 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.

19. 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.

20. 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.

21. 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

22. 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 five class action lawsuits in Canada, and over two dozen class action lawsuits in the United States (together, the "**Class Actions**"). These actions have been stayed as a result of the Initial

Order.

STATUS OF U.S. LITIGATION

23. 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 which are part of a multi-district litigation proceedings styled in Re Polyurethane Foam Anti Trust litigation in the United States District Court for the Northern District of Ohio.

24. 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.

25. The class settlements have been approved by the court. Attached hereto and marked as **Exhibit "A"** 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.

26. 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 "B"** 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.

27. 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

28. There are currently five 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 four 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.

29. A proposed national class settlement on behalf of the Applicants with the class action plaintiffs in respect of all of the Canadian Class Proceedings has been reached. The settlement agreement was executed by the Applicants and the class action plaintiffs prior to the Initial Order and anticipated that the Applicants would file these proceedings.

30. In exchange for cooperation from certain current representatives of the Applicants (in the form of interviews, depositions, and testimony), and the production of certain available documents by the companies (to the extent practicable), the class action plaintiffs have agreed to discontinue their proceedings as against the Applicants and to fully and forever release any of the

Applicants' current or former officers, employees, agents, shareholders, or owners.

31. The settlement agreement provided for an assignment by the Applicants of a portion of the proceeds from the U.S. polyol litigation (described in more detail below) of up to \$200,000.00. The assignment is made expressly subject to any Order of this Honourable Court. The class action plaintiffs have agreed to bear any risk relating to the validity or enforceability of the assignment. Attached hereto and marked as **Exhibit "C"** is a copy of the Settlement Agreement made as of January 10, 2012. The proposed settlement also provides for the payment of \$1.2 million by certain individuals who are parties to the settlement agreement. The individual payments have been made to the escrow agent and the Monitor holds the \$200,000.00 U.S. polyol settlement proceeds.

32. The implementation of the settlements was delayed for some time as a result of a carriage dispute in Quebec.

33. The class plaintiffs have brought their motions for certification of the proposed settlement class before the Ontario, Quebec and B.C. Courts. On June 28, 2013, the parties convened a joint hearing before Justice Leitch of the Ontario Superior Court and Justice Bowden of the B.C. Supreme Court. The non-settling defendants confirmed that they did not oppose the proposed certification order,

and the two courts did not express any concern in respect of the proposed order. The courts did request certain changes to the proposed class notice and the plan for dissemination of the notice. On July 8, 2013, the class plaintiffs filed further materials including an amended notice and an amended dissemination plan with the Ontario and B.C Courts. The parties are still waiting to obtain final orders from the Ontario and B.C. Courts. On July 8, 2013, the class plaintiffs also convened their hearing before Justice Lalonde of the Quebec Superior Court. The non-settling defendants opposed certain aspects of the order, and the parties made submissions. Following those submissions, the Quebec Superior Court approved a modified order, and approved the amended notice and the amended dissemination plan, with a more formal judgment and reasons to follow.

34. The Applicants expect that they will receive final orders from the three courts within the next 7-10 days, and that the class notice will be published shortly after that. Under the amended dissemination plan, the Applicants will be required to engage best efforts to locate a list of customers for the class period, and to the extent a list is located, the plaintiffs will complete a direct mailing to historical purchasers of the Applicants. The Quebec Superior Court has scheduled a final settlement approval hearing for September 24, 2013, and Justice Lalonde has indicated that he would prefer not to conduct a joint hearing. The Applicants

expect that the Ontario and B.C. Courts will likely schedule their settlement approval hearings in late September or early October 2013.

35. 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 total \$97.5 million.

STATUS OF FUNDS

36. 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.

37. In particular, the Monitor holds funds in approximately the following amounts as at July 11, 2013:

Valle Foam	\$5,661,222.92
Domfoam	\$3,309,411.09
A-Z	\$882,086.66

Urethane Antitrust Litigation

38. 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**").

39. 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 first relating to a settlement by Bayer AG and its subsidiaries (collectively "**Bayer**") was made back in 2008. A subsequent settlement was reached with BASF Corporation ("**BASF**") and Huntsman International LLC ("**Huntsman**"). This settlement was approved by the United States District Court for the District of Kansas by Order of Judge Lungstrum dated December 12, 2012. The BASF and Huntsman settlements provide for payment in instalments. The first instalment described below has been paid. The balance is expected in late 2013 or early 2014.

40. 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. This judgment will be appealed. The Applicants could receive a further significant payment from this judgment, or any related settlements.

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

42. The first \$200,000.00 of the Polyol claims was assigned in the Class Action Settlement. The Polyol claims were not marketed for sale in the sale process conducted in these proceedings. The Polyol claims were not listed as an asset available for sale in the sale process conducted by the Applicants and the Monitor.

43. The Polyol claims were not included as an asset to be acquired by any purchaser in any of agreements of purchase and sale with the Applicants.

44. In the case of the transaction for the sale of the Domfoam business Assets, the Polyol claims were specifically excluded from the assets being acquired by the purchaser of Domfoam. In the case of the Valle Foam and A-Z transactions, the Polyol claims were not addressed nor valued in the respective purchase agreements as neither the Applicants, nor to my knowledge the purchasers, intended for it to form part of the assets being purchased or sold.

45. Following the completion of the sale of the Polyol claims remain an asset of the Applicants and are anticipated to be part of the proceeds available to be distributed to the creditors of the Applicants.

46. 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. RRS facilitated the payment of the Bayer settlement at that time.

47. The Applicants received the first instalments of the BASF and Huntsman Settlements in the amount of U.S. \$196,802.78 and U.S. \$26,325.87 with respect to the claims of Domfoam and A-Z, respectively, and U.S. \$331,928.29 with respect to Valle Foam. The Domfoam and A-Z payments are net of the fees owing to RRS. The Valle Foam settlement was a gross amount.

48. The Monitor had some questions with respect to the entitlement of RRS and its related entities to these fees. Counsel for the Applicants and the Monitor conducted an investigation into the agreements under which the fee entitlements arise.

49. I am advised that the Monitor has now satisfied itself as to the entitlement of RRS, RRS’s related entity, “Enterprise Law Group”, and its counsel, to the fees payable. Payment of the fees owing with respect to the Valle Foam settlement have now been made to Enterprise Law Group.

50. Counsel for the Applicants are in communication with RRS in order to monitor the progress of the U.S. Polyol litigation.

CLAIMS PROCESS

51. 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.

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

53. At this time, the significant claims are 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.

54. The class action claims were filed in the same amount against each of the three companies. In discussion with the class plaintiffs' counsel we have confirmed that their total claim is \$97.5 million against the Applicants on a joint and several basis.

55. The extent of the anticipated distribution by the Applicants will be determined once the negotiation and/or adjudication of the claims have been completed.

Contested Claims

56. 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 and the class action creditors.

Class Action Creditors

57. With respect to the class action creditors, the claims were disallowed on the following basis:

- The claim was filed on behalf of a proposed class, but there was not yet any court order or agreement authorizing the filing as a class;
- The claims were in an amount “to be ascertained” and the claims process required that claimants put a value on the claim.

58. The Applicants, with the assistance of the Monitor and its counsel have entered into preliminary discussions to determine whether there is a quantum of the class action claims that could be accepted on a consensual basis. This would

avoid protracted proceedings as contemplated by the Claims Process Order. The class action plaintiffs have provided a confidential without prejudice expert report to substantiate their claims. The report and other relevant background information are currently being reviewed by counsel for the Applicants and the Monitor.

Revenu Quebec

59. 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.

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

61. 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.

62. On November 1, 2012, the Monitor advised Revenu Quebec of the Monitor's position that Revenu Quebec was obliged to have its claim determined in accordance with the Claims Process Order.

63. Domfoam, in consultation with the Monitor, on November 8, 2012 filed a Notice of Objection to the assessment. A copy of the Notice of Objection (without appendices) is attached hereto as **Exhibit "D"**.

64. The Notice of Objection asserts, among other things, that the vast majority of the amount claimed 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.

65. On December 20, 2012, Domfoam was advised that its Notice of Objection was out of time.

66. On January 18, 2013, Domfoam filed an appeal to extend the time for filing the Notice of Objection.

67. On May 10, 2013 the appeal to extend time was granted. Following the granting of the appeal, Domfoam received further correspondence from Revenu Quebec setting out further arguments in opposition to the position taken by Domfoam in its Notice of Objection. It required a response by June 26, 2013. A copy of that correspondence is attached hereto as **Exhibit "E"**.

68. The correspondence from Revenu Quebec does not address the position taken by the Applicants and the Monitor with respect to the proper forum in which to resolve this matter.

69. Domfoam was granted a further extension to August 30, 2013 by Revenu Quebec. Domfoam reserved its position that the CCAA proceeding is the proper forum for this matter.

70. The Applicants and the Monitor are engaged in further review with respect to this issue. In the event a resolution cannot be reached with Revenu Quebec on or before August 30, 2013, the Applicants may bring a motion before this Court to resolve this issue.

PROPOSED EXTENSION

71. The Applicants propose that the stay of the proceeding be extended from July 31, 2013 to December 31, 2013.

72. The extension sought herein will provide the Applicants with the time necessary to attend to the resolution 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.


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

74. 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.

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

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

77. 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 11th day of)
)
July, 2013.)

Commissioner for Taking Affidavits

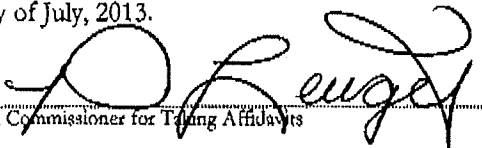

TONY VALLECOCCIA

#2001726 | 4079509

Pauline Erna Leltgeb, 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 11th
day of July, 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
DOMFOAM AND OTHERS

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 Rochietti-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

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 B

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

Sworn this 11th

day of July, 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

(K0289086.1)

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)(P). 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, mkw@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:

KOHRMAN JACKSON & KRANTZ P.L.L.

/s/ Mary K. Whitmer

Mary K. Whitmer (0018219)

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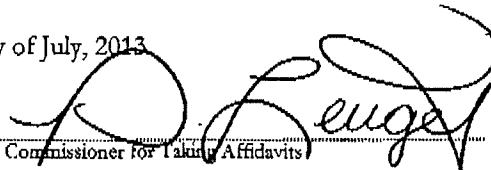
*Counsel for Deloitte & Touche Inc.,
the Foreign Representative of Valle
Foam Industries (1995) Inc.,
Domfoam International Inc., and
A-Z Sponge & Foam Products Ltd.*

TAB C

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

Sworn this 11th

day of July, 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 CAPPUCINO, PIETRO (PETER) FOTI,
DUKE GREENSTEIN, JOHN HOWARD, DALE MCNEILL,
JAMES WILLIAM SPROULE, ROBERT VALLE,
TONY VALLECOCCIA 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

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 Brayianis 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 Brayianis Defendant and the Individual Settling Parties as part of a settlement with the Domfoam Defendants;

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 Brayianis 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 Brayianis 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

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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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;

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 Brayianis 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 Brayianis 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 Brayianis Defendant and the Individual Settling Parties, without

costs as to the Plaintiffs, the classes they seek to represent, the Domfoam Defendants, the Brayianis 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

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

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 Brayianis 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 Brayianis 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.

- (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,

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

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 Brayianis 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) **Releasors** 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..

- (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

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

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

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 Brayianis Defendant. The Domfoam Defendants and the Brayianis 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.

(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 Releasers 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 Releasers 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 Brayiannis 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 Brayiannis 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

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

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

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

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

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

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 Brayiannis 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 Brayiannis 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 Brayiannis Defendant and the Individual Settling Parties shall be entitled to attend such interviews. The reasonable costs incurred by, and the reasonable expenses of, the Brayiannis Defendant and the Individual Settling Parties in relation to such interviews shall be the responsibility of the Brayiannis 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 Brayiannis 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

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 Brayiannis 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 Brayiannis Defendant and the Individual Settling Parties, and subject to the other provisions of this section, the Brayiannis 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 Brayiannis 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.

(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.

(12) Subject to the rules of evidence, the other provisions of this Settlement Agreement and any Confidentiality Order, the Domfoam Defendants, the Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis Defendant, and counsel for the Individual Settling Parties, acting reasonably, agree that such evidence from such Individual Settling Parties, the Brayiannis 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 Brayiannis 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 Brayiannis 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 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.

(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

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

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

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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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.

(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;

- (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.

(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 Brayianis 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

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

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 Brayianis 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 Brayianis 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.

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

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

- (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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis Defendant and/or the Individual Settling Parties authorizing the Domfoam Defendants, the Brayianis 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 Brayianis 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 Brayiannis 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 Brayiannis Defendant and the Individual Settling Parties do not attorn to the Courts for any other purpose or proceeding and that the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties otherwise reserve all of their other existing jurisdictional rights.

(5) The Plaintiffs, the Domfoam Defendants, the Brayiannis 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 Releasers, 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 Releasers 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

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

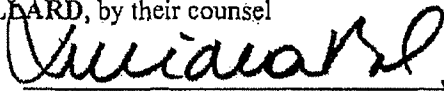
Jack Berkow

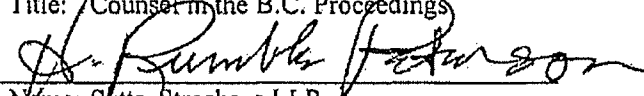
BERKOW COHEN LLP
141 Adelaide Street West
Suite 400
Toronto, Ontario
M5H 3L5
Tel: 416-364-4900
Fax: 416-364-3865
Email: jberkow@berkowcohen.com

15.19 Date of Execution

The Parties have executed this Settlement Agreement as of the date on the cover page.

**"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: Stuts, 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

15.19 Date of Execution

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LIMITED, MAJESTIC MATTRESS MFG. LTD,
TRILLIUM PROJECT MANAGEMENT LTD.,
OPTION CONSOMMATEURS and KARINE
ROBILLARD, by their counsel**

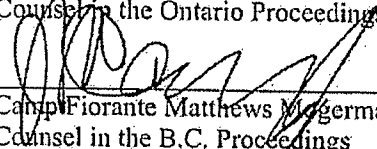
By:

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

By:

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

By:



Name: Campbell Fiorante Matthews Mogergerman
Title: Counsel in the B.C. Proceedings

By:

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

- 73 -

15.19 Date of Execution

The Parties have executed this Settlement Agreement as of the date on the cover page.

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LIMITED, MAJESTIC MATTRESS MFG. LTD,
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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 Mogerman
Title: Counsel in the B.C. Proceedings

By:

Belleau Lapointe

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

- 74 -

DOMFOAM INTERNATIONAL, INC., by its counselBy: *C. P. Paude*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel**VALLE FOAM INDUSTRIES (1995) INC.**, by its
counselBy: *C. P. Paude*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel**A-Z SPONGE & FOAM PRODUCTS LTD.**, by its
counselBy: *C. P. Paude*
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel**BRUCE BRADLEY**

By: _____

DEAN BRAYIANNIS

By: _____

15.19 Date of Execution

The Parties have executed this Settlement Agreement as of the date on the cover page.

“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: 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



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 BRAYIANNIS

By:

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:

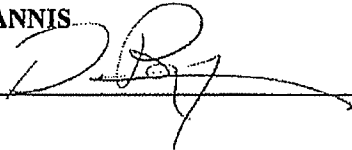
Name: Osler, Hoskin & Harcourt LLP
Title: Canadian Counsel

BRUCE BRADLEY

By:


DEAN BRAYIANNIS

By:



MICHAEL CAPPUCCINO

By:

 _____

PIETRO (PETER) FOTI

By:

DUKE GREENSTEIN

By:

JOHN HOWARD

By:

DALE MCNEIL

By:

MICHAEL CAPPUCINO

By: _____

PIETRO (PETER) FOTI

By: Pietro (Peter) Foti

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: _____

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: _____

DUKE GREENSTEIN

By:  _____

JOHN HOWARD

By: _____

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: _____

DUKE GREENSTEIN

By: _____

JOHN HOWARD

By: John C Howard

DALE MCNEIL

By: _____

MICHAEL CAPPUCCINO

By: _____

PIETRO (PETER) FOTI

By: _____

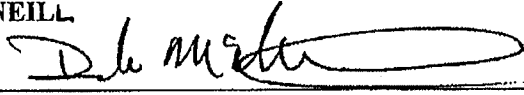
DUKE GREENSTEIN

By: _____

JOHN HOWARD

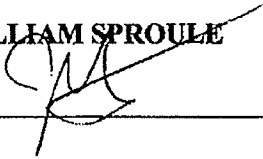
By: _____

^{DM}
DALE MCNEILL

By: 

JAMES WILLIAM SPROULE

By: _____



ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By: _____

- 76 -

JAMES WILLIAM SPROULE

By: _____

ROBERT VALLE

By: Robert Valle

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By: _____

- 76 -

JAMES WILLIAM SPROULE

By: _____

ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: *T. Vallecoccia*

FRED ZICKMANTEL

By: _____

JAMES WILLIAM SPROULE

By: _____

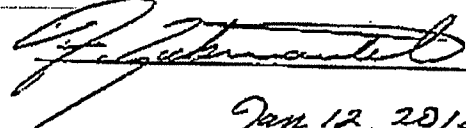
ROBERT VALLE

By: _____

TONY VALLECOCCIA

By: _____

FRED ZICKMANTEL

By: 
Jan 12, 2012

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.

#	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>"Hi! 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 Brayiannis, Bruce Schneider, Robert Magee and Michael Lajambe
4	Ontario Superior Court of Justice (Windsor) (Court File No. CV-11-17279)	Sutts Strosberg	<i>"Hi! 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 Brayiannis, 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.

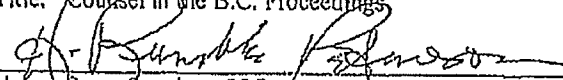
6. Execution. This Assignment and Assumption Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same document, and a facsimile signature shall be deemed an original signature for purposes of this agreement.

The Parties have executed this Assignment and Assumption Agreement as of the date on the cover page.

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



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 Mogerman
Title: Counsel in the B.C. Proceedings

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

-ii-

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LIMITED, MAJESTIC MATTRESS MFG. LTD,
TRILLIUM PROJECT MANAGEMENT LTD. and
KARINE ROBILLARD. by their counsel

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

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

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

Name: Belleau Lapointe
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"HI NEIGHBOR" FLOOR COVERING CO.
LIMITED, MAJESTIC MATTRESS MFG. LTD,
TRILLIUM PROJECT MANAGEMENT LTD. and
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 Fiorante Matthews Mogerman
Title: Counsel in the B.C. Proceedings

Belleau Lapointe

Name: Belleau Lapointe
Title: Counsel in the Quebec Proceeding

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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: 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

DOMFOAM INTERNATIONAL, INC., by its counsel

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

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

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

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

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

TAB D

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

Sworn this 11th

day of July, 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.

Notice of Objection

Use this form to file an objection to

- a notice of assessment, a notice of determination or a decision made by Revenu Québec respecting an application for a property tax refund; or
- a refund application under the International Fuel Tax Agreement (IFTA) or under a fiscal law other than the *Taxation Act* or the *Act respecting municipal taxation*, where the person received no reply within the 180-day period following the mailing date of the application.

Before filing a notice of objection, you should contact an office of Revenu Québec to try to resolve the matter. If this proves impossible and you decide to file a notice of objection, you must do so within the prescribed time limit.

A single form may be used for several objections. Please attach a copy of the notice or the refund application to which the objection applies. In Part 1, enter your address (if it differs from the address indicated on the notice or refund application to which the objection applies) and your telephone and fax numbers. Then complete Part 3 and, where applicable, Part 4.

If you cannot attach a copy of the notice or the refund application to which the objection applies, complete Parts 1, 2 and 3 and, where applicable, Part 4.

In Part 3, you must state the relevant facts and the reasons for the objection. You must also specify the issues and the amounts in dispute, where the objection relates to

- an assessment made under the *Taxation Act* for a corporation covered under paragraph (a) or (c) of section 1132 of the *Taxation Act* or a mining corporation that has not reached the production stage, an insurance corporation or a cooperative, provided the corporation's paid-up capital determined in accordance with the *Taxation Act* is at least \$10 million for the taxation year;

- an assessment of amounts payable under the *Act respecting the Québec sales tax* regarding
 - a listed financial institution, or
 - a person, other than a charity during the period in dispute, whose threshold amount determined in accordance with section 462 of the *Act* exceeds \$6 million for both the fiscal year that includes the period in dispute and the preceding fiscal year.

File this form with the Director of the Direction des oppositions, at the address given below or at any other office of Revenu Québec. You may also fax this form to 418 652-7080 or 1 866 374-7286.

The deadlines for filing the notice of objection are as follows:

- in the case of an individual or a testamentary trust,*
 - within one year after the individual's or trust's filing due date (within the meaning of section 1 of the *Taxation Act*) (or the taxation year, or
 - within 90 days after the mailing date of the notice to which the objection applies (if this deadline is more advantageous);
- in all other cases, within 90 days after the mailing date of the notice to which the objection applies.

- * The objection must be filed for a taxation year, by an individual or a testamentary trust, with regard to an assessment or a determination made under the *Taxation Act*; an assessment of an amount payable under section 34.1.1 or 37.6 of the *Act respecting the Régie de l'assurance maladie du Québec*; an assessment relating to earnings from self-employment, issued pursuant to the *Act respecting the Québec Pension Plan*; a decision made by Revenu Québec respecting a property tax refund; or an assessment issued pursuant to sections 220.2 to 220.13 of the *Act respecting municipal taxation* or sections 358 to 360 of the *Act respecting the Québec sales tax*.

1 Mailing address and identification of the person filing the objection

Send this notice to	Person filing the objection		
Direction des oppositions Revenu Québec 3800, rue de Marly, secteur 5-1-8 Québec (Québec) G1X 4A5	Name 4362063 Canada Ltd. (Mikaf Domfoam International Inc.)		
	Address 8785 Boul. Langelier, Saint-Leonard, Quebec		
	Postal code H 1 P 2 C 9		
	Area code Telephone (home)	Area code Telephone (work)	Area code Fax
	[5, 1, 4] [3, 2, 5] [8, 1, 2, 0]	[5, 1, 4] [3, 2, 5] [6, 4, 7, 7]	
Québec enterprise number (NEQ) 1143116961	Social insurance number or identification number 1010413083		
Check this box if the paid-up capital for the taxation year, determined in accordance with the <i>Taxation Act</i> , is at least \$10 million for a corporation covered under paragraph (a) or (c) of section 1132 of the <i>Taxation Act</i> , a mining corporation that has not reached the production stage, an insurance corporation or a cooperative. <input checked="" type="checkbox"/>			

(continued)

2 Information concerning the notice or the refund application to which the objection applies, and titles of pertinent laws

Notice number	Date of notice or application	Amount	Taxation year or period
1.			
2.			
3.			
List the laws to which the notice of objection applies.			

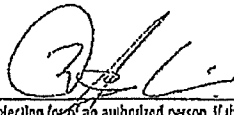
3 Relevant facts and reasons for the objection (if there is insufficient space, attach a separate sheet)

See attached.

4 Identification of the representative – Power of attorney and authorization (if applicable)

Name of representative Minden Gross LLP, Attention: David T. Ullmann			
Address 145 King Street West, Suite 2200, Toronto, Ontario			
Postal code M, 5, H, 4, G, 2	Area code Telephone 4, 1, 6, 3, 6, 9, 4, 1, 4, 8	Area code Fax 4, 1, 6, 8, 6, 4, 9, 2, 2, 3	
I authorize the person named above to represent me with respect to this notice of objection. This person will have access to all information concerning the notice and may discuss any matter relevant to it. For the purposes of the objection, I authorize Revenu Québec to provide my representative with any information I have supplied with respect to the taxation years or periods concerned.			

Certification



Signature of the person filing the objection (or of an authorized person, if the objection is filed by a legal person or a trust)

Nov 8, 2012

Date

Canada Revenue Agency / Agence Revenues du Canada



NOTICE OF OBJECTION (GST/HST) - AVIS D'OPPOSITION (TPS/TVH)

Before completing this form, read the instructions on the back. - Avant de compléter ce formulaire, lisez les instructions sur l' verso.

Name - Nom: 4362063 Canada Ltd. (f/k/a Domfoam International Inc.) Telephone No. - N° de téléphone: (514) 325-8120

Address - Adresse: 8785 Boul. Langelier, Saint-Leonard (Quebec)

If possible, attach a copy of the notice of assessment or notice of reassessment that you are objecting to, including any of the following information. Si possible, joignez une copie de l'avis de cotisation ou de réévaluation que vous contestez, y compris toute l'information suivante.

Check here if notice is attached. - Cochez ici si l'avis est joint.

Name No. / N° de l'avis: [Blank]

Amount in dispute / Montant en conteste: 2,912,679.00

Date the notice was sent / Date d'envoi de l'avis: June 28, 2012

Social Insurance Number / Numéro d'assurance sociale: 123485039 RT0001

Please state the facts and reasons for your objection (if you need more space, use a separate sheet). / Révélez les faits et les motifs de votre opposition (il vous faudra peut-être une feuille additionnelle).

Please see attached.

Check here if separate sheet is attached. - Cochez ici si vous avez jointe une feuille séparée.

Name and address of objector / Nom et adresse de l'opposant (Voyez l'annexe):

Minden Gross LLP
145 King Street West, Suite 2200
Toronto, Ontario M5H 4G2
Attention: David T. Ullmann

Telephone No. - N° de téléphone: (416) 369-4148

David T. Ullmann President November 7, 2012
Signature / Date

Instructions

If you disagree with an assessment or a reassessment, you should contact your tax services office in an attempt to resolve any disagreement before filing a formal notice of objection.

Complete this form if you want to object under Part IX of the Excise Tax Act (GST/HST), to your notice of assessment or notice of reassessment.

Do not use this form to object to any Excise Tax Act assessment other than GST/HST. Instead, use form E413 Notice of Objection (Excise Tax Act), or E414 Notice of Objection (Purchaser), as applicable.

Your notice of objection must be mailed or delivered within 90 days of the date shown on the notice of assessment you are disputing.

Where to send your objection

Residents with a postal code starting with A to P and non-residents may send their objection to:

Eastern Intake Centre
Sudbury TSO/TC
1050 Notre-Dame Avenue
Sudbury ON P3A 5C1

Residents with a postal code starting with R to Y may send their objection to:

Western Intake Centre
Burnaby-Fraser TSO
9737 King George Boulevard
PO Box 9070, Station Main
Surrey BC V3T 6W6

Rebate Program for Tour Packages, Foreign Conventions, and Non-Resident Exhibitor Purchases - Send your notice of objection to:

Eastern Intake Centre
Sudbury TSO/TC
1050 Notre-Dame Avenue
Sudbury ON P3A 5C1

File a separate form for each notice in dispute.

Specified person* - In addition to giving facts and reasons for objecting, a specified person has to describe each issue and specify the relief the person wants for each one.

For more information, you can contact the Appeals Division at your tax services office.

* Generally a specified person is a listed financial institution or a person whose annual taxable supplies in each of the two preceding fiscal years were more than \$6 million. For more information see subsection 301(1) of the Excise Tax Act.

Instructions

Si vous n'acceptez pas une cotisation ou une nouvelle cotisation, vous devez communiquer avec votre bureau des services fiscaux pour tenter de régler le différend avant de produire un avis d'opposition formel.

Remplissez ce formulaire si vous désirez contester, selon la partie IX de la Loi sur la taxe d'accise (TPS/TVH), votre avis de cotisation ou de nouvelle cotisation.

N'utilisez pas ce formulaire pour contester une cotisation selon la Loi sur la taxe d'accise autre que pour la TPS/TVH; remplissez plutôt le formulaire E413 Avis d'opposition (Loi sur la taxe d'accise), ou E414 Avis d'opposition (acheteur), selon le cas.

Votre avis d'opposition doit être envoyé ou présenté dans les 90 jours qui suivent la date indiquée sur l'avis de cotisation que vous contestez.

Où envoyer votre opposition

Les résidents dont le code postal débute par les lettres A à P et les non-résidents enverront leur opposition au :

Centre d'arrivage de l'Est
BSF/CF de Sudbury
1050, avenue Notre-Dame
Sudbury ON P3A 5C1

Les résidents dont le code postal débute par les lettres R à Y enverront leur opposition au :

Centre d'arrivage de l'Ouest
BSF de Burnaby-Fraser
9737, boulevard King George
C.P. 9070 succ. Main
Surrey BC V3T 6W6

Programme de remboursements pour les voyages organisés, les congrès étrangers et les achats des exposants non résidents - Faites parvenir votre avis d'opposition au :

Centre d'arrivage de l'Est
BSF/CF de Sudbury
1050, avenue Notre-Dame
Sudbury ON P3A 5C1

Produisez un formulaire distinct pour chaque avis que vous contestez.

Personne déterminée* - En plus de fournir les faits et motifs de l'opposition, une personne déterminée doit décrire les points contestés et préciser, pour chacun, le montant du redressement demandé.

Pour en savoir plus, communiquez avec la Division des appels de votre bureau des services fiscaux.

* En général, une personne déterminée est une institution financière désignée ou une personne dont le valeur des fournitures taxables a dépassé 6 millions de dollars au cours de chacun des deux exercices précédents. Pour en savoir plus, consultez le paragraphe 301(1) de la Loi sur la taxe d'accise.

DOMFOAM INTERNATIONAL INC.
NOTICE OF OBJECTION

Reporting periods:

2008/04/01 to 2008/04/30

2009/04/01 to 2009/04/30

2010/04/01 to 2010/04/30

2011/04/01 to 2011/04/30

2011/10/01 to 2011/10/31

2011/11/01 to 2011/11/30

2012/12/01 to 2012/12/31

(collectively, the "Reporting Periods")

STATEMENT OF FACTS

1. Domfoam International Inc. (the "Taxpayer") is a corporation incorporated under the laws of Canada with its head office located at 8785 Langelier Boulevard, Montreal, Quebec H1P 2C9. The Taxpayer changed its name to 4362063 Canada Ltd. by Articles of Amendment dated March 23, 2012. During the reporting periods in issue, the Taxpayer carried on business in the Province of Quebec at 8785 Boul. Langelier, Saint-Leonard, Quebec.
 2. During the Reporting Periods, the Taxpayer purchased goods and/or services from the following suppliers for consumption, use or supply exclusively in the course of the Taxpayer's commercial activities:
 - (a) 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc. ("3113736"))
 - (b) A-Z Sponge & Foam Products Ltd. ("AZ")
 - (c) Various temporary employment agencies (Temp")
 3. The Taxpayer did not pay GST and Harmonized Sales Tax (collectively "GST") on its purchases of goods and services from Vallefoam and AZ during the Reporting Periods.
 4. The Taxpayer did pay GST and QST on its purchases of services from Temp.
 5. During the reporting period, the Taxpayer submitted monthly returns with respect to GST in accordance with its usual practice. Refunds were due and paid to the Taxpayer in connection with goods supplied to the Taxpayer in respect of which HST was charged as detailed in those returns.
 6. On January 12, 2012, the Taxpayer, along with Valle Foam and AZ, filed for protection from its creditors under the *Companies Creditors Arrangement Act* (the "CCAA").
-

7. As a consequence of the terms of the Order of Justice Newbould of the Ontario Superior Court of Justice dated January 12, 2012 (the "Initial Order"), the Taxpayer was prohibited from making payment for goods supplied to the Taxpayer prior to that date ("Pre-filing Goods"), some of which were accounted for in the refund.
 8. Valle Foam and the Taxpayer are corporations under the Canada Business Corporations Act. AZ is incorporated under the Business Corporations Act of British Columbia. The Taxpayer is the 100% shareholder of Valle Foam and AZ.
 9. By notices of assessment, each dated June 28, 2012 (the "Assessment"), Revenu Quebec assessed the Taxpayer in respect of the Reporting Periods for Net Tax of \$2,912,679.00 for GST and QST. Copies of the Notices of Assessment are attached hereto as Appendix "1".
 10. This Notice of Objection is filed to jointly address issues raised in respect of both assessments.
 11. On June 15, 2012 pursuant to an Order Justice Brown of the Ontario Superior Court of Justice in the ongoing CCAA proceedings of the Taxpayer, the court instituted an exclusive process, pursuant to the terms of the CCAA, whereby all parties, including the Crown, were required to file any claim which such party may have against the Taxpayer. Claims were to be filed with the Court appointed Monitor on or before August 31, 2012. Failure to participate in the process would result in the claim of any party to be permanently extinguished. Attached hereto as Appendix "2" is a copy of that Order.
 12. The Attorney General of Canada, care of the Department of Justice, was served with the Taxpayer's motion with respect to this proposed claims process. There was no objection to the proposed process.
 13. The Order instituting a claims process was issued prior to the date of the Assessment.
 14. Revenu Quebec filed a proof of claim dated July 20, 2012 in that process in an amount equal to the amount of the Assessment and participated in the claims solicitation process.
 15. Attached hereto as Appendix "3" is a copy of that proof of claim (minus the Appendices).
 16. On September 21, 2012, the Monitor after consultation with the Applicants legal counsel, disallowed the claim in its entirety.
 17. Attached hereto as Appendix "4" is a copy of that disallowance.
-

18. On October 5, 2012, the Minister filed a dispute in the CCAA process. The principal ground of the dispute was that the Taxpayer had not filed a notice of objection to the Assessment.
19. Attached hereto as Appendix "5" is a copy of that dispute.
20. The Taxpayer hereby objects to the Assessment.

ISSUES TO BE DECIDED

21. The issues to be decided are:
 - (a) Intercompany Accounts: Whether GST was exigible in respect of the Taxpayer's purchases of goods and services from Vallefoam and AZ as described in paragraph 2 above;

Taxpayer position: The Taxpayer was exempt pursuant to the ETA.

- (b) Temp Services: Whether the Taxpayer should have been assessed for GST in respect of the purchases of goods and services from Temp as described in paragraph 2 above; and

Taxpayer position: All GST properly due in respect of the purchase of these services was paid at that time of supply

- (c) Pre-Filing Goods: Whether any amount of the refund applied for and received with respect to pre-filing goods delivered to the Taxpayer is to be repaid.

Taxpayer Position: The amount of this claim, if any, cannot be determined at this time pending the conclusion of the Taxpayer's restructuring.

REASONS FOR OBJECTION

22. The Taxpayer relies, inter alia, upon sections 128 and 156 of the ETA.
23. Further, the Taxpayer relies upon the disallowance provided by the Monitor in the CCAA process, attached as Appendix "4", which states:

"43262063 Canada Ltd. (the "Company") and its legal counsel have reviewed the claim of Revenu Quebec. The Company has provided the Monitor with a copy of an executed Closely Related Corporations and Canadian Partnerships, a copy of which is attached. Therefore, the entire amount of the intercompany claim for GST is disallowed which we understand is in the amount of \$1,664,824.52.

The Monitor has been advised by the Company that all of the necessary records for review of taxes on temporary labour, and tax

credits claimed for invoices not paid, are available for review by Revenu Quebec. The balance of the claim of Revenu Quebec is disallowed and needs to be quantified through the completion of a thorough audit."

Intercompany Accounts

24. At all relevant times during the Reporting Periods, the Taxpayer, Vallefoam and AZ were "closely related" as defined in section 128 of the ETA.
25. The Taxpayer, Vallefoam and AZ have elected jointly pursuant to subsection 156(2) of the ETA with effect as of September 1, 1999. As subsection 156(2) of the ETA provides that "every taxable supply made between them at a time when the election is in effect is deemed to have been made for no consideration", the Taxpayer submits that GST was not exigible in respect of its purchases of goods and services from Vallefoam and AZ during the Reporting Periods.
26. A copy of the Joint Election is attached hereto as Appendix "6".
27. At all relevant times the parties have conducted themselves as if an election were in place and all conditions for making the election were met during the period since the effective date.
28. The Taxpayer's practice is in keeping with its previous practices for the sale of goods among the Taxpayer, AZ and Valle Foam. The Taxpayer has previously been audited by CRA for GST compliance, as recently as 2007, at which time these practices were presumably reviewed and approved by the Minister, given that no Assessment in respect of this practice was issued.

Temp Services

29. The Taxpayer was invoiced by Temp for its purchases of goods and services during the Reporting Periods. Copies of samples of such invoices, with the names of the individuals who provided the temps services redacted, are attached hereto as Appendix "7".
30. The Taxpayer duly paid such invoices and GST and QST to Temp.
31. No further amount is owing by the Taxpayer in respect of this claim.

Pre-filing Goods

32. The Taxpayer filed its monthly GST returns in keeping with its usual practice. A copy of a return filed on December 31, 2011 is attached hereto as Appendix "8".
33. But for the intervention of the Initial Order and the prohibition against payment of pre-filing amounts contained therein, payments of GST would have been made in the ordinary course and no objection would arise.

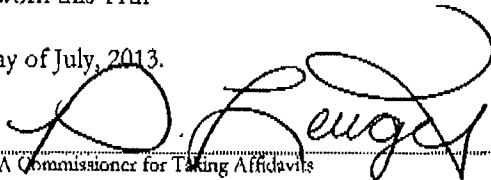
34. The CCAA process is ongoing. It is impossible to determine at this time whether or not there may yet be payments made or credits applied to which would eliminate any possible claim in this category.
35. No distribution has, as yet, been made to creditors from the proceeds of sale or other realization collected during the CCAA process. There may yet be a plan for distribution filed in the CCAA proceeding which may compromise and otherwise satisfy any amount ultimately found to be owing by the Taxpayer.
36. Pursuant to section 5(d) of the Initial Order, certain pre-filing claims for goods supplied after November 30, 2012 which were unpaid after January 12, 2012, were to be paid. Amounts which may yet be payable, which may include amounts in respect of which the Assessment has been issued, has not yet been determined.
37. Pursuant to section 7(b) of the Initial Order, the Taxpayer is to remit any amounts accrued at the time of the Initial Order but not yet due at January 12, 2012 for goods and services taxes. A reconciliation of such amounts which may yet be payable pursuant to this section, which may include amounts in respect of which the Assessment has been issued, has not yet been completed.
38. As a result of the foregoing, the exact amount owing by the Taxpayer, if any, cannot be quantified at this time.

RELIEF SOUGHT

39. The Taxpayer requests that the Assessment be vacated.

TAB E

This is Exhibit "E" referred to
in the Affidavit of Tony Vallecoccia
Sworn this 11th
day of July, 2013.



A Commissioner for Taking Affidavits

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



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 158 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,*

Complexe Desjardins, secteur D23110
 C.P. 5000, succursale Desjardins
 Montréal (Québec) H5B 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, 23ième 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



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MINDEN GROSS LLP
BARRISTERS & SOLICITORS
145 KING STREET WEST, SUITE 2200
TORONTO, ON, CANADA M5H 4G2
TEL 416.362.3711 FAX 416.864.9223
www.mindengross.com

DIRECT DIAL 416.369.4148
E-MAIL dullmann@mindengross.com
FILE NUMBER 4079509

June 24, 2013

VIA FACSIMILE 1- 514-285-5487

Ms. Claudie Michaud
Revenu Québec
Complexe Desjardins, Secteur D231110
Montreal, Québec
HSB 1A7

Dear Ms. Michaud:

Re: Domfoam International Inc. – Notice of Objection
Your Reference Nos: 315238 and 315244

As you are aware, we are counsel to 4362063 Canada Ltd. formerly known as Domfoam International Inc. We are in receipt of your letter dated May 29, 2013.

As discussed in our telephone conversation of last week, and while reserving all of our client's rights as set out in our previous correspondence, we appreciate you agreeing to provide an extension of time to allow us to respond to your recent letter. We would suggest that the date for response be changed from June 26, 2013 to August 30, 2013.

Yours truly,

MINDEN GROSS LLP

David T. Ullmann
DTU:nh

cc C. Hristow

#2053629 v1

**REVENU
QUÉBEC**

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BORDEREAU DE TÉLÉCOPIE

Date: June 25, 2013

Total nombre de pages : 2

Destinataire	Nom :	Organisme :
	David T. Ullman MINDEN GROSS LLP 145, King Street West, suite 2200 Toronto ON M5H 4G2	
	Téléphone: -416 369-4148	Fax: 416 864-9223

Expéditeur	Nom :	Unité administrative :
	Claudie Michaud	Direction des oppositions Montréal
	Téléphone 514 287-3110	Fax 514-285-5487 Sans frais : 1-866-872-5156

Message :OBJET : 315244**Avis relatif aux renseignements confidentiels**

Les renseignements contenus dans les présentes sont confidentiels en vertu de la *Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels*, de la *Loi sur l'administration fiscale* et de la *Loi facilitant le paiement des pensions alimentaires*. Ils ne peuvent être utilisés que par le ou la destinataire dont le nom apparaît ci-dessus.

Si ce message vous est parvenu par erreur et que vous n'êtes pas le destinataire visé, vous êtes, par les présentes, avisé que tout usage (copie, distribution ou autre) de ce message est strictement interdit. Vous êtes donc prié de nous aviser immédiatement de cette erreur en communiquant avec l'expéditeur ou l'opérateur, et nous retourner l'original de ce message à l'adresse indiquée ci-dessous. Merci.



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Direction des oppositions - Montréal

Montreal, June 25, 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: 315244 and 315238

Sir,

We confirm that the deadline for submitting the representation and material evidence has been extended to August 30, 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
514 287-3110

TAB 3



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 12th
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

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

- (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:

- (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;

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

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;

- (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,

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 ✓

Second – Directors’ Charge (to the maximum amount of \$●). 1,000,000 ✓

mt ✓

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

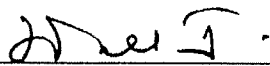
41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, 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

Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

46. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

47. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

#1832803 | 4079509



SECRETARY OF THE COURT & TOP SECRETARY
BOOK NO.
LE / DANS LE REGISTRE NO:

JAN 12 2012

SECRETARY: 

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

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Lawyers for the Applicants

TAB 4

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

ONTARIO
**SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST**

THE HONOURABLE MR.) FRIDAY, THE 15th DAY
)
 JUSTICE BROWN) OF JUNE, 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 3113736 CANADA LTD., 4362063
 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**ORDER
 (Claims Solicitation Procedure)**

THIS MOTION, made by 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.), 4362063 Canada Ltd. (formerly Domfoam International Inc.) and A-Z Sponge & Foam Products Ltd. (collectively, the "**Applicants**") for an order approving a procedure for the solicitation of claims against any or all of the Applicants, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Tony Vallecoccia sworn June 12, 2012, and the Fourth Report of Deloitte & Touche Inc., the Court-appointed monitor (the "**Monitor**"), and on hearing the submissions of counsel to the Applicants, the Monitor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

SERVICE

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

DEFINITIONS

1. **THIS COURT ORDERS** that for purposes of this Order, in addition to the terms defined elsewhere herein, the following terms shall have the following meanings:

- (a) **“Applicants”** means 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.), 4362063 Canada Ltd. (formerly Domfoam International Inc.) and A-Z Sponge & Foam Products Ltd.;
- (b) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) **“CCAA”** means the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended;
- (d) **“CCAA Proceeding”** means the proceeding commenced by the Applicants in the Court at Toronto under Court File No. CV-12-9545-00CL;
- (e) **“Claim”** means any Prefiling Claim or Postfiling Claim;
- (f) **“Claims Bar Date”** means 5:00 p.m. (Eastern Standard time) on August 31, 2012, or any later date ordered by the Court;

- (g) **“Claims Solicitation Procedure”** means the procedures outlined in this Order, as they may be amended by further order of the Court, including the Schedules hereto;
- (h) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (i) **“Creditor”** means any Person asserting a Claim or a D&O Claim;
- (j) **“D&O Claim”** means any right of any Person against one or more of the Directors and Officers (as defined below) which arose as a result of their position, supervision, management or involvement as Director and Officer, where such right arose on or before June 15, 2012, and whether enforceable in any civil, administrative or criminal proceedings;
- (k) **“DIP Loan”** means the loan by 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.) to either A-Z Sponge & Foam Products Ltd. or 4362063 Canada Ltd. (formerly known as Domfoam International Inc.) in an amount not exceeding \$1,000,000 as authorized by the Court in the CCAA Proceeding;
- (l) **“Directors and Officers”** means
 - (i) the current and former directors of any of the Applicants; and
 - (ii) the current and former officers of any of the Applicants;
- (m) **“Distribution”** means any distribution within the CCAA Proceeding of the proceeds of the Applicants’ assets;

- (n) **“Excluded Claim”** means (i) any claim secured by any of the Charges as defined in the Initial Order (as defined below); (ii) the DIP Loan; and (iii) any Intercompany Claim (as defined below);
- (o) **“Filing Date”** means January 12, 2012;
- (p) **“Initial Order”** means the Initial Order of the Honourable Mr. Justice Newbould dated January 12, 2012 in the CCAA Proceeding;
- (q) **“Intercompany Claim”** means any claim by any of the Applicants against one or more of the Applicants, whether secured or unsecured but not including the DIP Loan;
- (r) **“Known Creditor”** means any Person, based on the financial or other records of an Applicant as of the Filing Date, who had or may be entitled to assert, a Claim, where monies in respect of such Claim remain unpaid in full or in part, without acknowledging in any respect the validity or existence of any such Claim;
- (s) **“Monitor’s Website”** means <http://www.deloitte.com/ca/vallefoam>;
- (t) **“Notice to Creditors of Claims Bar Date”** means the notice for publication substantially in the form attached as Schedule “A”;
- (u) **“Notice of Dispute”** means a form substantially in accordance with the form attached as Schedule “E”;
- (v) **“Notice of Revision or Disallowance”** means a form substantially in accordance with the form attached as Schedule “D”;
- (w) **“Person”** means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, pension

plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or similar entity, howsoever designated or constituted;

(x) “**Postfiling Claim**” means any right or claim of any Person, or class of Persons or representative Person, against one or more of the Applicants whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Applicants which came into existence after the Filing Date but before the Claims Bar Date, any accrued interest thereon and costs payable in respect thereof, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature;

(y) “**Prefiling Claim**” means any right or claim of any Person, or class of Persons or representative Person, against one or more of the Applicants whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Applicants in existence on the Filing Date, any accrued interest thereon and costs payable in respect thereof to and including the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is

executory or anticipatory in nature, and includes any other claims that would have been claims provable in bankruptcy had the Applicants become bankrupt on the Filing Date;

- (z) **“Proof of Claim”** means the aggregate of the documentation submitted by a Creditor pursuant to the Claims Solicitation Procedure to evidence its Claim which shall include the Proof of Claim form attached hereto as Schedule “B”;
- (aa) **“Proof of D&O Claim”** means the aggregate of the documentation submitted by a Creditor pursuant to the Claims Solicitation Procedure to evidence its D&O Claim which shall include the Proof of D&O Claim form attached hereto as Schedule “C”;
- (bb) **“Proven Claim”** means a Claim filed by the Claims Bar Date in respect of which the Monitor has not sent a Notice of Revision or Disallowance to the Creditor asserting the Claim and which the Monitor accepts or is deemed to accept for distribution purposes pursuant to the Claims Solicitation Procedure;
- (cc) **“Surviving Claim”** means a Claim to which CCAA subsection 19(2) applies; and
- (dd) **“Surviving D&O Claim”** means a D&O Claim to which CCAA subsection 5.1(2) applies.

ADMINISTRATION OF THE CLAIMS SOLICITATION PROCEDURE

2. **THIS COURT ORDERS** that the Claims Solicitation Procedure shall govern the solicitation of Claims against the Applicants and the D&O Claims against the Directors and Officers of the Applicants and shall be conducted and

administered by the Monitor with the assistance of the Applicants except as otherwise provided for in this Order. No Creditor may participate in the Distribution if such Claim has not been reviewed, accepted and valued in accordance with this Claims Solicitation Process, subject to any further Order of this Court.

3. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to administer and implement the Claims Solicitation Procedure on the terms set out in this Order and the Monitor may take any steps and fulfill such other roles as are contemplated by this Order or which it believes are incidental or necessary for the implementation of the Claims Solicitation Procedure. The Monitor may seek advice and directions from the Court in respect of any aspect of the Claims Solicitation Procedure, including any of the Monitor's obligations provided for in this Order.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to use reasonable discretion as to adequacy of compliance with the Claims Solicitation Procedure and the terms of this Order including, without limitation, with respect to the manner in which a Proof of Claim, Proof of D&O Claim, Notice of Dispute or any other notices or documents are completed and executed and may, where it is satisfied that a Claim or D&O Claim has been adequately filed or, in the case of a Claim, proven, waive strict compliance with the requirements of this Order as to completion, execution and delivery of Proofs of Claim, Proofs of D&O Claim, Notices of Dispute or any other notice or document contemplated by the Claims Solicitation Procedure and request any further documentation the Monitor may require in order to enable it to determine the validity of a Claim; provided that nothing in this Order shall confer upon the Monitor or the Applicants the discretion

or authority to amend or to extend the Claims Bar Date without a further Order of this Court.

5. **THIS COURT ORDERS** that the Monitor shall not have any responsibility or liability with respect to any information, confidential or otherwise, including without limitation, a Proof of Claim, a Proof of D&O Claim, a Notice of Dispute or otherwise, distributed, circulated, or released, whether intentionally or unintentionally, by the Monitor relating to the exercise of its powers and discharge of its obligations under this Order. The Monitor shall be entitled to rely upon the Applicants' advice and the Applicants' books and records for all purposes including establishing the names and addresses of Known Creditors. In addition to the rights and protections afforded to the Monitor under the CCAA and the Initial Order or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the fulfillment of its duties in the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

6. **THIS COURT ORDERS** that the Applicants shall advise the Monitor of all Known Creditors, including the amounts owed to all Known Creditors and their last known address pursuant to the Applicants' books and records, and that the Monitor shall be entitled to rely upon the accuracy and completeness of the information provided by the Applicants regarding the Known Creditors. For greater certainty, the Monitor shall have no liability in respect of the information provided to it regarding the Known Creditors and shall not be required to conduct any independent inquiry and/or investigation with respect to such information.

SOLICITATION OF CLAIMS7. **THIS COURT ORDERS** that:

- (a) the Monitor shall cause the Notice to Creditors of Claims Bar Date to be published in each of The Globe and Mail (national edition) and La Presse as soon as practicable after the date of this Order;
- (b) the Monitor shall cause the Notice to Creditors of Claims Bar Date to be posted on the Monitor's Website as soon as practicable after the date of this Order and cause it to remain posted until its discharge as Monitor of the Applicants;
- (c) the Monitor shall, as soon as practicable after the date of this Order, mail to all Known Creditors at the last known address for such Known Creditor on the Applicants' books and records a Notice to Creditors of Claims Bar Date, a Proof of Claim form, a Proof of D&O Claim form substantially in the form attached as Schedules "B" and "C" to this Order and an instruction letter regarding the completion of the Proof of Claim and Proof of D&O Claim forms by a Creditor; and
- (d) the Monitor shall, as soon as practicable following receipt of a request therefor and provided such request is received prior to the Claims Bar Date, deliver a copy of the Proof of Claim or Proof of D&O Claim form as applicable to any Person claiming to be a Creditor and requesting such material, or in the alternative, notify such Person that it may obtain an electronic copy of the Proof of Claim and Proof of D&O Claim forms on the Monitor's Website.

8. **THIS COURT ORDERS** that service and delivery of the Notice to Creditors of Claims Bar Date, Proof of Claim form, Proof of D&O Claim form, the Dispute Notice and any other correspondence or document from the Monitor to any Creditor or any other Person pursuant to the Claims Solicitation Procedure shall be by ordinary mail, prepaid registered mail, courier, personal delivery, electronic communication or facsimile transmission. Any such service and delivery by the Monitor for all purposes under this Order shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by prepaid registered mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (iii) if by courier, on the next following Business Day for courier deliveries within Canada, and on the third following Business Day for courier deliveries outside of Canada; (iv) if sent by personal delivery, on the same date as delivery; (v) if sent by electronic communication, on the same date as the electronic communication is sent or, if sent on a day that is not a Business Day or after 5:00 p.m. (Eastern Standard Time) on a Business Day, the following Business Day; and (vi) if sent by fax, on the date on which the Monitor receives a successful facsimile transmission report or, if sent on a day that is not a Business Day or after 5:00 p.m. (Eastern Standard Time) on a Business Day, the following Business Day

9. **THIS COURT ORDERS** that service by the Monitor of the Proof of Claim and Proof of D&O Claim forms on Creditors and publication of the Notice to Creditors of Claims Bar Date in the manner set forth in this Order shall constitute good and sufficient service upon the Creditors of notice of this proceeding, this Order, the Claims Bar Date and the related deadlines and procedures set forth

herein and that no other form of service or notice need be made by the Applicants or the Monitor to any Person, and no other document or material need be served on any Person in respect of the Claims Solicitation Procedure.

10. **THIS COURT ORDERS** that the form and substance of each of the Notice to Creditors of Claims Bar Date, Proof of Claim, Proof of D&O Claim, Notice of Revision or Disallowance and Notice of Dispute, substantially in the forms attached as schedules hereto, are hereby approved. Despite the foregoing, the Applicants and the Monitor may, from time to time, make minor changes to such forms as the Monitor considers necessary or desirable.

11. **THIS COURT ORDERS** that any Person asserting a Claim against one or more of the Applicants or a D&O Claim against one or more of the Directors or Officers shall file a Proof of Claim or a Proof of D&O Claim, as applicable (including all supporting documentation), with the Monitor by no later than the Claims Bar Date.

12. **THIS COURT ORDERS** that any Creditor with a Claim or a D&O Claim who does not deliver a completed Proof of Claim or Proof of D&O Claim, as applicable, to the Monitor in accordance with the Claims Solicitation Procedure by the Claims Bar Date, or such later date as this Court may otherwise order:

- (a) shall be forever barred from asserting or enforcing any Claim (other than a Surviving Claim) against any of the Applicants or a D&O Claim (other than a Surviving D&O Claim) against any of the Director or Officers, and the Applicants or any of them, and the Directors and Officers, or any of them, shall not have any liability whatsoever in respect of such Claim (other than a Surviving Claim) or D&O Claim (other than a Surviving D&O Claim), and any such

Claim (other than a Surviving Claim) or D&O Claim (other than a Surviving D&O Claim) shall be forever barred and extinguished;

- (b) shall not be entitled to any further notice of any Orders made or steps taken in the CCAA Proceeding; and
- (c) shall not be entitled to participate as a Creditor in the CCAA Proceeding and shall not be entitled to receive any funds pursuant to the Distribution.

13. **THIS COURT ORDERS** that Creditors with Excluded Claims shall not be required to file a Proof of Claim in this process, unless required to do so by further Order of this Court.

ADJUDICATION OF CLAIMS

14. **THIS COURT ORDERS** that there shall be no adjudication of the D&O Claims by the Applicants or the Monitor, pursuant to the Claims Solicitation Procedure Order, pending a further Order of this Court.

15. **THIS COURT ORDERS** the Monitor shall, with the assistance of the Applicants, review all Proofs of Claim (but not any Proofs of D&O Claim) delivered to the Monitor by the Claims Bar Date and shall accept, revise or reject each Claim as submitted therein. If the Monitor disputes a Claim in whole or in part, the Monitor shall by no later than 11:59 p.m. (Eastern Standard Time) on September 21, 2012, send to the Creditor who has submitted the disputed Claim a Notice of Revision or Disallowance indicating the reasons for the revision or disallowance.

16. **THIS COURT ORDERS** that the Monitor may attempt to resolve any disputed Claim with the Creditor prior to accepting, revising or disallowing such Claim.

17. **THIS COURT ORDERS** that any Claim received by the Claims Bar Date in respect of which the Monitor does not send a Notice of Revision or Disallowance by the deadline date referenced above shall be deemed a Proven Claim.

DISPUTE NOTICES

18. **THIS COURT ORDERS** that any Creditor who receives a Notice of Revision or Disallowance and who objects to the amount of the Claim set out in or any other provision of the Notice of Revision or Disallowance shall deliver to the Monitor on or before 5:00 p.m. (Eastern Standard Time) on October 5, 2012 a Notice of Dispute by registered mail, courier service or facsimile.

19. **THIS COURT ORDERS** that if a Creditor receives a Notice of Revision or Disallowance and does not file a Notice of Dispute by the time set out in paragraph 18 above, then the value of such Creditor's Claim shall be deemed to be as set out in the Notice of Revision or Disallowance.

20. **THIS COURT ORDERS** that any Creditor who delivers a Notice of Dispute to the Monitor by the time set out in paragraph 18 above shall, unless otherwise agreed by the Monitor in writing, thereafter serve on the Monitor and the Applicants a notice of motion in the Court returnable not less 30 days after the service of the Notice of Dispute for determination of the Claim in dispute, failing which the value of such Creditor's Claim shall be deemed to be as set out in the applicable Notice of Revision or Disallowance.

SET-OFF

21. **THIS COURT ORDERS** that the Applicants may set-off (whether by way of legal, equitable or contractual set-off) against payments or other distributions to be made to any Creditor in respect of its Proven Claim, any claims of any nature whatsoever that any of the Applicants may have against such Creditor, however, neither the failure to do so nor the allowance of any Claim as a Proven Claim hereunder shall constitute a waiver or release by the Applicants of any such claim that the Applicants may have against such Creditor.

DISTRIBUTIONS

22. **THIS COURT ORDERS** that the Monitor and the Applicants shall not distribute any funds to Creditors holding Proven Claims prior to the approval by this Court of a distribution methodology to be proposed by the Monitor and/or the Applicants in a subsequent motion to this Court.

NOTICE OF TRANSFEREES

23. **THIS COURT ORDERS** that if, after the Filing Date, the holder of a Claim or D&O Claim transfers or assigns the whole of such Claim or D&O Claim to another Person, neither the Monitor nor the relevant Applicant shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim or D&O Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the relevant Applicant and the Monitor in writing and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim or D&O Claim. Any such transferee or assignee of a Claim or D&O Claim shall be bound by any notices given or steps taken in respect of such Claim or D&O Claim in accordance with

this Order prior to receipt and acknowledgment by the relevant Applicant and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim or D&O Claim takes the Claim or D&O Claim subject to any rights of set-off to which the Applicants or the Directors and Officers may be entitled with respect to such Claim or D&O Claim respectively. For greater certainty, a transferee or assignee of a Claim or D&O Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims or D&O Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Applicants or the Directors and Officers. Reference to transfer in this Order includes a transfer or assignment whether absolute or intended as security.

GENERAL PROVISIONS

24. **THIS COURT ORDERS** that any Creditor who submits a Proof of Claim or Proof of D&O Claim authorizes the Monitor to post the information contained therein to the Monitor's Website and that the Monitor shall have no liability for the information submitted other than as a result of gross negligence or wilful misconduct.

25. **THIS COURT ORDERS** that for the purposes of the Claims Solicitation Procedure, all Claims or D&O Claims which are denominated in United States dollars shall (i) in the case of Prefiling Claims or D&O Claims, be converted to Canadian dollars at the rate of 1.0198%, being the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on the Filing Date; and (ii) in the case of Postfiling Claims, be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on the date of the applicable Proof of Claim.

26. **THIS COURT ORDERS** that any document, notice or communication required to be filed with the Monitor by a Creditor pursuant to the terms of this Order must be delivered by facsimile, email or electronic transmission, personal delivery, courier or prepaid mail to:

Deloitte & Touche Inc.

181 Bay Street West
Suite 1400
Toronto, Ontario
M5J 2V1

Attention: Catherine Hristow

Telephone: (416) 775-8831
Facsimile: (416) 601-6690
E-mail: christow@deloitte.ca

27. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Solicitation Procedure is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

28. **THIS COURT ORDERS** that references to the singular include the plural and to the plural include the singular.

29. **THIS COURT ORDERS** that in the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be delivered by email, facsimile transmission, personal delivery or courier and any notice or other communication given or made by prepaid mail within the seven (7) Business Day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been delivered. All such notices and communications shall be deemed to have been received, in the case of notice

by email, facsimile transmission, personal delivery or courier prior to 5:00 p.m. (Eastern standard Time) on a Business Day, when received, if received after 5:00 p.m. (Eastern Standard Time) on a Business Day or at any time on a non-Business Day, on the next following Business Day, and in the case of a notice mailed as aforesaid, on the fourth Business Day following the date on which such notice or other communication is mailed.

30. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court or any judicial, regulatory or administrative body of the United States and the States or other subdivisions of the United States and of any nation or state to act in aid of and be complimentary to this Court in carrying out the terms of this Claims Solicitation Procedure Order.

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




JUN 15 2012

SCHEDULE "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

(the "Applicants")

NOTICE OF CLAIMS SOLICITATION PROCEDURE AND

CLAIMS BAR DATE REGARDING:

3113736 CANADA LTD. (FORMERLY VALLE FOAM
INDUSTRIES (1995) INC.,
4362063 CANADA LTD. (FORMERLY DOMFOAM
INTERNATIONAL INC.) AND
A-Z SPONGE & FOAM PRODUCTS LTD.

By Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated January 12, 2012 (the "Initial Order"), the Applicants listed above filed for and obtained relief from their creditors under the *Companies Creditors' Arrangement Act* (the "CCAA"). Pursuant to the Initial Order, Deloitte & Touche Inc. was appointed by the Court as monitor in the Applicants' CCAA proceeding (the "Monitor").

By Order of the Court dated June 15, 2012 (the "Claims Solicitation Procedure Order"), a process was established for creditors to prove claims against the Applicants in existence as at the date of the Initial Order or with respect to Postfiling Claims (as defined below) or with respect to claims against the current or former Directors and Officers of the Applicants which arose on or before June 15, 2012. Capitalized terms in this notice are as defined in the Claims Solicitation

Procedure Order, a copy of which can be found on the Monitor's Website: <http://www.deloitte.com/ca/vallefoam>.

In accordance with the Claims Solicitation Procedure Order, the Monitor shall mail to all known creditors ("**Known Creditors**") of the Applicants a Proof of Claim form together with this notice. Any Creditor who does not receive a Proof of Claim form may obtain this form on the Monitor's Website, <http://www.deloitte.com/ca/vallefoam> or by contacting the Monitor directly as follows: (i) by email: christow@deloitte.ca; (ii) by mail at Deloitte & Touche Inc., 181 Bay Street West, Suite 1400, Toronto, Ontario, M5J 2V1, attention: Catherine Hristow; or (iii) by facsimile at (416) 601-6690.

In accordance with the Claims Solicitation Procedure Order, any Person or representative class of Persons who wishes to assert a claim against one of more of the Applicants (each, a "**Claim**") which arose (i) at any time up to January 12, 2012; (ii) at any time after January 12, 2012 (a "**Postfiling Claim**") must complete and deliver the Proof of Claim form to the Monitor by mail, fax, e-mail, courier or hand delivery by **no later than 5:00 p.m. (Eastern Standard Time) on August 31, 2012** or such other date as ordered by the Court (the "**Claims Bar Date**").

In accordance with the Claims Solicitation Procedure, any Person or representative class of Persons who wishes to assert a claim against one of more of the current or former Directors and Officers of the Applicants which arose on or before June 15, 2012 (each, a "**D&O Claim**") must complete and deliver the Proof of D&O Claim form to the Monitor by mail, fax, e-mail, courier or hand delivery by **no later than the Claims Bar Date**.

IF YOUR PROOF OF CLAIM OR PROOF OF D&O CLAIM IS NOT RECEIVED BY THE MONITOR BY THE CLAIMS BAR DATE, YOUR CLAIM AGAINST THE APPLICANTS OR THE OFFICERS AND DIRECTORS WILL BE BARRED AND EXTINGUISHED FOREVER.

A Proof of Claim which is disputed by the Monitor will be addressed in the manner set out in the Claims Solicitation Procedure Order.

Address of the Monitor:

Deloitte & Touche Inc.
181 Bay Street West
Suite 1400
Toronto, Ontario
M5J 2V1

Attention: Catherine Hristow

Telephone: (416) 775-8831

Facsimile: (416) 601-6690

E-mail: christow@deloitte.ca

Dated at _____ this _____ day of _____, 2012.

#1900657

SCHEDULE "B"

DELOITTE & TOUCHE INC., solely in its capacity as the Court-appointed Monitor of the Applicants, and without personal or corporate liability • • • Telephone: (416) 775-8831 Telecopier: (416) 601-6690 Email: christow@deloitte.ca		OFFICE USE ONLY

		Date Received _____

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")

PROOF OF CLAIM

I. DESCRIPTION OF DEBTOR, CREDITOR AND NATURE OF CLAIM

Name of entity against which claim is being made: *(Check appropriate box in following list. If claims are being made against more than one entity, use a separate Proof of Claim form for each entity.)*

- 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.)
 4362063 Canada Ltd. (formerly known as Domfoam International Inc.)
 A-Z Sponge & Foam Products Ltd.

(hereinafter the "**Debtor**")

Name of person asserting a claim against the Debtor: _____
 (hereinafter the "**Creditor**")

Individual: Corporation: Other: Specify: _____

If individual, Creditor's Social Insurance Number: _____

If corporation, Business Identification Number: _____

Address of Creditor: _____

Telephone number of Creditor:

E-mail address of Creditor:

Fax number of Creditor:

I, _____, of _____, do hereby certify:

(Name)

(City and province)

1. That I am a Creditor of the Debtor

or that I am

of

(State position or title)

(Name of Creditor)

a Creditor of the Debtor.

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. (Check and complete appropriate category:)

That, as at January 12, 2012, the Creditor had and still has an **unsecured claim** against the Debtor in the sum of CAD\$ _____, as shown by the statement (or affidavit or solemn declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. (Claims in US dollars should be converted to Canadian dollars at the rate of [insert], being the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on January 12, 2012. The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim.) (Give full particulars of the claim with all necessary supporting documentation.)

That, as at the date hereof, the Creditor has an **unsecured claim** against the Debtor which arose after January 12, 2012 in the sum of CAD\$ _____, as shown by the statement (or affidavit or solemn declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. (Claims in US dollars should be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars as of the date hereof. The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim.) (Give full particulars of the claim with all necessary supporting documentation.)

-or-

That, as at January 12, 2012, the Creditor had and still has a **secured claim** against the Debtor in the sum of CAD\$ _____, as shown by the statement (or affidavit or solemn

declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. *(The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim and the security held in respect of the claim, including copies of all security.) (Give full particulars of the claim and security with all necessary supporting documentation.)*

- 4. That to the best of my knowledge and belief, I am *(or the above-named Creditor is) (or am not or is not)* related to the Debtor within the meaning of section 4 of the *Bankruptcy and Insolvency Act*.

II. ATTESTATION

I hereby attest that, to the best of my knowledge, the information in this document is and any and all annexes hereto are truthful and accurate in all material respects.

SIGNED this _____ day of _____, 2012.

(Signature of Creditor)

(Signature of witness)

(Name of Creditor in block letters)

(Name of witness in block letters)

(Address of witness in block letters)

ANNEX "A"
DETAILS OF CLAIM

SCHEDULE "C"

DELOITTE & TOUCHE INC., solely in its capacity as the Court-appointed Monitor of the Applicants, and without personal or corporate liability • • • Telephone: (416) 775-8831 Telecopier: (416) 601-6690 Email: christow@deloitte.ca		OFFICE USE ONLY

		Date Received _____

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")

PROOF OF D&O CLAIM

III. DESCRIPTION OF DEBTOR, CREDITOR AND NATURE OF D&O CLAIM

Name of entity against which claim is being made: *(Check appropriate box in following list. If claims are being made against more than one entity, use a separate Proof of Claim form for each entity.)*

- Director or Officer of 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.)
- Director or Officer of 4362063 Canada Ltd. (formerly known as Domfoam International Inc.)
- Director or Officer of A-Z Sponge & Foam Products Ltd.

(hereinafter the "**Debtor**")

Name of person asserting a claim against the Debtor: _____
(hereinafter the "**Creditor**")

Individual: Corporation: Other: Specify: _____

If individual, Creditor's Social Insurance Number: _____

If corporation, Business Identification Number: _____

Address of Creditor: _____

Telephone number of Creditor:

E-mail address of Creditor:

Fax number of Creditor:

I, _____, of _____, do hereby certify:

(Name)

(City and province)

1. That I am a Creditor of the Debtor

or that I am

of

(State position or title)

(Name of Creditor)

a Creditor of the Debtor.

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. (Check and complete appropriate category:)

That, as at June 15, 2012, the Creditor had and still has an **unsecured claim** against the Debtor in the sum of CAD\$ _____, as shown by the statement (or affidavit or solemn declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. (Claims in US dollars should be converted to Canadian dollars at the rate of 1.0198%, being the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on January 12, 2012. The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim.) (Give full particulars of the claim with all necessary supporting documentation.)

4. That to the best of my knowledge and belief, I am (or the above-named Creditor is) (or am not or is not) related to the Debtor within the meaning of section 4 of the *Bankruptcy and Insolvency Act*.

IV. ATTESTATION

I hereby attest that, to the best of my knowledge, the information in this document is and any and all annexes hereto are truthful and accurate in all material respects.

SIGNED this _____ day of _____, 2012.

(Signature of Creditor)

(Signature of witness)

(Name of Creditor in block letters)

(Name of witness in block letters)

(Address of witness in block letters)

ANNEX "A"
DETAILS OF CLAIM

SCHEDULE "D"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

(the "Applicants")

NOTICE OF REVISION OR DISALLOWANCE

TO: [INSERT NAME AND ADDRESS OF CREDITOR]

The Monitor has disallowed in full or in part your Claim as set out in your Proof of Claim, as set out below:

Prefiling Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
	\$	\$	\$
Total	\$	\$	\$

Postfiling Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
	\$	\$	\$
Total	\$	\$	\$

REASONS FOR DISALLOWANCE:

IF YOU INTEND TO DISPUTE THIS NOTICE OF REVISION OR DISALLOWANCE:

You must, no later than **5:00 p.m. (Toronto Time)** on **September 21, 2012**, deliver to the Monitor a Notice of Dispute of Revision or Disallowance (a copy of which can be found on the Monitor's Website at <http://www.deloitte.com/ca/vallefoam>) in accordance with the Claims Solicitation Procedure Order to the following address, email, or facsimile:

Deloitte & Touche Inc.

181 Bay Street West
Suite 1400
Toronto, Ontario
M5J 2V1

Attention: Catherine Hristow

Telephone: (416) 775-8831
Facsimile: (416) 601-6690
E-mail: christow@deloitte.ca

DATE:

#1900657

SCHEDULE "E"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

(the "Applicants")

NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE

1. PARTICULARS OF CREDITOR:

(a) Full Legal Name of Creditor: _____

(b) Full Mailing Address of Creditor: _____

(c) *Telephone Number of Creditor: _____

(d) *Facsimile Number of Creditor: _____

(e) *E-mail Address of Creditor: _____

(f) Attention (Contact Person): _____

***In order to ensure that all Claims are processed in an expedited manner you must provide one (1) or more of your telephone number, fax number or e-mail address.**

2. PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:

(a) Have you acquired this Claim by Assignment? Yes No
 (if yes, attach document evidencing assignment)

(b) Full Legal Name of original Creditor(s): _____

3. DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM FOR VOTING AND/OR DISTRIBUTION PURPOSES:

We hereby disagree with the value of our Claim set out in the Notice of Revision or Disallowance dated _____, as set out below:

Claim:

Claim Against	Claim per Proof of Claim	Allowed Amount	Disallowed Amount
	\$	\$	\$
Total Claims			

REASONS FOR DISPUTE:

(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction (s) or agreement(s) giving rise to the Claim, name of any guarantor(s) that has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.)

If you intend to dispute a Notice of Revision or Disallowance, you must, no later than **5:00 p.m. (Toronto Time) on October 5, 2012** deliver to the Monitor a Notice of Dispute of Revision or Disallowance in accordance with the Claims Solicitation Procedure Order to the following address, email or facsimile:

Deloitte & Touche Inc.
181 Bay Street West
Suite 1400
Toronto, Ontario
M5J 2V1

Attention: Catherine Hristow
Telephone: (416) 775-8831
Facsimile: (416) 601-6690
E-mail: christow@deloitte.ca

If you do not deliver a Notice of Dispute of Revision or Disallowance by the time and date set out above, as applicable, the value of your Claim shall be deemed to be as set out in the Monitor's Notice of Revision or Disallowance.

Dated at _____ this _____ day of _____, 2012.

Per: _____

#1900657

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
(Claims Solicitation Procedure)

MINDEN GROSS LLP
145 King Street West, Suite 2200
Toronto ON M5H 4G2

Raymond M. Slattery (LSUC #20479L)
416-369-4149
rslattery@mindengross.com

David T. Ullmann (LSUC #423571)
416-369-4148
dullmann@mindengross.com

Sepideh Nassabi (LSUC #60139B)
416-369-4323
snassabi@mindengross.com
416-864-9223 fax

Lawyers for the Applicants

TAB 5

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) THURSDAY, THE 28th DAY
))
JUSTICE NEWBOULD) OF FEBRUARY, 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 February 22, 2013, and the exhibits thereto, the Sixth Report of Deloitte & Touche Inc., in its capacity as Court-appointed monitor of the Applicants (the "**Monitor**") and the appendices attached thereto (the "**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 February 22, 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 October 25, 2012, is hereby extended from February 28, 2013 to and including July 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.~~

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~~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.~~

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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.:

#2002116 | 4079509

FEB 28 2013

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

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