

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.

APPLICANTS

SIXTH REPORT OF THE MONITOR  
DATED FEBRUARY 25, 2013

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## INTRODUCTION

1. By Order of the Court dated January 12, 2012 (the “**Initial Order**”), Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc. (“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z Foam**”) (collectively, the “**Applicants**” or the “**Companies**”), obtained protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The CCAA proceeding with respect to the Applicants is referred to herein as the “**CCAA Proceeding**”.
2. Pursuant to the Initial Order, Deloitte & Touche Inc. (“**Deloitte**”) was appointed monitor of the Applicants as part of the CCAA Proceeding (the “**Monitor**”). Pursuant to the Initial Order, all proceedings against the Applicants were stayed until February 10, 2012, or until such later date as this Court would order (the “**Stay Period**”). A copy of the Initial Order is attached hereto as Exhibit “A”.
3. As noted in the Monitor’s Fourth Report to the Court dated June 12, 2012 (the “**Fourth Report**”), Valle Foam changed its name to 3113736 Canada Ltd. and Domfoam changed its name to 4362063 Canada Ltd. Throughout this Report, references to Valle Foam mean 3113736 Canada Ltd. and references to Domfoam mean 4362063 Canada Ltd.
4. On January 23, 2012, the Monitor in its capacity as foreign representative of the Companies in the CCAA Proceeding filed with the United States Bankruptcy Court, Northern District of Ohio (Western Division) (the “**U.S. Bankruptcy Court**”) a petition for recognition of the CCAA Proceeding as a foreign main proceeding pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.
5. By Order of the U.S. Bankruptcy Court dated January 27, 2012 (the “**Provisional U.S. Recognition Order**”), all litigation in the United States against the Companies was stayed on a provisional basis (the “**U.S. Litigation Stay**”) until February 10, 2012, and provided that the U.S. Litigation Stay would be automatically extended to correspond to any extension of the Stay Period in the CCAA Proceeding. By Order of the U.S. Bankruptcy Court dated February 24, 2012 (the “**U.S. Recognition Order**”), the CCAA Proceeding was recognized as a foreign main proceeding. A copy of the U.S. Recognition Order is attached hereto as Exhibit “B”.
6. By Order of the Court dated January 27, 2012 (the “**Sale Process Order**”), the Court authorized and approved the process (the “**Sales Process**”) pursuant to which the Companies invited offers

to purchase some or all of the Applicants' assets (the "**Property**"). The deadline for delivering an offer to purchase some or all of the Property was February 22, 2012. A copy of the Sale Process Order is attached hereto as Exhibit "**C**".

7. By Orders of the Court dated February 8, March 16, June 15, 2012 and October 25, 2012 (the "**Extension Orders**"), the Court has periodically extended the Stay Period, with the most recent extension expiring on February 28, 2013. Copies of the Extension Orders are attached hereto as Exhibits "**D**", "**E**", "**F**" and "**G**".
8. By Order of the Court dated June 15, 2012 (the "**Claims Solicitation Procedure Order**"), the Court authorized and approved the procedure (the "**Claims Solicitation Procedure**") to:
  - (i) identify and determine the validity of creditor claims against the Companies as at the date of the Initial Order, as well as any claims which arose subsequent to the date of the Initial Order (collectively, the "**Claims**"); and
  - (ii) identify claims against any of the current or former directors or officers (collectively, the "**Directors and Officers**") of the Companies (the "**D&O Claims**").

The deadline for submission for proofs of claim under the Claims Solicitation Procedure was August 31, 2012 (the "**Claims Bar Date**"). A copy of the Claims Solicitation Procedure Order is attached hereto as Exhibit "**H**".

9. The Initial Order together with related Court documents, the Notice to Creditors dated January 19, 2012, the Monitor's First Report to the Court dated January 25, 2012 ("**First Report**"), the Monitor's Second Report to the Court dated February 7, 2012 ("**Second Report**"), the Monitor's Third Report to the Court dated March 13, 2012 (the "**Third Report**"), the Monitor's Fourth Report to the Court dated June 12, 2012 ("**Fourth Report**") and the Monitor's Fifth Report to the Court ("**Fifth Report**") dated October 22, 2012 (collectively, the "**Prior Reports**"), have been posted on the Monitor's website at [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam) (the "**Monitor's Website**"). The Monitor has also established a toll free number at 1-855-601-6415 and a dedicated e-mail address at [vallefoam@deloitte.ca](mailto:vallefoam@deloitte.ca) for creditors and other interested parties to contact the Monitor with questions or concerns regarding the CCAA Proceeding.

10. The purpose of this report (the “Sixth Report”) is to update the Court with respect to the status of the Claims Solicitation Procedure and to provide the Court with the Monitor’s recommendation with respect to the Companies’ motion for an extension of the Stay Period to July 31, 2013.

#### **TERMS OF REFERENCE**

11. In preparing the Sixth Report, the Monitor has relied upon unaudited financial information, the Companies’ books and records, the financial information prepared by the Companies, and discussions with management (“Management”) and legal counsel for the Companies. The Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in the Sixth Report.
12. Unless otherwise stated, all dollar amounts contained in this Sixth Report are expressed in Canadian dollars.
13. Capitalized terms not otherwise defined in this Sixth Report are as defined in the Initial Order, the Fourth Report or the Claims Solicitation Procedure Order.

#### **BACKGROUND**

14. The Companies operated together as one of Canada’s leading and largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. The operations of Valle Foam and Domfoam historically comprised substantially all of the Companies’ operations. A-Z Foam and Valle Foam are wholly owned subsidiaries of Domfoam.
15. Mr. Anthony Vallecoccia is the President and Chief Executive Officer of Domfoam, President of Valle Foam, and the sole officer and director of A-Z Foam.
16. Other than security interests which may be claimed by certain equipment lessors, the Monitor is not aware of any secured creditors of the Companies. As at January 11, 2012, the total liabilities of Valle Foam, Domfoam and A-Z Foam, not including any claims pursuant to the Class Actions

(as defined below), amounted to approximately \$11,218,000, \$11,339,000 and \$368,000 respectively.

***The Competition Bureau (Canada) Fines and Related Litigation***

17. As set out in the First Report, both Domfoam and Valle Foam were charged with, and on January 5, 2012, pled guilty to, certain offences under the *Competition Act*, R.S.C. 1985, c C-34 (the "*Competition Act*") arising from collusion with other manufacturers of slab foam and carpet underlay within Canada to lessen competition in the sale or supply of these products and by conspiring with other manufacturers to fix or control the price for these products.
18. Domfoam was fined a total of \$6.0 million and Valle Foam was fined a total of \$6.5 million. No fine was assessed against A-Z Foam as no charges were laid against A-Z Foam. In accordance with the terms of the sentence imposed, Valle Foam paid \$500,000 in partial payment of the fines imposed against it on the same day the guilty pleas were entered.
19. As a result of the foregoing, each of Valle Foam and Domfoam has an outstanding liability of \$6.0 million in fines payable to the Crown.
20. In accordance with the terms of the sentences imposed, Domfoam and Valle Foam are to each pay \$1.0 million on the 1<sup>st</sup> of January of each year, commencing in 2013 and ending in 2018.
21. As set out in the Affidavit of Tony Vallecoccia sworn January 11, 2012, (the "*Vallecoccia Affidavit*"), the Applicants disclosed their financial difficulties to the Crown prior to the entry of their guilty pleas and advised of the Applicants' intention to file for protection under the provisions of a Canadian insolvency regime.
22. The Monitor has been advised by the Companies that, as part of the plea arrangement with the Crown, certain officers and directors of the Companies are required to provide sworn testimony to the Competition Bureau.

**CLASS ACTIONS**

23. The Monitor has been advised by the Applicants that some or all of the Applicants have been named as defendants in four class action lawsuits in Canada, and over two dozen class action

lawsuits in the United States (together, the “Class Actions”), based upon allegations of price fixing by certain of the Applicants and other manufacturers in the slab foam industry.

24. The Canadian Class Actions consist of separate proceedings commenced in each of British Columbia (the “BC Proceeding”), Ontario (the “Ontario Proceeding”) and Quebec (the “Quebec Proceeding”). The Canadian Class Actions advance joint and several claims against the Companies and certain other defendants or respondents on behalf of proposed classes comprised of all persons or entities who purchased polyurethane foam and polyurethane foam products in Canada from and after January 1, 1999.
25. Settlements have been reached with virtually all of the Plaintiffs in both the Canadian and U.S. Class Actions. The terms of the settlement in the Canadian Class Actions are set out in the Canadian Polyurethane Foam Class Actions National Settlement Agreement dated as of January 10, 2012 (the “Canadian Class Action Settlement Agreement”), a copy of which is attached as Exhibit “I”. Under both the Canadian Class Action Settlement Agreement and the settlements in the US Class Actions, the Class Actions have been discontinued as against the Companies, provided that the Plaintiffs in the Class Actions may still assert their claims as creditors within the CCAA Proceeding in amounts to be determined. The Canadian Class Action Settlement Agreement is still subject to separate Court approvals in Ontario, British Columbia and Quebec. The settlements of the US Class Actions are still subject to Court approval in the United States.
26. The Canadian Class Actions have not yet been certified by the supervising Courts in British Columbia, Ontario and Quebec. The Monitor understands that Court approval of the Canadian Class Action Settlement Agreement will be sought from the supervising Courts in British Columbia, Ontario and Quebec after a Multijurisdictional Case Management Order is obtained, and the Canadian Class Actions have been certified. The Monitor has been advised by counsel to the Companies that no date has yet been set for the necessary approvals by the Canadian Courts.
27. The Monitor has been advised by counsel to the Companies that the Plaintiffs in the various U.S. Class Actions have dismissed both Domfoam and Valle Foam from such proceedings. Although preliminary approvals have been obtained from the U.S. Courts, the Monitor is not aware of the timetable for receipt of the final approvals from the U.S. Courts in connection with settlement of the U.S. Class Actions.



28. As noted in the Fifth Report, the Companies are unable to determine at this time the cost to complete the Court approval process with respect to the Class Action settlements described above as well as to complete their various continuing obligations under such settlement agreements. The law firms representing the Companies in the Class Actions have been paid retainers by the Companies. The Monitor has advised the Companies that the Companies' Class Action counsel should rely upon the foregoing retainers to fund any fees incurred through to the requested extension of the Stay Period. The Monitor and the Companies expect to be in a better position to reassess the ongoing costs associated with settlement of the Class Action once the settlement agreements have been approved by the supervising Courts.
29. The Canadian Class Action Settlement Agreement and the settlements reached in the US Class Actions require the Companies to make available for examination certain current and former officers and directors of the Companies. Certain officers and directors of the Companies were examined in the United States in January 2013. The Monitor has permitted the Companies to fund the legal fees and expenses of the Companies' former officers and directors in connection with such examinations to ensure that the settlements in the Canadian and US Class Actions are not jeopardized.
30. Pursuant to section 4.2 of the Canadian Class Action Settlement Agreement, the Companies agreed to assign to the Canadian Class Action Plaintiffs the Companies' right to receive any proceeds from the class action proceedings pending before the United States District Court for the District of Kansas under the caption *In re Urethane Antitrust Litigation* (the "US Urethane Proceedings"), provided that such assignment is limited to the maximum amount of the first \$200,000 the Companies may receive thereunder.
31. Section 4.2 (2) of the Canadian Class Action Settlement Agreement provides that any distribution of funds to the Companies from the US Urethane Proceedings up to the \$200,000 cap as described above, shall be paid to the escrow agent appointed by the parties (the "Escrow Agent"). Robert Tanner, an Ontario solicitor, has been appointed as Escrow Agent. The Canadian Class Action Settlement Agreement specifically provides that payment of such funds is subject to any order of the Court in the CCAA Proceeding. The Companies have not made any representation that the foregoing assignment is valid or enforceable.

32. It appears that the Companies retained Refund Recovery Services, LLC in 2008 to assist in asserting and recovering its claim in the US Urethane Proceedings in consideration of a fee equal to 25% of all funds paid to the Companies.
33. An entity known as Enterprise Law Group claims to act for Valle Foam only in connection with its claims under the US Urethane Proceedings. Counsel to the Companies has written to Enterprise Law Group requesting an explanation regarding the division of responsibilities for the Companies' claims between Refund Recovery Services, LLC and Enterprise Law Group. To date, no such explanation has been provided.
34. In January 2013, the Applicants' legal counsel received correspondence from Enterprise Law Group including a cheque in the amount of US\$331,928.29 for Valle Foam in respect of the U.S. Urethane Proceedings. These funds are currently in the possession of Valle Foam and are in the process of being sent to the Monitor. The foregoing payment may be subject to a collection fee by Enterprise Law Group equal to 25% of the foregoing amount. The Monitor is continuing to review this issue with the Companies' counsel and will report back to the Court once it has been resolved.
35. Also in January 2013, the Applicants' legal counsel received correspondence from Lex Group, LLC, enclosing cheques in the amount of US\$196,802.78 and US\$28,325.87 for Domfoam and A-Z Foam respectively, net of the 25% collection fees payable to Refund Recovery Services, LLC. The Monitor understands that Lex Group, LLC is related to Refund Recovery Services, LLC. The Applicants' legal counsel sent the cheques to the Monitor for Domfoam and A-Z Foam which were converted to CAD\$195,248.04 and \$27,821.67 respectively.
36. The Monitor does not object to the first \$200,000 received by the Companies pursuant to the US Urethane Proceedings being delivered to the Escrow Agent in accordance with the terms of the Canadian Class Action Settlement Agreement, provided such funds remain in the Escrow Agent's possession pending resolution of the validity and enforceability of the assignment of such funds to the Canadian Class Action Plaintiffs. The Monitor is concerned that payment of such funds to the Canadian Class Action Plaintiffs would be preferential. Notwithstanding this concern, it may be possible to resolve the competing claims to such funds as part of the overall resolution of the value of the Canadian Class Action Plaintiffs' claims against the Companies.

37. As noted in the Fifth Report, the Applicants, with the concurrence of the Monitor, determined that the appropriate pro rata allocation of the professional fees to Valle Foam, Domfoam and A-Z Foam should be 45%, 45% and 10% respectively. Accordingly, the Applicants have proposed and the Monitor agrees that the \$200,000 payment to the Escrow Agent be made on the same basis, namely payments in the amount of \$90,000, \$90,000, and \$20,000, from Valle Foam, Domfoam and A-Z Foam respectively.

#### **ACTIVITIES OF THE MONITOR**

38. The Monitor has undertaken the following activities since the date of the Monitor's Fifth Report:
- (a) met with legal counsel of the Canadian Class Action claimants with a view to resolving the proofs of claim filed by the Canadian Class Action claimants pursuant to the Claims Solicitation Procedure;
  - (b) reviewed various claims filed after the Claims Bar Date, as described below; and
  - (c) monitored the business and financial affairs of the Applicants, and prepared this Sixth Report.

#### **SALE OF COMPANIES' ASSETS**

39. As described in more detail in the Fourth Report, all of the Companies' assets have been sold pursuant to separate transactions. The Monitor is in receipt of the proceeds of sale of these transactions. The Monitor is not aware of any additional assets of the Companies which may be realized upon for the benefit of the Companies' creditors, other than certain accounts receivable of Valle Foam (book value approximately \$2.0 million) of which the Applicants and the Applicants' legal counsel are pursuing collection, and any future payments which may be received in the US Urethane Proceedings.

## POST CLOSING MATTERS – A-Z FOAM

40. As noted in the Fourth Report, the transaction under the A-Z Sale Agreement closed on or about March 29, 2012. The A-Z Foam Purchaser paid net proceeds of sale under the A-Z Sale Agreement in the amount of \$842,278.49, which are now held by the Monitor.
41. On June 15, 2012, the Monitor received funds in the amount of \$304,564.36 from RBC representing all of the funds in the RBC Canadian and U.S. bank accounts for A-Z Foam.
42. As noted in paragraph 35 of the Fifth Report, paragraph 6 of the Initial Order provides that the Applicants are entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on their business in the ordinary course after the date of that Order. The Monitor did not object to the payment by A-Z Foam of its post-filing obligations incurred in the ordinary course of business in the amount of \$20,610.40, which have been paid from the proceeds of sale of A-Z Foam's assets held by the Monitor.
43. Paragraph 7 of the Initial Order states 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 or after the date of this Order.
44. Pursuant to the Claims Solicitation Procedure, Canada Revenue Agency ("CRA") filed a Proof of Claim ("CRA A-Z Claim") in the amount of \$104,789.08 on December 8, 2012, after the Claims Bar Date. The CRA Proof of Claim consists of a post-filing claim for source deductions in the amount of \$3,027.47, including penalties and interest of \$311.67, and post-filing HST in the amount of \$101,761.61, including penalties and interest of \$6,253.61.

45. Given the terms of the Initial Order, the amount claimed by CRA pursuant to the CRA A-Z Claim should be paid by A-Z Foam, notwithstanding that the CRA A-Z Claim was received after the Claims Bar Date. If A-Z Foam had not remitted the balance of funds on hand on June 15, 2012 to the Monitor, A-Z Foam would be in possession of sufficient funds to pay the CRA Claim. The Monitor does not object to proceeds of sale of A-Z Foam's assets in the possession of the Monitor being partially utilized to pay the amount of the CRA A-Z Claim.

#### **POST-CLOSING MATTERS – DOMFOAM**

46. The transaction under the Domfoam Sale Agreement closed on or about March 26, 2012. The Domfoam Purchaser paid net proceeds of sale under the Domfoam Sale Agreement in the amount of \$4,008,346.87, which are held by the Monitor, including the working capital adjustment as noted in the Fourth Report.
47. As noted in the Fourth Report, there was approximately CAD\$306,000 and US \$7,000 in the bank accounts maintained by Domfoam with RBC. Paragraph 6 of the Initial Order provides that the Applicants are entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on their business in the ordinary course after the date of that Order. Domfoam paid operating expenses from the funds on hand and, on October 31, 2012, delivered to the Monitor the remainder of the funds in its RBC bank accounts in the amounts of \$293,449.75 and US\$3,596.77. The US funds have been converted to CAD funds by the Monitor.

#### **POST-CLOSING MATTERS - VALLE FOAM**

48. The transaction under the Valle Sale Agreement closed on or about March 30, 2012. The Valle Foam Purchaser paid net proceeds of sale under the Valle Sale Agreement in the amount of \$1,525,000, which are held by the Monitor. On February 12, 2013, the Monitor received \$35,000 from the Valle Foam Purchaser for the inventory adjustment under the Valle Sale Agreement as noted in the Fifth Report.
49. Paragraph 6 of the Initial Order provides that the Applicants are entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on their business in the ordinary course after the date of that Order. As described below, Valle Foam paid \$1,083,123.46 on behalf of the other Companies with respect to certain professional fees incurred by the Companies in respect of the Class Actions and the Competition Bureau proceeding. As a result, Valle Foam

did not have sufficient funds to pay certain post-filing obligations. As at the date of the Fourth Report, Valle Foam only had \$2,000 and USD \$14,000 in its bank accounts, which funds were subsequently used to pay only some of its post-filing expenses incurred in the ordinary course. From the reimbursement of funds received by Valle Foam from Domfoam and A-Z Foam in respect of professional fees described below, Valle Foam paid certain of its remaining post-filing expenses in the ordinary course in the amount of \$67,079.53.

50. As noted in the Fifth Report, the Monitor does not object to the payment by Valle of its post-filing obligations incurred in the ordinary course of business in the amount of \$1,993.32.

#### **CLAIMS SOLICITATION PROCEDURE**

51. The Monitor, with the assistance of the Companies, reviewed all Proofs of Claim delivered to the Monitor by the Claims Bar Date. Except as described below, the Monitor has not reviewed or taken any steps with respect to any Proofs of D&O Claim delivered to the Monitor.
52. The Claims Solicitation Procedure Order does not include procedures for reviewing and determining D&O Claims. There were a number of creditors with claims against the Companies who mistakenly filed a Proof of D&O Claim instead of a Proof of Claim. The Monitor, after consultation with the Applicants, disallowed the improperly filed Proofs of D&O Claim and either admitted the claimed amount as a Proof of Claim, or issued a partial disallowance.
53. Listed below is a summary of the pre-filing and post-filing Proofs of Claim which have been admitted by the Monitor and those Proofs of Claim that are pending resolution, which are discussed later in this report.

<b>Company</b>	<b>Pre-Filing (Admitted)</b>	<b>Post-Filing (Admitted)</b>	<b>Pending Resolution</b>	<b>Total</b>
Valle Foam	\$ 8,529,565.41	\$ 758,821.94	\$ 292,500,000.00	\$ 301,788,387.35
Domfoam	\$ 8,045,747.98	\$ -	\$ 295,412,919.10	\$ 303,458,667.08
A-Z Foam	\$ 82,398.29	\$ 20,610.40	\$ 292,500,000.00	\$ 292,603,008.69

54. Of the approximately \$759,000 in Claims filed against Valle Foam for post-filing obligations, approximately \$757,000 is in respect of severance and termination claims by employees who were terminated post January 12, 2012.

55. In accordance with paragraph 31 of the Initial Order, Valle Foam was authorized to advance funds up to, but not exceeding \$1,000,000 to either A-Z Foam or Domfoam to be used for operating purposes (the "Valle Foam Loan"). A-Z Foam and Domfoam granted security to Valle Foam for the Valle Foam Loan. As noted in Prior Reports, Domfoam owes Valle Foam \$700,000 in respect of the Valle Foam Loan. The Claims Solicitation Procedure Order did not require Valle Foam to file a Proof of Claim in respect of any amounts outstanding under the Valle Foam Loan. Although Domfoam has not yet repaid its indebtedness to Valle Foam under the Valle Foam Loan, the Monitor anticipates that such payment will be addressed in connection with the ultimate distribution of funds available in the Companies' estates.
56. No Proof of Claim forms were filed by the U.S. Class Action claimants.
57. Included in the amount of admitted Claims against both Valle Foam and Domfoam are the claims submitted by the Competition Bureau in the amount of \$6.0 million respectively.
58. In accordance with the Claims Solicitation Procedure Order, the Monitor sent by September 21, 2012 a Notice of Revision or Disallowance in respect of any Proof of Claim disputed by the Monitor in whole or in part indicating the reasons for the revision or disallowance. Those Proofs of Claim received by the Claims Bar Date in respect of which the Monitor did not send a Notice of Revision or Disallowance by September 21, 2012 are deemed to be Proven Claims.
59. Pursuant to the Claims Solicitation Procedure Order, any Creditor who receives a Notice of Revision or Disallowance and who objects to the amount of the Claim set out therein or any other provisions of such notice was required to deliver to the Monitor on or before 5:00 p.m. on October 5, 2012 a Notice of Dispute. If a Creditor failed to deliver a Notice of Dispute to the Monitor by the foregoing deadline, then the value of such Creditor's claim is deemed to be as set out in the Monitor's Notice of Revision or Disallowance.
60. Any creditor who has delivered a Notice of Dispute to the Monitor by the foregoing deadline is required, unless otherwise agreed by the Monitor in writing, to serve on the Monitor and the Applicants a notice of motion in the Court, returnable not less than 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.

## CLAIMS DISALLOWED BY THE MONITOR

61. In connection with the Notices of Revision or Disallowance issued by the Monitor, only four Notices of Dispute were received as described below.
62. Revenu Quebec filed a Proof of Claim in the amount of \$2,912,679.00. The Monitor, after consultation with the Applicants, issued a Notice of Revision or Disallowance disallowing the claim of Revenu Quebec in full on September 21, 2012. On October 5, 2012, Revenu Quebec issued a Notice of Dispute in the full amount of its original claim which has yet to be resolved. The Monitor has agreed to extend the time for Revenu Quebec to bring its motion before the Court to determine its claim to provide the parties an opportunity to resolve same.
63. As noted in the Fifth Report, the most significant Proofs of Claim submitted to the Monitor were filed in respect of the Canadian Class Actions. The Monitor received three separate Proofs of Claim as follows:
  - (a) Proof of Claim from one of the Plaintiffs in the BC Proceedings on behalf of a proposed class of all persons or entities in British Columbia who purchased polyurethane foam or polyurethane foam products, including carpet underlay, directly from the Companies from January 1, 1999 to the present;
  - (b) Proof of Claim by the Plaintiff in the Ontario Proceeding on behalf of a proposed class of all persons or entities in Canada who purchased foam products or carpet underlay directly and/or indirectly from the Companies from January 1, 1999 to the present, except for purchasers in the BC and Quebec Proceedings; and
  - (c) Proof of Claim from one of the Plaintiffs in the Quebec Proceeding, together with a proposed class of all persons and entities in Quebec who purchased polyurethane foam products,(collectively, the “**Canadian Class Action Proofs of Claim**”).
64. The Canadian Class Action Proofs of Claim do not specify the amount claimed but instead indicate such amount is “to be ascertained”.



65. In addition to the Canadian Class Action Proofs of Claim as noted above, two additional claimants, Satpanth Capital Inc. et al and Dynasty Furniture Mfg. Ltd. filed Proofs of Claim as members of a proposed class in amounts yet to be determined.
66. The Monitor issued a Notice of Revision or Disallowance in respect of each of the Canadian Class Action Proofs of Claim on the following basis:
  - (a) no agreement between the party filing the Proof of Claim and the proposed class or an Order of the Court or any other authority pursuant to which the party filing the Proof of Claim is authorized to file the Proof of Claim on behalf of the subject class was provided to the Monitor; and
  - (b) the Monitor required that the amount claimed under each Canadian Class Action Proof of Claim be quantified.
67. The Monitor issued a Notice of Revision or Disallowance in respect of Satpanth Capital Inc. et al and Dynasty Furniture Mfg. Ltd. on the same basis as the Canadian Class Action Notice of Disputes as noted above.
68. In accordance with the Claims Solicitation Procedure Order, the Monitor received Notices of Dispute in respect of each of the foregoing Notices of Revision or Disallowance. The Notices of Dispute confirm that the plaintiffs in the Canadian Class Actions have not sought certification or authorization of the Canadian Class Actions because the Canadian Class Action Settlement Agreement calls for doing so concurrently with settlement approval. The Plaintiffs have secured in the Canadian Class Action Settlement Agreement, the right to advance collective claims in the CCAA proceeding. The Notices of Dispute also provide that, to the extent the Monitor continues to take issue with the claimant's ability to advance collective Claims in the CCAA proceedings, the claimant will take steps to immediately seek certification or authorization of the Canadian Class Actions retroactive to the date of the settlement agreement so that there is no question that those Claims can be advanced as agreed by the parties.
69. The Notices of Dispute also address quantification of the Claims in the Canadian Class Actions. The Notices of Dispute provide that the amount claimed under each of the Canadian Class Action Proofs of Claim is \$97,500,000 (\$292,500,000 in total) on behalf of the class of plaintiffs referenced in the subject Proof of Claim. The amount claimed is calculated as 10% of the total sales to customers in Canada by Domfoam and Valle Foam during the relevant period. The

Notices of Dispute provide that it is the practice of the Competition Bureau and of the U.S. Department of Justice to establish fines using 20% of the volume of commerce to arrive at the appropriate fine. Of that amount, 10% is considered to be the estimate of the damages flowing from the overcharges, whereas the additional 10% is assessed for deterrence purposes.

70. The Notices of Dispute also note that the \$12,500,000 fine levied by the Competition Bureau against Domfoam and Valle Foam was calculated based upon the statutory maximum fine of \$25,000,000.00, which was further discounted by 50% pursuant to the Competition Bureau's leniency program.
71. The Monitor, the Applicants and respective legal counsel met with counsel for the Canadian Class Action claimants to discuss the quantum of the claims and to attempt to resolve the amounts claimed under the Canadian Class Action Proofs of Claim. Counsel to the Canadian Class Action Plaintiffs has since delivered to the Monitor a report providing an explanation of the amount claimed under the Canadian Class Action Proofs of Claim. The Monitor, together with its counsel and the Companies' counsel, is reviewing the merits of the methodology relied upon by the Canadian Class Action Plaintiffs to justify the amount claimed under the Canadian Class Action Proofs of Claim.
72. In anticipation of the Canadian Class Actions being certified by the supervising Courts, the Monitor and the Applicants will continue their attempt to resolve the value of the Canadian Class Action Proofs of Claim, failing which, the Monitor will seek advice and directions from the Court with respect to quantification of the Canadian Class Action Proofs of Claim.
73. Satpanth Capital Inc. et al and Dynasty Furniture Mfg. Ltd. did not file Notices of Dispute and the Monitor has been advised that those claimants are relying on the Notice of Dispute filed by the Canadian Class Action claimants.

#### **LATE FILED CLAIMS**

74. As noted above, the Claims Bar Date was 5:00 pm EDT on August 31, 2012. Paragraph 4 of the Claims Solicitation Procedure Order states 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 further order of this Court."

75. Subsequent to August 31, 2012 to the date of this report, the following late claims have been received and are in the process of being reviewed, other than the CRA A-Z Claim as noted above:

<b>Company</b>	<b>Pre-Filing</b>	<b>Post-Filing</b>	<b>Total</b>
Valle Foam	\$ -	\$ 39,240.08	\$ 39,240.08
Domfoam	\$ 73,910.13	\$ -	\$ 73,910.13
A-Z Foam	\$ 4,830.80	\$104,789.08	\$109,619.88

76. The Monitor proposes to address the treatment of all Proofs of Claim filed after the Claims Bar Date as part of a subsequent motion to approve distribution of funds to those creditors of the Companies holding Proven Claims.

#### **STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS**

77. Attached as Exhibit "J" is the Statement of Receipts and Disbursements for Valle Foam for the period March 29, 2012 to February 21, 2013. Total cash receipts from the sale of assets, the collection of accounts receivable, reimbursement of legal fees and other receipts are \$5,996,778.48. Total disbursements are \$540,247.58. Net cash on hand as at February 21, 2013 is \$5,456,530.90.
78. Attached as Exhibit "K" is the Statement of Receipts and Disbursements for Domfoam for the period March 29, 2012 to February 21, 2013. Total cash receipts from the sale of assets, the collection of accounts receivable, US Urethane settlement funds and other receipts are \$4,517,768.04. Total disbursements are \$1,068,191.71. Net cash on hand as at February 21, 2013 is \$3,449,570.33.
79. Attached as Exhibit "L" is the Statement of Receipts and Disbursements for A-Z Foam for the period March 29, 2012 to February 21, 2013. Total cash receipts from the sale of assets, the collection of accounts receivable, US Urethane settlement funds and other receipts are \$1,187,849.82. Total disbursements are \$273,980.03. Net cash on hand as at February 21, 2013 is \$913,869.79.

## **PROFESSIONAL FEES**

80. The Monitor and its independent legal counsel, Thornton Grout Finnigan LLP ("TGF") have maintained detailed records of their professional time and costs since the issuance of the Initial Order. Pursuant to paragraph 29 of the Initial Order, the Monitor and TGF were directed to pass their accounts from time to time before this Court.
81. The total fees of the Monitor during the period from October 1, 2012 to January 31, 2013 amount to \$53,815.00, together with expenses and disbursements in the amount of \$75.56 and harmonized sales tax ("HST") in the amount of \$7,005.77, totalling \$60,896.33 (the "Monitor Fees"). The time spent by the Monitor is more particularly described in the Affidavit of Catherine Hristow of Deloitte & Touche Inc., sworn February 22, 2013, sworn in support hereof and attached hereto as Exhibit "M".
82. The total legal fees incurred by the Monitor during the period October 1, 2012 to January 31, 2013 for services provided by TGF as the Monitor's independent legal counsel amount to \$23,045.00, together with disbursements in the amount of \$203.28 and HST in the amount of \$3,022.28, totalling \$26,270.56. The time spent by TGF personnel is more particularly described in the Affidavit of Grant Moffat, a partner of TGF, sworn February 22, 2013 in support hereof and attached hereto as Exhibit "N".

## **ALLOCATION OF PROFESSIONAL FEES**

83. As noted in the Fourth Report, Valle Foam paid all of the professional fees incurred by the Companies in connection with the Class Actions and the Competition Bureau proceeding. As at the date of the Fifth Report, Valle Foam had paid \$1,083,123.46 on behalf of all of the Companies with respect to the fees of the Applicant's legal counsel, the fees of the Monitor and its legal counsel, and the Companies' Class Action legal counsel, all of which should be allocated on a pro rata basis. The Applicants, with the concurrence of the Monitor, determined that the appropriate pro rata allocation of the foregoing professional fees to Valle Foam, Domfoam and A-Z Foam should be 45%, 45% and 10% respectively. Ongoing payment of the Monitor's fees, and legal fees incurred by the Monitor and the Applicant are paid on the above noted prorated basis.

84. Valle Foam also gave retainers to a number of law firms prior to January 12, 2012. As the law firms draw down on their retainers, Domfoam and A-Z Foam repay Valle Foam their respective proportionate share.
85. Subsequent to the Fifth Report, Domfoam and A-Z Foam have repaid Valle Foam \$51,530.34 and \$11,451.20 including HST respectively on account of the above noted professional fees from funds in the accounts of the Monitor.
86. As noted previously, Valle Foam paid certain of its remaining post-filing expenses in the ordinary course in the amount of \$67,079.53 from the legal fees that were reimbursed by Domfoam and A-Z Foam.

#### **EXTENSION OF THE STAY PERIOD**

87. The Companies have asked the Court to approve an extension of the Stay Period from February 28, 2013 to July 31, 2013. The basis for this request is to allow time for resolution of the various Notices of Dispute referred to in the Sixth Report and to collect the remaining Valle Foam accounts receivable.
88. The Monitor believes that the Companies are acting in good faith and with due diligence and the Monitor therefore supports the stay extension to July 31, 2013.

#### **MONITOR'S RECOMMENDATIONS**

89. For the reasons set out above, the Monitor recommends that:
  - (a) the Stay Period be extended until July 31, 2013;
  - (b) the Sixth Report and the activities of the Monitor as described in the Sixth Report be approved; and
  - (c) the professional fees and disbursements of the Monitor, and TGF be approved and the Companies be authorized to pay all such fees and disbursements.

All of which is respectfully submitted at Toronto, Ontario this 25 day of February, 2013.

**DELOITTE & TOUCHE INC.,**  
solely in its capacity as the Monitor  
of the Companies (as defined herein),  
and without personal or corporate liability

Per:           P. Casey            
Paul M. Casey, CA•CIRP  
Senior Vice-President

# TAB A

**EXHIBIT** "A"

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



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 12<sup>th</sup>  
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~~); 500,000 ✓

Second – Directors' Charge (to the maximum amount of \$~~1,000,000~~). 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 ~~[newspapers specified by the Court]~~ <sup>the Star and Mail</sup> 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](http://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*.

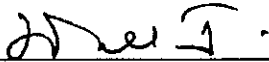
45. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this

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.

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RECEIVED AT THE COURT OF QUEBEC  
BY BOOKING  
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RECEIVED AT:  
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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VALLE FOAM INDUSTRIES  
(1995) INC., DOMFOAM INTERNATIONAL INC., and A-Z SPONGE & FOAM PRODUCTS LTD.

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**INITIAL ORDER**

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

**Raymond M. Slattery (LSUC #20479L)**  
416-369-4149  
[rslattery@mindengross.com](mailto:rslattery@mindengross.com)

**David T. Ullmann (LSUC #423571)**  
416-369-4148  
[dullmann@mindengross.com](mailto:dullmann@mindengross.com)

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

Lawyers for the Applicants

# TAB B

# EXHIBIT "B"

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. <sup>1</sup> )	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

<sup>1</sup> The Foreign Applicants include Valle Foam Industries (1995) Inc., Domfoam International, Inc., and A-Z Sponge & Foam Products Ltd.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings given to them in the Declaration

{K0289088.1}



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

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

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

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

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

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<sup>2</sup> 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, 20<sup>th</sup> Floor, 1375 East 9<sup>th</sup> St., Cleveland, Ohio, 44114, to the attention of Mary K. Whitmer or James W. Ehrman, (216) 686-8700, [mkw@kjk.com](mailto:mkw@kjk.com) or [jwe@kjk.com](mailto: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 (0018213)

James W. Ehrman (0011006)

One Cleveland Center, 20<sup>th</sup> Floor

1375 East 9<sup>th</sup> Street

Cleveland, OH 44114-1793

Telephone: (216) 696-8700

Facsimile: (216) 621-6536

Email: [mkw@kjk.com](mailto:mkw@kjk.com)

[jwe@kjk.com](mailto:jwe@kjk.com)

*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

# EXHIBIT "C"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY, THE 27<sup>th</sup> DAY  
MR. JUSTICE BROWN ) 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")

**ORDER  
(Approval of Sale Process)**

**THIS MOTION** made by Valle Foam Industries (1995) Inc., Domfoam International Inc., and A-Z Sponge & Foam Products Ltd. (the "Applicants") for an Order authorizing and approving the Sale Process (as defined below) and certain ancillary relief was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Tony Vallecoccia sworn January 25, 2012, and the exhibits thereto (the "Vallecoccia Affidavit"), the First Report of Deloitte & Touche Inc., in its capacity as Court-appointed monitor of the Applicants (the "Monitor") dated January 25, 2012, and the appendices attached thereto (the "First Report"), and on hearing the submissions of counsel for the Applicants, counsel for



the Monitor, counsel for 631400 Ontario Limited and counsel for Bayer Inc., and no one appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Victoria Stewart sworn January 25, 2012,

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 capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the First Report.
3. **THIS COURT ORDERS** that the First Report and the actions, decisions and conduct of the Monitor as set out in the First Report are hereby approved.
4. **THIS COURT ORDERS** that the sale process for the Property as described in the Vallecoccia Affidavit, (the "Sale Process") is approved.
5. **THIS COURT ORDERS** that the terms and conditions of sale ("Terms of Sale") attached as an exhibit to the First Report be and the same are hereby approved, together with any amendments thereto deemed necessary and appropriate by the Applicants with the consent of the Monitor.
6. **THIS COURT ORDERS** that notwithstanding paragraph 4 of this Order the Applicants are authorized to return to Court on or before February 22, 2012 to seek the approval of a sale or sales of some or all of the Property should the Applicants and the Monitor determine it necessary to do so.
7. **THIS COURT ORDERS** that the Applicants are authorized and directed to perform their obligations under and take such steps as they consider necessary or desirable in carrying out the Sale Process, and any step taken by the Applicants in

connection with the Sale Process prior to the date hereof is hereby approved and ratified.

8. **THIS COURT ORDERS** that, in accordance with the Terms of Sale, the Applicants are not obligated to accept any offer or offers to purchase some or all of the Property.

9. **THIS COURT ORDERS** that the Monitor shall have no personal or corporate liability in connection with the Sale Process including, without limitation:

- (a) by advertising the Property and/or the Sale Process;
- (b) by exposing the Property to any and all parties, including, but not limited to, those who have made their interests known to the Monitor;
- (c) by responding to any and all requests or inquiries in regards to due diligence conducted in respect of the Property;
- (d) through the disclosure of any and all information regarding the Applicants or the Property arising from, incidental to, or in connection with the Sale Process;
- (e) pursuant to any and all offers received by the Applicants in accordance with the Sale Process; and
- (f) pursuant to any agreements of purchase and sale entered into by any of the Applicants in respect of the sale of any of the Property.

10. **THIS COURT ORDERS** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Applicants shall disclose personal information of identifiable individuals to prospective

purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such information is provided shall limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Applicants or the Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants or the Monitor, or ensure that all other personal information is destroyed.

11. **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.

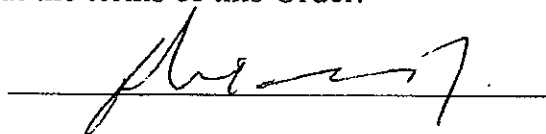
12. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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

**ORDER**  
(Approval of Sale Process)

**MINDEN GROSS LLP**

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

**Raymond M. Slattery** (LSUC #20479L)  
416-369-4149  
[rslattery@mindengross.com](mailto:rslattery@mindengross.com)

**David T. Ullmann** (LSUC #423571)  
416-369-4148  
[dullmann@mindengross.com](mailto:dullmann@mindengross.com)

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

Lawyers for the Applicants

# TAB D

# EXHIBIT "D"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY, THE 8<sup>th</sup> DAY  
JUSTICE NEWBOULD ) OF FEBRUARY, 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")

**ORDER  
(Extension Order)**

**THIS MOTION** made by Valle Foam Industries (1995) Inc., Domfoam International Inc., and A-Z Sponge & Foam Products Ltd. (the "Applicants") for an Order authorizing and approving the Sale Process (as defined below) and certain ancillary relief was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Tony Vallecoccia sworn February 7, 2012, and the exhibits thereto (the "Vallecoccia Affidavit"), the Second Report of Deloitte & Touche Inc., in its capacity as Court-appointed monitor of the Applicants (the "Monitor") dated February 7, 2012, and the appendices attached

thereto (the "Second Report"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor,

, and 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 7, 2012,

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 capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Second Report.
3. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 13 of the Order of Justice Newbould in these proceedings dated January 12, 2012) is hereby extended from February 10, 2012 to March 30, 2012.
4. **THIS COURT ORDERS** that the Second Report and the actions, decisions and conduct of the Monitor as set out in the Second Report are hereby approved.
5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Second Report and the Bougie Affidavit and the Moffat Affidavit attached as exhibits thereto, are hereby authorized and approved.
6. **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 Second Report.

7. **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.

8. **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.



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

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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

**ORDER**  
**(Approval of Sale Process)**

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

**Raymond M. Slattery** (LSUC #20479L)  
416-369-4149  
[rslattery@mindengross.com](mailto:rslattery@mindengross.com)

**David T. Ullmann** (LSUC #423571)  
416-369-4148  
[dullmann@mindengross.com](mailto:dullmann@mindengross.com)

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

Lawyers for the Applicants

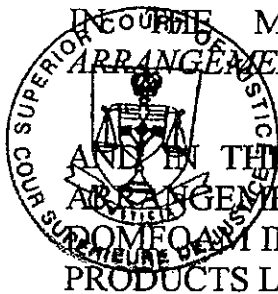
# **T A B E**

**EXHIBIT** " E "

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 16<sup>th</sup> DAY  
 )  
JUSTICE BROWN ) OF MARCH, 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")

**ORDER  
(Extension Order)**

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

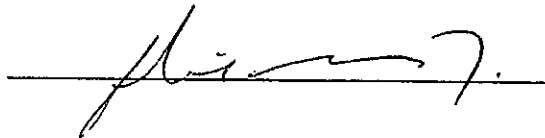
**ON READING** the affidavit of Tony Vallecoccia sworn March 13, 2012, and the exhibits thereto, the Third Report of Deloitte & Touche Inc., in its capacity as Court-appointed monitor of the Applicants (the "Monitor") dated March 13, 2012, and the appendices attached thereto (the "Third Report"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and no one

appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Victoria Stewart sworn March 13, 2012,

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 is hereby extended from March 30, 2012 to June 30, 2012.
3. **THIS COURT ORDERS** that the Third Report and the actions, decisions and conduct of the Monitor as set out in the Third Report are hereby authorized and approved.
4. **THIS COURT ORDERS** that the Confidential Supplement to the Third Report (the "Confidential Supplement") be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice which sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.
5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Third Report and the affidavit of <sup>Robert Boyle and Grant Moffat</sup> ~~(insert)~~ and the exhibits attached thereto, are hereby authorized and approved.
6. **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 Third Report.

7. **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.

8. **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.

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ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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

**ORDER  
(Extension Order)**

**MINDEN GROSS LLP**

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

**Raymond M. Slattery** (LSUC #20479L)

416-369-4149

[rslattery@mindengross.com](mailto:rslattery@mindengross.com)

**David T. Ullmann** (LSUC #423571)

416-369-4148

[dullmann@mindengross.com](mailto:dullmann@mindengross.com)

**Sepideh Nassabi** (LSUC #60139B)

416-369-4323

[snassabi@mindengross.com](mailto:snassabi@mindengross.com)

416-864-9223 fax

Lawyers for the Applicants

# TAB F

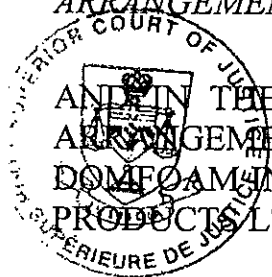
# EXHIBIT ~ F ~

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 15<sup>th</sup> 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 VALLE FOAM INDUSTRIES (1995) INC.,  
DOMFOAM INTERNATIONAL INC., and A-Z SPONGE & FOAM  
PRODUCTS LTD.

(the "Applicants")

## **ORDER**

**(Extension, Monitor's Report & Change Title of Proceedings)**

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

**ON READING** the affidavit of Tony Vallecoccia sworn June 12, 2012, and the exhibits thereto, the Fourth Report of Deloitte & Touche Inc., in its capacity as Court-appointed monitor of the Applicants (the "Monitor") dated June 12, 2012, and the exhibits attached thereto (the "Report"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, and no one appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Nada Hannouch sworn June 12, 2012,



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 capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Report.
3. **THIS COURT ORDERS** that the Stay Period as defined in the Initial Order of Justice Newbould dated January 12, 2012 and as subsequently extended is hereby extended from June 30, 2012 to and until October 31, 2012.
4. **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.
5. **THIS COURT ORDERS** that the title of the proceedings in all documents issued, served or filed after the date of this Order be as follows:

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.

6. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Report and the Bougie Affidavit, the Moffat Affidavit and the Whitmer Affidavit attached as Exhibits thereto, are hereby authorized and approved.

7. **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.

8. **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.

9. **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 À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

#1903114 v. 4079509

JUN 15 2012

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

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 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

**ORDER**

**(Extension, Monitor's Report & Change Title of  
Proceedings)**

**MINDEN GROSS LLP**

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

**Raymond M. Slattery** (LSUC #20479L)  
416-369-4149

[rslattery@mindengross.com](mailto:rslattery@mindengross.com)

**David T. Ullmann** (LSUC #423571)  
416-369-4148

[dullmann@mindengross.com](mailto:dullmann@mindengross.com)

**Sepideh Nassabi** (LSUC #60139B)  
416-369-4323

[snassabi@mindengross.com](mailto:snassabi@mindengross.com)  
416-864-9223 fax

Lawyers for the Applicants

# TAB G

# EXHIBIT

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) THURSDAY, THE 25<sup>th</sup> DAY  
JUSTICE NEWBOULD ) OF OCTOBER, 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  
(Extension Order)**

**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 October 19, 2012, and the exhibits thereto, the Fifth Report of Deloitte & Touche Inc., in its capacity as Court-appointed monitor of the Applicants (the "Monitor") dated October 22, 2012, and the appendices attached thereto (the "Report"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor,

and no one appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Victoria Stewart sworn October 19, 2012,

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 is hereby extended from October 31, 2012 to February 28, 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, Grant Moffat and Mary Whitmer, and the exhibits attached thereto, are hereby authorized and approved.

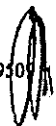
5. **THIS COURT ORDERS** that the Applicants are hereby authorized and directed to pay the fees and disbursements of the Monitor and of its legal counsel and agents in the amounts set out in the Report.

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.

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OCT 25 2012

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

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

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER  
(Extension Order)**

**MINDEN GROSS LLP**

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

**Raymond M. Slattery** (LSUC #20479L)  
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416-369-4323

[snassabi@mindengross.com](mailto:snassabi@mindengross.com)  
416-864-9223 fax

Lawyers for the Applicants



# TAB H

# EXHIBIT "H"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 15<sup>th</sup> 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 CLAIMS**

**7. 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](mailto: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.

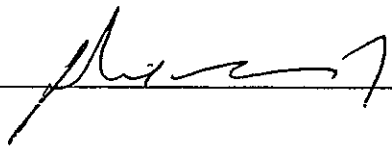
28. **THIS COURT ORDERS** that references to the singular include the plural and to the plural include the singular.

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.:



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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](mailto: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](mailto:christow@deloitte.ca)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

#1900657

**SCHEDULE "B"**

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

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

\_\_\_\_\_  
*(Name of Creditor in block letters)*

\_\_\_\_\_  
*(Signature of witness)*

\_\_\_\_\_  
*(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")**

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**NOTICE OF REVISION OR DISALLOWANCE**

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**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:**

<b>Claim Against</b>	<b>Claim per Proof of Claim</b>	<b>Allowed Amount</b>	<b>Disallowed Amount</b>
	\$	\$	\$
<b>Total</b>	\$	\$	\$

**Postfiling Claim:**

<b>Claim Against</b>	<b>Claim per Proof of Claim</b>	<b>Allowed Amount</b>	<b>Disallowed Amount</b>
	\$	\$	\$
<b>Total</b>	\$	\$	\$

**REASONS FOR DISALLOWANCE:**

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**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](mailto: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**

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**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:**

<b>Claim Against</b>	<b>Claim per Proof of Claim</b>	<b>Allowed Amount</b>	<b>Disallowed Amount</b>
	\$	\$	\$
<b>Total Claims</b>			

**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.)*

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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

<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>COMMERCIAL LIST</b> Proceeding commenced at TORONTO</p>	
<p><b>ORDER</b> (Claims Solicitation Procedure)</p>	
<p><b>MINDEN GROSS LLP</b> 145 King Street West, Suite 2200 Toronto ON M5H 4G2</p>	
<p><b>Raymond M. Slattery</b> (LSUC #20479L) 416-369-4149 <a href="mailto:rslattery@mindengross.com">rslattery@mindengross.com</a></p>	
<p><b>David T. Ullmann</b> (LSUC #423571) 416-369-4148 <a href="mailto:dullmann@mindengross.com">dullmann@mindengross.com</a></p>	
<p><b>Sepideh Nassabi</b> (LSUC #60139B) 416-369-4323 <a href="mailto:snassabi@mindengross.com">snassabi@mindengross.com</a> 416-864-9223 fax</p>	
<p>Lawyers for the Applicants</p>	

# TAB I

**EXHIBIT** "I"

**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 CAPPUCCINO, PIETRO (PETER) FOTI,  
DUKE GREENSTEIN, JOHN HOWARD, DALE MCNEIL,  
JAMES WILLIAM SPROULE, ROBERT VALLE,  
TONY VALLECOCIA and FRED ZICKMANTEL**

(the "Individual Settling Parties")

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

**RECITALS**

- A. WHEREAS the Ontario Plaintiffs and the B.C. Plaintiffs have respectively commenced the Ontario Proceedings and the B.C. Proceedings which allege that the Defendants, including the Domfoam Defendants, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and common law;
- B. AND WHEREAS the Ontario Plaintiffs have named the Brayianis Defendant, an employee of the Domfoam Defendants, as an individual defendant in the Ontario Proceedings;
- C. AND WHEREAS the Quebec Plaintiffs have commenced the Quebec Proceeding which alleges that one Defendant and other unnamed co-conspirators participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and the civil law, but whereas the Quebec Plaintiffs have not pleaded the Domfoam Defendants or the Brayianis Defendant as named parties to the Quebec Proceeding;
- D. AND WHEREAS the Domfoam Defendants believe that they are not liable in respect of the claims as alleged in the Proceedings, and whereas the Domfoam Defendants believe that they have good and reasonable grounds to oppose certification/authorization of the Proceedings as class proceedings and have good and reasonable defences in respect of the merits of the Proceedings;
- E. AND WHEREAS the Domfoam Defendants assert that they would actively pursue and vindicate their defences in respect of certification/authorization and the merits during the course of the certification/authorization process, during the course of

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

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

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

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;

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 Brayannis.
- (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 McNeil 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 Brayannis Defendant.

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

- (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 Brayiannis 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) *Releasers* mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members on behalf of themselves and any Person claiming by or through them as a present or former, direct or indirect parent, subsidiary, division, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or legal representative of any kind.
- (69) *Restructuring Court* means the Ontario Court that is appointed to oversee the Restructuring Process in Canada.
- (70) *Restructuring Process* means the process associated with the filing and implementation for creditor protection and/or insolvency relief in Canada and/or in the U.S., including but not limited to the process of filing a claim as a creditor under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S..

- (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 Brayiannis Defendant. The Domfoam Defendants and the Brayiannis Defendant shall engage their reasonable efforts to ensure that any Restructuring Process shall not impede the hearings or implementation of this Settlement Agreement, and will make any applications that are reasonably required within the Restructuring Process in order to implement this Settlement Agreement. Notwithstanding anything in this Settlement Agreement to the contrary, including but not limited to this Settlement Agreement's provisions relating to the release of the Released Claims granted by the Releasors 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 Brayianis Defendant and the Individual Settling Parties do not make any representation, covenant or promises in respect of the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment, and the Plaintiffs and the Settlement Class shall bear any and all risk relating to the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment. In the event that the Assignment is terminated, is not approved or otherwise fails to come into effect, the Parties agree that such event shall not give rise to any right of termination under this Settlement Agreement. However, nothing in this section shall be treated as a waiver, forbearance, or abandonment of the Plaintiffs' rights and/or interests accruing under the Assignment. The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree to make reasonable efforts and provide cooperation to assist in the implementation of the Assignment.

#### 4.3 No Further Settlement Payments, Transfers or Assignments

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

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

#### 4.4 Taxes and Interest

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

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

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 Brayianis 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 Brayianis 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 Brayianis 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 Brayannis Defendant and the Individual

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

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

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

- (a) at the request of Class Counsel and upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, and subject to any order of the Restructuring Court, engage reasonable efforts to make available up to three (3) current directors, officers or employees of the Domfoam Defendants (other than the Brayannis 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 Brayianis Defendant or the Individual Settling Parties) refuses to provide information, or otherwise cooperate, the Domfoam Defendants shall engage their reasonable efforts to make such person available for an interview but the failure or refusal of any such current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such a failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

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

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

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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayiannis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis 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 Brayianis Defendant and/or the Individual Settling Parties or otherwise, orders to the contrary.

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

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

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

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

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

## 9.3 No Further Litigation

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

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

**SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

**10.1 Settlement Class and Common Issue**

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

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

**10.2 Certification or Authorization Without Prejudice in the Event of Termination**

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

**SECTION 11 – NOTICE TO SETTLEMENT CLASS**

**11.1 Notice Required**

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



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

#### **11.2 Form, Publication and Distribution of Notice**

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

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

#### **11.3 Notice of Distribution**

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

### **SECTION 12 – ADMINISTRATION AND IMPLEMENTATION**

#### **12.1 Mechanics of Administration**

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

**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 Brayianis 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 Brayianis 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;

- (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 Brayianis Defendant and the Individual Settling Parties acknowledge and agree that they shall not rely on any future ruling or proceedings arising from or in connection with the pending appeals before the Supreme Court of Canada in respect of *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* (Supreme Court of Canada File #34283) and *Pro-Sys Consultants Ltd. v. Microsoft Corporation* (Supreme Court of Canada File #34282) as a ground or basis for terminating this Settlement Agreement pursuant to sections 14.1(1) and 14.1(2) or otherwise at law.

**14.2 If Settlement Agreement is Terminated**

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

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

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

(e) the Parties shall negotiate in good faith to determine a new timetable, if the Proceedings are to continue against the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties;

(f) within ten (10) days of such termination or failure having occurred, Class Counsel shall destroy all Documents or other information provided by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties as cooperation under this Settlement Agreement, or containing or reflecting information derived from such Documents or other information, and to the extent that Class Counsel has disclosed any Documents or other information provided by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties to any other person (including Plaintiffs' experts), shall recover and destroy such Documents and other information. Class Counsel shall provide the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties with a written certification by Class Counsel of such destruction. Nothing contained in this subsection shall be construed to require Class Counsel to destroy any of their work product; and

(g) each Class Counsel shall forthwith deliver consents in writing to counsel for the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties authorizing the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties to bring motions before each of the Courts for orders:

(A) directing that the balance of the Settlement Amount in the Trust Account less the ISP Release Payment shall be paid to the Contributing Individual Settling Parties, in accordance with section

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

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

#### **14.3 Allocation of Monies in the Trust Account Following Termination**

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

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



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

#### **14.4 Survival of Certain Releases Following Termination**

Notwithstanding sections 14.2 and 14.3 of this Settlement Agreement, in the event that the Contributing Individual Settling Parties comply with their obligations of payment under section 4.1 of this Settlement Agreement and the Individual Settling Parties and the Brayianis 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 Brayianis 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 Brayianis 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 Brayianis Defendant, and the Individual Settling Parties and the Brayianis 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

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

### 15.5 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Proceeding.

(2) No Party shall ask a Court to make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other relevant Court(s) with which it shares jurisdiction over that matter.

(3) Notwithstanding sections 15.5(1) and 15.5(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Quebec Settlement Class Member or a B.C. Settlement Class Member shall be determined by the Ontario Court.

(4) For the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree to submit to the jurisdiction of the Courts solely for the purpose of implementing, administering and enforcing this Settlement Agreement. The Parties acknowledge and confirm that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties do not attorn to the Courts for any other purpose or proceeding and that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties otherwise reserve all of their other existing jurisdictional rights.

(5) The Plaintiffs, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

**15.6 Governing Law**

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

**15.7 Entire Agreement**

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

**15.8 Amendments**

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

**15.9 Binding Effect**

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

#### 15.10 Counterparts

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

#### 15.11 Negotiated Agreement

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

#### 15.12 Language

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

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

**15.13 Transaction**

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

**15.14 Recitals**

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

**15.15 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

**15.16 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

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

**15.17 Authorized Signatures**

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

**15.18 Notice**

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



**For the Plaintiffs and for Class Counsel in the Proceedings:**

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

Ward Branch and  
Luciana Brasil

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

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

Tel: 519-258-9333  
Fax: 519-258-9527  
Email: [harvey@strosbergco.com](mailto:harvey@strosbergco.com)  
[hpeteron@strosbergco.com](mailto:hpeteron@strosbergco.com)

Tel: 604-654-2966  
Fax: 604-684-3429  
Email: [wbranch@branmac.com](mailto:wbranch@branmac.com)  
[lbrasil@branmac.com](mailto:lbrasil@branmac.com)

Daniel Belleau and  
Maxime Nasr

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

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

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

Tel: 514-987-6700  
Fax: 514-987-6886  
Email: [dbelleau@belleaulapointe.com](mailto:dbelleau@belleaulapointe.com)  
[mnasr@belleaulapointe.com](mailto:mnasr@belleaulapointe.com)

Tel: 604-689-7555  
Fax: 604-689-7554  
Email: [jjcamp@cfmlawyers.ca](mailto:jjcamp@cfmlawyers.ca)  
[rmogerman@cfmlawyers.ca](mailto:rmogerman@cfmlawyers.ca)

**For the Defendant Defendants:**

Christopher P. Naudie

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

**For Tony Vallecoccia and John Howard:**

Robert Tanner

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

**For Bruce Bradley, Michael  
Cappuccino, Pietro (Peter) Foti,  
Duke Greenstein, Dale Mcneil, 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](mailto: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: Sutts, 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

**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 CAPPUCINO**

By: \_\_\_\_\_

**PIETRO (PETER) FOTI**

By: \_\_\_\_\_

**DUKE GREENSTEIN**

By: \_\_\_\_\_

**JOHN HOWARD**

By: \_\_\_\_\_

**DALE MCNEIL**

By: \_\_\_\_\_

**JAMES WILLIAM SPROULE**

By: \_\_\_\_\_

**ROBERT VALLE**

By: \_\_\_\_\_

**TONY VALLECOCCIA**

By: \_\_\_\_\_

**FRED ZICKMANTEL**

By: \_\_\_\_\_

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.

# TAB J

**Exhibit J**

**Deloitte & Touche Inc., CCAA Monitor of  
3113736 Canada Ltd.  
(formerly Valle Foam Industries (1995) Inc.)  
Statement of Receipts and Disbursements  
For the period March 29, 2012 to February 21, 2013**

**Receipts**

Sale of assets	\$ 1,560,000.00
Accounts Receivable - Collected by Purchaser	3,699,723.31
Accounts Receivable - Collected by Applicants	27,161.61
Reimbursement of Legal Fees (net of payment of post-filing obligations)	628,449.03
Insurance Refund	51,297.00
Interest Earned	30,147.53
Total cash receipts	\$ <u>5,996,778.48</u>

**Disbursements**

CCAA Monitor's Fees	167,493.24
HST on CCAA Monitor's Fees	21,774.12
Legal Fees and Disbursements	285,396.53
HST Paid on Legal and Disbursements	32,044.62
Other Disbursements (Newspaper Notices, Bank Charges)	4,953.60
HST on Disbursements	640.47
PST Paid on D&O Premium	2,070.00
D&O Insurance premium	25,875.00
Total cash disbursements	\$ <u>540,247.58</u>

Cash on hand as at February 21, 2013	\$ <u><u>5,456,530.90</u></u>
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# TAB K

## Exhibit K

**Deloitte & Touche Inc., CCAA Monitors of  
43262063 Canada Ltd.  
(formerly Domfoam International Inc.)  
Statement of Receipts and Disbursements  
For the period March 29, 2012 to February 21, 2013**

Receipts

Sale of assets	\$ 4,008,346.87
Funds received from Domfoam RBC bank accounts	296,932.86
Interest earned	17,240.27
Class Action Settlement (net)	195,248.04
Total cash receipts	\$ <u>4,517,768.04</u>

Disbursements

CCAA Monitor's Fees	167,493.21
HST on CCAA Monitor's Fees	21,774.12
Legal Fees and Disbursements	808,084.97
HST Paid on Legal and Disbursements	37,306.57
Other Disbursements (Newspaper Notices, bank charges)	4,953.37
HST on Disbursements	640.47
PST Paid on D&O Premium	2,070.00
D&O Insurance premium	25,875.00
Total cash disbursements	\$ <u>1,068,197.71</u>

Cash on hand as at February 21, 2013	\$ <u><u>3,449,570.33</u></u>
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# TAB L

**Exhibit L**

**Deloitte & Touche Inc., CCAA Monitors of  
of A-Z Sponge & Foam Products Ltd.  
Statement of Receipts and Disbursements  
For the period March 29, 2012 to February 21, 2013**

**Receipts**

Sale of assets	\$ 842,278.49
Funds received from A-Z bank account	304,564.36
Insurance Refund	8,517.80
Interest Earned	4,667.50
Class Action Settlement (net )	<u>27,821.67</u>
Total cash receipts	\$ <u>1,187,849.82</u>

**Disbursements**

CCAA Monitor's Fees	37,220.68
HST on CCAA Monitor's Fees	4,838.68
Legal Fees and Disbursements	194,847.48
HST Paid on Legal and Disbursements	8,988.98
Other Disbursements (Newspaper Notice, bank charges)	1,121.49
HST on Disbursements	142.32
PST Paid on D&O Premium	460.00
D&O Insurance premium	5,750.00
Post-filing claims paid	<u>20,610.40</u>
Total cash disbursements	\$ <u>273,980.03</u>

Cash on hand as at February 21, 2013	\$ <u><u>913,869.79</u></u>
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# TAB M



# EXHIBIT "M"

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.

APPLICANTS

AFFIDAVIT OF CATHERINE HRISTOW  
(Sworn February 22, 2013)

I, CATHERINE A. HRISTOW, of the Town of Richmond Hill, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Certified Management Accountant and Chartered Insolvency and Restructuring Professional qualified to practice in the Province of Ontario and am a Vice President of Deloitte & Touche Inc. ("**Deloitte**"), the Court-Appointed monitor (the "**Monitor**") of 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc. ("**Valle**")), 4362063 Canada Ltd. (formerly known as Domfoam International Inc. ("**Domfoam**")) and A-Z Sponge & Foam Products Ltd. ("**A-Z Foam**") (collectively, the "**Applicants**" or the "**Companies**") and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto as Exhibit "A" are true copies of the invoices for fees and disbursements incurred by Deloitte in the course of the CCAA administration of the Company between October 1, 2012 and January 31, 2013 (the "**Passing of Accounts Period**").

3. The total fees of the Monitor during the Passing of Accounts Period amount to \$53,815.00, together with expenses and disbursements in the amount of \$75.56 and harmonized sales tax ("HST") in the amount of \$7,005.77 totalling \$60,896.33.

4. To the best of my knowledge, the rates charged by Deloitte throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Toronto market for the provision of similar services.

5. The hourly billing rates outlined in Exhibit "A" to this affidavit are comparable to the hourly rates charged by Deloitte for services rendered in relation to similar proceedings.

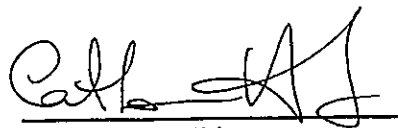
6. The fees of the Monitor have been allocated on a percentage basis to Valle Foam, Domfoam and A-Z at 45%, 45% and 10% respectively as agreed with the Applicants.

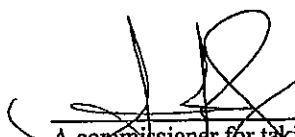
7. Attached as Exhibit "A" to the Affidavit of Grant Moffat sworn and filed in support of the within motion are the full particulars of the fees and disbursements of Thornton Grout Finnigan LLP, counsel to the Monitor, which have been incurred during the period October 1, 2012 to January 31, 2013.

8. Thornton Grout Finnigan LLP rendered services throughout these proceedings in a manner consistent with instructions from the Monitor. The Monitor has approved all such accounts and I verily believe that the fees and disbursements of Thornton Grout Finnigan LLP are fair and reasonable in the circumstances.

9. I make this affidavit in support of a motion by the Monitor for, *inter alia*, approval of the fees and disbursements of the Monitor.

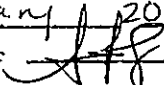
**SWORN BEFORE ME**  
at the City of Toronto, in the  
Province of Ontario this  
day of February 22, 2013

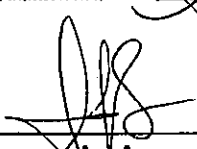
)  
)  
)  
)   
) Catherine A. Hristow )

  
\_\_\_\_\_  
A commissioner for taking oaths, etc.  
Anna Koroneos, a Commissioner, etc.,  
Province of Ontario  
for Deloitte & Touche Inc.,  
Trustee in Bankruptcy.  
Expires June 5, 2014.

**EXHIBIT "A"**

**REFERRED TO IN THE AFFIDAVIT OF CATHERINE HRISTOW**  
*(Sworn February 22, 2013)*

This is Exhibit "A." referred to  
in the Affidavit of Catherine Hristow  
Sworn before me this 22nd day of  
February, 2013  
/ Commissioner, etc. 

  
\_\_\_\_\_  
**Commissioner**

Anna Koroneos, a Commissioner, etc.,  
Province of Ontario  
for Deloitte & Touche Inc.,  
Trustee in Bankruptcy.  
Expires June 5, 2014.



Deloitte & Touche Inc.  
Brookfield Place  
181 Bay Street  
Suite 1400  
Toronto ON M5J 2V1  
Canada

Tel: 416-601-6150  
Fax: 416-601-6690  
www.deloitte.ca

Valle Foam Industries (1995) Inc.  
Domfoam International Inc.  
A-Z Sponge & Foam Products Ltd.  
c/o Deloitte & Touche Inc.  
181 Bay Street, Suite 1400  
Toronto, ON M5J 2V1

Attention: Mr. Paul Casey

Date: November 19, 2012  
Invoice No: 3200872  
Client/Mandate No: 921001/1000001  
Partner: Paul Casey

HST Registration No: 122893605

For professional services rendered in connection with Deloitte & Touche Inc. acting as Court-Appointed Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") Monitor of Valle Foam Industries (1995) Inc. ("Valle Foam") Domfoam International Inc. ("Domfoam") and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period October 1, 2012 to November 1, 2012.

Date	Professional	Description
10/1/2012	Hristow, Catherine	Status update with B. Bougie; correspondence with T. Dunn regarding landlord claim.
10/3/2012	Brown, Rose	Issue cheques and record same in Ascend.
10/3/2012	Hristow, Catherine	Review revised claims from RCAP in response to Notice of Revision and forward same to D. Ullmann; review correspondence from J. Vincent.
10/3/2012	Hristow, Catherine	Review list of Notices of Revisions; commence draft court report.
10/5/2012	Hristow, Catherine	Review correspondence from a former Valle employee; review Notices of Dispute from Class Action claimants and forward to legal counsel; correspondence with D. Ullmann.
10/9/2012	Hristow, Catherine	Voicemail message for G. Moffat; voicemail message for D. Ullmann and subsequent email correspondence; review Notice of Dispute from Revenu Quebec; telephone attendance with representative from Bell Canada regarding phone numbers for Valle Foam and Domfoam; prepare and send letter to WorkSafe BC; review correspondence from T. Dunn; telephone attendances with G. Moffat and subsequent email correspondence; revise draft affidavit; continue drafting Fifth Report of the Monitor.
10/10/2012	Hristow, Catherine	Email correspondence with D. Ullmann; email correspondence with T. Dunn; review correspondence from D. McNeill; review correspondence from S. Nassabi; review correspondence from D. Schlesinger and forward same to D. Ullmann; continue to draft Fifth Report of the Monitor.

10/11/2012	Koroneos, Anna	Discussion with C. Hristow on status and print schedules for updating in Ascend.
10/11/2012	Hristow, Catherine	Revise affidavit of fees; commence update of claims schedule; preparation of legal fees schedule for allocation of same; continue to draft the Fifth Report of the Monitor; telephone attendance with D. Ullmann; telephone attendance with T. Dunn; email correspondence with M. Whitmer.
10/11/2012	Brown, Rose	Preparation of cheques and record same in Ascend.
10/12/2012	Hristow, Catherine	Telephone attendance with N. Berube of Revenu Quebec and email correspondences with R. Slattery regarding same; correspondence with A. Koroneos regarding claims schedule; correspondence with B. Robb regarding legal accounts; correspondence with M. Whitmer; continue to draft Fifth Report of the Monitor; status update with P. Casey.
10/12/2012	Casey, Paul	Status update with C. Hristow.
10/15/2012	Hristow, Catherine	Attendance on a conference call with R. Slattery and G. Moffat; email correspondence with J. Howard and G. Ross; email correspondence with B. Robb; continue drafting Fifth Report of the Monitor.
10/16/2012	Koroneos, Anna	Review of all claims filed, organize revisions file; update schedule for review with C. Hristow; review of all revisions and organize files; review of disputes with C. Hristow; update schedule to reflect all claims.
10/16/2012	Hristow, Catherine	Email correspondences with D. Ullmann; review document regarding working capital adjustment and meet with M. Freake to sign same; email correspondence to A. Lin regarding Notice to Participate from WorkSafe BC and subsequent correspondence with WorkSafe BC regarding same; correspondences with B. Robb regarding operating expenses and legal fees; update legal fee retainer schedule drawdowns; review correspondence from the Competition Bureau; telephone attendance with C. Stanley of CRA and subsequent email correspondence; meeting with A. Koroneos regarding claims schedule and updating same; continue with revisions to the Fifth Report of the Monitor.
10/17/2012	Hristow, Catherine	Correspondence with S. Nassabi; correspondence with M. Whitmer of Kehrman Jackson & Krantz; review affidavits of legal counsel; telephone attendance with G. Moffat; email correspondences with D. Ullmann; email correspondence with D. Schlesinger; correspondence with J. Ehrman and forward same to G. Moffat; correspondence with B. Robb; draft statements of receipts and disbursements for Fifth Report of the Court; continue drafting Fifth Report of the Monitor; status update with P. Casey; discussion with S. Damiani regarding claims schedule.
10/17/2012	Damiani, Stefano	Review email from C. Hristow and discussion on same; prepare summary schedule with respect to claims filed by the creditors of the Debtor Companies, and email to C. Hristow on same.
10/17/2012	Brown, Rose	Issuance of cheques and allocation of legal fees and record same in Ascend.

10/18/2012	Hristow, Catherine	Various email correspondence with D. Ullmann and subsequent telephone attendance; send fax to Bond Street Collections including the Initial Order and Claims Solicitation Procedure Order; correspondence with A. Morganti; email correspondences and subsequent telephone attendance with G. Moffat; continue drafting Fifth Report of the Monitor.
10/18/2012	Brown, Rose	Allocation of disbursements between estates and record same in Ascend.
10/19/2012	Hristow, Catherine	Email correspondences with B. Robb; organize documentation for court report and quality review of same; meet with B. Tannenbaum to discuss the Fifth Report of the Monitor; continue with revisions to the Fifth Report of the Monitor; discussions with G. Moffat; send draft Fifth Report of the Monitor to the Applicants; review the Applicants Motion materials; issue letters to the three Class Action Claimants regarding the Notices of Dispute filed; discussion with D. Ullmann.
10/19/2012	Tannenbaum, Bryan	Review draft Fifth Report of the Monitor and discuss same with C. Hristow.
10/19/2012	Brown, Rose	Record deposit.
10/22/2012	Koroneos, Anna	Discussion with BC Hydro on post filing amounts and payments thereto.
10/22/2012	Hristow, Catherine	Discussion with P. Casey regarding the draft Fifth Report of the Monitor; finalize report.
10/22/2012	Casey, Paul	Review Fifth Report of the Monitor; comment and meet with C. Hristow.
10/23/2012	Hristow, Catherine	Correspondence with N. Berube of Revenu Quebec; telephone attendance with R. Slattery; send letter to B. Robb regarding post-filing expenses; file administration; telephone attendance with G. Moffat; email correspondences with D. Schlesinger; email correspondence with L. Brasil.
10/23/2012	Brown, Rose	Record deposit in Ascend.
10/24/2012	Hristow, Catherine	Correspondence with G. Moffat regarding D&O insurance; correspondence with D. Ullmann; correspondences with M. Whitmer; voicemail message for R. Slattery; discussions with R. Brown regarding investments.
10/24/2012	Brown, Rose	Discussion with C. Hristow and renew investments for 90 days; record investments in Ascend.
10/25/2012	Hristow, Catherine	Attendance at Court regarding the Fifth Report of the Monitor.
10/26/2012	Hristow, Catherine	Review invoice from KRG Insurance, and request cheques for payment of same; review correspondence from the Ministry of Labour; correspondence regarding posting the October 25th Order and Endorsement on the Monitor's webpage; correspondence with G. Moffat.
10/26/2012	Brown, Rose	Issue and record cheques in Ascend.
10/29/2012	Hristow, Catherine	Review correspondence from T. Dunn regarding Valle landlord; review documentation received from J. Ehrman; correspondence with Affiliated Brokers regarding status of the file.
10/30/2012	Hristow, Catherine	Correspondence with A. Koroneos regarding claims sent in by Bankruptcy Highway; correspondence with J. Ehrman; file administration; correspondences with B. Uysal of the Ministry of Labour; correspondence with D. McNeill.

Valle Foam Industries (1995) Inc.  
Domfoam International Inc.  
A-Z Sponge & Foam Ltd.  
c/o Deloitte & Touche Inc.  
November 19, 2012  
Page 4

10/31/2012	Brown, Rose	Allocation of fees between estates; prepare cheque and record same in Ascend.
10/31/2012	Hristow, Catherine	Review email correspondence from N. Berube and respond to same; telephone attendance with R. Slattery; discussion with A. Koroneos regarding claims schedule and post-filing claims.
11/1/2012	Damiani, Stefano	Email correspondence with C. Hristow regarding Domfoam HST returns; review and compile financial information, file administration.
11/1/2012	Hristow, Catherine	Telephone attendance with G. Moffat; letter to N. Berube of Revenu Quebec; letter to R. Tanner of Tanner & Guiney; discussions with A. Koroneos; review draft response to Revenu Quebec and provide comments to D. Ullmann; discussion with S. Damiani; discussion with Bell Canada regarding extension.

Valle Foam Industries (1995) Inc.  
 Domfoam International Inc.  
 A-Z Sponge & Foam Ltd.  
 c/o Deloitte & Touche Inc.  
 November 19, 2012  
 Page 5

**Summary of Fees**

Professional	Position	Hours	Rate	Fees
Casey, Paul	Partner	1.5	\$ 650.00	975.00
Tannenbaum, Bryan	Partner	0.8	650.00	520.00
Hristow, Catherine	Senior Manager	69.6	500.00	34,800.00
Damiani, Stefano	Manager	2.3	425.00	977.50
Koroneos, Anna	Manager	5.2	425.00	2,210.00
Brown, Rose	Trust Administrator	6.5	160.00	1,040.00
<b>Total hours and professional fees</b>		<u>85.9</u>		40,522.50
<b>Blended hourly rate</b>			471.74	
<b>Disbursements</b>				10.13
<b>Total Fees and Disbursements</b>				40,532.63
<b>HST @ 13%</b>				5,269.24
<b>Total Amount Due</b>				<b>\$ 45,801.87</b>

**Allocation of fees**

Entity	Professional Fees	Disbursements	Taxes	Total
Valle Foam Industries (1995) Inc. (45%)	18,235.13	4.56	2,371.16	20,610.85
Domfoam International Inc. (45%)	18,235.13	4.56	2,371.16	20,610.85
A-Z Sponge & Foam Products	4,052.24	1.01	526.92	4,580.17
<b>Totals</b>	<b>40,522.50</b>	<b>10.13</b>	<b>5,269.24</b>	<b>45,801.87</b>

Payable upon receipt to: Deloitte & Touche Inc.



# Deloitte.

Deloitte & Touche Inc.  
 Brookfield Place  
 181 Bay Street  
 Suite 1400  
 Toronto ON M5J 2V1  
 Canada

Tel: 416-601-6150  
 Fax: 416-601-6690  
 www.deloitte.ca

Valle Foam Industries (1995) Inc.  
 Domfoam International Inc.  
 A-Z Sponge & Foam Products Ltd.  
 c/o Deloitte & Touche Inc.  
 181 Bay Street, Suite 1400  
 Toronto, ON M5J 2V1

Date: December 11, 2012  
 Invoice No: 3212444  
 Client/Mandate No: 921001/1000001  
 Partner: Paul Casey

Attention: Mr. Paul Casey

HST Registration No: 122893605

For professional services rendered in connection with Deloitte & Touche Inc. acting as Court-Appointed Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") Monitor of Valle Foam Industries (1995) Inc, ("Valle Foam") Domfoam International Inc. ("Domfoam") and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period November 2, 2012 to November 30, 2012.

Date	Professional	Description
11/14/2012	Hristow, Catherine	Correspondence with Linden Landscaping regarding status of dividend payment; correspondence with R. Slattery.
11/19/2012	Hristow, Catherine	Review legal invoices; review correspondence regarding landlord settlement; prepare and send letter to WorkSafe BC.
11/20/2012	Brown, Rose	Trust Banking Administration – preparation of disbursement cheques.
11/20/2012	Hristow, Catherine	Review and approve the bank reconciliations for the month of October.
11/23/2012	Hristow, Catherine	Review documentation/invoices including banking and tax information sent by G. Ross; discussions with R. Brown regarding payment of post filing claims for A-Z; correspondence with G. Moffat.
11/26/2012	Hristow, Catherine	Correspondence with G. Ross; correspondence with L. Roy of Ormuco; various correspondences with P. Birthistle of Thomson Research Associates; review correspondence from T. Dunn regarding Valle landlord; review correspondence from R. Slattery.
11/27/2012	Hristow, Catherine	Correspondence with D. Stanneveid regarding claims process; conference call with G. Moffat and R. Slattery.
11/28/2012	Koroneos, Anna	Discussion with R. Brown on distribution to post filing A-Z claims and review of same.
11/28/2012	Hristow, Catherine	Review class action claims; attendance at Minden Gross for a meeting with class action counsel.
11/29/2012	Brown, Rose	Trust Banking Administration - distribution cheques for A-Z and legal disbursement.
11/29/2012	Hristow, Catherine	Review A-Z post-filing claims; sign cheques and draft letter regarding same; discussion with R. Brown regarding Ascend.

Valle Foam Industries (1995) Inc.  
 Domfoam International Inc.  
 A-Z Sponge & Foam Ltd.  
 c/o Deloitte & Touche Inc.  
 December 11, 2012  
 Page 2

**Summary of Fees**

<b>Professional</b>	<b>Position</b>	<b>Hours</b>	<b>Rate</b>	<b>Fees</b>
Hristow, Catherine	Senior Manager	8.2	500.00	4,100.00
Koroneos, Anna	Manager	0.8	425.00	340.00
Brown, Rose	Trust Administrator	<u>1.5</u>	160.00	<u>240.00</u>
<b>Total hours and professional fees</b>		<b><u>10.5</u></b>		4,680.00
<b>Blended hourly rate</b>			<b>445.71</b>	
<b>Disbursements</b>				44.95
<b>Total Fees and Disbursements</b>				4,724.95
<b>HST @ 13%</b>				614.24
<b>Total Amount Due</b>				<b>\$ 5,339.19</b>

**Allocation of fees**

<b>Entity</b>	<b>Professional Fees</b>	<b>Disbursements</b>	<b>Taxes</b>	<b>Total</b>
Valle Foam Industries (1995) Inc. (45%)	2,106.00	20.23	276.41	2,402.64
Domfoam International Inc. (45%)	2,106.00	20.23	276.41	2,402.64
A-Z Sponge & Foam Products (10%)	468.00	4.49	61.42	533.91
<b>Totals</b>	<b>4,680.00</b>	<b>44.95</b>	<b>614.24</b>	<b>5,339.19</b>

Payable upon receipt to: Deloitte & Touche Inc.

# Deloitte.

Deloitte & Touche Inc.  
 Brookfield Place  
 181 Bay Street  
 Suite 1400  
 Toronto ON M5J 2V1  
 Canada

Tel: 416-601-6150  
 Fax: 416-601-6680  
 www.deloitte.ca

Valle Foam Industries (1995) Inc.  
 Domfoam International Inc.  
 A-Z Sponge & Foam Products Ltd.  
 c/o Deloitte & Touche Inc.  
 181 Bay Street, Suite 1400  
 Toronto, ON M5J 2V1

Date: February 21, 2013  
 Invoice No: 3248897  
 Client/Mandate No: 921001/1000001  
 Partner: Paul Casey

Attention: Mr. Paul Casey

HST Registration No: 122893605

For professional services rendered in connection with Deloitte & Touche Inc. acting as Court-Appointed Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") Monitor of Valle Foam Industries (1995) Inc. ("Valle Foam") Domfoam International Inc. ("Domfoam") and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period December 1, 2012 to January 31, 2013.

Date	Professional	Description
12/3/2012	Koroneos, Anna	Review of Domfoam, Valle Foam and A-Z claims schedule and enter any missing information and update post revisions/disallowances in Ascend for distribution at a later date.
12/3/2012	Hristow, Catherine	Review correspondence; file and claim administration.
12/4/2012	Hristow, Catherine	Review correspondence from S. Schneiderman; review correspondence from former A-Z employee.
12/7/2012	Hristow, Catherine	Review CRA claim for A-Z Foam; forward CRA claim to Minden Gross; telephone attendance with D. Ullmann regarding Revenu Quebec.
12/10/2012	Koroneos, Anna	Review of proof of claims and property claim from Bankruptcy Highway for postage meter; discussion with C. Hristow on same; telephone conversation with Bankruptcy Highway regarding claims bar date and proof of delivery prior to bar date; review of email from purchaser regarding attempts to have them pick up the meter.
12/10/2012	Hristow, Catherine	Correspondence with T. Dunn; correspondence with Thomson Research; correspondence with Bankruptcy Highway regarding Pitney Bowes; correspondence with D. McNeill.
12/11/2012	Brown, Rose	Prepare disbursement cheques and transfer between accounts for legal expenses.
12/14/2012	Hristow, Catherine	Telephone attendance with M. Kennedy, former Valle Foam employee.
12/17/2012	Hristow, Catherine	Review correspondence from T. Dunn regarding balance of Valle purchase price; review and respond to correspondence from D. Ullmann regarding Revenu Quebec.
12/18/2012	Brown, Rose	Prepare disbursement cheques.
12/19/2012	Koroneos, Anna	Discussion with representative of Pitney Bowes regarding proof of claim property and release of postage machine; review of records and email to C. Hristow on same.

Valle Foam Industries (1995) Inc.  
Domfoam International Inc.  
A-Z Sponge & Foam Ltd.  
c/o Deloitte & Touche Inc.  
February 21, 2013  
Page 2

12/20/2012	Koroneos, Anna	Telephone message with Pitney Bowes regarding postage machine and contact at Valle.
12/21/2012	Hristow, Catherine	Telephone attendance with G. Moffat regarding correspondence from class action claimants, request from legal counsel and other matters.
1/7/2013	Hristow, Catherine	Review and sign bank reconciliations.
1/9/2013	Hristow, Catherine	Review correspondence; attendance on a conference call with G. Moffat, R. Slattery and C. Naudie.
1/18/2013	Hristow, Catherine	Review correspondence to Revenu Quebec.
1/21/2013	Hristow, Catherine	Correspondence with R. Slattery; correspondence with Bond Street Collections.
1/22/2013	Brown, Rose	Renewal of Investments.
1/22/2013	Koroneos, Anna	Telephone discussion with representative of Adpro Adhesives regarding the status of Domfoam distributions and discussion with C. Hristow regarding same.
1/22/2013	Hristow, Catherine	Review Revenu Quebec claims and notice of disallowance; various correspondence with R. Slattery; review late filed claims and commence schedule of same; review correspondence regarding settlement and receipt of funds; review filing documents regarding same; correspondence with J. Rossi of RBC; correspondence with G. Ross.
1/23/2013	Hristow, Catherine	Discussions with R. Brown; prepare draw down schedule for legal fees; sign disbursement forms.
1/23/2013	Hristow, Catherine	File administration; commence draft of court report.
1/25/2013	Brown, Rose	Prepare transfer between accounts for legal fees.
1/25/2013	Hristow, Catherine	Telephone attendance with G. Moffat.
1/29/2013	Hristow, Catherine	Review correspondence from T. Dunn; review and approve the December bank reconciliations.
1/30/2013	Hristow, Catherine	Review correspondence; revise draft court report.
1/31/2013	Hristow, Catherine	Telephone attendance with R. Slattery; correspondence with G. Moffat.

Valle Foam Industries (1995) Inc.  
 Domfoam International Inc.  
 A-Z Sponge & Foam Ltd.  
 c/o Deloitte & Touche Inc.  
 February 21, 2013  
 Page 3

**Summary of Fees**

Professional	Position	Hours	Rate	Fees
Hristow, Catherine	Senior Manager	13.1	500.00	\$ 6,550.00
Koroneos, Anna	Manager	4.1	425.00	1,742.50
Brown, Rose	Trust Administrator	2.0	160.00	320.00
<b>Total hours and professional fees</b>		<u>19.2</u>		<u>\$ 8,612.50</u>
<b>Blended hourly rate</b>			448.57	
<b>Disbursements</b>				20.48
<b>Total Fees and Disbursements</b>				\$ 8,632.98
<b>HST @ 13%</b>				1,122.29
<b>Total Amount Due</b>				<b>\$ 9,755.27</b>

**Allocation of fees**

Entity	Professional Fees	Disbursements	Taxes	Total
Valle Foam Industries (1995) Inc. (45%)	3,875.63	9.22	505.03	4,389.88
Domfoam International Inc. (45%)	3,875.63	9.22	505.03	4,389.88
A-Z Sponge & Foam Products (10%)	861.24	2.04	112.23	975.51
<b>Totals</b>	<b>\$ 8,612.50</b>	<b>\$ 20.48</b>	<b>\$1,122.29</b>	<b>\$ 9,755.27</b>

Payable upon receipt to: Deloitte & Touche Inc.

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 FOAM SPONGE & FOAM PRODUCTS LTD.

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

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

Proceedings commenced at **Toronto**

**AFFIDAVIT OF CATHERINE HRISTOW**  
*(Sworn February 22, 2013)*

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat (LSUC# 32380L)**  
Tel: 416-304-0599  
Fax: 416-304-1313

Lawyers for the Monitor

**TAB N**

# EXHIBIT "N"

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

APPLICANTS

AFFIDAVIT OF GRANT MOFFAT  
(Sworn February 22, 2013)

I, GRANT MOFFAT, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and am a partner with Thornton Grout Finnigan LLP ("TGF"), lawyers for Deloitte & Touche Inc. in its capacity as monitor (the "Monitor") of the property, assets and undertakings of Valle Foam Industries (1995) Inc., Domfoam International Inc. and A-Z Sponge & Foam Products Ltd. and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. Attached hereto as Exhibit "A" are true copies of the invoices forwarded to the Monitor by TGF for fees and disbursements incurred by TGF in the course of the within proceeding for the period October 1, 2012 to January 31, 2013.
3. Attached hereto as Exhibit "B" is a schedule summarizing each invoice in Exhibit "A", the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.



4. Attached hereto as Exhibit "C" is a schedule summarizing the respective years of call and billing rates of each of the solicitors at TGF who acted for the Monitor.

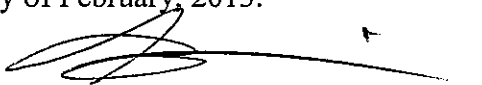
5. To the best of my knowledge, the rates charged by TGF throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

6. The hourly billing rates outlined in Exhibit "C" to this affidavit are comparable to the hourly rates charged by TGF for services rendered in relation to similar proceedings.

7. I make this affidavit in support of a motion by the Monitor for, *inter alia*, approval of the fees and disbursements of the Monitor's counsel.

**SWORN BEFORE ME**

at the City of Toronto, in the  
Province of Ontario this 22  
day of February, 2013.



A commissioner for taking oaths, etc.  
Annette Melinda Fournier, a Commissioner, etc.,  
City of Toronto, for ThorntonGroutFinnigan LLP,  
Barristers and Solicitors.  
Expires November 8, 2013.

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**Grant B. Moffat**

# EXHIBIT "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 FOAM SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

## TENTH BILL OF COSTS OF THE MONITOR

### For the period ending October 31, 2012

Oct-05-12	Review notices of dispute;	0.40	GBM
Oct-09-12	Review notices of objection;	1.00	GBM
	Telephone call with C. Hristow regarding claims process; review employee claim;	0.40	GBM
	Review priority of employee claims; consider impact of initial order on post-filing claims; telephone call with C. Hristow regarding same;	1.10	GBM
Oct-10-12	Review employee proof of claim; review other objections;	0.80	GBM
Oct-11-12	Consider quantification of damages for class action plaintiffs; review notices of dispute regarding same; telephone call with solicitor for directors; correspondence with Monitor regarding same;	1.10	GBM
Oct-12-12	Review report on cartel pricing; consider damage calculation;	0.40	GBM
Oct-15-12	Review notices of dispute; conference call with Monitor and company counsel;	1.00	GBM
Oct-17-12	Review correspondence regarding HST claim; telephone call with C. Hristow regarding same; consider HST claims; review correspondence from Competition Bureau regarding priority claim; telephone call with R. Slattery regarding DOJ position on priority of claim; review draft order;	1.40	GBM
	Review and revise draft report;	1.70	GBM

	Prepare fee affidavit of G. Moffat and exhibits thereto, provide same to C. Hristow;	0.70	AF
Oct-18-12	Review and revise Fifth Report to Court; telephone call with C. Hristow (2x) regarding intercompany loan; review correspondence from D. Ullman;	5.10	GBM
	Telephone call with C. Hristow regarding Fifth Report; review revised report;	0.40	GBM
Oct-19-12	Review correspondence regarding Domfoam funds; telephone call with C. Hristow; review affidavit and draft order;	1.00	GBM
	Review motion record;	0.30	GBM
	Review revised report; further revisions to same; review exhibits;	0.80	GBM
	Telephone call with C. Hristow regarding report;	0.20	GBM
	Letter to parties submitting notices of dispute; review Claims Solicitation Procedure Order regarding same;	0.60	GBM
	Telephone call with C. Hristow regarding report;	0.20	GBM
	Review correspondence from class action plaintiff;	0.20	GBM
	Finalize Fifth Report of the Monitor and compile exhibits thereto, e-mails to and from client regarding executed Report and final exhibits, revise Service List;	2.50	AF
Oct-22-12	Review correspondence regarding claims by Canadian class plaintiffs; telephone call with R. Slattery;	0.40	GBM
	Telephone call with C. Hristow regarding further revisions to Fifth Report; review same; review final report;	1.10	GBM
	Receive executed Fifth Report and final exhibits, e-mail to Service List serving Fifth Report with Exhibits, compile Report with Exhibits to be filed with the Court, prepare Affidavit of Service, memo to court agent;	1.60	AF
Oct-23-12	Review correspondence regarding D&O policy; telephone call with C. Hristow; review correspondence from class action counsel;	0.30	GBM
Oct-24-12	Review correspondence regarding D&O policy;	0.20	GBM
Oct-25-12	Review Monitor's Report; attend stay extension motion;	1.00	GBM
	Review correspondence from solicitor for directors; correspondence with C. Hristow;	0.40	GBM
Oct-26-12	Telephone call with C. Hristow; review correspondence regarding D&O	0.40	GBM

	policy;		
Oct-29-12	Telephone call with hedge fund representative regarding claims process;	0.30	GBM
	Consider damages quantification for price fixing; review caselaw regarding same;	1.10	GBM
Oct-31-12	Telephone call with C. Hristow regarding payment of D&O legal fees; review correspondence from R. Tanner regarding same; telephone call with C. Hristow regarding same;	0.40	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Grant B. Moffat	23.70	\$700.00	16,590.00
Annette Fournier (Law Clerk)	4.80	\$250.00	1,200.00
<b>TOTAL FEE HEREIN</b>			<b>\$17,790.00</b>
<b>HST on Fees</b>			<b><u>\$2,312.70</u></b>
<b>Total Fees and HST</b>			<b>\$20,102.70</b>
<b><u>Disbursements:</u></b>			
Computer Research			\$74.08
Photocopies			\$96.00
<b>Total Taxable Disbursements</b>			<b>\$170.08</b>
<b>HST on Disbursements</b>			<b>\$22.11</b>
<b>Total Non-Taxable Disbursements</b>			<b><u>\$0.00</u></b>
<b>Total Disbursements and HST</b>			<b><u>\$192.19</u></b>
<b>Total Fees, Disbursements &amp; HST</b>			<b>\$20,294.89</b>
<b>OUR ACCOUNT HEREIN</b>			<b><u>\$20,294.89</u></b>

**ThorntonGroutFinnigan LLP**

Per: \_\_\_\_\_

Grant B. Moffat

HST No. 87042 1039RT  
Matter No. 533-029  
Invoice No. 26164  
Date: Nov 13/12

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6:00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

**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 FOAM SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**ELEVENTH BILL OF COSTS OF THE MONITOR**

**For the period ending November 30, 2012**

Nov-01-12	Review correspondence from Revenu Quebec; telephone call with C. Hristow regarding same;	0.40	GBM
Nov-19-12	Office conference with G. Moffat regarding issues for meeting with class counsel;	0.20	JTP
Nov-27-12	Telephone call with R. Slattery and C. Hristow regarding meeting with class counsel;	0.20	GBM
Nov-28-12	Review disallowance of class claims; meeting with class counsel;	1.60	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	
John T. Porter	0.20	\$725.00	145.00	
Grant B. Moffat	2.20	\$700.00	1,540.00	
<b>TOTAL FEE HEREIN</b>			<b>\$1,685.00</b>	
<b>HST on Fees</b>			<b><u>\$219.05</u></b>	
<b>Total Fees and HST</b>				<b>\$1,904.05</b>

**Disbursements:**

Binding			\$3.20	
Filed Fifth Report of the Monitor and Affidavit of Service			\$30.00	
<b>Total Taxable Disbursements</b>			<b>\$33.20</b>	
<b>HST on Disbursements</b>			<b>\$4.32</b>	
<b>Total Non-Taxable Disbursements</b>			<b><u>\$0.00</u></b>	
<b>Total Disbursements and HST</b>				<b><u>\$37.52</u></b>
<b>Total Fees, Disbursements &amp; HST</b>				<b>\$1,941.57</b>
<b>OUR ACCOUNT HEREIN</b>				<b><u>\$1,941.57</u></b>

**ThorntonGroutFinnigan LLP**

Per: \_\_\_\_\_

Grant B. Moffat

HST No. 87042 1039RT

Matter No. 533-029  
Invoice No. 26285  
Date: Dec 12/12

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6:00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

**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 FOAM SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**TWELFTH BILL OF COSTS OF THE MONITOR**

**For the period ending January 31, 2013**

Dec-18-12	Review correspondence and report from class action counsel; consider value of claim;	0.90	GBM
Jan-08-13	Review correspondence regarding class action claim;	0.20	GBM
Jan-09-13	Review class expert report on quantification of overcharge; consider same; review <i>Competition Act</i> ;	0.90	GBM
	Conference call with Oslers and R. Slattery regarding class action claim and other estate issues;	0.70	GBM
Jan-10-13	Review CRA proof of claim; review Canadian settlement agreement regarding claim in U.S. settlement; review correspondence from Oslers regarding same; consider applicability of preference provisions to same; telephone call with R. Slattery;	1.40	GBM
Jan-21-13	Telephone call with class counsel regarding claim process;	0.20	GBM
Jan-22-13	Review correspondence regarding urethane settlement; telephone call with C. Hristow regarding same;	0.40	GBM
Jan-25-13	Telephone call with C. Hristow regarding urethane settlement; review correspondence regarding same;	0.40	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Grant B. Moffat	5.10	\$700.00	3,570.00
			<b>\$3,570.00</b>

**TOTAL FEE HEREIN**

**HST on Fees**

**Total Fees and HST**

**\$464.10**

**\$4,034.10**

**OUR ACCOUNT HEREIN**

**\$4,034.10**

**ThorntonGroutFinnigan LLP**

Per: \_\_\_\_\_

Grant B. Moffat

HST No. 87042 1039RT

Matter No. 533-029

Invoice No. 26491

Date: Feb 11/13

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6:00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.



## EXHIBIT "B"

Calculation of Average Hourly Billing Rates of  
Thornton Grout Finnigan LLP  
for the period October 1, 2012 to January 31, 2013

Invoice No.	Fees	Disbursements	HST	Hours	Average Rate	Total
26164	\$ 17,790.00	\$ 170.08	\$ 2,334.81	28.5	\$624.21	\$ 20,294.89
26285	1,685.00	33.20	223.37	2.4	702.08	1,941.57
26491	3,570.00	0.00	464.10	5.1	700.00	4,034.10
<b>Totals:</b>	<b>\$23,045.00</b>	<b>\$ 203.28</b>	<b>\$3,022.28</b>			<b><u>\$26,270.56</u></b>

## EXHIBIT "C"

### Billing Rates of Thornton Grout Finnigan LLP

For the period October 1, 2012 to January 31, 2013

	<u>Rate</u>	<u>Year of Call</u>
John T. Porter	\$725	1984
Grant B. Moffat	\$700	1991
Annette Fournier	\$250	Law Clerk

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)**

Proceedings commenced at **Toronto**

**AFFIDAVIT OF GRANT B. MOFFAT**  
*(Sworn February 22, 2013)*

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat (LSUC# 32380L)**  
Tel: 416-304-0599  
Fax: 416-304-1313

Lawyers for the Monitor

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 FOAM SPONGE & FOAM PRODUCTS LTD.

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

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

Proceedings commenced at **Toronto**

**SIXTH REPORT OF THE MONITOR  
DATED FEBRUARY 25, 2013**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat (LSUC# 32380L)**  
Tel: 416-304-0599  
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Lawyers for the Monitor