

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

MOTION RECORD
(returnable August 29, 2016)

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**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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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "**Applicants**")

NOTICE OF MOTION

The Applicants will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on Monday, August 29, 2016 at 10:00 a.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A", *inter alia*:
 - a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record and dispensing with service on any person other than those served;
 - b) extending the stay of proceedings from the Initial Order of Justice Newbould dated January 12, 2012 (the "**Initial Order**"), and subsequently extended by, *inter alia*, the Order of Justice Newbould, dated February 25, 2016, to and including January 30, 2017;

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- c) accepting the filing of the Plan of Compromise and Arrangement submitted by 4362063 Canada Ltd. (formerly Domfoam International Inc.) (the “**Domfoam**”), dated July 30, 2016 (the “**Plan**”);
- d) authorizing Domfoam to establish one class of Creditors (as defined in the Plan) for the purpose of considering and voting on the Plan;
- e) authorizing Domfoam to call, hold and conduct a meeting of the Creditors (the “**Meeting**”) to consider and vote on a resolution to approve the Plan, and approving the procedures to be followed with respect to the Meeting;
- f) setting the date for the Applicants’ motion seeking sanction of the Plan should the Plan be approved by the required majority of Creditors at the Meeting; and
- g) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. On January 12, 2012, the Applicants sought and were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-35, as amended (the CCAA) pursuant to the Initial Order.
2. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (the “**Monitor**”) was appointed as monitor of the Applicants.
3. The Applicant, 3113736 Canada Ltd. (formerly known as Valle Foam) continues to pursue collection efforts of its outstanding receivables. Litigation has been commenced in connection with many of these claims, and summary judgment proceedings are being pursued, where warranted.
4. The Applicants are each claimants in a U.S. class action proceeding that relates to price fixing for a product known as “Polyether Polyol” (“**Polyol**”). Dow Chemical Company

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(“**Dow**”) has accepted a settlement under which it is to pay \$834,000,000 for distribution to the class members, including the Applicants (the “**Polyols Settlement**”).

5. The recovery of the Applicants, before attorney fees, payable in respect of the Applicants’ claim in the Polyol proceedings, is expected to be several million dollars.
6. The Applicants have run a Court ordered process to identify pre- and post-filing claims against the Applicants and/or their officers and directors (the “**Claims Process Order**”).
7. The Monitor, in conjunction with the Applicants, has solicited claims from the Creditors, issued Notices of Disallowance where appropriate, and received Notices of Dispute from certain creditors.
8. The Monitor has a comprehensive registry of claims, including contact information, so as to enable payments to be made to those Creditors.
9. The sole remaining disputed claim involves a claim by Revenu Quebec and the Canada Revenue Agency. This claim is proceeding before both the Tax Court of Canada and the Quebec Superior Court. Discussions are ongoing with respect to settlement of this claim.
10. Domfoam has developed the Plan to present to the Creditors, the key features of which are as follows:
 - a) the Plan only relates to Domfoam;
 - b) it proposes a pro rata distribution of the funds already realised by the liquidation of Domfoam’s business to a single class of unsecured Creditors;
 - c) it utilizes the existing claims, as filed pursuant to the Claims Process Order;
 - d) it meets the statutory requirements in terms of those provisions of a Plan, which must be included in any plan;

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- e) Domfoam's directors and officers will be released from any pre-filing claims against them, including from any claims by Revenu Quebec and the Canada Revenue Agency;
 - f) the proceeds from the Polyols Settlement will be distributed when they are received without further Court order; and
 - g) Domfoam will discontinue its action to contest the Revenue Quebec claim in the Tax Court and to resolve other tax issues.
11. The Plan contains language declaring that the distributions under the Plan are distributions from the Applicant, and do not constitute distributions from the Monitor.
 12. A distribution under the Plan is the most efficient manner of distributing funds to the Creditors, and maximizes return to the Creditors.
 13. Domfoam intends to call the Meeting in respect of the Plan.
 14. In advance of the Meeting, it is necessary to establish a procedure for the calling and conduct of the Meeting.
 15. The Meeting Order provides that, for the purposes of considering and voting on the Plan, the Creditors will constitute a single class.
 16. The proposed Meeting Order also provides for, *inter alia*:
 - a) comprehensive notification of the Meeting to the Creditors;
 - b) procedures for the conduct of the Meeting, including that a representative of the Monitor will preside as the Chair of the Meeting, and, subject to any further Order of this Court, will decide all matters relating to the conduct of the Meeting;
 - c) the voting procedure at the Meeting;
 - d) the manner of valuing Claims for voting and distribution purposes;

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- e) the process by which the Monitor will keep a separate record of votes cast by Creditors holding Unconfirmed Voting Claims;
 - f) the processes and requirements for assigning claims; and
 - g) the ability of Domfoam and the Monitor to make amendments to the Plan.
17. The Monitor is supportive of the relief sought herein.
 18. The Applicants are operating in good faith and with due diligence.
 19. It is just and convenient and in the interests of the Applicants and their respective stakeholders that the requested Order be granted and the stay period extended.
 20. Section 11 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.
 21. Rule 1.04, 2.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended.
 22. Such further and other grounds as counsel may advise and this Honourable Court permit.

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

1. The Affidavit of Tony Vallecoccia, sworn August 23, 2016;
2. The Fourteenth Report of the Monitor, to be filed;
3. The Initial Order; and
4. Such further and other evidence as counsel may advise and this Honourable Court may permit.

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August 23, 2016

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TO: THE ATTACHED SERVICE LIST

TAB A

SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 29TH DAY
)
JUSTICE NEWBOULD) OF AUGUST, 2016
)

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**")

MEETING ORDER

THIS MOTION made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order, *inter alia*, (a) accepting the filing of the Plan of Compromise and Arrangement pursuant to the CCAA filed by 4362063 Canada Ltd. (formerly Domfoam International Inc.) (the "**Applicant**") dated July 30, 2016, (b) authorizing the Applicant to establish one class of Creditors for the purpose of considering and voting on the Plan, (c) authorizing the Applicant to call, hold and conduct a meeting of the Creditors (the "**Meeting**") to consider and vote on a resolution to approve the Plan; (d) approving the procedures to be followed with respect to the calling and conduct of the Meeting; and (e) setting the date for the hearing of the Applicant's motion seeking sanction of the Plan, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Tony Vallecoccia sworn August 23, 2016 and the exhibits thereto (the "**Vallecoccia Affidavit**") and the Fourteenth Report of Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (the "**Fourteenth Report**") in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants, and on hearing the submissions of counsel for the Applicant, the Monitor and all other counsel listed on the counsel slip, no one

appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Alexandra Teodorescu sworn August 23, 2016, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Fourteenth Report is hereby abridged and validated and this Motion is properly returnable today without further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that, unless otherwise noted, capitalized terms shall be as defined in this Order or in the Plan (as it may be amended in accordance with its terms), which is attached as Exhibit “B” to the Vallecoccia Affidavit.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period of the Initial Order of Justice Newbould dated January 12, 2012 and as subsequently extended by, *inter alia*, the Order of Justice Newbould dated February 25, 2016, is hereby extended from August 30, 2016 to and including January 30, 2017.

MONITOR'S ROLE

4. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under (i) the CCAA, (ii) the Initial Order of this Court dated January 12, 2012, as amended and restated (the “**Initial Order**”), and (iii) the Claims Process Order, is hereby authorized to take such other actions and fulfill such other roles as are authorized by this Meeting Order.

5. **THIS COURT ORDERS** that: (i) in carrying out the terms of this Meeting Order, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, the Claims Procedure Order, and as an officer of the Court; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Meeting Order, save and except for any gross negligence or wilful misconduct on its part; (iii) the Monitor shall be entitled to rely on

the books and records of the Applicants and any information provided the Applicants without independent investigation; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

PLAN OF COMPROMISE AND ARRANGEMENT

6. **THIS COURT ORDERS** that the Plan is hereby accepted for filing with the Court, and the Applicant is authorized to seek approval of the Plan by the Creditors at the Meeting (as defined below) in the manner set forth in this Order.

7. **THIS COURT ORDERS** that the Applicant is hereby authorized to amend, modify and/or supplement the Plan, provided that any such amendment, modification or supplement shall be made in accordance with the terms of Section 11.1 of the Plan.

NOTICE OF MEETING

8. **THIS COURT ORDERS** that each of the following in substantially the forms attached as Schedules "A" and "B" to this Meeting Order are hereby approved:

(a) the Notice of Meeting of Creditors (as defined below) (the "**Notice of Meeting**");

(b) the form of proxy for Creditors (the "**Creditor Proxy**");

(together with the Fourteenth Report, Plan and Meeting Order, the "**Creditors' Information Package**").

9. **THIS COURT ORDERS** that, notwithstanding paragraph 8 above, the Applicant and the Monitor may from time to time make such minor changes to the documents in the Creditors' Information Package as the Applicant and the Monitor consider necessary or desirable or to conform the content thereof to the terms of the Plan, this Order or any further Orders of the Court, including the changes necessary to confirm the date, time and location of the Meeting and the Sanction Hearing.

10. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Order, the Monitor shall cause a copy of the Creditors Information Package, this Order, and the Monitor's Fourteenth Report to be posted on <http://www.deloitte.com/ca/vallefoam> (the "**Monitor's**

Website”). The Monitor shall ensure that the Creditors’ Information Package remains posted on the Monitor’s Website until at least one (1) Business Day after the Plan Implementation Date.

11. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Order, the Monitor shall send the Creditors’ Information Package to all Creditors (or their counsel) known to the Monitor and the Applicant as of the date of this Order, by regular mail, facsimile, courier or e-mail at the last known address (including fax number or e-mail address) for such Creditors (or their counsel) set out in the proof of claim submitted by the respective Creditor.

12. **THIS COURT ORDERS** that, as soon as practicable following the receipt of a request therefor, the Monitor shall send a copy of the Creditors’ Information Package by registered mail, facsimile, courier or e-mail, to each Creditor who, no later than three (3) Business Days prior to the Meeting (or any adjournment thereof), makes a written request for it.

13. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Order, the Monitor shall use reasonable efforts to cause the Notice of Meeting to be published for a period of one (1) Business Day in the *Globe and Mail* (National Edition), provided that the Monitor shall be entitled to make such amendments or abridgments to the Notice of Meeting as are reasonable, in its discretion, for the purpose of publishing the Notice of Meeting in such newspapers.

NOTICE SUFFICIENT

14. **THIS COURT ORDERS** that the provision of notice in the manner set out in paragraphs 8 to 13 above shall constitute good and sufficient service of this Order, the Plan, the Proxies and the Notice of Meeting on all Persons who may be entitled to receive notice thereof, or who may wish to be present in person or by proxy at the Meeting or in these proceedings, and no other form of notice or service need be made on such Persons and no other document or material need be served on such Persons in respect of these proceedings. Service shall be effective, in the case of mailing, three (3) Business Days after the date of mailing, in the case of service by courier, on the day after the courier was sent, in the case of any means of transmitted, recorded or electronic communication, when dispatched or delivered for dispatch and in the case of service by fax or e-

mail, on the day the fax or e-mail was transmitted, unless such day is not a Business Day, or the fax or e-mail transmission was made after 5:00 p.m., in which case, on the next Business Day.

15. **THIS COURT ORDERS** that the non-receipt of a copy of the Creditors' Information Package beyond the reasonable control of the Monitor, or any failure or omission to provide a copy of the Creditors' Information Package as a result of events beyond the reasonable control of the Monitor (including, without limitation, any inability to use postal services or lack of available contact information) shall not constitute a breach of this Order, and shall not invalidate any resolution passed or proceedings taken at the Meeting, but if any such failure or omission is brought to the attention of the Monitor, then the Monitor shall use reasonable efforts to rectify the failure or omission by the method and in the time most reasonably practicable in the circumstances.

THE MEETING

16. **THIS COURT ORDERS** that the Applicant is hereby authorized to call, hold and conduct a Meeting of the Creditors at the offices of counsel for the Applicant, Blaney McMurtry LLP, 1500-2 Queen Street East, Toronto, Ontario, M5C 3G5 or such other location as may be approved by the Monitor, on September 19, 2016, at 10:00 a.m. (Toronto Time) (the "**Meeting**"), or as adjourned to such place and time as the Chair or Monitor may determine in accordance with paragraph 33 hereof, for the purposes of considering and voting on the resolution to approve the Plan and transacting such other business as may be properly brought before the Meeting.

17. **THIS COURT ORDERS** that the only Persons entitled to notice of, attend or speak at the Meeting are the Creditors with Proven Claims or Unconfirmed Voting Claims (or their respective duly appointed proxyholders), the Monitor, the Applicants, all such parties' financial and legal advisors, the Chair, Secretary, and the Scrutineers (each as defined below). Any other Person may be admitted to the Meeting only by invitation of the Applicant or the Chair.

UNSECURED CREDITORS CLASS

18. **THIS COURT ORDERS** that, for the purposes of voting at the Meeting, each Creditor with a Proven Claim shall be entitled to one vote in a single class of Creditors ("**Creditor Class**").

19. **THIS COURT ORDERS** that notwithstanding anything to the contrary in paragraph 18 in the event that a Creditor holds a Claim that is an Unconfirmed Voting Claim as at the date of the Meeting, such Creditor may attend the Meeting, and such Unconfirmed Voting Claim may be voted at the Meeting by such Creditor (or its duly appointed proxyholder) in accordance with the provisions of this Order, without prejudice to the rights of the Applicant, the Monitor or the holder of the Unconfirmed Voting Claim with respect to the final determination of the Unconfirmed Voting Claim, and such vote shall be separately tabulated as provided herein, provided that votes cast in respect of any Unconfirmed Voting Claim shall not be counted for any purpose, unless, until and only to the extent that such Unconfirmed Voting Claim is finally determined to be a Proven Claim.

20. **THIS COURT ORDERS** that, subject to paragraph 26, the only Persons entitled to vote at the Meeting in person or by proxy are Creditors with Proven Claims or Unconfirmed Voting Claims.

21. **THIS COURT ORDERS** that, for the purposes of voting at the Meeting, the value of a vote cast by any Creditor shall be deemed equal to his, her or its Proven Claim.

VOTING BY PROXIES

22. **THIS COURT ORDERS** that all Creditor Proxies submitted in respect of the Meeting (or any adjournments thereof) must be (a) received by the Monitor by 10:00 a.m. (Toronto Time) at least one (1) Business Day prior to the Meeting; and (b) in substantially the form attached to this Meeting Order as Schedule "B", or in such other form acceptable to the Monitor or the Chair. The Monitor is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any Proxy is completed and executed, and may waive strict compliance with the requirements in connection with the deadlines imposed in connection therewith.

23. **THIS COURT ORDERS** that for the purpose of tabulating the votes cast on any matter that may come before the Meeting, the Chair shall be entitled to rely on any vote cast by a holder of a Proxy that has been duly submitted to the Monitor in the manner set forth in this Order without independent investigation.

24. **THIS COURT ORDERS** that if an officer of the Monitor is appointed or is deemed to be appointed as proxyholder and the Creditor fails to indicate on its Proxy whether to vote for or against approval of the Plan or to abstain from voting on the Plan, the Proxy shall be voted FOR approval of the Plan and any amendments thereto.

25. **THIS COURT ORDERS** that paragraphs 22 to 24 and the instructions contained in the Proxies shall govern the submission of such documents and any deficiencies in respect of the form or substance of such documents filed with the Monitor.

TRANSFERS OR ASSIGNMENTS OF CLAIMS

26. **THIS COURT ORDERS** that a Creditor may transfer or assign the whole of its Claim prior to the Meeting. If a Creditor transfers or assigns the whole of its Claim to another Person, such transferee or assignee shall not be entitled to attend and vote the transferred or assigned Claim at the Meeting unless (i) the assigned Claim is a Proven Claim or an Unconfirmed Voting Claim, or a combination thereof, and (ii) satisfactory notice of and evidence of such transfer or assignment has been delivered to the Monitor in accordance with the Claims Process Order not less than two Business Days prior to the date of the Meeting.

ENTITLEMENT TO VOTE AT THE MEETING

27. **THIS COURT ORDERS** that, for greater certainty, and without limiting the generality of anything in this Order, a Person holding an Unaffected Claim is not entitled to vote on the Plan in respect of such Unaffected Claim at the Meeting and, except as otherwise permitted herein, shall not be entitled to attend the Meeting.

28. **THIS COURT ORDERS** that, notwithstanding anything to the contrary herein, any Person with an Equity Claim shall have no right to, and shall not, vote at the Meeting in respect of such Claim and, except as otherwise permitted herein, shall not be entitled to attend the Meeting.

PROCEDURE AT THE MEETING

29. **THIS COURT ORDERS** that a representative of the Monitor, designated by the Monitor, shall preside as the chair of the Meeting (the “**Chair**”) and, subject to this Order or any further Order of the Court, shall decide all matters relating to the conduct of the Meeting.

30. **THIS COURT ORDERS** that a Person designated by the Monitor shall act as secretary at the Meeting (the “**Secretary**”).

31. **THIS COURT ORDERS** a Creditor with a Proven Claim that is not an individual may only attend and vote at the Meeting if it has appointed a proxyholder to attend and act on its behalf at the Meeting.

32. **THIS COURT ORDERS** that the quorum required at the Meeting shall be one (1) Creditor with a Proven Claim present at the Meeting in person or by proxy.

33. **THIS COURT ORDERS** that the Meeting shall be adjourned to such date, time and place as may be designated by the Chair or the Monitor, if:

- (a) the requisite quorum is not present at the Meeting; or
- (b) prior to or during the Meeting, the Chair or the Monitor, in consultation with the Applicant, otherwise decides to adjourn the Meeting.

The announcement of the adjournment by the Chair at the Meeting (if the adjournment is during the Meeting), the posting of notice of such adjournment on the Monitor’s Website and written notice (including by e-mail) to the Service List shall constitute sufficient notice of the adjournment and neither the Applicant nor the Monitor shall have any obligation to give any other or further notice to any Person of the adjourned Meeting.

34. **THIS COURT ORDERS** every question submitted to the Meeting, except to approve the Plan resolution, shall be decided by a vote of a majority in value of the Creditors with Proven Claims present in person or by proxy at the Meeting.

35. **THIS COURT ORDERS** that the Chair be and is hereby authorized to direct a vote at the Meeting, by such means as the Chair may consider appropriate, with respect to: (i) a

resolution to approve the Plan and any amendments thereto; and (ii) any other resolutions as the Chair may consider appropriate in consultation with the Applicant.

36. **THIS COURT ORDERS** that the Monitor shall keep separate tabulations of votes cast at the Meeting in respect of:

- (a) Proven Claims; and
- (b) Unconfirmed Voting Claims, if applicable.

37. **THIS COURT ORDERS** that following the votes at the Meeting, the Monitor shall tabulate the votes and the Monitor shall determine whether the Plan has been approved by the required majority of Creditors.

38. **THIS COURT ORDERS** that the Monitor shall file a report with this Court after the Meeting or any adjournment thereof, as applicable, with respect to the results of the votes, including:

- (a) whether the Plan has been approved by the required majority of the Creditor Class; and
- (b) whether the votes cast in respect of Unconfirmed Voting Claims, if applicable, would affect the result of that vote.

39. **THIS COURT ORDERS** that a copy of the Monitor's Report regarding the Meeting shall be posted on the Monitor's Website prior to the Sanction Hearing (as defined below).

40. **THIS COURT ORDERS** that the result of any vote conducted at the Meeting shall be binding upon all Creditors, whether or not any such Creditor was present or voted at the Meeting.

SANCTION HEARING AND ORDER

41. **THIS COURT ORDERS** that if the Plan is accepted by the required majority in the Creditor Class, the Applicant is authorized to bring a motion seeking the Sanction Order on a date to be determined by this Court (the "**Sanction Hearing**").

42. **THIS COURT ORDERS** that service of the Notice of Meeting and the posting of this Order to the Monitor's Website pursuant to paragraphs 8 to 13 hereof shall constitute good and sufficient service of notice of the Sanction Hearing upon all Persons who may be entitled to receive such service and no other form of service or notice need be made on such Persons and no other materials need be served on such Persons in respect of the Sanction Hearing unless they have asked to be included on the Service List in these proceedings.

43. **THIS COURT ORDERS** that any Person (other than the Applicant or the Monitor) that is not on the Service List for the within motion and that is wishing to receive materials and appear at the Sanction Hearing, shall serve upon the lawyers for each of the Applicant and the Monitor a request to be added to the Service List in these proceedings by no later than 5:00 p.m. (Toronto Time) on the date that is seven (7) days prior to the Sanction Hearing.

44. **THIS COURT ORDERS** that any Person who wishes to oppose the motion for the Sanction Order shall serve upon the lawyers for each of the Applicant and the Monitor and upon all other parties on the Service List, and file with this Court, a copy of the materials to be used to oppose the motion for the Sanction Order by no later than 5:00 p.m. (Toronto Time) on the date that is three (3) days prior to the Sanction Hearing.

45. **THIS COURT ORDERS** that the Applicant is authorized to adjourn the Sanction Hearing with the prior consent of the Monitor, and if the Sanction Hearing is adjourned, only those Persons who are listed on the Service List (including those Persons who have complied with paragraph 43 of this Order) shall be served with notice of the adjourned date of the Sanction Hearing.

GENERAL

46. **THIS COURT ORDERS** that the Applicant and the Monitor may, in their discretion, generally or in individual circumstances, waive in writing the time limits imposed by this Order if each of the Applicant and the Monitor deem it advisable to do so, without prejudice to the requirement that all other Persons must comply with the terms of this Order.

47. **THIS COURT ORDERS** that any notice or other communication to be given pursuant to this Order by or on behalf of any Person shall be in writing and will be sufficiently given only if by mail, courier, e-mail, fax or hand-delivery addressed to:

(a) in the case of the Applicant:

Blaney McMurtry LLP
1500-2 Queen Street East
Toronto, ON M5C 3G5

Attention: David Ullmann
Fax: (416) 594-2437
Email: dullmann@blaney.com

(b) in the case of the Monitor:

Deloitte Restructuring Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Attention: Catherine Hristow
Email: christow@deloitte.ca
With an e-mail copy to: paucasey@deloitte.ca

with a copy to:

Thornton Grout Finnigan LLP
100 Wellington Street West, Suite 3200
Toronto, Ontario M5K 1K7
Attention: Grant B. Moffat and Leanne M. Williams
Fax: (416) 304-1313
Email: gmoffat@tgf.ca
lwilliams@tgf.ca

48. **THIS COURT ORDERS** that notwithstanding any provision herein to the contrary, the Monitor shall be entitled to rely upon any communication given pursuant to this Order (including any delivery of Proxies).

49. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions

concerning the discharge of their respective powers and duties under this Order or the interpretation or application of this Order.

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside Canada to give effect to this Order and to assist the Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order.

SCHEDULE “A”

NOTICE OF MEETING OF CREDITORS AND SANCTION HEARING

**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.**

NOTICE IS HEREBY GIVEN THAT that a plan of compromise and arrangement (the “**Plan**”) has been filed with the Ontario Superior Court of Justice Commercial List (the “**Court**”) in respect of 4362063 Canada Ltd. (formerly Domfoam International Inc.) (“**Domfoam**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

NOTICE IS ALSO HEREBY GIVEN that a meeting (the “**Meeting**”) of a single class of Creditors (as defined in the Plan) will be held at the offices of Blaney McMurtry LLP on September 19, 2016, at 10:00 a.m. (Toronto Time), (or such other date as may be set and announced in accordance with the Meeting Order, as defined below), for the purpose of considering and voting upon the Plan filed by Domfoam.

The Meeting is being held pursuant to the Order of the Ontario Superior Court of Justice Commercial List (the “**Court**”) made on August 29, 2016 (the “**Meeting Order**”). A copy of the Meeting Order and the Plan can found on the website of the Court-appointed monitor, Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (the “**Monitor**”): www.deloitte.com/ca/vallefoam

NOTICE IS ALSO HEREBY GIVEN that Domfoam has set a date for a Court hearing on 10:00 a.m. (Toronto Time) on _____ at the Court at 330 University Avenue, Toronto, Ontario, at which time Domfoam will ask the Court to approve the Plan, if the Plan was approved by the requisite majorities of the Creditors at the Meeting.

Creditors should receive an information package and important forms for completion and submission with respect to the Meeting. If you do not, please contact the Monitor at the address listed below. To cast a vote at the Meeting, Creditors should follow the procedures set out in the Meeting Order. Creditors may attend the Meeting in person or may submit the proxy included in the information package as per the terms outlined therein.

The Monitor’s contact details for additional information or materials relating to the Meeting is:

Deloitte Restructuring Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Attention: Catherine Hristow
Email: christow@deloitte.ca
With an e-mail copy to: paucasey@deloitte.ca

SCHEDULE “B”

FORM OF PROXY FOR THE MEETING OF CREDITORS
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.

Before completing this form of proxy (the “**Proxy**”) please read carefully the accompanying instructions for information respecting the proper completion and return of this Proxy.

THIS PROXY MUST BE COMPLETED, SIGNED, DATED AND PROVIDED TO DELOITTE RESTRUCTURING INC. (THE “**MONITOR**”) SO THAT THEY ARE RECEIVED BY 10:00 A.M. (TORONTO TIME) ON SEPTEMBER 16, 2016 (BEING ONE (1) BUSINESS DAY PRIOR TO THE MEETING) IF ANY PERSON ON BEHALF OF THE CREDITOR IS TO ATTEND THE MEETING AND VOTE ON THE PLAN OR IF THE CREDITOR WISHES TO APPOINT AN OFFICER OF THE MONITOR TO ACT AS THE CREDITOR’S PROXY.

Capitalized terms used and not otherwise defined herein have the meaning ascribed to them in the Plan of Compromise and Arrangement of 4362063 Canada Ltd. (formerly Domfoam International Inc.) (“**Domfoam**”) dated August 23, 2016 (as may be amended, restated or supplemented from time to time, the “**Plan**”) filed pursuant to the *Companies’ Creditors Arrangement Act* with the Ontario Superior Court of Justice Commercial List (the “**Court**”) in the City of Toronto in the Province of Ontario or in the order granted by the Court on August 29, 2016 (the “**Meeting Order**”).

The Creditor, as the holder of a Proven Claim and/or an Unconfirmed Voting Claim that may be voted and tabulated separately at the Meeting in accordance with the Meeting Order, hereby revokes all proxies previously given and nominates, constitutes and appoints _____ or, instead of the foregoing, a representative of the Monitor, as proxyholder, with full power of substitution, to attend, vote and otherwise act for and on behalf of the Creditor at the Meeting and any adjournment(s) thereof. Without limiting the generality of the power hereby conferred, the persons named as proxyholders are specifically directed to vote as follows:

1) (mark one only)

- VOTE **FOR** approval of the Plan;
- VOTE **AGAINST** approval of the Plan; or
- ABSTAIN from voting on the Plan.

2) Vote at the proxyholder’s discretion and otherwise act for and on behalf of the undersigned Creditor with respect to any amendments to the Plan and to any other matters that may come before the Meeting or any other adjournment thereof.

Dated this _____ day of September, 2016.

Name of the Creditor (Please Print)

Signature of Witness

Signature of the Creditor or Attorney authorized in writing or, if the Creditor is a corporation, signature of a duly authorized signing officer of the corporation.

Title of the authorized signing officer of the Creditor

Mailing address of the Creditor:

Telephone number of the Creditor:

Facsimile number of the Creditor:

Email address of the Creditor:

INSTRUCTIONS FOR COMPLETION OF THE PROXY

- 1) This proxy should be read in conjunction with the Plan and Meeting Order.
- 2) Each Creditor who has a right to vote at the Meeting has the right to appoint a person to attend, act and vote for and on behalf of the Creditor and such right may be exercised by inserting in the space provided the name of the person to be appointed. If no name has been inserted in the space provided, the Creditor will be deemed to have appointed a representative of the Monitor as the Creditor's proxyholder.
- 3) A Creditor who has given a proxy may revoke it (as to any matter on which a vote has not already been cast pursuant to its authority) by delivering written notice to the Monitor prior to the commencement of the Meeting or any adjournment or postponement of the Meeting.
- 4) If this Proxy is not dated in the space provided, it shall be deemed to be dated on the date it is received by the Monitor.
- 5) If an officer of the Monitor is appointed or is deemed to be appointed as proxyholder and the Creditor fails to indicate on the Proxy whether it wishes to vote for or against approval of the Plan or whether it wishes to abstain from voting on the Plan, **the Creditor will be deemed to have instructed its proxyholder to vote FOR approval of the Plan, including any amendments thereto.**
- 6) If more than one valid Proxy for the same Creditor is received the Proxy bearing the later date shall govern and the earlier-dated Proxy shall be revoked. If more than one valid Proxy for the same Creditor and bearing or deemed to bear the same date are received with conflicting instructions, such Proxies will be treated as disputed Proxies and shall not be voted.
- 7) This Proxy must be signed by the Creditor or by a person duly authorized (by power of attorney) to sign on the Creditor's behalf or, if the Creditor is a corporation, by a duly authorized officer or attorney of the corporation.
- 8) In order to appoint the Monitor as your proxy, this Proxy, once completed, dated and signed, should be sent in advance to the Monitor, by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email at the address set out below and must be received by the Monitor by no later than 10:00 a.m. (Toronto Time) on September 16, 2016, being one (1) Business Day before the Meeting.
- 9) If you wish to appoint any person other than the Monitor as your proxy, you may either send the proxy to the Monitor at the address listed below before 10:00 a.m. (Toronto Time) on September 1, 2016, being one (1) Business Day before the Meeting.

Address of the Monitor:

Deloitte Restructuring Inc.
181 Bay Street, Suite 1400
Toronto, ON M5J 2V1

Attention: Catherine Hristow
Email: christow@deloitte.ca
With an e-mail copy to: paucasey@deloitte.ca

TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

**AFFIDAVIT OF TONY VALLECOCCIA
(sworn August 23, 2016)**

I, **TONY VALLECOCCIA**, of the Town of Milton, in the Regional Municipality of Halton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and CEO of 3113736 Canada Ltd. formerly known as Valle Foam Industries (1995) Inc. and of 4362063 Canada Ltd. formerly known as Domfoam International Inc. and a director of each of the Applicants, and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated. Where my evidence is based on information and belief, I have stated the source of that information and believe it to be true.
2. This affidavit is sworn in support of a motion by the Applicants for an Order:
 - a) authorizing the Applicant Domfoam to file a plan of arrangement in these *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceedings (the "**Plan**");

- b) Calling a meeting of creditors to consider the Plan; and
 - c) extending the stay granted pursuant to the Initial Order of Justice Newbould in these CCAA proceedings dated January 12, 2012, from August 30, 2016 to and including January 30, 2017.
3. As a result of the sale of assets of the Applicants, Valle Foam changed its name to 3113736 Canada Ltd. and Domfoam changed its name to 4362063 Canada Ltd. The style of cause of these proceedings was changed by the Order of Justice Brown dated June 15, 2012 to reflect the change of names. For the purpose of this affidavit, the said Applicants will still be referred to as Valle Foam, Domfoam and A-Z.
4. Attached hereto as **Exhibit "A"** is my affidavit of February 19, 2016 without Exhibits, (the "**February Affidavit**"), which sets out the material events which the Applicants were dealing with leading up to the last extension requested by the Applicants. The balance of this affidavit, other than the section related to the Plan, provides an update on those matters described in the February Affidavit.

VALLE FOAM COLLECTION EFFORTS

5. Valle Foam continues to pursue collection efforts of its outstanding receivables.
6. There are six actions outstanding in respect of an aggregate amount of \$793,000.00. The Monitor has been advised on the status of each of these actions.

7. Valle Foam continues to vigorously pursue the remaining actions. I have recently instructed counsel to commence summary judgment proceedings in several cases where warranted.

CLASS ACTIONS

8. Prior to the commencement of these CCAA proceedings, class counsel in the U.S. and Canada initiated a number of proposed class proceedings against the Applicants on behalf of purchasers of polyurethane foam and products containing polyurethane foam products (the “**Class Actions**”).

9. There are no further developments with respect to the Class Actions since the February Affidavit other than with respect to the Urethane Antitrust Litigation.

URETHANE ANTITRUST LITIGATION

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

11. There has been a trial in respect of one of the defendants in the Polyol matter, The Dow Chemical Company (“**Dow**”), in which a judgment has been rendered against Dow in the amount of \$1.06 billion. The judgment was upheld on appeal.

12. Refund Recovery Services LLC (“**RRS**”), the Applicants’ exclusive agent is retained to assist in filing the necessary documents to secure their share of the Polyol settlement funds.

13. In March 2016, Dow withdrew its appeal of the Judgment to the United States Supreme Court and accepted a settlement under which it is to pay \$834,000,000 USD, for distribution to the class members, including the Applicants.

14. The amount which will be payable to the Applicants under this settlement has not yet been determined. The parties are applying a different method for the allocation of the settlement than had been used in the previous settlements in this matter.

15. The funds are to be distributed, net of fees, in proportion to the dollar amount of each customer's specific damages as determined by a Court designated expert. The expert will calculate each member's damages using customer-specific estimates, bounded by the Interquartile Range for each modeled product overcharge applicable to that customer.

16. At a hearing in July 2016, the US Judge with carriage of this class action approved the above referenced method for processing and payment of claimants set out above. The Appeal period for the approval of the settlement will expire at the end of his month. If there is no appeal (and none is anticipated at this time), the US claims process is expected to commence within one or two months thereafter.

17. As I have stated in previous affidavits in these proceedings, the recovery to the Applicants, before attorney fees, payable in respect of the Applicants' claim in the Polyol proceedings, is expected to be several million dollars.

18. Based upon previous filings and payments received to date in this case, and without any unanticipated circumstances, payment to the applicants could be as much as follows: AZ Foam -

\$690,000; Valle Foam - \$6,000,000; and Domfoam \$4,900,000. These amounts are gross of fees payable to RSS.

19. I am cautioned by our counsel that there are many factors which could reduce the amounts actually received by the Applicants, including additional late filed claims, appeal costs, higher attorney fees approved by the Court, and other unforeseen events or holdbacks.

20. Funds are not anticipated to be paid to the Applicants until sometime in early 2017. It may also be that the funds will be paid in stages, as was the case with other settlements in this matter.

CLAIMS PROCESS and DISTRIBUTIONS

21. The Order in these proceedings of Justice Brown dated June 15, 2012 (the “**Claims Process Order**”), established a process to identify pre and post-filing claims against the Applicants and/or their officers and directors.

22. I am advised that the Monitor has a comprehensive registry of claims, including contact information, so as to enable payments to be made to those creditors.

UNRESOLVED CLAIMS

23. As set out in my February Affidavit, the sole remaining disputed claim in the Claims Solicitation Procedure is proceeding before both the Tax Court of Canada and in the Quebec Superior Court. The dispute involves a claim by Revneu Quebec with respect to an amount of approximately \$400,000.00 (before interest and penalties) in relations to GST paid to seven

different Temporary Employment Agencies (the “**Temp Agencies**”) hired by Domfoam to provide additional labour to Domfoam’s operations prior to the CCAA filing.

24. Counsel for Domfoam, the Monitor, and Monitor’s counsel attended a settlement conference at the Tax Court of Canada on March 3, 2016 in Ottawa. As no resolution was reached, the Court adjourned the settlement conference to April 28th, at which point it was reconvened by phone. However, no settlement was reached at that reconvened conference in April.

25. There is a parallel proceeding outstanding before the Quebec courts. It continues to be anticipated that the Tax Court proceeding will complete itself substantially in advance of the Quebec Court matter and that the Quebec Court matter will likely settle in accordance with the findings of the Tax Court

26. Revenue Quebec was unwilling to settle, in part, because it was uncertain as to what recovery it would receive from Domfoam under any plan of arrangement which may be put forward. Domfoam was unwilling to settle in the absence of a settlement that released the officers and directors from any possible claim by Revenu Quebec. As set out below, the Plan addresses these concerns.

27. The Tax Court adjourned the settlement conference *sine die* and directed that the parties report back to the Court on or before October 31, 2016.

Pre-Filing Credits

28. There also remains an issue with respect to approximately \$525,000.00 (before penalties and interest) in respect of GST credits which Revenu Quebec requires be refunded. This

amount arises in respect of GST credits which Domfoam may have applied for in respect of goods or services it ordered and took delivery of prior to the CCAA filing, and in respect of which, due to the prohibition in the Court order to pay those pre-filing debts after the CCAA proceeding commenced, the GST was likely ultimately never paid to Revenu Quebec.

29. There remains an unresolved issue among the Applicants, the officers and directors of the Applicants and the Monitor as to the proper treatment of these amounts as a pre or post-filing obligation.

30. Counsel for the directors and officers and counsel for the Monitor continue to discuss the treatment of these claim. The Plan addresses this issue.

31. The Applicants' directors' and officers' insurer is on notice as to these claims and the status of this dispute.

32. The insurance in respect of this issue is set to expire shortly, making it more urgent that this matter be resolved before further insurance costs need be considered.

PROPOSED PLAN

33. Attached here and marked as **Exhibit "B"** is the Plan. The key features of the Plan are as follows:

- a) It deals only with the applicant Domfoam;
- b) It proposes a pro rata distribution of the funds already realised by the Company from the liquidation of the business to a single class of unsecured creditors;

- c) It utilizes the existing claims, as filed pursuant to the Claims Process Order, as the basis for making a distribution. Claims and D&O Claims as defined in the Plan use the definitions from the Claims Process Order;
 - d) It meets the statutory requirements in terms of those provisions of a Plan which must be included in any Plan;
 - e) It releases the officers and directors from any pre-filing claims against them, including expressly releasing them from the claims of Revenu Quebec and CRA discussed above;
 - f) It allows for the distribution of future funds realized from the polyols settlement without further order of the court, as and when such funds are received; and
 - g) It requires Domfoam to discontinue their action to contest the Revenue Quebec claim in Tax Court and to resolve the issue with respect to the pre and post filing HST dispute.
34. There are no known secured or preferred creditors of Domfoam. There is one recent outstanding claim for payment of source deductions from Revenu Quebec, which I am advised the Monitor is investigating. To the extent that amount is found to be owing, it will be paid in priority as required.
35. I have provided the counsel to the class action claimants, who are the largest creditor in this proceeding, with an outline of this Plan.
36. I have provided counsel to the Bayer, the single largest trade creditor with an outline of this Plan.

37. I have provided counsel to the current officers and directors with an outline of this Plan. They are supportive.

38. I am not aware of any creditor who objects to the proposed Plan.

39. Having discussed it with my counsel, Blaney McMurtry LLP, I am of the view that a distribution under a Plan is the most efficient manner to distribute the funds from Domfoam. I am told it avoids the Superintendent's levy being deducted from the amount as would be the case in a bankruptcy, which would reduce creditor recovery. It also avoids the necessity of seeking additional claims from the creditors or other administrative steps required in a bankruptcy. It also provided a simple mechanism for the distribution of the Polyols funds, as they arrive. It will also, once approved by the Court, allow for a conclusion to the Domfoam proceedings.

40. I am also advised by my counsel that an interim distribution, of the type done in respect of Valle Foam and AZ Foam is not possible because the Monitor has been unable to secure a clearance certificate from Revenu Quebec.

41. I understand Revenu Quebec was asked by the Monitor for a clearance certificate or comfort letter several times, including at the March 3rd, 2016 and April 26th, 2016 appearances before the Tax Court and Revenu Quebec would not provide it.

42. The Plan contains express language which makes it a requirement that the Court provide an order declaring that the distributions to be made under the Plan are distributions from the Applicant Domfoam and do not constitute distributions from the Monitor, in order to protect the Monitor from liability for disbursing these funds in the absence of a clearance certificate.

43. There were no claims filed against the directors and officers of Domfoam pursuant to the Claims Process Order, other than the claims of Revenu Quebec. I am not aware of there being any further or other claims. No claims have been commenced against or are pending against the officers and directors outside of the claims process.

44. I have consulted with the Monitor on the design of the Plan

45. Subsequent amount realized from the Polyols settlement will be distributed from time to time thereafter. As noted above, the anticipated distribution under the Polyols settlement to Domfoam is significant.

PROPOSED MEETING

46. In order to consider the Plan, it is proposed that the Monitor call for a meeting of creditors at which a vote will be held on the Plan.

47. Attached to this motion is the proposed form of Meeting Order.

48. The meeting is to be held on September 19, 2016 at the offices of Blaney McMurtry LLP. The meeting is to be chaired by the Monitor.

49. The Meeting Order addresses how votes are to be counted and the treatment of disputed claims, including the claim of Revenu Quebec. In the absence of a resolution prior to the meeting, that claim, and any other disputed claim, will be treated as an Unconfirmed Voting Claim.

50. Voting shall be conducted in person or by proxy. Quorum for the Meeting shall be one creditor with an affected claim present at such meeting in person or by Proxy.

51. The Meeting Order provides for Notice to be sent to the creditors. The Meeting Order allows for amendments to be made to the Plan by Domfoam up to or on the date of the Meeting.

52. In the event the requisite majority, as required by the CCAA is attained (following the tallying of the votes by the Monitor), the results will be binding on all affected claimants, whether or not any such affected claimant is present at the Meeting

53. In the event the Plan is approved, Domfoam intends to return to this Court for approval shortly thereafter.

PROPOSED EXTENSION

54. The Applicants propose that the stay of the proceeding be extended from August 30, 2016 to and including January 30, 2017.

55. The extension sought herein will provide the Applicants and the Monitor further opportunity to attend the Meeting and proceed with the Plan, and to collect outstanding amounts owed to Valle Foam. As noted above, it is anticipated that the Applicants will return to Court before January 2017 to seek the approval of the Plan.

56. I am not aware of any creditor, or any other party, who is objecting to the proposed continuation of the CCAA process.

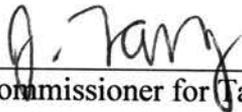
57. No cash flow is being provided with this affidavit as the Applicants have limited expenses and no employees. I am confident that the Applicants each have sufficient funds on hand to meet its obligations on a go forward basis for the period of the proposed extension.

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

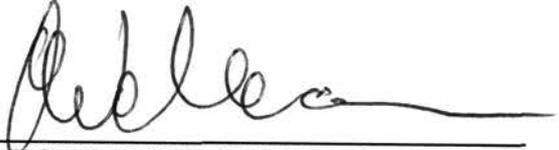
59. The Applicants are operating with good faith and with due diligence.

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

SWORN BEFORE ME at)
the City of Milton,)
in the Province of Ontario,)
this 23rd day of August , 2016)



A Commissioner for Taking Affidavits)
)
)
)



TONY VALLECOCCIA

Jaclyn Haley Tanz, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires March 18, 2018.

TAB A

This is **EXHIBIT "A"** referred to in the Affidavit of **TONY VALLECOCCIA** sworn this 23rd day of August, 2016.



A COMMISSIONER FOR TAKING AFFIDAVITS

Jaclyn Haley Tanz, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires March 18, 2018.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

**AFFIDAVIT OF TONY VALLECOCCIA
(sworn February 19, 2016)**

I, **TONY VALLECOCCIA**, of the Town of Milton, in the Regional Municipality of Halton, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the President and CEO of 3113736 Canada Ltd. formerly known as Valle Foam Industries (1995) Inc. and of 4362063 Canada Ltd. formerly known as Domfoam International Inc. and a director of each of the Applicants, and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated. Where my evidence is based on information and belief, I have stated the source of that information and believe it to be true.

2. This affidavit is sworn in support of a motion by the Applicants for an extension of the stay granted pursuant to the Initial Order of Justice Newbould in these *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceedings dated January 12, 2012, from February 29, 2016 to and including August 30, 2016.

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

4. Attached hereto as **Exhibit "A"** is my affidavit of September 25, 2015 without Exhibits, (the "**September Affidavit**"), which sets out the material events which the Applicants were dealing with leading up to the last extension requested by the Applicants. The balance of this affidavit, provides an update on those matters described in the September Affidavit.

VALLE FOAM COLLECTION EFFORTS

5. Valle Foam continues to pursue collection efforts of its outstanding receivables.

6. Since my affidavit in these proceedings of September 25, 2016, two additional actions have settled. As such there six actions outstanding in respect of an aggregate amount of \$793,000.00.

7. Valle Foam continues to vigorously pursue the remaining actions.

CLASS ACTIONS

8. Prior to the commencement of these CCAA proceedings, class counsel in the U.S. and Canada initiated a number of proposed class proceedings against the Applicants on behalf of purchasers of polyurethane foam and products containing polyurethane foam products (the "Class Actions").

9. There are no further developments with respect to the Class Actions since the September Affidavit other than with respect to the Urethane Antitrust Litigation.

URETHANE ANTITRUST LITIGATION

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

11. There has been a trial in respect of one of the defendants in the Polyol matter, The Dow Chemical Company ("Dow"), in which a judgment has been rendered against Dow in the amount of \$1.06 billion. The judgment was upheld on appeal.

12. Refund Recovery Services LLC ("RRS"), the Applicants' exclusive agent is retained to assist in filing the necessary documents to secure their share of the Polyol settlement funds.

13. Our counsel has been in communication with RRS and has been advised that a Writ of Certiorari has been filed with the United States Supreme Court and that, as at February 11, 2016, the Supreme Court has not decided whether it will hear the case.

14. Our counsel has been advised by RRS that in the event the Writ of Certiorari is denied, there will be new claims filed which may decrease the recovery to the Applicants.

15. As I have stated in previous affidavits in these proceedings, the recovery to the applicants, before attorney fees, payable in respect of the Applicants' claim in the Polyol proceedings, in the event of a one billion dollar judgment, could be several million dollars.
16. I am cautioned by our counsel that there are many factors which could reduce the amounts actually received by the Applicants, including additional late filed claims, appeal costs, higher attorney fees approved by the Court, and other unforeseen events or holdbacks.

CLAIMS PROCESS and DISTRIBUTIONS

17. The Order in these proceedings of Justice Brown dated June 15, 2012 (the "Claims Process Order"), established a process to identify pre and post-filing claims against the Applicants and/or their officers and directors.
18. There are no disputed Claims other than the Claim filed by Revenu Quebec against Domfoam, described in more detail therein.
19. Given that most claims were settled, the Applicants sought and received an order allowing for an interim distribution of funds to the creditors of the various Applicants. I am advised that the Monitor had a comprehensive registry of

claims, including contact information, so as to enable payments to be made to those creditors.

20. In accordance with the Order of Justice Newbould dated September 29, 2015, I am advised that the Monitor has attended to payments in the following amounts in the following companies:

Name of Applicant	Aggregate amount of Funds Disbursed	Number of Creditors who received payments	Funds Remaining to be Disbursed
A-Z Foam	\$ 624,054	30	Nil
Domfoam	Nil	Nil	\$ 976,596
Valle Foam	\$5,585,546	75	\$ 10,999

UNRESOLVED CLAIMS

21. The sole remaining disputed Claim in the Claims Solicitation Procedure is proceeding before both the Tax Court of Canada and in the Quebec Superior Court. The dispute is with respect to an amount of approximately \$400,000.00 (before interest and penalties) in relations to GST paid to seven different Temporary Employment Agencies (the "Temp Agencies") hired by Domfoam to provide additional labour to Domfoam's operations prior to the CCAA filing.

22. A without prejudice settlement offer was provided to Revenu Quebec on September 28, 2015, following a productive conference call. Despite repeated follow up attempts by our counsel, Revenu Quebec only responded on February 1, 2016, rejecting that offer.

23. There is a settlement conference scheduled before the Tax Court of Canada on March 3, 2016 in Ottawa. If no settlement is reached at that conference, the parties will set out a litigation schedule to move the matter through the next stages.

24. There is a parallel proceeding outstanding before the Quebec courts. It continues to be anticipated that the Tax Court proceeding will complete itself substantially in advance of the Quebec Court matter and that the Quebec Court matter will likely settle in accordance with the findings of the Tax Court.

Pre-Filing Credits

25. There also remains an issue arising from the review of Domfoam by Revenu Quebec with respect to approximately \$525,000.00 (before penalties and interest) in respect of GST credits which Revenu Quebec requires be refunded. This amount arises in respect of GST credits which Domfoam may have applied for in respect of goods or services it ordered and took delivery of prior to the CCAA

filing, and in respect of which, due to the prohibition in the Court order to pay those pre-filing debts after the CCAA proceeding commenced, the GST was likely ultimately never paid to Revenu Quebec.

26. It is undetermined whether or not these amounts will be payable as a post-filing obligation.

27. There is also a similar claim outstanding in the estate of Valle Foam. In that estate the amount owing is approximately \$186,000.00. As I reported in my Affidavit sworn October 22, 2014, the question as to whether or not this amount is properly a post-filing or pre-filing amount has not been determined.

28. Counsel for the directors and officers and counsel for the Monitor continue to discuss the treatment of these claim. The fact that this matter remains unresolved required that an amount equal to the amount in dispute be held back from any proposed distribution, pending a resolution.

29. The Applicants' directors' and officers' insurer is on notice as to these claims and the status of this dispute.

PROPOSED EXTENSION

30. The Applicants propose that the stay of the proceeding be extended from February 29, 2016 to and including August 30, 2016.

31. The extension sought herein will provide the Applicants and the Monitor further opportunity to deal with, among other things, the disputed claim with Revenu Quebec, to collect outstanding amounts owed to Valle Foam, to collect funds from the Polyol proceeding and otherwise to attend to the proposed distribution of the sale proceeds.

32. I am not aware of any creditor, or any other party, who is objecting to the proposed continuation of the CCAA process.

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

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

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

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

FURTHER AFFIANT SAITH NOT.

Tony Vallecoccia
TONY VALLECOCCIA

SWORN TO AND SUBSCRIBED before me this 19th day of February, 2016.

Grace Houck
Notary Name: GRACE HOUCK
Notary Public, State of Florida
Notary Commission Number:
My Commission Expires: 4-13-19



Personally Known _____ OR Produced Identification
Type of Identification Produced Ontario Driver's License

TAB B

This is **EXHIBIT "B"** referred to in the Affidavit of **TONY VALLECOCCIA** sworn this 23rd day of August, 2016.



A COMMISSIONER FOR TAKING AFFIDAVITS

Jaclyn Haley Tanz, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires March 18, 2018.

PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)**ARTICLE 1 - INTERPRETATION 1.1 Definitions**

In this Plan:

"Applicant" means 4362063 Canada Ltd. (formerly Domfoam International Inc.);

"Approval Meeting" means a meeting of Creditors, held pursuant to the Meeting Order, to vote on the Plan, and includes any meeting or meetings resulting from the adjournment thereof;

"A-Z Foam" means the applicant A-Z Sponge & Foam Products Ltd, in these proceedings;

"Business" means the business and operations carried on by or formerly carried on by the Applicant;

"Business Day" means a day other than a Saturday or Sunday on which banks are generally open for business in Toronto, Ontario, and Montreal, Quebec;

"CCAA" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

"CCAA Proceedings" means the proceedings under the CCAA commenced by the Applicant on January 12, 2012 at Toronto under Court File No. CV-12-9545-00CL;

"Claim" means any right or claim of any Person, or class of Persons or representative Person, against the Applicant whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of the Applicant in existence on the Filing Date, or which has arisen since 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 Applicant become bankrupt on the Filing Date;

"Claims Bar Date" means the 5:00 PM August 31, 2012 bar date referred to at paragraphs 5(b) and (f) of the Claims Process Order;

"Claims Process Order" means the Order of Justice Brown in the CCAA Proceedings dated June 15, 2012;

"Court" means the Ontario Superior Court of Justice;

"Creditor" means any Person with a Claim or a D&O Claim regardless of whether such Person has filed a Proof of Claim in the CCAA Proceedings;

“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, before or after June 15, 2012, and whether enforceable in any civil, administrative or criminal proceedings, including, without limitation, any person (including the crown) who filed a claim against the Directors and Officers pursuant to the Claims Process Order, including, without limitation any possible D&O Claim related to or derived from the facts alleged against the Applicant in the Revenu Quebec Action;

“DIP Loan” means any loans made between or among the Applicant, Valle Foam and A-Z Foam on or after January 12, 2012 which were expressly authorized to be considered a DIP loan by an Order of the Court;

“Directors and Officers” means (i) the current and former directors of the Applicant; and (ii) the current and former officers of the Applicant;

"Effective Time" means the first moment in time on the Plan Implementation Date;

“Equity Claim” means an equity claim as defined by the *Bankruptcy Insolvency Act*, R.S.C. 1985, c. B-3;

"Excepted Claim" has the meaning given to that term in Section 9.5 hereof;

“Filing Date” means January 12, 2012;

“Holdback Amount” means that amount from the cash on hand from the Applicant which the Monitor, in consultation with the Applicant, elects to hold back from the distribution of the Liquidation Proceeds, for future administration costs of these CCAA Proceedings;

“HST Pre and Post Filing Dispute” means the outstanding dispute between the Applicant and the Monitor as to the treatment of certain outstanding claims for payment of HST by Revenu Quebec as either a pre or post Filing Date obligation of the Applicant as further described in the Affidavit of Tony Vallecoccia sworn August 23, 2016;

"Initial CCAA Order" means the initial order of the Ontario Court dated January 12, 2012, pursuant to which, among other things, the Ontario Court granted a stay of proceedings with respect to the Applicant, as same may be further amended from time to time;

“Intercompany Claims” means any Claims, including the DIP Loan, owing among or between the Applicant and A-Z Foam or Valle Foam or any of them;

“Liquidation Proceeds” means the proceeds realized from the Business or collected by the Applicant or the Monitor on behalf of the Business since the Filing Date;

"Meeting" means an Information Meeting or an Approval Meeting;

"Meeting Order" means the Order of the Ontario Court dated August 29, 2016, regarding, *inter alia*, the calling and holding of the Meetings;

"Monitor" means Deloitte Restructuring Inc. (previously known as Deloitte & Touche Inc.), in its capacity as monitor of the Applicant, appointed pursuant to the Initial CCAA Order;

"Ontario Court" means the Superior Court of Justice (Ontario);

"Order" means an order of the Ontario Court in the CCAA Proceedings;

"Person" means any individual, partnership, limited partnership, limited liability company, joint venture, trust, trustee, corporation, unincorporated organization, government, agency, regulatory body or instrumentality thereof, legal personal representative or litigation guardian, or any other entity howsoever designated or constituted;

"Plan" means this plan of compromise or arrangement and all schedules hereto, as same may be amended hereafter in accordance with Section 11.1 herein;

"Plan Completion Date" means the Business Day on which the Monitor has completed and filed a certificate in accordance with Section 10.1 of this Plan;

"Plan Implementation Date" means the Business Day on which the conditions precedent to implementation of this Plan as set out in Section 7.1 hereof have been satisfied or fulfilled, and the Monitor has completed and filed its certificate in accordance with Section 7.2 of this Plan;

"Polyols Settlement" means the settlement as described in the affidavit of Tony Vallecoccia, sworn August 23, 2016, between the Applicant, as a member of a class of plaintiffs, and Dow Chemical Inc. in the United States;

"Proof of Claim" means the form attached as Schedule B to the Claims Process Order;

"Proven Claim" means a Creditor Claim that was properly filed with the Monitor, to the extent that it was allowed in whole or in part by (a) the Monitor, or (b) the Ontario Court, following an appeal from the determination of the Monitor;

"Proven Creditor" means a Creditor having a Proven Claim;

"Revenu Quebec Action" means the outstanding action by the Applicant against each of Revenu Quebec and Canada Revenue Agency with respect to certain amounts assessed as due and owing by Revenu Quebec and Canada Revenue Agency against the Applicant, before each of the Superior Court of Quebec and the Tax Court of Canada;

"Sanction Order" means an order of the Ontario Court approving this Plan;

"Unaffected Claim" has the meaning given to that term in Section 3.3 hereof;

"Unaffected Creditor" means any Person holding Unaffected Claims, to the extent of those Unaffected Claims;

"Unconfirmed Vote" means a vote cast at the Approval Meeting and marked by the Monitor as relating not to a Proven Claim, but to a Claim which the Monitor revised or disallowed in whole or in part and which remains in dispute;

"Unconfirmed Voting Claim" means a Creditor Claim in respect of which the Creditor's vote is an Unconfirmed Vote;

"Valle Foam" means Valle Foam Industries (1995) Inc. one of the applicants in the CCAA Proceedings; and

"Website" means the website established by the Monitor for purposes of the Plan and having the following address: [http://www.insolvencies.deloitte.ca/en-ca/pages/Valle%20Foam%20Industries%20\(1995\)%20Inc%20and%20Other%20Petitioners.aspx](http://www.insolvencies.deloitte.ca/en-ca/pages/Valle%20Foam%20Industries%20(1995)%20Inc%20and%20Other%20Petitioners.aspx)

1.2 Certain Rules of Interpretation

In this Plan and all schedules hereto:

- (a) the division of this Plan into articles, sections, subsections and clauses and the insertion of headings and a table of contents are for convenience of reference only and shall not affect the construction or interpretation of this Plan. The terms "this Plan", "hereof", "hereunder", "herein" and similar expressions refer to this Plan and not to any particular article, section, subsection or clause and include any plan supplemental hereto. Unless otherwise indicated, any reference in this Plan to an article, section, subsection, clause or schedule refers to the specified article, section, subsection, clause or schedule of or to this Plan;
- (b) the use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of this Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;
- (c) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes without limitation" and "including without limitation", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (d) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day. Unless otherwise specified, the time period within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day; and
- (e) unless otherwise provided, any reference to a statute, or other enactment of parliament or a legislature includes all regulations made thereunder, all enactments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation.

ARTICLE 2 - PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of this Plan is to enable the Applicant to efficiently distribute the Liquidation Proceeds and the proceeds of the Polyols Settlement to its Proven Creditors on a pro-rated basis, and to provide for releases for the Directors and Officers.

2.2 Affected Persons

This Plan will be implemented pursuant to the CCAA. On the Plan Implementation Date, subject to Section 3.3 hereof and subject to the satisfaction of the conditions contained in Section 7.1 herein, this Plan will be binding upon all Creditors and all other Persons in accordance with its terms.

ARTICLE 3 - CLASSIFICATION OF CREDITORS

3.1 Class of Creditors

The sole class for the purpose of considering and voting on this Plan shall be a single class consisting of Creditors.

3.2 Creditor Identification Procedure

Creditor Claims which have been delivered by Proof of Claim by the Claims Bar Date shall be as if they had been filed in respect of the Plan, and Creditors need not deliver to the Monitor a further Proof of Creditor Claim in respect thereof.

3.3 Unaffected Claims

This Plan does not compromise, release or otherwise affect any rights or claims:

- (a) for fees and expenses authorized pursuant to paragraph [INSERT] of the Initial CCAA Order, incurred in the provision of goods and services relating to the CCAA Proceedings;
- (b) of the Applicant, the Monitor and of its counsel;
- (c) that fall within Section 6(3), 6(5) or 6(6) of the CCAA;
- (d) that arise from the DIP Loan; or
- (e) any outstanding Intercompany Claims.

Each of the foregoing rights and claims set out in this Section 3.3 is referred to herein as an "**Unaffected Claim**".

3.4 Equity Claims

All Persons holding Equity Claims shall not be entitled to vote at or attend the Approval Meeting, and shall not receive any distributions under the Plan or otherwise receive any other compensation in respect of their Equity Claims.

ARTICLE 4 - TREATMENT OF CREDITORS

4.1 Treatment of Claims

On the Plan Implementation Date, the Claims will be compromised, released and otherwise affected in accordance with the terms of this Plan.

4.2 Voting Rights of Creditors

Subject to this Plan and the Meeting Order, each Proven Creditor shall be entitled to one vote in an amount equal to such Proven Claim. Furthermore, votes in respect of Unconfirmed Voting Claims will be recorded by the Monitor, subject to further determination in accordance with the Meeting Order. The procedure for determining the validity and quantum of the Claims for voting purposes shall be governed by the Meeting Order.

4.3 Unaffected Creditors

Notwithstanding anything to the contrary herein, each Person who has an Unaffected Claim shall not be entitled to vote or to receive any distribution under this Plan in respect of such Unaffected Claim. All Unaffected Claims shall be unaffected by the CCAA Proceedings and principal and interest shall continue to accrue notwithstanding the CCAA Proceedings.

ARTICLE 5 - DISTRIBUTIONS

5.1 Employees (Section 6(5) CCAA)

To the best of the Company's knowledge, there are no amounts owing to employees of the Applicant generally, or which would be captured by section 6(5) of the CCAA. However, in the event any such claims exist, immediately after the rendering of the Sanction Order and the expiry of all appeal periods relating thereto or the affirmation of the Sanction Order in such appeals, employees and former employees of the Applicant shall receive payment of:

- (a) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the Applicant had become bankrupt on the day on which proceedings commenced under the CCAA; and
- (b) wages, salaries, commissions or compensation for services rendered after the Initial CCAA Order and before the Sanction Order, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Applicant's business during the same period.

The inclusion of this Section 5.1 herein does not constitute any admission or acknowledgment by the Applicant as to the existence of any employees or former employees claims.

5.2 Crown claims (Section 6(3) CCAA)

Within six (6) months after the date of the Sanction Order and the expiry of all appeal periods relating thereto or the affirmation of the Sanction Order in such appeals, all amounts that were outstanding at the time of the Applicant's application for an order under Section 11 or 11.02 of the CCAA and that are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the *Income Tax Act*;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum:
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
 - (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;

shall be paid in full to Her Majesty in right of Canada or a Province, as applicable, but expressly not including any claims as may be due under the Excise Tax Act or any analogous statute in any province.

The inclusion of this Section 5.2 herein does not constitute any admission or acknowledgment by the Applicant as to the existence of any such outstanding amounts.

5.3 Payment of Professional and Administrative Expenses

On the Plan Implementation Date, all outstanding fees and disbursements payable under any Order shall be fully paid, or a reserve for such amount fully funded, as determined by the Monitor. Parties entitled to be paid hereunder shall have sixty (60) days from the Plan Implementation Date, or such later date as may be agreed with the Monitor, to submit final invoices to the Monitor for payment. Any reserve shall be administered by the Monitor.

5.4 Initial Distribution

Within thirty (30) days of the Plan Implementation Date, the Monitor shall distribute to the Proven Creditors the Liquidation Proceeds, less any amounts required to be paid pursuant to this Article 5 as determined by the Monitor in its sole discretion, and less the Holdback Amount.

5.5 Subsequent Distribution(s)

From time to time, the Monitor shall distribute to the Proven Creditors any other amounts in the possession or coming into the possession of the Monitor which will be available from other sources, including amounts paid to the Applicant pursuant to the Polyols Settlement, less the Holdback amount, if any, as determined by the Monitor in its sole discretion.

5.6 Distributions *Pro Rata* and *Pari Passu*

All distributions made to Proven Creditors pursuant hereto shall be made on a *pro rata, pari passu basis* among such Proven Creditors, considering the amounts of their respective Proven Claims.

All distributions made by the Monitor are made as agent for and on behalf of the Applicant, and not in its personal capacity.

ARTICLE 6 - SANCTION ORDER

6.1 Application for Sanction Order

The application for the Sanction Order shall be brought by the Applicant as soon as reasonably practicable following the approval of this Plan by the requisite majorities of Creditors voting at the Approval Meeting.

6.2 Effect of Sanction Order

In addition to sanctioning this Plan, and subject to the discretion of the Ontario Court, the Sanction Order shall, among other things and without limitation:

- (a) direct and authorize the distributions contemplated under this Plan;
- (b) order and declare that any distributions under the Plan shall not constitute a "distribution" and the Monitor shall not constitute a "legal representative" or "representative" of the Applicants for the purposes of section 159 of the Income Tax Act (Canada), section 270 of the Excise Tax Act (Canada), section 14 of the Tax Administration Act (Quebec), section 107 of the Corporations Tax Act (Ontario), section 22 of the Retail Sales Tax Act (Ontario), section 117 of the Taxation Act, 2007 (Ontario), section 23 of the Canada Pension Plan, section 86 of the Employment Insurance Act or any other similar federal, provincial or territorial tax legislation (collectively the "Tax Statutes"), nor a "receiver" within the meaning of An Act Respecting the Quebec Sales Tax, given that the Monitor is only a disbursing agent under the CCAA Plan, and the Monitor in making such payments is not "distributing", nor shall be considered to "distribute" nor to have "distributed", such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of it making any payments ordered or permitted hereunder, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of payments made under the Plan and this Order and any claims of this nature are hereby forever barred.
- (c) declare that the compromises and releases effected hereby are approved, binding and effective as of the Plan Implementation Date upon all Creditors, the Monitor and all other Persons affected by this Plan;
- (d) provide that no Person who is a party to any obligation or agreement with the Applicant shall, following the Plan Implementation Date, accelerate, terminate, rescind, refuse to perform or repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason:

- (i) of any event(s) that occurred on or prior to the Plan Implementation Date that would have entitled any other Person thereto to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicant);
 - (ii) of the fact that relief under the CCAA has been sought or obtained in respect of the Applicant or that the CCAA Proceedings have been commenced or completed; or
 - (iii) of any compromises or arrangements effected pursuant to this Plan;
- (d) confirm the effect of the Meeting Order;
 - (e) provide that the Monitor shall be discharged and released from its role as Monitor on the Plan Completion Date, save and except with respect to any remaining duties or powers required to implement and give effect to the terms of this Plan.

ARTICLE 7 - CONDITIONS PRECEDENT

7.1 Conditions Precedent to Implementation of Plan

The implementation of this Plan shall be conditional upon the fulfillment of the following conditions on or before the Plan Implementation Date:

- (a) **Approval by Creditors:** The Plan shall have been approved pursuant to the CCAA by the Proven Creditors;
- (b) **Granting of Sanction Order:** The Sanction Order shall have been granted by the Ontario Court in a form acceptable to the Applicant and the Monitor;
- (c) **Expiry of Appeal Periods:** The appeal periods and any periods for leave to appeal with respect to the Sanction Order shall have expired without an appeal or application for leave to appeal of such Order having been commenced or, in the event of an appeal or application for leave to appeal, a final determination denying leave to appeal or dismissing such appeal and affirming and recognizing the sanctioning of this Plan, as the case may be, shall have been made by the applicable appellate court, with no further right of appeal;
- (d) **Revenu Quebec Action:** The Applicant and the Directors and Officers shall have provided a binding undertaking to discontinue, settle or withdraw the Revenu Quebec Action on terms satisfactory to the Monitor and the Court, upon the Plan Implementation Date;
- (e) **HST Pre and Post Filing Dispute:** The Applicant and the Directors and Officers shall have provided a binding undertaking to settle or withdraw from further contesting the position of the Monitor with respect to this issue upon the Plan Implementation Date;
- (f) **Completion of Necessary Documentation:** The execution and delivery by all relevant Persons of all agreements, settlements, resolutions, indentures, releases, documents and other instruments that are necessary to be executed and delivered to implement and give effect to all material terms and provisions of this Plan;

7.2 Monitor's Certificate

Upon the satisfaction of the conditions set out in Section 7.1 hereof, the Monitor shall file with the Ontario Court in the CCAA Proceedings a certificate that states that all conditions precedent set out in Section 7.1 of this Plan have been satisfied and that the Plan Implementation Date has occurred.

7.3 Termination of Plan for Failure to Become Effective

If the Plan Implementation Date shall not have occurred on or before one hundred and twenty (120) days following the date of the Sanction Order, or such later date as the Applicant may stipulate, then, subject to further Order of the Ontario Court, this Plan shall automatically terminate and be of no further force or effect; provided that this Plan shall not automatically terminate pursuant to this section if the sole basis for the nonoccurrence of the Plan Implementation Date is the pendency of any appeal or application for leave to appeal with respect to the Sanction Order.

ARTICLE 8 - EFFECT OF PLAN

8.1 Effect of Plan Generally

The Plan (including, without limitation, the releases and injunctions contained in the Plan), upon being sanctioned and approved by the Ontario Court pursuant to the Sanction Order, shall be binding on the Plan Implementation Date on the Creditors and all other Persons (and each of their respective heirs, executors, administrators, guardians, legal personal representatives, successors and assigns) irrespective of the jurisdiction in which such Creditors and other Persons reside, or in which the Claims arose.

On the Plan Implementation Date, the Directors and Officers shall and shall be deemed to resign without the requirement of further action on the part of such Directors and Officers. The Directors and Officers shall also consent to the discharge of the Directors and Officer's Charge, as created by and defined in the Initial Order.

8.2 Consents and Agreements

On the Plan Implementation Date, each Creditor shall be deemed to have consented and agreed to all of the provisions of this Plan in its entirety. In particular, each Creditor shall be deemed:

- (a) to have executed and delivered to the Monitor all consents, releases or agreements required to implement and carry out this Plan in its entirety; and
- (b) to have agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Applicant at the Plan Implementation Date (other than those entered into by the Applicant in writing on or after the date hereof) and the provisions of this Plan, the provisions of this Plan take precedence and priority and the provisions of such agreement or other arrangement shall be deemed to be amended accordingly.

8.3 Exculpation

The Monitor (including its affiliates, directors, officers, employees, associated individuals,

agents and representatives) and all of its professional advisors and legal counsel shall have no liability or obligation to any Person for their role, or any act or omission, in connection with their appointments as Monitor or advisors or counsel thereto, the CCAA Proceedings, activities undertaken in preparation for or in anticipation of the CCAA Proceedings, the Plan, the pursuit of sanctioning of the Plan, the consummation and implementation of the Plan, the administration of the Plan or the property to be distributed under the Plan, from the date of their appointments to the earlier of the date of their discharges from those appointments, or the Plan Completion Date.

ARTICLE 9 - RELEASES AND INJUNCTIONS

9.1 Plan Releases

- (a) On the Plan Implementation Date, the Applicant, the Directors, Officers, current and former employees, advisors, legal counsel and agents, (being referred to individually as a “**Domfoam Released Party**”) shall be released and discharged from the D&O Claims, the Claims and any and all demands, claims, actions, applications, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Unaffected Creditor, Her Majesty the Crown or other Person may be entitled to assert, including any and all Claims in respect of the payment and receipt of proceeds, statutory liabilities of the Directors and Officers and employees of the Applicant and any alleged fiduciary or other duty (whether such employees are acting as a Director and Officer or employee), whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions are taken to implement the Plan that are in any way relating to, arising out of or in connection with the Claims, the Business whenever or however conducted, the Plan, the CCAA Proceedings, or any Claim that has been barred or extinguished by the Claims Process Order and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Applicant’s obligations under the Plan or any related document), all to the full extent permitted by applicable law, provided that nothing herein shall release or discharge (i) any Domfoam Released Party if such Domfoam Released Party is judged by the expressed terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct or (ii) the Directors with respect to matters set out in section 5.1(2) of the CCAA. For clarity, a D&O Claim with respect to the Revenu Quebec Action is not a claim to which section 5.1(2) applies and is to be released hereunder.
- (b) The Sanction and Vesting Order will enjoin on the Plan Implementation Date the prosecution, whether directly, derivatively or otherwise, of any Claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.

- (c) Nothing in the Plan shall be interpreted as restricting the application of Section 21 of the CCAA.

9.1 Injunction

On the Plan Implementation Date, all Persons (regardless of whether or not such Persons are Creditors), together with their respective affiliates, present and former officers, directors, employees, associated individuals, auditors, financial advisors, legal counsel, other professionals, sureties, insurers, indemnitees, agents, dependents, heirs, representatives and assigns, as applicable, are permanently and forever barred, estopped, stayed and enjoined, with respect to all Claims against the Monitor and the Domfoam Released Parties, from (i) commencing, conducting, or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature of kind whatsoever against the Monitor and the Domfoam Released Parties; (ii) levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Monitor and the Domfoam Released Parties; (iii) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, or damages, including without limitation, by way of contribution or indemnity or other relief, in common law, or in equity, or under the provisions of any statute or regulation, or other proceedings of any nature or kind whatsoever (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes such a claim or might reasonably be expected to make such a claim in any manner or forum, against one or more of the Domfoam Released Parties or the Monitor; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind; or (v) taking any actions to interfere with the implementation or consummation of this Plan.

ARTICLE 10 - COMPLETION OF PLAN

10.1 Monitor's Certificate

Upon the Monitor being satisfied that there is no likelihood of additional funds becoming available for distribution to Creditors under the Polyols Settlement or otherwise, the Monitor shall file with the Ontario Court a certificate confirming that there are no further distributions to be made to Creditors, and that the Plan is completed to the satisfaction of the Monitor.

10.2 Discharge and release of the Monitor

On the Plan Completion Date, and subject to the Sanction Order and any other Orders, the Monitor shall be discharged and released and shall have no further obligations or responsibilities. For clarity, nothing in this Plan shall discharge the Monitor from its duties related to Valle Foam or A-Z Foam.

ARTICLE 11 - GENERAL PROVISIONS

11.1 Plan Amendment

The Applicant reserves the exclusive right to amend this Plan, in a written document filed with the Ontario Court, at any time prior to the Plan Implementation Date, provided that:

- (a) if the amendment is made before or during the Meetings, prior to the vote being taken to approve the Plan, the Applicant shall, subject to the Meeting Order:
 - (i) give notice to all Proven Creditors of the details of any amendment that renders the Plan less favourable to such Proven Creditors; and
 - (ii) may, in its entire discretion, give notice to Proven Creditors absent from a Meeting, of the details of any amendment that does not render the Plan less favourable to them.
- (b) if the Monitor, acting reasonably and in good faith, determines that the amendment is of a technical or administrative nature that would not be materially prejudicial to the interests of any of the Proven Creditors under the Plan, subject to the Meeting Order, and is necessary in order to give effect to the substance of the Plan or the Sanction Order, the Applicant need not give notice to Proven Creditors or obtain a further Order in connection therewith, regardless of whether the amendment is made prior to or subsequent to the vote on the Plan, or prior to or subsequent to the Sanction Order, if granted;
- (c) after the Approval Meeting, any other amendment may only be made if approved by the Ontario Court; and
- (d) any supplementary plan or plans of compromise or arrangement filed by the Applicant with the Ontario Court and, if required by this Section 11.1, approved by the Ontario Court, shall, for all purposes be a part of and incorporated into this Plan.

11.2 Severability

In the event that any provision in this Plan is held by the Ontario Court to be invalid, void or unenforceable, this Plan shall be null and void in all respects, with effect in accordance with Section 11.3 hereof.

11.3 Termination

At any time prior to the Plan Implementation Date, the Applicant may, subject to further order of the Ontario Court, determine not to proceed with this Plan notwithstanding any prior approvals given at the Meeting or the obtaining of the Sanction Order.

If the conditions precedent to implementation of this Plan are not satisfied, if the Applicant determines not to proceed with this Plan, if the Ontario Court holds any provision of this Plan to be invalid, void or unenforceable or if the Sanction Order is not issued by the Ontario Court:

- (a) this Plan shall be null and void in all respects;
- (b) any document or agreement executed pursuant to this Plan shall be deemed null and void;

and

- (c) nothing contained in this Plan, and no act taken in preparation for the consummation of this Plan, shall:
- (i) constitute or be deemed to constitute a waiver or release of any Creditor Claims or any defenses thereto by or against the Applicant or any other Person;
 - (ii) prejudice in any manner the rights of any of the Creditors, or any other Person in any further proceedings involving the Applicant or the Domfoam Released Parties; or
 - (iii) constitute an admission of any sort by any of the Creditors, the Applicant, the Monitor, or any other Person.

11.4 Paramountcy

From and after the Plan Implementation Date, any conflict between: (a) this Plan; and (b) any information statement or summary in respect of this Plan, or the covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between the Applicant and any Creditor or other Person as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

11.5 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceedings, and it will not be responsible or liable for any obligations of the Applicant hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the Ontario Court in the CCAA Proceedings, including the Initial CCAA Order.

11.6 Deeming Provisions

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

11.7 Notices

Any notice or communication to be delivered hereunder shall be in writing and shall reference this Plan and may, subject as hereinafter provided, be made or given by personal delivery or by fax addressed to the respective parties as follows:

- (a) if to the Applicant or to the Monitor:
- (b) if to a Creditor:

to the address specified in the Proof of Claim, or Proof of Creditor Claim filed by that Creditor or, if none has been specified, to such other address at which the notifying party may reasonably believe that the Creditor may be contacted;

or to such other address as any party may from time to time notify the others in accordance with this Section 11.7. All such notices and communications that are personally delivered shall be deemed to have been received on the date of delivery. Any such notices and communications that are faxed shall be deemed to be received on the date faxed if sent before 5:00 p.m. Eastern Time on a Business Day and otherwise shall be deemed to be received on the Business Day next following the day upon which such fax was sent. Any notice or other communication sent by mail shall be deemed to have been received on the fifth Business Day after the date of mailing. The unintentional failure to give a notice contemplated hereunder shall not invalidate any action taken by any Person pursuant to this Plan.

11.8 Successors and Assigns

The rights, benefits and obligations of any Person named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, trustee, administrator, successor or assign of such Person.

11.9 Further Assurances

Notwithstanding that the transactions and events set out in this Plan shall be deemed to occur without any additional act or formality other than as set out herein, each of the Persons affected hereby shall make, do and execute or cause to be made, done or executed all such further acts, deeds, agreements, transfers, assurances, instruments, documents or discharges as may be reasonably required by the Monitor in order to implement and give effect to this Plan.

11.10 Governing Law

This Plan shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflict of law provision that would require the application of the law of any other jurisdiction. In the event of any dispute or issue in connection with, or related to, the interpretation, application or effect of this Plan, such dispute or issue shall be subject to the exclusive jurisdiction of the Ontario Court.

Dated at Toronto, Ontario, as of this 23rd day of August, 2016.

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

MOTION RECORD
(returnable August 29, 2016)

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