

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

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

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

**APPLICANTS**

**MOTION RECORD OF THE MONITOR  
(returnable April 28, 2020)  
(Re Appointment of CRO)**

Dated: April 22, 2020

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

(the "Applicants")

**NOTICE OF MOTION  
(returnable April 28, 2020)  
(Appointment of CRO)**

**Deloitte Restructuring Inc.** (formerly Deloitte & Touche Inc.) in its capacity as the Court-appointed Monitor (in such capacity, the "**Monitor**") of 3113736 Canada Ltd., 4362063 Canada Ltd., and A-Z Sponge & Foam Products Ltd. (collectively, the "**Applicants**") will make a motion to a Judge presiding over the Commercial List on Tuesday, April 28, 2020 at 11:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:**

This motion is to be heard orally by teleconference with the following call-in particulars:

1. Dial 416-933-3851(local) or 1-855-331-8822 (toll free)
2. Enter Conference ID 3224065

**THE MOTION IS FOR:**

1. If necessary, an order abridging the time for service of this Notice of Motion and the

Motion Record, declaring that the motion is properly returnable today, and validating service of this Notice of Motion and Motion Record;

2. Advice and directions from the Court regarding the appointment of a chief restructuring officer (“**CRO**”) of the Applicants with the mandate and powers to take any necessary steps to complete the administration of the Applicants’ estates in this proceeding, substantially on the terms of the draft order attached to the Motion Record at Tab 3; and

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

**THE GROUNDS FOR THE MOTION ARE:**

1. By order of the Court dated January 12, 2012 (the “**Initial Order**”), the Applicants were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. Pursuant to the terms of the Initial Order, Deloitte & Touche Inc., now known as Deloitte Restructuring Inc., was appointed as Monitor and authorized to apply to the Court for advice and directions in the discharge of its powers and duties under the Initial Order.

3. The Monitor understands that Mr. Anthony Vallecoccia is the sole-remaining director and officer of the Applicants. Counsel to Mr. Vallecoccia has advised the Monitor that Mr. Vallecoccia no longer feels capable of continuing his duties as director of the Applicants and has requested that he be removed as a director of the Applicants.

4. 3113736 Canada Ltd. (“**Valle Foam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z Foam**”) are subsidiaries of 4362063 Canada Ltd. (“**Domfoam**”). Mr. Vallecoccia is one of the

shareholders of Domfoam. However, the Monitor is not aware who the other shareholders of Domfoam may be.

5. The only substantive issues that remain to be addressed in the within proceeding are (i) if Domfoam or the purchaser of Domfoam's assets is entitled to Domfoam's share of certain settlement proceeds paid or payable to Domfoam pursuant to a class action proceeding in the United States and a related class action proceeding in Canada; (ii) if A-Z Foam or the purchaser of A-Z Foam's assets is entitled to A-Z Foam's share of certain settlement proceeds paid or payable to A-Z Foam pursuant to the same class action proceedings; and (iii) once the foregoing issues are resolved, a final distribution to the creditors of the Applicants.

6. The parties entitled to the settlement proceeds in the US and Canadian class action proceedings will either be determined through litigation or possibly settlement of the competing claims to these funds. Given that Mr. Vallecoccia does not wish to continue as a director of the Applicants, the Monitor recommends that an independent third party be appointed by the Court as CRO with the mandate and powers necessary to resolve the foregoing issues and take any other steps necessary to complete the administration of the Companies' estates in this proceeding.

7. The Monitor has identified Mr. Linc Rogers, a partner with Blake, Cassels & Graydon LLP in Toronto, as a recommended candidate for the CRO role.

8. Absent the appointment of a CRO, counsel to the Applicants will be unable to obtain the instructions necessary to address the foregoing issues.

9. The Monitor supports the appointment of Mr. Rogers as CRO on the terms of the draft order at Tab 3 of the Motion Record.
10. The provisions of the CCAA and the inherent and equitable jurisdiction of this Court.
11. Rules 1.04, 1.05, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Twenty-Second Report of the Monitor, dated April 22, 2020; and
2. Such further and other materials as counsel may advise and this Court may permit.

April 22, 2020

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Lawyers for the Monitor

**TO: THE SERVICE 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.

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

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

Proceedings commenced at Toronto

**NOTICE OF MOTION  
(returnable April 28, 2020)  
(Re Appointment of CRO)**

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# TAB 2

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

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

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

**APPLICANTS**

**TWENTY-SECOND REPORT OF THE MONITOR  
DATED APRIL 22, 2020**



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## **EXHIBITS**

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- EXHIBIT C: Claims Solicitation Procedure Order dated June 15, 2012
- EXHIBIT D: Distribution Order dated September 29, 2015
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- EXHIBIT M: Affidavit of Catherine A. Hristow of Deloitte Restructuring Inc., sworn on April 16, 2020
- EXHIBIT N: Affidavit of Grant Moffat of Thornton Grout Finnigan LLP, sworn on April 16, 2020

## INTRODUCTION

1. By Order of the Court dated January 12, 2012 (the “**Initial Order**”), Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc. (“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z Foam**”) (collectively, the “**Applicants**” or the “**Companies**”), obtained protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The CCAA proceeding with respect to the Applicants is referred to herein as the “**CCAA Proceeding**”.
2. Pursuant to the Initial Order, Deloitte & Touche Inc. was appointed monitor of the Applicants as part of the CCAA Proceeding (the “**Monitor**”). Pursuant to the Initial Order, all proceedings against the Applicants were stayed until February 10, 2012, or until such later date as this Court would order (the “**Stay Period**”). A copy of the Initial Order is attached hereto as Exhibit “**A**”.
3. On July 1, 2013, Deloitte & Touche Inc. changed its name to Deloitte Restructuring Inc. (hereafter, “**Deloitte**”).
4. All of the assets utilized by the Companies in connection with operation of their businesses have been sold. As described below, certain of the proceeds of the Companies’ assets (collectively, the “**Proceeds**”) have been distributed to the Companies’ creditors. Following the sale of its assets, Valle Foam changed its name to 3113736 Canada Ltd. and Domfoam changed its name to 4362063 Canada Ltd. Throughout this Report, references to Valle Foam mean 3113736 Canada Ltd. and references to Domfoam mean 4362063 Canada Ltd.
5. By Order of the United States Bankruptcy Court, Northern District of Ohio (Western Division) (the “**U.S. Bankruptcy Court**”) dated February 24, 2012 (the “**U.S. Recognition Order**”), the CCAA Proceeding was recognized as a foreign main proceeding. A copy of the U.S. Recognition Order is attached hereto as Exhibit “**B**”.

6. The Court has periodically extended the Stay Period, most recently by order dated October 23, 2019. Unless extended, the Stay Period will expire on April 30, 2020.
7. Pursuant to the Order of the Court dated June 15, 2012 (the “**Claims Solicitation Procedure Order**”), the Monitor conducted and completed a claims process with respect to the Companies (the “**Claims Solicitation Procedure**”). The claims bar date under the Claims Solicitation Procedure was August 31, 2012 (the “**Claims Bar Date**”). A copy of the Claims Solicitation Procedure Order is attached hereto as Exhibit “**C**”.
8. By Order of the Court dated September 29, 2015 (the “**Distribution Order**”), the Monitor was authorized and directed to make an interim distribution of the Valle Foam Proceeds and A-Z Foam Proceeds on a *pro rata, pari passu* basis to the Valle Foam Creditors and A-Z Foam Creditors holding Proven Claims (the “**First Distribution**”), subject to the holdbacks described in the Distribution Order in respect of amounts secured by the Administration Charge and Directors’ Charge. A copy of the Distribution Order is attached hereto as Exhibit “**D**”.
9. By Order dated September 6, 2016 (the “**Meeting Order**”), the Court authorized Domfoam to file a Plan of Compromise and Arrangement pursuant to the CCAA dated August 23, 2016 (as amended, varied or supplemented from time to time in accordance with the terms thereof, the “**Plan**”) and authorized Domfoam to call, hold and conduct a meeting of one class of unsecured creditors for the purpose of considering and voting on a resolution to approve the Plan (the “**Meeting**”).
10. The Meeting was held on October 19, 2016 in Toronto, Ontario. The Plan was approved by the requisite majorities of creditors present in person or by proxy at the Meeting. By Order dated January 24, 2017 (the “**Sanction Order**”), the Court approved and sanctioned the Plan and authorized the Monitor, Domfoam and its directors and officers to take all steps necessary to implement the Plan. A copy of the Sanction Order is attached hereto as Exhibit “**E**”.

11. The conditions precedent to implementation of the Plan were satisfied and the Monitor filed its Plan Implementation Certificate with the Court on June 23, 2017. As described in more detail below, the Monitor carried out the distribution to the Creditors of Domfoam (the “**First Domfoam Distribution**”) within 30 days of the June 23, 2017 Plan Implementation Date as required by the Plan.
12. By Order of the Court dated May 29, 2018 (the “**Second Distribution Order**”), the Monitor was authorized and directed to make a second interim distribution of the Valle Foam Proceeds, A-Z Foam Proceeds and Domfoam Proceeds on a *pro rata*, *pari passu* basis to the Valle Foam Creditors, A-Z Foam Creditors and Domfoam Creditors respectively holding Proven Claims. A copy of the Second Distribution Order is attached hereto as Exhibit “F”.
13. As described below, the Monitor has not carried out the second interim distribution of the Domfoam Proceeds pending resolution of the claim to the Dow Settlement Funds (as defined below) asserted by Domfoam Inc. (formerly 4037057 Canada Inc.) (the “**Domfoam Purchaser**”).
14. The Initial Order together with related Court documents, the Notice to Creditors dated January 17, 2012 and the Monitor’s First through Twenty-First Reports to the Court (collectively, the “**Prior Reports**”) have been posted on the Monitor’s website at [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam) (the “**Monitor’s Website**”). The Monitor has also established a dedicated e-mail address at [vallefoam@deloitte.ca](mailto:vallefoam@deloitte.ca) for creditors and other interested parties to contact the Monitor with questions or concerns regarding the CCAA Proceeding.

## PURPOSE OF REPORT

15. The purpose of this report (the “**Twenty-Second Report**”) is to provide the Court with information on the following:
  - (a) the Monitor’s activities since the filing of the Twenty-First Report;

- (b) the status of the claim to the Dow Settlement Funds asserted by the Domfoam Purchaser;
- (c) the need for the appointment of a chief restructuring officer (“**CRO**”) of the Companies;
- (d) the status of the Companies’ claims to certain additional settlement funds described below; and
- (e) the need for an extension of the Stay Period from April 30, 2020 to October 30, 2020.

## **TERMS OF REFERENCE**

- 16. In preparing the Twenty-Second Report, the Monitor has relied upon unaudited financial information, the Companies’ books and records, the financial information prepared by the Companies and discussions with legal counsel for the Companies. As described below, in preparing the Twenty-Second Report, the Monitor has been unable to discuss the contents hereof with management of the Companies (“**Management**”).
- 17. Unless otherwise stated, all dollar amounts contained in the Twenty-Second Report are expressed in Canadian dollars.
- 18. Capitalized terms not otherwise defined in the Twenty-Second Report are as defined in the Initial Order, the Claims Solicitation Procedure Order or the Plan.

## **BACKGROUND**

- 19. The Companies operated together as one of Canada’s leading and largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. The operations of Valle Foam and Domfoam historically comprised substantially all of the Companies’ operations. A-Z Foam and Valle Foam are wholly owned subsidiaries of Domfoam.

20. Mr. Anthony Vallecoccia is the President and Chief Executive Officer of Domfoam, President of Valle Foam, and the sole officer and director of A-Z Foam. Although the records maintained by Corporations Canada indicate that Mr. Vallecoccia and Dale McNeill are directors of both Valle Foam and Domfoam, the Monitor understands that Mr. Vallecoccia is the only remaining director and officer of the Companies. The records maintained by B.C. Registry Services disclose that A-Z Foam is active but in the process of being dissolved. The records maintained by Corporations Canada disclose that Domfoam and Valle Foam were dissolved for non-compliance on December 7, 2019.

#### CLAIMS SOLICITATION PROCEDURE

21. Listed below is a summary of the Prefiling Claims and Postfiling Claims which have been admitted by the Monitor in accordance with the Claims Solicitation Procedure Order and the Distribution Order (which authorized the Monitor to admit certain late filed Proofs of Claim).

<b>Company</b>	<b>Pre-Filing (Admitted)</b>	<b>Post-Filing (Admitted)</b>	<b>Total</b>
Valle Foam Industries (1995) Inc.	\$ 27,822,834.03	\$ 168,255.98	\$ <b>27,991,090.01</b>
Domfoam International Inc.	\$ 27,037,315.86	\$ 54,241.01	\$ <b>27,091,556.87</b>
A-Z Sponge & Foam Products Ltd.	\$ 4,084,071.70	\$ 135,372.59	\$ <b>4,219,444.29</b>

22. As described in the Prior Reports, the Applicants were named as Defendants in certain class action lawsuits in Canada and the United States (collectively, the “**Class Actions**”), based upon allegations of price fixing by certain of the Applicants and other manufacturers in the slab foam industry. The Canadian Class Actions consisted of two proceedings commenced in each of British Columbia and Ontario and a proceeding commenced in Quebec. The Canadian Class Actions advanced joint and several claims against the Companies and certain other defendants or respondents on behalf of proposed classes comprised of all persons or entities who purchased polyurethane foam and polyurethane foam products in Canada from and after January 1, 1999 (collectively, the “**Class**”).

23. The most significant Proven Claims against the Companies were filed in respect of the Canadian Class Actions in the total amount of \$40.0 million (allocated to each of Valle Foam and Domfoam in the amount of \$18.0 million, and to A-Z Foam in the amount of \$4.0 million), and by the Competition Bureau against both Valle Foam and Domfoam each in the amount of \$6.0 million.

#### **RECEIPTS FROM THE US URETHANE PROCEEDINGS**

24. The Companies had previously advised the Monitor that they each were claimants in a class action proceeding before the United States District Court for the District of Kansas under the caption In Re Urethane AntiTrust Litigation (the “**US Urethane Proceedings**”).
25. As previously reported in the Monitor’s Seventh Report to the Court dated July 12, 2013 (the “**Seventh Report**”), pursuant to a 2008 services agreement (the “**Services Agreement**”) between the Companies and Refund Recovery Services, LLC (“**RRS**”), the Companies retained RRS to assist in asserting and recovering their claims in the US Urethane Proceedings in consideration of a fee equal to 25% of all funds paid to the Companies. Thereafter, Enterprise Law Group (“**ELG**”) was retained by RRS to assist in recovering the Valle Foam claim only in the US Urethane Proceedings. Subsequently, Lex Group, LLC (“**Lex Group**”), the successor to RRS, assigned to ELG its rights under the Services Agreement to receive the 25% commission in respect of any funds paid to Valle Foam only pursuant to the US Urethane Proceedings. The Monitor has been advised by Lex Group that it assigned its rights under the Services Agreement to Lex Acquisition Group, LLC (“**Lex Acquisition**”) on January 7, 2015.
26. In 2013, the Companies received initial distributions with respect to their claims in the US Urethane Proceedings related to two separate settlements with BASF Corporation and Huntsman International LLC. The net amount of these settlement funds, after deduction of the 25% fee payable to ELG and Lex Group (the “**Agent**”



**Fee**”), was distributed to the creditors of Valle Foam and A-Z Foam as part of the First Distribution and to the creditors of Domfoam as part of the First Domfoam Distribution.

27. A further settlement was reached in the US Urethane Proceedings with The Dow Chemical Company (“**Dow**”). By letter dated March 21, 2018, class counsel delivered to the Companies their share of the initial distribution of 85% of the USD\$835 million settlement reached with Dow in the US Urethane Proceedings (the “**Dow Settlement**”) as follows: USD\$732,651.37 to A-Z Foam, USD\$5,542,999.25 to Valle Foam and USD\$3,741,639.62 to Domfoam (collectively, the “**Initial Dow Settlement Funds**”). Each of these cheques was deposited to the applicable account maintained by the Monitor for each of the Companies, following which the Monitor paid the Agent Fee from such funds.
28. In December 2018, the Monitor received from class counsel the Companies’ remaining 15% share of the Dow Settlement as follows: USD\$130,519.67 to A-Z Foam, USD\$987,486.91 to Valle Foam and USD\$666,562.02 to Domfoam (collectively, the “**Residual Dow Settlement Funds**” and together with the Initial Dow Settlement Funds, the “**Dow Settlement Funds**”). Each of these cheques was deposited to the applicable account maintained by the Monitor for each of the Companies, following which the Monitor paid the Agent Fee from such funds.

## **SECOND INTERIM DISTRIBUTION TO CREDITORS OF VALLE FOAM AND A-Z FOAM**

29. In accordance with the Second Distribution Order, the Monitor carried out an interim distribution in June 2018 of Valle Foam’s share of the Initial Dow Settlement Funds in the amount of \$5,600,000 to the Valle Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the “**Second Valle Foam Distribution**”). Each Creditor holding a Prefiling Claim against Valle Foam received approximately \$0.20 for each dollar of its Proven Claim. As described below, Valle Foam’s share of the

Residual Dow Settlement Funds after payment of the Agent Fee is currently being held by the Monitor.

30. In accordance with the Second Distribution Order, the Monitor carried out an interim distribution in June 2018 of A-Z Foam's share of the Initial Dow Settlement Funds in the amount of \$707,950 to the A-Z Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the "**Second A-Z Foam Distribution**"). Each Creditor holding a Prefiling Claim against A-Z Foam received approximately \$0.15 for each dollar of its Proven Claim. As described below, A-Z Foam's share of the Residual Dow Settlement Funds after payment of the Agent Fee is currently being held by the Monitor.

## **SECOND INTERIM DISTRIBUTION TO DOMFOAM CREDITORS**

31. Pursuant to the Second Distribution Order, the Monitor was authorized to distribute Domfoam's share of the Initial Dow Settlement Funds in the amount of \$3,470,000 on a *pro rata, pari passu* basis to the Domfoam Creditors holding Proven Claims (the "**Second Domfoam Distribution**"). This would have resulted in each Creditor holding a Prefiling Claim against Domfoam receiving approximately \$0.13 for each dollar of its Proven Claim.
32. However, prior to the Monitor carrying out the Second Domfoam Distribution, the Domfoam Purchaser asserted a proprietary claim to Domfoam's share of the Initial Dow Settlement Funds. The Domfoam Purchaser claims that Domfoam's interest in the Dow Settlement Funds is included in the "Purchased Assets" conveyed to the Domfoam Purchaser pursuant to the Asset Purchase Agreement dated March 8, 2012 between Domfoam as vendor and the Domfoam Purchaser as purchaser (the "**Domfoam APA**").
33. As noted in the Monitor's Seventh Report, the affidavit of Mr. Vallecoccia sworn July 11, 2013 provides that each of Domfoam, Valle Foam and A-Z Foam did not intend to sell to the purchaser of its assets its claim in the US Urethane Proceedings

(the “**Domfoam US Urethane Claim**”, the “**Valle Foam US Urethane Claim**”, the “**A-Z Foam US Urethane Claim**” respectively and, collectively, the “**US Urethane Claims**”), and that the US Urethane Claims remain assets of the Companies’ estates. The Monitor was not involved in any of the negotiations between the Companies and the purchasers of their assets.

34. Pursuant to a notice of motion dated September 14, 2018, the Domfoam Purchaser sought an order setting aside the Second Distribution Order and directing Domfoam and the Monitor to pay to the Domfoam Purchaser the Dow Settlement Funds attributable to Domfoam. The foregoing motion was returnable on November 29, 2018. However, at the hearing of the motion, Domfoam sought leave to examine the President and an employee of the Domfoam Purchaser.
35. By reasons dated February 13, 2019, Justice Wilton-Siegel granted Domfoam’s motion to examine the President of the Domfoam Purchaser (which examination has been conducted), but denied its motion to examine the employee of the Domfoam Purchaser.
36. Domfoam later consented to the Second Distribution Order being set aside with respect to the second interim distribution of the Domfoam Proceeds. However, it is Domfoam’s position that the Domfoam Purchaser’s proprietary claim to Domfoam’s share of the Dow Settlement Funds should proceed as a trial rather than as a motion.
37. A case conference was held before Justice Conway on October 7, 2019 to address the manner in which the Domfoam Purchaser’s claim to Domfoam’s share of the Dow Settlement Funds shall be determined. Following submissions by the parties, the Court ordered that: (i) the parties shall exchange affidavits of documents within 45 days, relating only to the issues of surrounding circumstances (i.e., what each party knew about the US Urethane Proceedings at the time – not what their subjective intentions were or prior drafts of the Domfoam APA) and the “estoppel issue” (i.e., Domfoam’s position that the Domfoam Purchaser’s claim may be subject to an estoppel argument or the expiry of an applicable limitation period); (ii)

thereafter, the parties will proceed to mediation; and (iii) if the dispute regarding entitlement to Domfoam's share of the Dow Settlement Funds is not resolved at mediation, a further case conference shall be held for directions regarding the manner in which the dispute will be heard by the Court, including what evidence (both written and oral) will be admissible.

38. The Monitor has agreed that it will not distribute any further amount from Domfoam's share of the Dow Settlement Funds pending disposition of the Domfoam Purchaser's motion.
39. The mediation was originally scheduled for April 17, 2020. Given the effects of the COVID-19 pandemic, it has been rescheduled for May 25, 2020.

#### **A-Z FOAM PURCHASER'S CLAIM TO RESIDUAL DOW SETTLEMENT FUNDS**

40. 0932916 BC Ltd. (the "**A-Z Purchaser**") purchased certain of A-Z Foam's assets pursuant to the Asset Purchase Agreement between A-Z Foam as vendor and the A-Z Purchaser as purchaser dated February 21, 2012 (the "**A-Z Foam APA**"). Mr. Vallecoccia's affidavit sworn July 11, 2013 indicates that A-Z Foam did not intend to sell the A-Z Foam US Urethane Claim to the A-Z Purchaser. In the Monitor's Seventh Report, which was served upon the A-Z Purchaser, the Monitor noted that, barring any claim to the A-Z Foam US Urethane Claim by the A-Z Purchaser, it appears that the net proceeds thereof should be available for distribution to the creditors of A-Z Foam.
41. On November 5, 2018, subsequent to the Second A-Z Foam Distribution (but prior to receipt of the Residual Dow Settlement Funds), the A-Z Purchaser contacted the Monitor to advise of its position that the A-Z Foam US Urethane Claim was conveyed to the A-Z Purchaser pursuant to the A-Z APA. The A-Z Purchaser remains on the Service List in this proceeding and was served with the Monitor's Eighteenth Report in connection with the Companies' motion for the Second Distribution Order. The A-Z Purchaser has retained new legal counsel who

confirmed with the Monitor on November 22, 2018 the above noted position of the A-Z Purchaser. The Monitor will continue to review this issue with the A-Z Purchaser and will update the Court as appropriate. To date, the A-Z Purchaser has not filed any motion materials with respect to its purported entitlement to the Residual Dow Settlement Funds. It is the Monitor's view that the A-Z Purchaser is waiting for the resolution of the Domfoam Purchaser's entitlement to the Dow Settlement Funds. In the meantime, the Monitor will not distribute any further amount from A-Z Foam's share of the Residual Dow Settlement Funds.

#### **STATUS OF VALLE FOAM'S SHARE OF THE RESIDUAL DOW SETTLEMENT FUNDS**

42. Fybon Industries Limited ("**Fybon**") purchased certain of Valle Foam's assets pursuant to the Asset Purchase Agreement between Valle Foam as vendor and Fybon as purchaser dated February 22, 2012 (the "**Valle Foam APA**"). As noted in the Seventh Report, which was served upon Fybon, it appeared that the Valle Foam assets purchased by Fybon did not include the Valle Foam US Urethane Claim since Valle Foam's accounts receivable were not included as purchased assets under that transaction. As far as the Monitor is aware, Fybon has not asserted any claim to the Valle Foam US Urethane Claim. Fybon was removed from the Service List following the Applicants' motion for the Distribution Order.
43. By email dated March 5, 2019, a copy of which is attached hereto as Exhibit "**G**", the Monitor advised Fybon of (i) the claim to the Dow Settlement Funds asserted by the Domfoam Purchaser; and (ii) the claim to the Residual Dow Settlement Funds asserted by the A-Z Purchaser. Fybon advised the Monitor that it sold the assets it purchased from Valle Foam and confirmed that it did not have any concerns at that time. The Monitor has not yet distributed to Valle Foam's creditors Valle Foam's share of the Residual Dow Settlement Funds.

## RECEIPTS FROM CANADIAN POLYOLS CLASS PROCEEDING

44. As described in the Affidavit of Mr. Vallecoccia sworn on November 16, 2018 (“**November 2018 Affidavit**”) in connection with the Companies’ motion for an extension of the Stay Period, a class proceeding was commenced before the Ontario Superior Court of Justice under the style of cause *Crosslink Technology Inc. v BASF Canada et al*, Ontario Superior Court of Justice, London (Court File No. 50305CP) (the “**Canadian Polyols Proceeding**”), seeking similar relief to that sought in the US Urethane Proceedings. A copy of the November 2018 Affidavit (with only Exhibit E included) is attached hereto as Exhibit “H”.
45. Exhibit E to the November 18 Affidavit is a summary of the Canadian Polyols Proceeding extracted from the website maintained by class counsel, Siskinds LLP (the “**Siskinds Polyols Site**”). As described on the Siskinds Polyols Site, the Canadian Polyols Proceeding alleges that the defendants unlawfully conspired to fix, increase, and/or maintain prices in the market for Polyether Polyols, defined as polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), toluene diisocyanate (TDI), and polyether polyol systems.
46. As disclosed on the Siskinds Polyols Site, settlements were reached in the Canadian Polyols Proceeding with Bayer Inc. and certain related entities, Lyondell Chemical Company, Huntsman International LLC, BASF Corporation, BASF Canada Inc. and most recently with the Dow Chemical Company and Dow Chemical Canada Inc.
47. As described in paragraph 32 of the November 2018 Affidavit, Mr. Vallecoccia advised that the Applicants, with the assistance of Lex Acquisition, were in the process of determining whether or not they are class members in the Canadian Polyols Proceeding.
48. Counsel to the Companies advised the Monitor that it was retained by Lex Acquisition to file the Companies’ claims in the Canadian Polyols Proceeding. As set out in Mr. Vallecoccia’s affidavit sworn April 18, 2019, counsel to the

Companies filed placeholder claims in February 2019. Counsel to the Companies have confirmed to the Monitor that the claims were submitted through the on-line claim portal administered by RicePoint Administration Inc. as the claims administrator in the Canadian Polyols Proceeding (the “**Claims Administrator**”).

49. By letter dated November 1, 2019, counsel for the Domfoam Purchaser advised that the Domfoam Purchaser had received a cheque in the amount of \$1,399,002.24 (the “**Domfoam Canadian Polyols Funds**”) from the Claims Administrator. Counsel to Domfoam has advised counsel to the Domfoam Purchaser that Domfoam asserts an interest in the foregoing funds and requested that such funds be held by counsel to the Domfoam Purchaser pending resolution of the competing claims to such funds. The Monitor understands that counsel to the Domfoam Purchaser has not yet confirmed if it is holding the Domfoam Canadian Polyols Funds in trust, or if the Domfoam Purchaser is in receipt of same.
50. Prior to receipt of the foregoing correspondence from counsel to the Domfoam Purchaser, the Monitor was not aware that the Domfoam Canadian Polyols Funds had been paid to Domfoam. Thereafter, the Monitor contacted the Claims Administrator on multiple occasions to determine the status of payments that may have been issued to Valle Foam and A-Z Foam.
51. In December 2019, the Monitor received from the Claims Administrator copies of two cheques dated October 11, 2019, the first payable to “Valle Foam Industries 1995 Inc.” in the amount of \$1,892,110.59 (the “**Valle Foam Canadian Polyols Funds**”) and the second payable to “A-Z Sponge & Foam Ltd.” in the amount of \$239,277.74 (the “**A-Z Canadian Polyols Funds**”). Based on the address details included on each cheque, it appears that the cheques were delivered to the premises occupied by each of Valle Foam and A-Z Foam prior to the sale of their assets.
52. The information on each of the cheques references the Polyether Polyol Price Fixing Settlement and *Crosslink Technology v BASF Canada et al.* Each cheque face includes a statement that, “Based on the value of your Aggregate Purchases and

other information you provided in your claim form we have determined that your 'Notional Entitlement' is" \$42,053,748.69, \$31,094,001.00, and \$5,318,082.18 for Valle Foam, Domfoam and A-Z Foam respectively. The Notional Entitlement was used to calculate the prorated distribution of the Canadian Polyols Funds.

53. The Monitor immediately contacted VPC Group Inc., which the Monitor was advised is the party to whom Fybon sold the assets it had purchased from Valle Foam (the "**New Valle Foam Purchaser**"), as well as counsel to the A-Z Foam Purchaser, in each case requiring the immediate delivery of such funds to the Monitor.
54. Counsel to the A-Z Purchaser advised that the A-Z Purchaser had not received the cheque for the A-Z Canadian Polyols Funds. The Monitor was then advised by the Claims Administrator that the cheque had been negotiated. The Monitor again followed up with counsel to the A-Z Purchaser, who again confirmed that the A-Z Purchaser did not receive that cheque. The Monitor has requested a copy of the negotiated cheque from the Claims Administrator on three occasions and will continue its efforts to determine the status of these funds. Upon the appointment of a CRO as discussed in paragraphs 61 to 66 in this Report, the Monitor will work with the CRO to investigate commencing legal proceedings against the Claims Administrator and/or any party in possession of the A-Z Canadian Polyols Funds.
55. The New Valle Foam Purchaser requested that the Monitor provide a copy of the agreement of purchase and sale between Valle Foam and the Valle Foam Purchaser to verify that the Valle Foam Canadian Polyols Funds were excluded from that transaction. The Monitor directed the New Valle Foam Purchaser to the copy of the APA posted on the Monitor's website. However, despite several follow up emails, the New Valle Foam Purchaser did not deliver the Valle Foam Canadian Polyols Funds to the Monitor.
56. By letter dated February 13, 2020, counsel to Valle Foam demanded the return of the Valle Foam Canadian Polyols Funds by no later than February 26, 2020, failing



which counsel reserved the right to seek the necessary injunctive relief from the Court. Exchanges between counsel continued thereafter.

57. On March 19, 2020, counsel to the New Valle Foam Purchaser advised counsel to Valle Foam that the Valle Foam Canadian Polyols Funds would be sent to the Monitor.
58. On March 26, 2020, the Monitor received a wire transfer in the amount of the Valle Foam Canadian Polyols Funds.
59. Thereafter, Lex Acquisition delivered to the Monitor its invoice for the 25% Agent Fee payable by Valle Foam in connection with collection of the Valle Foam Canadian Polyols Funds, which counsel to the Companies has confirmed is payable to Lex Acquisition in accordance with the retainer of Lex Acquisition by Valle Foam. The Monitor paid the Agent Fee of \$473,027.65 to Lex Acquisition on April 17, 2020.
60. Lex Acquisition has also issued an invoice to Domfoam in the amount of \$349,750.56 for the applicable 25% Agent Fee in connection with the claims filed on behalf of Domfoam in the Canadian Polyols Proceeding. As noted above, the Monitor is not in possession of the Domfoam Canadian Polyols Funds or the A-Z Canadian Polyols Funds. Lex Acquisition will issue the invoice for the A-Z Foam Agent Fee once it has been determined who is in possession of the A-Z Canadian Polyols Funds.

#### **APPOINTMENT OF CRO**

61. As noted above, Mr. Vallecoccia is the sole remaining director and officer of the Companies. The Monitor has previously been advised by counsel to the Companies that counsel to the Companies is unable to obtain instructions from the Companies through Mr. Vallecoccia. On April 16, 2020, counsel to Mr. Vallecoccia advised that he no longer feels capable of continuing his duties as a director. Counsel to Mr.

Vallecoccia advised that it will be difficult to obtain a signed resignation from Mr. Vallecoccia and that Mr. Vallecoccia has requested that he be removed as a director of the Companies.

62. Mr. Vallecoccia's affidavit sworn January 11, 2012 in support of the application for the Initial Order in this proceeding provides that Valle Foam and A-Z Foam are subsidiaries of Domfoam and that Mr. Vallecoccia is one of the shareholders of Domfoam. The other shareholders of Domfoam are not identified and the Monitor is not aware of who the other shareholders of Domfoam may be.
63. The substantive issues that remain to be addressed in the within proceeding are the entitlement of the Domfoam Purchaser to the Dow Settlement Funds and the Domfoam Canadian Polyols Funds and the entitlement of the A-Z Purchaser to A-Z Foam's share of the Residual Dow Settlement Funds and the A-Z Canadian Polyols Funds. These issues will either be addressed through litigation or possibly settlement with these parties. Given that counsel to the Companies is unable to obtain instructions from Mr. Vallecoccia, the Monitor recommends that an independent third party be appointed by the Court as the Chief Restructuring Officer ("**CRO**") of the Companies with the mandate and powers necessary to resolve the foregoing issues and take any other steps necessary to complete the administration of the Companies' estates in this proceeding.
64. The Monitor has identified Linc Rogers, a partner with Blake, Cassels & Graydon LLP in Toronto, as a recommended candidate for this role. Mr. Rogers is recognized as a leading insolvency lawyer and appears regularly before the Court. A copy of Mr. Rogers' website bio is attached hereto as Exhibit "**I**".
65. As with the Monitor and counsel to the Monitor, the Monitor recommends that the fees of the CRO be based on the amount of professional time required multiplied by the CRO's hourly rate, plus applicable taxes and disbursements. If appointed as CRO, Mr. Rogers has requested a retainer and the Monitor has agreed to same in the amount of \$25,000. The hourly fee chargeable by Mr. Rogers will be \$875.00. As

with the Monitor and counsel to the Monitor, all fees charged by the CRO will be subject to approval by the Court.

66. Given the pending expiry of the Stay Period on April 30, 2020 and the upcoming mediation with the Domfoam Purchaser, it is essential that the CRO be appointed as soon as possible to provide the necessary instructions to counsel for the Companies to address these issues.

#### **ALLOCATION OF CRO FEES**

67. As noted in the Monitor's Eleventh Report to the Court, the Applicants, with the concurrence of the Monitor, determined that the appropriate *pro rata* allocation of professional fees to Valle Foam, Domfoam and A-Z Foam should be 45%, 45% and 10%, respectively. In its Sixteenth Report to the Court, the Monitor recommended that since the great majority of the professional fees and disbursements incurred by the Monitor, its counsel and counsel to the Applicants for the periods referenced in the Sixteenth Report related to the Plan alone, that all such fees and disbursements should be paid entirely from the Domfoam Proceeds. As noted in the Monitor's Seventeenth Report to the Court, the 45%/45%/10% professional fee allocation was reinstated following implementation of the Plan.
68. As reported in the Monitor's Twenty-First Report, given the claims advanced by the Domfoam Purchaser and the A-Z Purchaser described above, the Monitor has suspended payment of professional fees attributable to Domfoam and A-Z Foam from the Dow Settlement Funds held by the Monitor attributable to Domfoam and the Residual Dow Settlement Funds attributable to A-Z Foam pending determination by the Court of entitlement to those funds. In the meantime, professional fees will continue to be paid from Valle Foam's share of the Residual Dow Settlement Funds held by the Monitor and will be reimbursed by Domfoam and A-Z Foam if appropriate.

## STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

69. The following chart summarizes the cash on hand in the Companies' estates as at April 17, 2020

	As at April 17, 2020		
	Valle Foam	Domfoam	A-Z Foam
Cash on hand as at April 17, 2020	\$ 2,052,687.93	\$ 4,397,131.76	\$ 138,636.40
Directors' Charge Holdback	115,281.34	-	-
Balance of Administration Charge Holdback	-	-	6,179.75
Total cash available as at April 17, 2020	<u>\$ 2,167,969.27</u>	<u>\$ 4,397,131.76</u>	<u>\$ 144,816.15</u>

70. Attached hereto as Exhibit "J" is the Statement of Receipts and Disbursements for Valle Foam for the period March 29, 2012 to April 17, 2020. Total cash receipts from the sale of assets, the collection of accounts receivable, settlement funds, reimbursement of legal fees and other receipts are \$18,037,209.72. Total disbursements are \$15,984,521.79 which includes the First Distribution payment of \$5,585,546.00 and the Second Valle Foam Distribution of \$5,602,260.97 (which includes a distribution of \$2,271.97 made to an additional creditor after the First Distribution was completed), and the accruals for the Administration Charge and the Valle Foam Directors' Charge in the amounts of \$225,000.00 and \$200,000.00, respectively, of which nil and \$115,281.34 remain. Net cash on hand as of April 17, 2020 is \$2,052,687.93. This amount excludes any possible recovery of funds that may not be required to pay amounts secured by the Valle Foam Directors' Charge.
71. Attached hereto as Exhibit "K" is the Statement of Receipts and Disbursements for Domfoam for the period March 29, 2012 to April 17, 2020. Total cash receipts from the sale of assets, the collection of accounts receivable, settlement funds and other receipts are \$10,532,901.17. Total disbursements are \$6,135,769.41 which includes the First Distribution payment of \$1,524,785.47. Net cash on hand as at April 17, 2020 is \$4,397,131.76.

72. Attached hereto as Exhibit “L” is the Statement of Receipts and Disbursements for A-Z Foam for the period March 29, 2012 to April 17, 2020. Total cash receipts from the sale of assets, the collection of accounts receivable, settlement funds and other receipts are \$2,342,276.50. Total disbursements are \$2,203,640.10 which includes the First Distribution payment of \$624,054.25, the Second A-Z Foam Distribution of \$707,950.00 and the accrual for the Administration Charge in the amount of \$50,000.00, of which \$6,179.75 remains. Net cash on hand as at April 17, 2020 is \$138,636.40, which excludes any possible recovery for funds that may not be required for the Administration Charge.
73. The Monitor anticipates that the only meaningful disbursements during an extension of the Stay Period will be on account of professional fees in connection with (i) the claims advanced by the Domfoam Purchaser to Domfoam’s share of the Dow Settlement Funds and the Domfoam Canadian Polyols Funds, and by the A-Z Purchaser to A-Z Foam’s share of the Residual Dow Settlement Funds and the entitlement to the A-Z Canadian Polyols Funds; and (ii) once those claims are resolved, a final distribution to be carried out by the Monitor to the Companies’ Proven Creditors.

#### **PROFESSIONAL FEES**

74. The Monitor and its independent legal counsel, Thornton Grout Finnigan LLP (“TGF”), have maintained detailed records of their professional time and costs since the issuance of the Initial Order. Pursuant to paragraph 29 of the Initial Order, the Monitor and TGF were directed to pass their accounts from time to time before this Court.
75. The total fees of the Monitor during the period from October 1, 2019 to March 31, 2020 amount to \$16,557.50, together with disbursements of nil and harmonized sales tax (“HST”) in the amount of \$2,152.49, totalling \$18,709.99 (the “**Monitor Fees**”). The time spent by the Monitor is more particularly described in the Affidavit of

Catherine A. Hristow of Deloitte sworn on April 16, 2020 in support hereof and attached hereto as Exhibit “M”.

76. The total legal fees incurred by the Monitor during the period October 1, 2019 to March 31, 2020 for services provided by TGF as the Monitor’s independent legal counsel amount to \$28,122.50, together with disbursements in the amount of \$126.18 and HST in the amount of \$3,672.33, totalling \$31,921.01. The time spent by TGF personnel is more particularly described in the Affidavit of Grant Moffat, a partner of TGF, sworn on April 16, 2020 in support hereof and attached hereto as Exhibit “N”.

#### **ALLOCATION OF PROFESSIONAL FEES**

77. As noted in the Monitor’s Eleventh Report to the Court, the Applicants, with the concurrence of the Monitor, determined that the appropriate *pro rata* allocation of professional fees to Valle Foam, Domfoam and A-Z Foam should be 45%, 45% and 10%, respectively. In its Sixteenth Report to the Court, the Monitor recommended that since the great majority of the professional fees and disbursements incurred by the Monitor, its counsel and counsel to the Applicants for the periods referenced in the Sixteenth Report related to the Plan alone, that all such fees and disbursements should be paid entirely from the Domfoam Proceeds. As noted in the Monitor’s Seventeenth Report to the Court, the 45%/45%/10% professional fee allocation was reinstated following implementation of the Plan.
78. Given the claims advanced by the Domfoam Purchaser and the A-Z Purchaser described above, the Monitor has suspended payment of professional fees attributable to Domfoam and A-Z Foam from the Dow Settlement Funds held by the Monitor attributable to Domfoam and the Residual Dow Settlement Funds attributable to A-Z Foam pending determination by the Court of entitlement to those funds. In the meantime, all such fees will be paid from the Valle Foam estate and reimbursed by Domfoam and A-Z Foam if appropriate.

## **EXTENSION OF THE STAY PERIOD**

79. Unless otherwise extended, the Stay Period will expire on April 30, 2020. An extension of the Stay Period is required to resolve the claims of the Domfoam Purchaser and the A-Z Purchaser described above and, if appropriate, for the Monitor to carry out further distributions to the Companies' Proven Creditors. However, if the CRO is not appointed or the inability of counsel to the Companies to obtain instructions is not otherwise addressed, it will not be possible to continue this proceeding and a bankruptcy would likely be required. In the Monitor's view, the appointment of the CRO is the most cost effective and timely method to resolve the corporate governance challenge facing the Companies, particularly given the limited number of remaining issues in this proceeding.
80. The Monitor believes that the Companies have acted in good faith and with due diligence and, provided that the CRO is appointed for the reasons set out above, the Monitor supports an extension of the Stay Period to October 30, 2020.

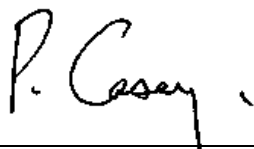
## **MONITOR'S RECOMMENDATIONS**

81. For the reasons set out above, the Monitor recommends that:
- (a) the Twenty-Second Report and the activities of the Monitor as described in the Twenty-Second Report be approved;
  - (b) the CRO be appointed on the terms set out in the draft appointment order;
  - (c) the Stay Period be extended until October 30, 2020;
  - (d) the professional fees and disbursements of the Monitor and TGF be approved and the Monitor be authorized to pay all such fees and disbursements in the manner described above.

All of which is respectfully submitted at Toronto, Ontario this 22nd day of April, 2020.

**DELOITTE RESTRUCTURING INC.**

solely in its capacity as the Monitor  
of the Companies (as defined herein),  
and without personal or corporate liability

A handwritten signature in black ink, appearing to read "P. Casey", is positioned above a horizontal line.

---

Paul M. Casey, CPA, CA, FCIRP, LIT  
Senior Vice-President



# **Exhibit "A"**



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 12<sup>th</sup>

JUSTICE NEWBOULD

)

DAY OF JANUARY, 2012

)

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

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

(the "Applicants")

**INITIAL ORDER**

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

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

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

### **SERVICE**

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

### **APPLICATION**

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

### **PLAN OF ARRANGEMENT**

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

### **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **RESTRUCTURING**

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

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

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



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

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

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

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

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

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

### **NO INTERFERENCE WITH RIGHTS**

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

### **CONTINUATION OF SERVICES**

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

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

### **NON-DEROGATION OF RIGHTS**

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

### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

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

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

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

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

## **APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

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

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

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

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

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

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

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

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

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

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

#### **SERVICE AND NOTICE**

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

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

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

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

## **GENERAL**

41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

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

44. **THIS COURT ORDERS** that the Monitor is hereby authorized, as the foreign representative of the Applicants, to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.

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

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

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

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

#1832803 | 4079509

SECRETARY OF THE COURT  
BY BOOKING  
LE / DANS LE PAYS (RE MOI)

JAN 12 2012

RECEIVED

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

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

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

Proceeding commenced at TORONTO

**INITIAL ORDER**

**MINDEN GROSS LLP**

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

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416-864-9223 fax

Lawyers for the Applicants



# **Exhibit "B"**

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



Dated: February 24 2012

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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

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

Upon the Verified Chapter 15 Petitions (the “**Chapter 15 Petitions**”) filed by Deloitte & Touche Inc., the court appointed Monitor (the “**Monitor**”) of Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc.

(“**Domfoam**”), and A-Z Sponge & Foam Products Ltd. (“**A-Z**” and, together with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# # #

Prepared and Submitted by:

**KOHRMAN JACKSON & KRANTZ P.L.L.**

/s/ Mary K. Whitmer

Mary K. Whitmer (0018213)

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



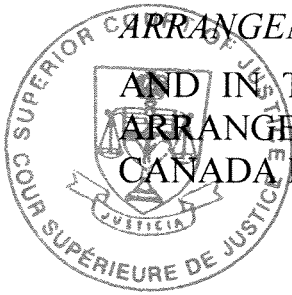
# **Exhibit "C"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 15<sup>th</sup> DAY  
JUSTICE BROWN ) OF JUNE, 2012

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

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



(the "Applicants")

**ORDER  
(Claims Solicitation Procedure)**

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

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

## **SERVICE**

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

## **DEFINITIONS**

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

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

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

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

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

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

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

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

## **ADMINISTRATION OF THE CLAIMS SOLICITATION PROCEDURE**

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

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

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

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



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

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

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

## **SOLICITATION OF CLAIMS**

**7. THIS COURT ORDERS** that:

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

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

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

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

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

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

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

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

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

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

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

#### **ADJUDICATION OF CLAIMS**

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

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

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

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

### **DISPUTE NOTICES**

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

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

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

### **SET-OFF**

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

### **DISTRIBUTIONS**

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

### **NOTICE OF TRANSFEREES**

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

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

### **GENERAL PROVISIONS**

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

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



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

**Deloitte & Touche Inc.**

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

**Attention: Catherine Hristow**

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

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

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

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

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

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

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


JUN 15 2012

**SCHEDULE "A"**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**(the "Applicants")**

**NOTICE OF CLAIMS SOLICITATION PROCEDURE AND**

**CLAIMS BAR DATE REGARDING:**

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

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

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

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

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

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

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

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

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

**Address of the Monitor:**

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

**Attention: Catherine Hristow**

Telephone: (416) 775-8831

Facsimile: (416) 601-6690

E-mail: christow@deloitte.ca

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

#1900657

## SCHEDULE "B"

<b>DELOITTE &amp; TOUCHE INC., solely in its capacity as the Court-appointed Monitor of the Applicants, and without personal or corporate liability</b> <ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul> Telephone: (416) 775-8831 Telecopier: (416) 601-6690 Email: christow@deloitte.ca	
	OFFICE USE ONLY
	_____
	_____
	Date Received _____

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

(the “Applicants”)

## PROOF OF CLAIM

## I. DESCRIPTION OF DEBTOR, CREDITOR AND NATURE OF CLAIM

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

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

(hereinafter the “Debtor”)

Name of person asserting a claim against the Debtor: \_\_\_\_\_  
(hereinafter the “**Creditor**”)

Individual: ☐ Corporation: ☐ Other: ☐ Specify: \_\_\_\_\_

If individual, Creditor's Social Insurance Number:

If corporation, Business Identification Number:

Address of Creditor: \_\_\_\_\_

Fax number of Creditor:

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby certify:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(City and province)

- or that I am \_\_\_\_\_ of \_\_\_\_\_  
 \_\_\_\_\_  
 (State position or title) (Name of Creditor)

a Creditor of the Debtor.

3. (Check and complete appropriate category:)

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

-Or-

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

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

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

## **II. ATTESTATION**

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

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
*(Signature of Creditor)*

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

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

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

\_\_\_\_\_  
*(Address of witness in block letters)*



**ANNEX “A”**  
**DETAILS OF CLAIM**

## SCHEDULE "C"

<b>DELOITTE &amp; TOUCHE INC., solely in its capacity as the Court-appointed Monitor of the Applicants, and without personal or corporate liability</b> • • • Telephone: (416) 775-8831 Telecopier: (416) 601-6690 Email: christow@deloitte.ca		<div style="text-align: center; border-bottom: 1px solid black; margin-bottom: 5px;">OFFICE USE ONLY</div> <div style="border-bottom: 1px solid black; margin-bottom: 5px; height: 15px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px; height: 15px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px; height: 15px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px; height: 15px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px; height: 15px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px; height: 15px;"></div>
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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")

### PROOF OF D&O CLAIM

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

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

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

(hereinafter the "**Debtor**")

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

Individual: ☐ Corporation: ☐ Other: ☐ Specify: \_\_\_\_\_

If individual, Creditor's Social Insurance Number: \_\_\_\_\_

If corporation, Business Identification Number: \_\_\_\_\_

Address of Creditor: \_\_\_\_\_

Fax number of Creditor:

1. That I am a Creditor of the Debtor

a Creditor of the Debtor.

3. (Check and complete appropriate category:)

- #### IV. ATTESTATION

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

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
*(Signature of Creditor)*

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

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

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

\_\_\_\_\_  
*(Address of witness in block letters)*

**ANNEX “A”**  
**DETAILS OF CLAIM**

**SCHEDULE “D”**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**(the “Applicants”)**

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**NOTICE OF REVISION OR DISALLOWANCE**

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**TO: [INSERT NAME AND ADDRESS OF CREDITOR]**

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

**Prefiling Claim:**

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

**Postfiling Claim:**

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

**REASONS FOR DISALLOWANCE:**

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

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

**Deloitte & Touche Inc.**

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

**Attention: Catherine Hristow**

Telephone: (416) 775-8831

Facsimile: (416) 601-6690

E-mail: [christow@deloitte.ca](mailto:christow@deloitte.ca)

DATE:

#1900657



**SCHEDULE “E”**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**(the “Applicants”)**

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**NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE**

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**1. PARTICULARS OF CREDITOR:**

(a) Full Legal Name of Creditor:\_\_\_\_\_

(b) Full Mailing Address of Creditor:\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(c) \*Telephone Number of Creditor:\_\_\_\_\_

(d) \*Facsimile Number of Creditor:\_\_\_\_\_

(e) \*E-mail Address of Creditor:\_\_\_\_\_

(f) Attention (Contact Person): \_\_\_\_\_

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

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

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

(b) Full Legal Name of original Creditor(s): \_\_\_\_\_

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

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

**Claim:**

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

**REASONS FOR DISPUTE:**

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

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

**Deloitte & Touche Inc.**

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

**Attention: Catherine Hristow**

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

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

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

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

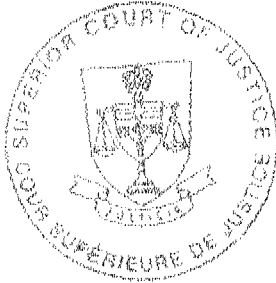
IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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

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

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

# **Exhibit "D"**



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
JUSTICE NEWBOULD

) TUESDAY, THE 29<sup>th</sup> DAY  
)  
) OF SEPTEMBER, 2015.

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

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

(the "Applicants")

**ORDER**  
**(Extension of Stay Period, Admission of Late Claims**  
**and Interim Distributions)**

**THIS MOTION** made by the Applicants for an Order extending the stay of proceedings, admitting certain late filed claims and approving the Valle Foam Interim Distribution and the A-Z Foam Interim Distribution (each as defined below) was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Tony Vallecoccia sworn September 25, 2015, and the exhibits thereto, the Twelfth Report of Deloitte Restructuring Inc. (formerly known as Deloitte & Touche Inc.), in its capacity as Court-appointed monitor of the Applicants (the "**Monitor**") and the appendices attached thereto (the "**Twelfth Report**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor, no one appearing for anyone else on the

Service List, although properly served as appears from the affidavit of service of Nada Hannouch sworn September 25, 2015.

1. **THIS COURT ORDERS** that each capitalized term not otherwise defined in this Order shall have the meaning set out in the Twelfth Report or the order of the Court dated June 15, 2012 (the "**Claims Solicitation Procedure Order**").

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

*Stay Extension*

3. **THIS COURT ORDERS** that the Stay Period granted under the Initial Order of Justice Newbould dated January 12, 2012 (the "**Initial Order**") and as subsequently extended by, *inter alia*, the Order of Justice Pattillo dated April 22, 2015, is hereby extended from September 30, 2015 to and including February 29, 2016.

*Late Claims*

4. **THIS COURT ORDERS** that the following Claims filed after the Claims Bar Date (collectively, the "**Valle Foam Late Claims**") shall be admitted as Prefiling Claims against 3113736 Canada Ltd. ("**Valle Foam**") and shall be deemed to be Proven Claims against Valle Foam for the purpose of any Distribution in these proceedings:

Claimant	Prefiling Claim Amount
Just Energy Group Inc.	\$185,408.93
Ontario Ministry of Labour	\$46,309.15
Pitney Bowes	\$1,395.57



Pitney Bowes	\$3,435.23
Workplace Safety and Insurance Board	\$117,738.58

For greater certainty, none of the Creditors holding a Valle Foam Late Claim shall be entitled to send a Notice of Dispute or otherwise dispute or seek to vary the amount or priority of such Valle Foam Late Claim.

5. **THIS COURT ORDERS** that the Claim filed by WorkSafe BC in the amount of \$1,673.41 after the Claims Bar Date (the "**A-Z Foam Late Claim**") against A-Z Foam and Sponge Ltd. ("**A-Z Foam**") shall be admitted as Prefiling Claims against A-Z Foam and shall deemed to be a Proven Claim for the purpose of any Distribution in these proceedings.

For greater certainty, WorkSafe BC shall not be entitled to send a Notice of Dispute or otherwise dispute or seek to vary the amount or priority of the A-Z Foam Late Claim.

6. **THIS COURT ORDERS** that the Claim against Valle Foam filed by Manulife Financial after the Claims Bar Date in the amount of \$39,240.08 shall be admitted as a Postfiling Claim against Valle Foam and paid in full by Valle Foam prior to the Valle Foam Interim Distribution.

7. **THIS COURT ORDERS** that any Person with a Claim against any of the Applicants that is not a Proven Claim as of the date of this order shall not be entitled to participate in the Valle Foam Interim Distribution or the A-Z Foam Interim Distribution.

*Directors' Indemnity and Charge*

8. **THIS COURT ORDERS** that paragraph 19 of the Initial Order be and is hereby amended and restated as follows:

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

9. **THIS COURT ORDERS** that paragraph 20 of the Initial Order be and is hereby amended and restated as follows:

20A. **THIS COURT ORDERS** that the directors and officers of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.) shall be entitled to the benefit of and are hereby granted a charge (the "**Valle Foam Directors' Charge**") on the Property of 3113736 Canada Ltd., which charge shall not exceed the amount of \$200,000 as security for the indemnity provided in paragraph 19 of this Order.

20B. **THIS COURT ORDERS** that the directors and officers of 4362063 Canada Ltd. (formerly Doamfoam International Inc.) shall be entitled to the benefit of and are hereby granted a charge (the "**Domfoam Directors' Charge**") on the Property of 4362063 Canada Ltd., which charge shall not exceed the amount of \$1,000,000 as security for the indemnity provided in paragraph 19 of this Order. The Valle Foam Directors' Charge and the Doamfoam Directors' Charge granted shall have the priority set out in paragraph 32 herein.

10. **THIS COURT ORDERS** that the Directors' Charge granted to the Directors and Officers on the Property of A-Z Foam be and is hereby permanently discharged.

11. **THIS COURT ORDERS** that paragraph 32 of the Initial Order be and is hereby amended and restated as follows:

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

On the Property of 3113736 Canada Ltd.: First—Administration Charge (to the maximum amount of \$500,000); Second—Valle Foam Directors' Charge (to the maximum of \$200,000);

On the Property of 4362063 Canada Ltd.: First—Administration Charge (to the maximum amount of \$500,000); Second—Domfoam Directors' Charge (to the maximum of \$1,000,000);

*Valle Foam Interim Distribution*

12. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to hold back from the Valle Foam Interim Distribution the following amounts from the Valle Foam Proceeds (as defined in the Twelfth Report):

- (a) \$225,000 as security for the Administration Charge; and
- (b) \$200,000 as security for the Valle Foam Directors' Charge.

13. **THIS COURT ORDERS** that, subject to the holdbacks set out in paragraph 12 above, the Monitor be and is hereby authorized to make an interim Distribution of the Valle Foam

Proceeds in the amount of \$5,583,436.23 to the Valle Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the “**Valle Foam Interim Distribution**”).

*A-Z Foam Interim Distribution*

14. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to hold back \$50,000 of the A-Z Foam Proceeds (as defined in the Twelfth Report) from the A-Z Foam Interim Distribution as security for the Administration Charge.

15. **THIS COURT ORDERS** that, subject to the holdback set out in paragraph 14 above, the Monitor be and is hereby authorized to make an interim Distribution of the A-Z Foam Proceeds in the amount of \$623,820.39 to the A-Z Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the “**A-Z Foam Interim Distribution**”).

*Approval of the Monitor's Actions, Fees and Expenses*


16. **THIS COURT ORDERS** that the Twelfth Report and the actions, decisions and conduct of the Monitor as set out in the Twelfth Report are hereby authorized and approved.

17. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Twelfth Report and the Affidavit of Catherine Hristow sworn September 22, 2015 and the Affidavit of Grant Moffat sworn September 18, 2015, and the exhibits attached thereto, are hereby authorized and approved.

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

Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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



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

SEP 30 2015



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

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

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

Proceeding commenced at TORONTO

**ORDER**  
**(Extension of Stay Period, Admission of Late Claims and**  
**Interim Distributions)**

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

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416-864-9223 fax  
Lawyers for the Applicants

# **Exhibit "E"**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

)

TUESDAY, THE 24<sup>th</sup> DAY

)

MR. JUSTICE HAINEY

)

OF JANUARY, 2017

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**")

**SANCTION ORDER**

**THIS MOTION** made by the Applicants for an Order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**"), *inter alia* sanctioning the Plan of Compromise and Arrangement filed by 4362063 Canada Ltd. (formerly Domfoam International Inc.) ("**Domfoam**"), dated August 23, 2016 (as amended, varied or supplemented from time to time in accordance with the terms thereof, and together with all schedules thereto, the "**Plan**"), which Plan is attached as **Schedule "A"** hereto, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Tony Vallecoccia sworn January 13, 2017 and the exhibits thereto (the "**Vallecoccia Affidavit**") and the Fifteenth Report of Deloitte & Touche Inc., now known as Deloitte Restructuring Inc., (the "**Fifteenth Report**") in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants, and on hearing the submissions of counsel for the Applicants, 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 Beverly Rusk sworn January 13, 2017, filed:



### **DEFINED TERMS**

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meaning ascribed to such terms in the Plan.

### **SERVICE, NOTICE AND MEETING**

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

3. **THIS COURT ORDERS** that there has been good and sufficient notice, service and delivery of the Creditors' Information Package (as defined in the Meeting Order granted by this Court on September 6, 2016 (the "**Meeting Order**")), and that the Creditors' Meeting was duly called, convened, held and conducted, all in conformity with the CCAA and the Orders of this Court made in the CCAA Proceedings, including, without limitation, the Meeting Order.

### **SANCTION OF THE PLAN**

4. **THIS COURT ORDERS AND DECLARES** that:

- (a) the Plan has been approved by the requisite majorities of Creditors present and voting, either in person or by proxy, at the Approval Meeting, all in conformity with the CCAA, the terms of the Initial CCAA Order and the Meeting Order;
- (b) Domfoam has complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects;
- (c) Domfoam has not done or purported to do (nor does the Plan do or purport to do) anything that is not authorized by the CCAA; and
- (d) Domfoam has acted in good faith and with due diligence and the Plan, together with all of the compromises, arrangements, transactions, releases, discharges, bar orders, injunctions and results provided for therein and effected thereby are fair,

reasonable and in the best interests of the Creditors and does not unfairly disregard the interests of any Person (whether a Creditor or otherwise).

5. **THIS COURT ORDERS** that the Plan is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

**PLAN IMPLEMENTATION**

6. **THIS COURT ORDERS** that each of Domfoam, its directors and officers, and the Monitor is authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries, allocations, instruments and agreements contemplated pursuant to the Plan, and such steps and actions are hereby authorized, ratified and approved. Domfoam, its directors and officers and the Monitor shall not incur any liability as a result of acting in accordance with the terms of the Plan or this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of such parties.

7. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are hereby approved, shall be deemed to be implemented and shall be binding and effective as of the Effective Time in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon Domfoam, all Creditors, the Domfoam Released Parties and all other Persons and parties named or referred to in, affected by, or subject to the Plan.

8. **THIS COURT ORDERS** that upon fulfillment or waiver of the conditions precedent to implementation of the Plan as set out in section 7.1 of the Plan, the Monitor shall file with the Court a certificate signed by the Monitor substantially in the form attached as **Schedule "B"** hereto confirming that all of the conditions precedent set out in section 7.1 of the Plan have been satisfied or waived, as applicable, in accordance with the terms of the Plan (the "**Monitor's Plan Implementation Date Certificate**") and, with the filing of such certificate by the Monitor, the Plan Implementation Date shall occur and the Plan shall be effective in accordance with its terms

and the terms of this Order. The Monitor is hereby directed to post a copy of the Monitor's Plan Implementation Date Certificate, once filed, on the Website and provide a copy to the Service List.

9. **THIS COURT ORDERS** that upon the Plan Implementation Date occurring, the charge in the amount of \$1,000,000 upon the Property of Domfoam in favour of the Directors and Officers created by the Initial CCAA Order and as subsequently amended by Order of this Court dated September 29, 2015, shall be permanently discharged.

10. **THIS COURT ORDERS** that upon the Plan Implementation Date occurring, the Monitor is hereby directed and authorized to complete the distributions contemplated under the Plan.

#### **COMPROMISE OF CLAIMS AND EFFECT OF PLAN**

11. **THIS COURT ORDERS** that, pursuant and in accordance with the terms of the Plan, on the Plan Implementation Date, all Claims and D&O Claims which are released pursuant to Article 9 of the Plan or discharged, compromised or terminated pursuant to the Plan shall be fully, finally, irrevocably and forever compromised, discharged and released with prejudice, and the ability of any Person to proceed against the Domfoam Released Parties in respect of or relating to any such Claim or D&O Claim shall be and shall be deemed forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Claims and D&O Claims shall permanently be stayed against the Domfoam Released Parties, subject only to the right of Proven Creditors to receive the distributions pursuant to the Plan and this Order in respect of their Proven Claims, in the manner and to the extent provided for in the Plan. Notwithstanding the foregoing or any other provision of this order, the Competition Act Claim shall not be compromised or released by the Plan.

12. **THIS COURT ORDERS** that no Person who is a party to any obligation or agreement with Domfoam 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 of:

- (a) 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 and/or remedies (including defaults or events of default arising as a result of the CCAA Proceedings);
- (b) the fact that relief under the CCAA has been sought or obtained in respect of Domfoam or that the CCAA Proceedings have been commenced or completed; and
- (c) any compromises or arrangements effected pursuant to the Plan.

13. **THIS COURT ORDERS** that the determination of Proven Claims in accordance with the Claims Procedure Order, the Order of the Court dated September 6, 2016 admitting certain late filed Claims against Domfoam (the “**Domfoam Late Claims Order**”) and the Plan shall be final and binding on Domfoam and all Creditors.

14. **THIS COURT ORDERS** that a Creditor holding a Claim that is subject to a Notice of Revision or Disallowance (as defined in the Claims Procedure Order) shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Claim becomes a Proven Claim in accordance with the Claims Procedure Order and the Plan.

15. **THIS COURT ORDERS** that nothing in the Plan extends to or shall be interpreted as extending or amending the Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order. Any Claim for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims Procedure Order or admitted as a Proven Claim pursuant to the Domfoam Late Claims Order, whether or not the holder of such a Claim has received personal notification of the claims process established by the Claims Procedure Order, shall be and is hereby forever barred, extinguished and released with prejudice.

16. **THIS COURT ORDERS** that each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have consented and agreed to all of the provisions in the Plan, in its entirety, and each Person named or referred to in, or subject to, the Plan shall be and

is hereby deemed to have executed and delivered to Domfoam all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

17. **THIS COURT ORDERS AND DECLARES** that all distributions or payments by the Monitor to Creditors with Proven Claims under the Plan are for the account of Domfoam and the fulfillment of its obligations under the Plan.

18. **THIS COURT ORDERS** that section 95 and 101 of the *Bankruptcy and Insolvency Act* and any other federal or provincial law relating to preferences, fraudulent conveyances or transfers at undervalue, shall not apply to the Plan or to any transactions, distributions or settlement payments implemented pursuant to the Plan.

19. **THIS COURT ORDERS AND DECLARES** that Domfoam shall be authorized, in connection with the making or any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Person, including but not limited to a government department, agency or regulatory body (“**Government Authority**”) for any consent, authorization, certificate or approval in connection therewith.

20. **THIS COURT ORDERS AND DECLARES** that any distributions, disbursements or payments made under the Plan or this Order (including without limitation distributions made to or for the benefit of the Proven Creditors and the Crown with respect to the Competition Act Claim) shall not constitute a “distribution” by any person 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*, and the Monitor, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under the Plan, and is not exercising any discretion in making payments under the Plan and no person

is “distributing”, nor shall be considered to “distribute” nor to have “distributed”, such funds for the purpose of the Tax Statutes.

21. **THIS COURT ORDERS** that the Monitor shall not incur any liability under the Tax Statutes in respect of any distributions, disbursements or payments made by it pursuant to the Plan or this Order 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 or as a result of distributions, disbursements or payments made by it in accordance with the Plan and this Order and any claims of this nature are hereby forever barred.

### **RELEASES**

22. **THIS COURT ORDERS AND DECLARES** that the compromises and releases set out in Article 9 of the Plan are approved and shall be binding and effective as at the Plan Implementation Date.

23. **THIS COURT ORDERS** that from and after the Plan Implementation Date any and all Persons (other than the Crown with respect to the Competition Act Claim) shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Domfoam Released Party in respect of all Claims, D&O Claims and matters which are released pursuant to paragraph 11 of this Order and Article 9 of the Plan or discharged, compromised or terminated pursuant to the Plan.

24. **THIS COURT ORDERS** that the Crown shall be stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, in respect of the Competition Act Claim until such time as the stay of proceedings against Domfoam created by the Initial CCAA Order expires or is terminated by the Court.

**THE MONITOR**

25. **THIS COURT ORDERS** that in addition to its prescribed rights and obligations under the CCAA and the Orders of the Court made in these CCAA Proceedings, the Monitor is granted the powers, duties and protections contemplated by and required under the Plan and that the Monitor be and is hereby authorized, entitled and empowered to perform its duties and fulfill its obligations under the Plan to facilitate the implementation thereof, including without limitation:

- (a) to receive on behalf of Domfoam the proceeds of the Polyols Settlement and any remaining Liquidation Proceeds and distribute same in accordance with the terms of the Plan and this Order; and
- (b) apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other Order granted by this Court including for advice and directions with respect to any matter arising from or under the Plan.

26. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order or the provisions of any other Order granted in the CCAA Proceedings, including this Order, the Applicant shall remain in possession and control of its Property (as defined in the Initial Order) and that the Monitor shall not take possession or be deemed to be in possession and/or control of any of the Property.

27. **THIS COURT ORDERS AND DECLARES** that the Monitor shall be authorized, in connection with the taking of any step or transaction or performance or any function under or in connection with the Plan, to apply to any Governmental Authority for any consent, authorization, certificate or approval in connection therewith.

28. **THIS COURT ORDERS AND DECLARES** that: (i) in carrying out the terms of this Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Initial Order, and as an officer of the Court, including the Stay of Proceedings in its favour; (ii) the Monitor shall not be or become liable for any obligations of Domfoam as a result of carrying out the provisions of this Order and/or the Plan; (iii) 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; (iv) the Monitor shall be entitled to rely on the books and records of the Applicants and any information provided by them without independent investigation; and (v) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

29. **THIS COURT ORDERS** that the form of Monitor's Plan Completion Certificate attached as **Schedule "C"** hereto is hereby approved and, upon the Monitor being satisfied that there is no likelihood of additional funds becoming available for distribution to the Creditors under the Polyols Settlement or otherwise, authorizes and directs the Monitor to file the Monitor's Plan Completion Certificate with this Court stating that all of its duties and Domfoam's duties under the Plan and the Orders have been completed, and thereafter the Monitor shall seek an Order, *inter alia*, (a) approving its final fees and disbursements and those of its counsel; (b) discharging the Monitor from its duties as Monitor in the CCAA Proceedings; and (c) releasing Domfoam, the Monitor and any Directors and Officers holding such office following the Plan Implementation Date and their advisors, from all claims relating to the implementation of the Plan.

30. **THIS COURT ORDERS** that the Monitor is hereby directed to post a copy of the Monitor's Plan Completion Certificate, once filed, on the Website and provide a copy to the Service List.

31. **THIS COURT ORDERS** that, upon the Plan Completion Date, the Monitor shall be discharged and released with respect to Domfoam and shall have no further obligations, duties or responsibilities pursuant to the Plan.



**GENERAL**

32. **THIS COURT ORDERS** that:

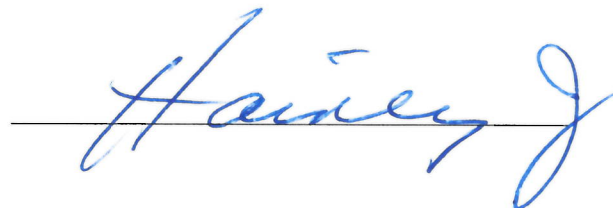
- (a) except to the extent that the Initial CCAA Order has been varied by or is inconsistent with this Order or any further Order of this Court, the provisions of the Initial CCAA Order shall remain in full force and effect; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date; and
- (b) other Orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or are inconsistent with, this Order or any further Order of this Court in the CCAA Proceedings; provided that the protections granted in favour of the Monitor shall continue in full force and effect after the Plan Implementation Date.

33. **THIS COURT ORDERS** that any of the Applicants 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 with respect to any matter arising from or under the Plan or this Order.

34. **THIS COURT ORDERS** that Domfoam (in its sole discretion) is hereby authorized to seek an order of any court of competent jurisdiction to recognize the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist Domfoam, the Monitor and their respective agents in carrying out the terms of the Plan and this Order.

35. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to recognize and give effect to the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist Domfoam, the Monitor and their respective agents in carrying out the terms of the Plan and this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Domfoam and the Monitor, as

an officer of the 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 Domfoam and the Monitor and their respective agents in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read "Hainey J", is written over a horizontal line.

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

JAN 25 2017.

PER / PAR 

## SCHEDULE "A"

### PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (CANADA)

#### ARTICLE 1 - INTERPRETATION 1.1

##### 1.2 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;

**"Competition Act Claim"** means the proof of claim filed by Her Majesty the Queen in Right of Canada (the **"Crown"**) in respect of fines owed to the Crown by Domfoam International Inc. and

Valle Foam Industries (1995) Inc. as a result of their participation in offences under ss. 45(1)(a) and 45(1)(c) of the *Competition Act*, RSC 1985, c C-34, and in accordance with the Sentencing Order of Justice Ratushny of the Superior Court of Justice, dated January 5, 2012.

**"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 September 6, 2016, regarding, *inter alia*, the calling and holding of the Meeting;

**"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: [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam).

## 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 6 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.

Notwithstanding the foregoing and anything else in the Plan, the Competition Act Claim shall not be compromised or released by the Plan. For greater certainty, the Crown is entitled to participate in any distributions under the Plan with respect to the Competition Act Claim, and any funds distributed on account of the Competition Act Claim will reduce the amount outstanding thereunder.

### **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(l)(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.

Notwithstanding the foregoing and anything else in the Plan, the Competition Act Claim shall not be compromised or released by the Plan. For greater certainty, the Crown is entitled to participate in any distributions under the Plan with respect to the Competition Act Claim, and any funds distributed on account of the Competition Act Claim will reduce the amount outstanding thereunder.

## **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.
- (d) Notwithstanding the foregoing and anything else in the Plan, the Competition Act Claim shall not be compromised or released by the Plan. For greater certainty, the Crown is entitled to participate in any distributions under the Plan with respect to the Competition Act Claim, and any funds distributed on account of the Competition Act Claim will reduce the amount outstanding thereunder.

## **9.2 Injunction**

- (a) On the Plan Implementation Date, all Persons (regardless of whether or not such Persons are Creditors, but expressly excluding the Crown with respect to the enforcement of the Competition Act Claim), 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

- (b) Notwithstanding its exclusion from section 9.2(a) hereof, the enforcement of the Competition Act Claim by the Crown against the Applicant shall continue to be stayed until such time as the stay of proceedings created by the Initial Order in the CCAA Proceedings expires.

## **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 23<sup>rd</sup> day of August, 2016.

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

and

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

Applicants

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**SANCTION ORDER**

**BLANEY McMURTRY LLP**

Barristers and Solicitors  
1500 - 2 Queen Street East  
Toronto, ON M5C 3G5

**David Ullmann** (LSUC #423571)

Tel: (416) 596-4289

Fax: (416) 594-2437

**Alexandra Teodorescu** (LSUC #63889D)

Tel: (416) 596-4279

Fax: (416) 593-5437

Lawyers for the Applicants

# **Exhibit "F"**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE M.P.

TUESDAY, THE 29TH DAY

OF MAY, 2018



JUSTICE H.J. WILTON - 50202

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

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

(the "Applicants")

ORDER

**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*, extending the stay of proceedings in respect of the Applicants to and including November 30, 2018 was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Tony Vallecoccia sworn May 22, 2018 and the exhibits thereto (the "**Vallecoccia Affidavit**") and the Eighteenth Report of Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) (the "**Eighteenth Report**") in its capacity as the Court-appointed monitor (the "**Monitor**") of the Applicants, and on hearing the submissions of counsel for the Applicants, 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 Ariyana Botejue sworn May 23, 2018, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Eighteenth 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 capitalized terms not otherwise defined in this Order shall have the meaning set out in the Eighteenth Report or the Order of the Court dated June 15, 2012 (the “**Claims Solicitation Procedure Order**”).

**STAY EXTENSION**

3. **THIS COURT ORDERS** that the Stay Period granted under the Initial Order of Justice Newbould dated January 12, 2012 (the “**Initial Order**”) and as subsequently extended by, *inter alia*, the Order of the Honourable Mr. Justice Myers, dated November 24, 2017, is hereby extended from May 31, 2018 to and including November 30, 2018.

**INTERIM DISTRIBUTIONS**

4. **THIS COURT ORDERS** that the Monitor is hereby authorized to make an interim Distribution of the Valle Foam Proceeds in the amount of \$5,600,000 to the Valle Foam Creditors holding Proven Claims on a *pro rata pari parssu* basis.
5. **THIS COURT ORDERS** that the Monitor is hereby authorized to make an interim Distribution of the Domfoam Proceeds in the amount of \$3,470,000 to the Domfoam

Creditors holding Proven Claims on a *pro rata pari parssu* basis.

6. **THIS COURT ORDERS** that the Monitor is hereby authorized to make an interim Distribution of the A-Z Foam Proceeds in the amount of \$708,000 to the A-Z Foam Creditors holding Proven Claims on a *pro rata pari parssu* basis.

**MONITOR'S REPORT, ACTIONS AND FEES**

7. **THIS COURT ORDERS** that the Eighteenth Report and the actions, decisions and conduct of the Monitor as set out in the Eighteenth Report are hereby authorized and approved.
8. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel as set out in the Eighteenth Report, the Affidavit of Paul Casey sworn on May 24, 2018 and the Affidavit of Grant B. Moffat sworn on May 23, 2018, and the exhibits attached thereto, are hereby authorized and approved.
9. **THIS COURT HEREBY** requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
10. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty

and are hereby authorized and empowered to apply to any Court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

W. Don-HMJ

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

MAY 29 2018

PER / PAR:

nl



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

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER**

**BLANEY McMURTRY LLP**  
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**David T. Ullmann** LSUC #423571  
Tel: (416) 596-4289  
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**Alexandra Teodorescu** LSUC #63899D  
Tel: (416) 596-4279  
Fax: (416) 593-5437

Lawyers for the Applicants

# **Exhibit "G"**

**From:** Hristow, Catherine

**Sent:** Tuesday, March 5, 2019 11:20 AM

**To:** 'Steve Knapp' <[REDACTED]>

**Subject:** Valle Foam

**Importance:** High

Good morning Steve,

As you may recall, Valle Foam (along with Domfoam and A-Z Foam) was a claimant in a class action proceeding in the United States under the caption In Re Urethane AntiTrust Litigation (the "**US Urethane Proceedings**"). As noted in the Monitor's Seventh Report to the Court, it appears that the Valle Foam assets purchased by Fybon did not include Valle Foam's claim in the US Urethane Proceedings since Valle Foam's accounts receivable were not purchased by Fybon. Accordingly, funds previously received by Valle Foam with respect to its claim in the US Urethane Proceedings (\$330,000 with respect to the BASF Corporation and Huntsman International LLC settlements and \$5.6 million with respect to the Dow settlement) were distributed to Valle Foam's creditors in accordance with orders of the Court dated September 29, 2015 and May 29, 2018. The Monitor has recently received a final distribution of funds in the Dow settlement in the net amount of CDN \$1,007,195.42. These funds are being held by the Monitor for distribution to Valle Foam's creditors pending further order of the Court.

The May 29, 2018 order also authorized the Monitor to distribute to the A-Z Foam and Domfoam creditors the Dow settlement funds received by A-Z Foam and Domfoam in the amount of \$708,000 and \$3,470,000 respectively. The Monitor distributed the A-Z Foam funds but prior to the distribution of the Domfoam funds, the purchaser of the Domfoam assets advised the Monitor of its position that the Dow settlement funds were part of the assets it purchased from Domfoam and should not be distributed to the creditors of Domfoam. The Domfoam purchaser brought a motion before the Court claiming entitlement to such funds. We expect that the Court will determine the Domfoam purchaser's claim in the next few months. Late in 2018, the purchaser of the A-Z Foam assets made a similar claim, but only with respect to the remainder of the Dow settlement funds recently received by A-Z Foam in the net amount of CDN\$132,073.86.

Although we understand that Fybon has sold the assets it purchased from Valle Foam, we wanted to ensure you are aware of the claims raised by the purchasers of the Domfoam and A-Z Foam assets. The Monitor's Nineteenth Report to the Court contains a more detailed explanation of these issues. You can access that report, along with all other reports and orders made in this proceeding, on the Monitor's website which is [www.deloitte.com/vallefoam](http://www.deloitte.com/vallefoam).

I am available to discuss if you have any questions.

Regards

Catherine

Catherine Hristow, BBA, CPA, CMA, CIRP, LIT  
Senior Vice President - Financial Advisory – Restructuring Services Inc.  
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# **Exhibit "H"**

**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 November 16, 2018)

**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 Chief Executive Officer of 3113736 Canada Ltd., formerly known as Valle Foam Industries (1995) Inc. ("**Valle Foam**"), and of 4362063 Canada Ltd., formerly known as Domfoam International Inc. ("**Domfoam**"), and a director of Valle Foam, Domfoam and A-Z Sponge & Foam Products Ltd. ("**A-Z Foam**") (collectively, the "**Applicants**"), and as such have knowledge of the matters to which I hereinafter depose, except where otherwise stated.

2. To the extent that the matters deposed to in this affidavit are based on my review of documents or information and belief, I have stated the source of my information and belief and do verily believe the information to be true.

3. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the stay of proceedings for all of the Applicants to and including April 30, 2019, and approving the Nineteenth Report of the Monitor, to be filed separately.

### **Background**

4. On January 12, 2012, the Applicants sought and were granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended ("**CCAA**"), pursuant to the Order of the Honourable Mr. Justice Newbould (the "**Initial Order**").

5. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc., was appointed in the Initial Order to act as monitor in these CCAA proceedings ("**Monitor**").

6. 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 Foam.

7. On September 6, 2016, the Honourable Mr. Justice Penny approved the Applicants' order seeking acceptance of Domfoam's Plan of Compromise and Arrangement, dated August 23, 2016 ("**Plan**") for filing with the Court and authorizing Domfoam to seek approval of the Plan at a meeting of the creditors ("**Meeting Order**").

8. Pursuant to the Meeting Order, the meeting of the creditors of Domfoam was held on October 19, 2016 ("**Creditors' Meeting**"). The Plan was approved by an overwhelming majority (92% in number and 99% in value) of creditors at the Creditors' Meeting.

9. The Plan was approved and sanctioned by the Honourable Mr. Justice Hainey on January 24, 2017.

10. The prerequisites to the implementation of the Plan have all now been satisfied, and, on June 23, 2017, the Monitor filed with the Court its Plan Implementation Certificate, a copy of which is attached hereto and marked as **Exhibit “A”**.

11. Following the sanction and implementation of the Plan, the Monitor has the ongoing responsibility to collect funds from the Polyols Settlement (discussed below), and to distribute those funds to creditors with proven claims under the Plan.

#### **Extension of the Stay Period**

12. The Initial Order granted a stay of proceedings (“**Stay Period**”) until February 10, 2012.

13. The Stay Period granted under the Initial Order was subsequently extended from time to time by orders of the Court, the most recent being the Order of the Honourable Mr. Justice Wilton-Siegel, dated May 29, 2018, which extended the Stay Period to November 30, 2018.

14. The Applicants are seeking to extend the Stay Period up to and including April 30, 2019.

15. 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 their obligations on a go forward basis for the period of the proposed extension.

16. I believe that the Applicants have acted, and continue to act, in good faith and with due diligence in pursuing the orderly wind down of Domfoam and collecting outstanding amounts



owed to Valle Foam (as explained in further detail below). I am informed by the Monitor that it supports the request to extend the Stay Period to April 30, 2019.

17. An extension of the Stay Period is required to allow the Applicants to continue collecting outstanding accounts as well as funds due under the Polyols Settlement (as defined below), and to allow the Monitor to distribute these funds to creditors with proven claims.

***Collection of the Polyols Settlement***

18. Each of the Applicants are claimants in a U.S. class action proceeding that relates to price fixing for a product known as “Polyether Polyol” (the “**US Urethane Proceeding**”).

19. There was a trial in respect of one of the defendants in the US Urethane Proceeding, the Dow Chemical Company (“**Dow**”), in which a judgment was rendered against Dow in the amount of \$1.06 billion (“**Judgment**”).

20. In March 2016, Dow withdrew its appeal of the Judgment to the United States Supreme Court and accepted a settlement under which it agreed to pay \$834 million USD, for distribution to the class members, including the Applicants (the “**Polyols Settlement**”).

21. Refund Recovery Services LLC (now known as Lex Recovery Group) (“**Lex Recovery**”) was retained as the Applicants’ exclusive agent to assist in filing the necessary documents to secure their share of the Polyols Settlement funds. Lex Recovery has filed claims with the administrator on behalf of the Applicants in accordance with the deadlines set out in the US Urethane Proceeding.

22. A distribution hearing with respect to the Polyols Settlement took place on December 19, 2017 in Kansas City, Kansas, and the Court approved the proposed distribution of the Polyols Settlement funds on that date.

23. On or about March 21, 2018, an initial distribution representing 85% of the total recovery from the Polyols Settlement was made to the creditors. The Applicants each received the following amounts from the Polyols Settlement:

- a) Valle Foam received \$5,542,999.25 USD;
- b) Domfoam received \$3,741,639.62 USD; and
- c) A-Z Foam received \$732,651.37 USD.

Attached hereto and marked as **Exhibit “B”** is a copy of the letters from US class action counsel in the US Urethane Proceeding to the Applicants enclosing the respective cheques. I am advised by my counsel, David Ullmann, that these cheques have been sent to the Monitor.

24. The Applicants were required to pay \$2,504,322.56 USD to Lex Recovery from the funds they received from the Polyols Settlement, which represents the 25% fee owing to Lex Recovery based on the retainer with the Applicants to assist and recover their claims in the US Urethane Proceeding. I am advised by my lawyer, Alexandra Teodorescu, that this fee was paid to Lex Recovery by the Monitor in May 2018.

25. The Applicants are set to receive a second and final tranche of money from the Polyols Settlement holdback. On November 5, 2018, the United States District Court for the District of Kansas approved the distribution of the balance of the Polyols Settlement holdback (“**Final Distribution Order**”). A copy of the Final Distribution Order is attached hereto and marked as

**Exhibit “C”**. The Final Distribution Order provides that the holdback funds will be disbursed after the appeal period from the Order has run out. If no appeal is filed, it is expected that funds will be distributed by the end of the year, but as of the swearing of this affidavit, no exact date is known.

26. I am advised by CJ Kishish of Lex Recovery that the Applicants are expected to receive the following gross amounts, which are subject to a 25% fee in favour of Lex Recovery:

a) Valle Foam: \$992,796

b) Domfoam: \$670,158

c) A-Z Foam: \$131,223

27. An extension of the Stay Period is required to allow for further distributions to be made to the Applicants pursuant to the Polyols Settlement. The funds paid to Domfoam under the Polyols Settlement will be distributed to proven creditors *pro-rata* under the Plan.

28. It should be noted that the purchaser of Domfoam (now known as 4362063 Canada Ltd.), Domfoam Inc. (formerly known as 4037057 Canada Inc.) (“**Purchaser**”), has brought a motion directing the Applicants to pay the proceeds recovered from the Polyols Settlement to the Purchaser. I have sworn an affidavit in response to the Purchaser’s motion, which is attached hereto and marked as **Exhibit “D”**. The Purchaser’s motion is currently scheduled to be heard on November 29, 2018.

### ***Canadian Class Action***

29. A similar class action was initiated and certified against Dow and a number of other defendants in Ontario. The class action was certified on behalf of all persons in Canada who purchased polyether polyol products between January 1, 1999 and December 31, 2004 (“**Canadian Urethane Proceeding**”).

30. Settlements have been reached in the Canadian Urethane Proceeding with several defendants wherein the defendants agreed to pay a total of \$13.3 million. Dow agreed to contribute \$5,080,000 CDN into the settlement funds, which are being held in trust for the benefit of the class members.

31. Class counsel for the Canadian Urethane Proceeding, Siskinds LLP, intends to implement a claims process in order to determine the class members entitled to a distribution from the Canadian settlement funds. Attached hereto and marked as **Exhibit “E”** is a copy of a summary of the Canadian Urethane Proceeding from the website of class counsel, and the proposed distribution protocol.

32. The Applicants with the assistance of Lex Recovery are currently in the process of determining whether or not they are class members in the Canadian Urethane Proceeding. The Applicants hope to recover additional funds from the Canadian class action for the benefit of the creditors of the respective estates.

### ***Valle Foam Collection Efforts***

33. As set out in my previous affidavits, there were eight actions initiated by Valle Foam to collect various outstanding receivables. Judgment has now been obtained with respect to three

of these actions, and Valle Foam has diligently been enforcing these judgments during the stay period. In addition, two of these actions have been settled, and one has been dismissed on consent without costs.

34. With respect to the remaining two pieces of litigation, Valle Foam continues to vigorously pursue these actions. A summary judgment motion is currently scheduled to be heard on December 8, 2018 in regards to one of the outstanding matters, and the second matter is potentially proceeding to a mediation. The Monitor has been advised of the status of each of these actions.

35. Extending the Stay Period will provide Valle Foam with the breathing room required to continue pursuing its collection and enforcement efforts.

#### ***A-Z Foam***

36. Although the business of A-Z Foam has been ceased for several years at this point in time, it is an affiliated entity of the Applicants, and the continuation of the stay is convenient as there remain amounts to collect from the Polyols Settlement and inter-company accounting to be resolved.

37. No one has at any time during the CCAA Proceedings objected to the continuation of the stay with respect to A-Z Foam, and I am not aware of any objections at this time.

38. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the Stay Period to and including April 30, 2019, and for no improper purpose.

38. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the Stay Period to and including April 30, 2019, and for no improper purpose.

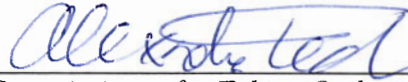
SWORN before me at the Town of )  
Milton in the Province of Ontario, this )  
16<sup>th</sup> of November, 2018 )

  
\_\_\_\_\_

(A commissioner for taking affidavits) )  
**Alexandra Teodorescu** )

  
\_\_\_\_\_  
**TONY VALLECOCCIA**

This is Exhibit "E" referred to in the Affidavit of Tony Vallecoccia  
sworn before me this 16<sup>th</sup> day of November, 2018.



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*A Commissioner for Taking Oaths, Affidavits (or as may be) in  
Ontario*

**Alexandra Teodorescu**

# Polyether Polyols

## Active Action

The Polyether Polyols class action alleges that the Defendants unlawfully conspired to fix, increase, and/or maintain prices in the market for Polyether Polyols.

Polyether Polyols means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), toluene diisocyanate (TDI), and polyether polyol systems. Polyether Polyols are used in a variety of manufacturing applications.

The Plaintiff alleges that from at least January 1999 to December 2004, the Defendants and senior executive of the corporate defendants participated in illegal and secretive meetings and made arrangements relating to price targets, specific price increases, and market share divisions for Polyether Polyols.

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[DevelopmentsFAQs Documents](#)

## Developments

### Settlements

Settlements have been reached with the following defendants, totaling approximately \$13.3 million:

- Bayer Inc, Bayer AG, Bayer MaterialScience LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation (collectively “Bayer”) (CDN\$2,500,000)
- Lyondell Chemical Company (“Lyondell”) (Up to \$35,000 towards Notice)
- Huntsman International LLC (“Huntsman”) (USD\$1,700,000)
- BASF Canada Inc. (“BASF Canada”) (CDN\$2,000,000)
- BASF Corporation (“BASF Corp”) (CDN\$2,000,000)
- Dow Chemical Company and Dow Chemical Canada Inc. (collectively “Dow”) (CDN\$5,080,000)

The Dow settlement approval hearing will be heard before the Ontario court on March 13, 2018. The other settlements have received court approval.

The settlement funds (plus interest, less court-approved fees and expenses) are being held in trust for the benefit of settlement class members. At the March 13, 2018 hearing, the Ontario court will be asked to approve a method of distributing the settlement funds to settlement class members. Please [click here to view a copy of the Proposed Distribution Protocol.](#)

### Contested Litigation



In March 2014, the Ontario action was certified against Dow. The class action was certified on behalf of all persons in Canada (excluding defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors) who purchased Polyether Polyol Products between January 1, 1999 and December 31, 2004. Polyether Polyol Products means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (MDI), toluene diisocyanate (TDI), and polyether polyol systems.

Dow was denied leave to appeal the certification decision.

If the Dow settlement is approved, it will resolve the Ontario class action in its entirety.

In light of the certification of a national class in Ontario, the Quebec action was discontinued. Please [click here](#) to view a copy of the [Quebec Discontinue Order](#) and the [Quebec Notice of Discontinuance](#)

## Ask a question

First Name
Last Name
Email
Message

<input type="checkbox"/>	I'm not a robot	reCAPTCHA <a href="#">Privacy</a> - <a href="#">Terms</a>
<input type="button" value="Submit"/>		

[polyetherclassaction@siskinds.com](mailto:polyetherclassaction@siskinds.com)

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**DISTRIBUTION PROTOCOL**  
**IN THE MATTER OF THE POLYETHER POLYOL PRODUCTS**  
**CLASS ACTION SETTLEMENTS**

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## **GENERAL PRINCIPLES**

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into with the following Defendants:
  - (a) Bayer Inc., Bayer AG, Bayer Material Science LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation, dated June 6, 2007;
  - (b) Lyondell Chemical Company, dated November 22, 2011;
  - (c) Huntsman International LLC, dated April 11, 2012;
  - (d) BASF Corporation, dated April 12, 2012;
  - (e) BASF Canada Inc., dated April 12, 2012; and
  - (f) Dow Chemical Company and Dow Chemical Canada Inc., dated November 17, 2017 (collectively, the “Settlement Agreements”).
2. The administration shall:
  - (a) implement and conform to the Settlement Agreements, orders of the Ontario Court, and this Distribution Protocol;
  - (b) include the establishment and maintenance of the Settlement Website;
  - (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible;
  - (d) rely on sales information provided by the Defendants wherever possible; and
  - (e) be bilingual in all respects.

3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to Polyether Polyol Products, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

## **DEFINITIONS**

4. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.
5. For the purpose of this Distribution Protocol, the following definitions apply:
  - (a) ***Aggregate Purchases*** means the aggregate amount paid by a Settlement Class Member for Polyether Polyol Products, less any taxes, delivery or shipping charges, rebates, or other form of discounts.
  - (b) ***Claim*** means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
  - (c) ***Claims Administrator*** means the firm appointed by the Ontario Court to administer the Settlement Amounts in accordance with the provisions of the Settlement Agreements and the Distribution Protocol, and any employees of such firm.

- (d) ***Claims Filing Deadline*** means the date by which Claims (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.
- (e) ***Class Period*** means from January 1, 1999 and December 31, 2004.
- (f) ***Decision Notice*** shall have the meaning attributed to it in paragraph 38.
- (g) ***Net Settlement Amount*** means the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements, plus any costs awards and accrued interest, less:
  - (i) Class Counsel Fees as approved by the Ontario Court or Quebec Court;
  - (ii) Administration Expenses;
  - (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties); and
  - (iv) any other deductions approved by the Ontario Court.
- (h) ***Notional Entitlement*** means the total value assigned to Settlement Class Member's purchases of Polyether Polyol Products by the Claims Administrator, in accordance with paragraphs 6 to 13 below.
- (i) ***Online Claim Portal*** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs 23 to 25 below.

- (j) ***Polyether Polyol Products*** means:
  - (i) polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (“MDI”) and toluene Diisocyanate (“TDI”) purchased in Canada during the Class Period; and
  - (ii) polyether polyol systems purchased from the Defendants in Canada during the Class Period.
- (k) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.
- (l) ***Settlement Class Members*** means all persons who purchased Polyether Polyol Products. The following persons are excluded:
  - (i) each Defendant, Rhodia, Rhodia Inc., and Rhodia Canada Inc., and their respective parents, employees, subsidiaries, affiliates, officers and directors; and
  - (ii) persons who validly opted-out of the Proceedings.
- (m) ***Settlement Website*** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreements, the Distribution Protocol, and the claims process, and access to the Online Claim Portal.

## **DISTRIBUTION OF NET SETTLEMENT FUNDS**

### **Calculation of Payments**

6. The Net Settlement Amount will be distributed to qualifying Settlement Class Members *pro rata* (proportionally) based on the value of the qualifying Settlement Class Member’s

Notional Entitlement as against the value of all qualifying Settlement Class Members' Notional Entitlement.

7. For the purposes of the *pro rata* distribution, a Settlement Class Member's Notional Entitlement will be calculated based on:

- (a) the value of the Aggregate Purchases (see paragraph 8);
- (b) the categorization of the Settlement Class Member (see paragraphs 9 to 11);
- (c) the type of Polyether Polyol Products purchased (see paragraph 12); and
- (d) the date of purchase (see paragraph 13).

(a) The value of the Aggregate Purchases

8. The Claims Administrator will calculate the value of the Settlement Class Member's Aggregate Purchases based on the information disclosed in the Defendants' sales information and/or information provided by the Settlement Class Member as part of the claims process.

(b) The categorization of the Settlement Class Member

9. Settlement Class Members will be categorized into the following purchaser groups based on their position in the distribution chain:

- (a) ***Direct Purchaser*** means a Settlement Class Member who purchased Polyether Polyol Products from a manufacturer for either (i) its own use and not for commercial resale; or (ii) inclusion in a product for commercial resale;

- (b) ***Distributor*** means a Settlement Class Member who purchased Polyether Polyol Products and resold the Polyether Polyol Products without further processing and without including them in any product; and
- (c) ***Indirect Purchaser*** means a Settlement Class Member who purchased Polyether Polyol Products from a Distributor.

- 10. Settlement Class Members may fall into more than one category.
- 11. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the capacity in which the Polyether Polyol Products were purchased:
  - (a) Aggregate Purchases made in the capacity of a Direct Purchaser will be valued at 100%;
  - (b) Aggregate Purchases made in the capacity of a Distributor will be valued at 25%; and
  - (a) Aggregate Purchases made in the capacity of an Indirect Purchaser will be valued at 75%.

(c) The type of Polyether Polyol Products

- 12. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the type of Polyether Polyol Product:
  - (a) Aggregate Purchases attributable to purchases of MDI, TDI and/or polyether polyols will be valued at 100%; and



- (b) Aggregate Purchases attributable to purchases of polyether polyol systems will be valued at 50%.

(d) The date of purchase

13. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the date the Polyether Polyol Products were purchased:

- (a) Aggregate Purchases made between January 1, 2002 and December 31, 2003 will be valued at 100%; and
- (b) Aggregate Purchases made between January 1, 1999 to December 31, 2001 and January 1, 2004 to December 31, 2004 will be valued at 30%.

**Sample Calculations**

14. If a Distributor purchased \$1,000,000 of MDI and TDI in 2001, its Notional Entitlement would be calculated as follows.

$\$1,000,000$  (representing the Aggregate Purchases of MDI and TDI)  $\times 0.25$  (representing the categorization of the purchaser as a Distributor)  $\times 1.0$  (representing the type of Polyether Polyol Product purchased)  $\times 0.3$  (representing the timing of the purchase)  
= \$75,000

15. If an Indirect Purchaser purchased \$2,000,000 worth of polyether polyol systems in 2002 and \$5,000,000 worth of polyether polyols in 2004, its Notional Entitlement would be calculated as follows.

$\$2,000,000$  (representing the Aggregate Purchases of polyether polyol systems)  $\times 0.75$  (representing the categorization of the purchaser as an Indirect Purchaser)  $\times 0.5$  (representing the type of

Polyether Polyol Product purchased) x 1.0 (representing the timing of the purchase) = \$750,000

plus

\$5,000,000 (representing the Aggregate Purchases of polyether polyols) x 0.75 (representing the categorization of the purchaser as an Indirect Purchaser) x 1.0 (representing the type of Polyether Polyol Product purchased) x 0.3 (representing the timing of the purchase) = \$ 1,125,000

## **Distribution**

16. All eligible Settlement Class Members will receive a minimum payment of \$20. The \$20 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.
17. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of the Net Settlement Amount to ensure a fair and cost effective distribution of the Net Settlement Amount.

## **THE CLAIMS PROCESS**

### **The Claim**

#### All Settlement Class Members

18. All Settlement Class Members will be required to provide the following information:
  - (a) name and contact information;
  - (b) purchase information in accordance with paragraphs 19 to 20 or 21, as applicable;
  - (c) disclosure about whether the Settlement Class Member or any entity related to the Settlement Class Member has received compensation through other proceedings

or private out-of-class settlements and/or provided a release in respect of any of Polyether Polyol Products, and provide details of the compensation received and the claims released;

- (d) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate for more information and/or to audit the Claim;
- (e) a declaration that the information submitted in the Claim is true and correct; and
- (f) if the Claim is submitted by a third-party on behalf of a Settlement Class Member (including a parent company claiming on behalf of a subsidiary or affiliate), the third-party must provide a signed statement from that Settlement Class Member at the time the Claim is filed authorizing the third-party to file the Claim on its behalf.

Settlement Class Members relying on Defendant sales data

19. Where the Defendants have provided sales information in respect of the Settlement Class Member, the required fields in the Online Claim Portal will be pre-populated with the information provided by the Defendants. The following categories of information shall be provided separately:

- (a) for the period between January 1, 2002 and December 31, 2003:
  - (i) the value of Aggregate Purchases attributable to polyether polyol systems;
  - (ii) the value of Aggregate Purchases attributable to MDI, TDI or Polyols;
- (b) for the remainder of the Class Period:

- (i) the value of Aggregate Purchases attributable to polyether polyol systems;  
and
  - (ii) the value of Aggregate Purchases attributable to MDI, TDI or Polyols.
- 20. The Settlement Class Member will be given the opportunity to agree with the purchase information provided by the Defendants. Where the Settlement Class Member agrees with the purchase information provided by the Defendants, no further purchase information is required from the Settlement Class Member. However, the Settlement Class Member must identify which purchases it made in the capacity of a Direct Purchaser or a Distributor.

Settlement Class Members claiming for purchases not substantiated by Defendant sales data

- 21. Where the Defendants have not provided sales information in respect of a Settlement Class Member and/or the Settlement Class Member is claiming for purchases of Polyether Polyol Products in addition to those substantiated by the Defendants' data, the Settlement Class Member must provide a declaration attesting to the information described in paragraph 19(a) and (b) above. The Settlement Class Member must also identify which purchases it made in the capacity of a Direct Purchaser, Distributor or Indirect Purchaser.
- 22. Where a Settlement Class Member has purchase records for at least two years during the Class Period, or sales information from the Defendant Bayer, the Settlement Class Member can use such records to extrapolate its purchases of Polyether Polyol Products for the remainder of the Class Period.

### **The Online Claim Portal**

23. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administration support to enable Settlement Class Members to do so.
24. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraphs 18 to 22.
25. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is entered into the Online Claim Portal or provided by Settlement Class Members who file hardcopy Claims in accordance with paragraph 28 below:
  - (a) names, addresses, and purchase data of the Settlement Class Members;
  - (b) supporting documents provided by Settlement Class Members as part of the audit process; and
  - (c) any other information that might be useful in the claims administration process.

### **The Claims Filing Process**

26. Where a Settlement Class Member has been identified by the Defendants, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the Online Claim Portal.

27. Settlement Class Members will be encouraged to complete and submit a Claim electronically using the Online Claim Portal. Subject to paragraphs 28 and 36, or further order of the Ontario Court, Claims must be submitted on the Online Claim Portal on or before the Claim Filing Deadline.
28. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to paragraph 36 or further order of the Ontario Court, the completed and executed hardcopy Claim must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.

#### **Assistance in Filing a Claim**

29. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.
30. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Members will be responsible for any and all expenses incurred in doing so.

#### **Audits**

31. Where the Settlement Class Member purchased Polyether Polyol Products directly from a Defendant and the Defendant provided sales information in respect of that Settlement

Class Member, the Defendant's sales information shall be *prima facie* proof of the Settlement Class Member's Polyether Polyol Product purchases and those purchases shall not be subject to an audit.

32. Where the Settlement Class Member was not identified by Defendants and/or is claiming for additional purchasers, the Claims Administrator shall audit:

- (i) a random selection of at least 10% of Claims; and
- (ii) Claims representing the top 15% of Claims (measured by Notional Entitlement).

33. The Claims Administrator shall notify the Settlement Class Member, by email or by regular mail, that the Settlement Class Member's Claim is the subject of an audit and the requirement to provide documentary proof:

- (a) Proof of purchase might include invoices, receipts, delivery or packing slips, purchase records, historical accounting records, credit card statements, bank statements, cancelled cheques, wire transfer confirmations, or comparable verification that is acceptable to the Claims Administrator.
- (b) where a Settlement Class Member has extrapolated its purchase records in accordance with paragraph 22 above, the Settlement Class Member must provide a declaration explaining the basis for and calculation of the extrapolation of purchases.

34. At its sole discretion, the Claims Administrator can elect to audit any Claim and can reject a Claim, in whole or in part, where, in the Claims Administrator's view, the

Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

### **Deficiencies**

35. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other required information, the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator may reject the Claim. The Online Claim Portal shall be designed so as to minimize the possibility of deficient claims.

### **Adjustments to Claims Process and Extension of the Claims Filing Deadline**

36. By agreement between the Claims Administrator and Class Counsel, the Claims Filing Deadline may be extended and the Claims Administrator may adjust the claims process. Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the claims process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Amount and it is in the best interests of the Settlement Class Members to do so.

### **Claims Administrator's Decision**

37. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:
- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the



Settlement Agreements, orders of the Ontario Court and this Distribution Protocol; and

- (b) make a determination of the value of the Settlement Class Member's Notional Entitlement in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Ontario Court and this Distribution Protocol.

- 38. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Notional Entitlement (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim of the Settlement Class Member (or recategorized any purchases), the Claims Administrator shall include in the Decision Notice its grounds for rejecting or recategorizing all or part of the Claim.
- 39. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 40 to 47 below.

#### **Appeal of the Claims Administrator's Decision**

- 40. The right to appeal is limited to circumstances where the dispute as to the value of the Notional Entitlement is greater than \$100,000.
- 41. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.
- 42. The following grounds shall not be grounds for appeal:

- (a) the refusal of the Claims Administrator to accept a Claim postmarked or electronically submitted after the Claims Filing Deadline;
  - (b) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member has not cooperated with the Claims Administrator in respect of any audit conducted by the Claims Administrator in respect of that Settlement Class Member's Claim; or
  - (c) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member did not declare that the information submitted in the Claim is true and correct.
43. Appeals will be determined by the Ontario Court or a third party designated by the Ontario Court.
44. Appeals will be on the basis of written submissions, supported by the documentation provided by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Ontario Court or its designee for consideration.
45. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Settlement Class Member as a part of the claims process, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court or its designee as is reasonably necessary.

46. Notwithstanding the foregoing, the Ontario Court or its designee, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court or its designee) from the Settlement Class Member and/or Claims Administrator.
47. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

**Payment of Claims**

48. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:
- (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
  - (b) make arrangements to pay approved Claims by cheque.
49. To the extent that the full Net Settlement Amount is not paid out due to uncashed cheques, residual interest or otherwise, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000. For distribution of any amount above \$10,000, further direction of the Ontario Court shall be sought.
50. The payment to Pro Bono Canada shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (1°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount

payable to the Fonds d'aide aux actions collectives, 23.6%<sup>1</sup> of the payment to Pro Bono Canada will be notionally allocated to Quebec.

## **THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

### **Supervisory Powers of the Ontario Court**

51. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

### **Investment of Settlement Amounts**

52. The Settlement Amounts shall be held in guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution.

### **Communication, Languages and Translation**

53. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
54. The Claims Administrator shall establish a toll-free number for calls from Canada.
55. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.

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<sup>1</sup> 23.6% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

56. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

#### **Undeliverable Mail**

57. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
58. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from that Settlement Class Member's settlement benefits.
59. Where a Settlement Class Member who is entitled to payment of greater than \$20 requests a cheque be reissued, \$15 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$20 will not be reissued.

#### **Fraudulent Claims**

60. The Claims Administrator shall develop and implement processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address.

#### **Taxes**

61. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Amount and shall pay any taxes imposed on such monies out of the Net Settlement Amount.

### **Reporting**

62. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
63. The Claims Administrator shall provide any reports requested by the Ontario Court.

### **Preservation and Disposition of Claim Submissions**

64. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until two (2) years after all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

### **Assistance to the Claims Administrator**

65. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol, provided that related expenses are paid out of the Claims Administrator's fees or approved by the Ontario Court in advance.

### **Confidentiality**

66. All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreements, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreements. The information provided by the Settlement Class Member is strictly private and confidential and will not be

disclosed without the express written consent of the Settlement Class Member, except in accordance with the Settlement Agreements, orders of the Ontario Court and/or this Distribution Protocol.

# **Exhibit "I"**





## Linc Rogers

Partner | Toronto

---

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Linc acts as a principal advisor to key stakeholders in some of Canada's most complex domestic and cross-border restructurings and distressed acquisitions.

Linc gained insights into cross-border mandates as a key member of the Blakes U.S. initiative team, having relocated to the United States from 2004 to 2007 to assist in establishing our U.S. presence. Upon his return to Toronto, Linc developed a leading restructuring practice with a particular focus on cross-border matters. In addition to acting for a broad cross section of domestic clients, Linc is routinely retained by U.S. private equity and hedge funds and U.S. headquartered asset based lenders to provide strategic and legal advice for some of their most complicated mandates.

Linc is also a leading contributor to continuing legal education. He has published extensively in scholarly journals and trade publications for almost two decades and now sits on the Editorial Advisory Board of the Annual Review of Insolvency Law, Canada's leading insolvency law publication. He is an invited speaker at conferences and seminars throughout Canada and the U.S. Many of his speaking engagements address diversity issues in the legal profession, and he has been recognized for his pioneering accomplishments in this area.

## Select Experience

Recent engagements in which Linc acted as lead or co-lead counsel include acting for:

- syncreon Group B.V. and its Canadian affiliates in the cross-border balance sheet restructuring of C\$1.1-billion of funded debt (logistics)
- The court-appointed monitor in the insolvency proceedings of JTI-Macdonald Corp. involving over C\$600-billion of claims asserted against the tobacco industry (manufacturing)
- The DIP lender in the U.S.\$2.3-billion DIP facility to Toys "R" Us (retail)
- The court-appointed monitor in the insolvency proceedings of Express Fashion Canada (retail)
- A broad cross-section of trade suppliers in the Sears Canada insolvency proceedings (retail)
- The largest group of unsecured trade suppliers in the Target Canada insolvency (served on court-appointed Consultative Committee) (retail)
- The agent for a syndicate of senior secured creditors in the Concordia International restructuring proceedings (pharmaceutical)
- The lender in the U.S.\$360-million exit financing in the Tervita Corporation restructuring (oil and gas)

- The court-appointed monitor in Primus Telecommunications' cross-border restructuring (telecom)
- The DIP lender in the Colossus Minerals restructuring (mining)
- The DIP lenders in the Digital Domain Group cross-border proceedings (high tech)
- The trustee of MF Global U.S. in connection with its claims in the bankruptcy of MF Global Canada (financial services)
- The DIP lenders in the Northstar Aviation cross-border restructuring proceedings (aeronautics)
- The court-appointed monitor in the Timminco Limited restructuring proceedings (mining)
- Indalex Limited in the Canada/U.S. cross-border restructuring proceedings (manufacturing)
- The purchaser of Blockbuster U.S.'s assets in the receivership proceedings of Blockbuster Canada (retail)
- Linens 'N Things in its Canada/U.S. cross-border insolvency proceedings (retail)

## Awards & Recognition

Linc is an experienced insolvency lawyer recognized in the following publications, particularly for his extensive Canada/U.S. cross-border work and lead role on large transactions:

- *Chambers Global: The World's Leading Lawyers for Business 2020* (Restructuring/Insolvency)
- *The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2020* (Insolvency & Financial Restructuring)
- *Chambers Canada: Canada's Leading Lawyers for Business - 2019-2020* (Restructuring/Insolvency)
- *The Best Lawyers in Canada - 2019-2020* (Insolvency and Financial Restructuring)
- *The Canadian Legal Lexpert Directory - 2018-2019* (Financial Restructuring)
- *Who's Who Legal: Thought Leaders – Restructuring & Insolvency 2019*
- *The Legal 500 Canada 2019* (Restructuring and Insolvency)
- *Who's Who Legal: Restructuring & Insolvency 2019*
- *IFLR1000: The Guide to the World's Leading Financial Law Firms - 2019 Edition*
- *Chambers Global: The World's Leading Lawyers for Business 2017-2018* (Restructuring/Insolvency)
- *The 2017 Lexpert Guide to the Leading US/Canada Cross-border Corporate Lawyers in Canada* (Insolvency & Financial Restructuring)
- *The Canadian Legal Lexpert Directory 2017*
- *Who's Who Legal: Restructuring & Insolvency 2017*
- *Lexpert Magazine, June 2016* (2016 Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada)
- *Lexpert Zenith Award: Celebrating Diversity and Inclusion, June 2016*
- *Chambers Canada: Canada's Leading Lawyers for Business 2016*
- *Chambers Global: The World's Leading Lawyers for Business 2016* (Canada: Restructuring/Insolvency)
- *IFLR1000: The Guide to the World's Leading Financial Law Firms - 2016 Edition*
- *Who's Who Legal: Canada 2015* (Insolvency & Restructuring)

- *The 2015 Canadian Legal Lexpert Directory*
- *The 2013 Lexpert Guide to the Leading US/Canada Cross-border Corporate Lawyers in Canada* (Corporate Lawyers to Watch)
- *Lexpert Magazine*, November/December 2012 (named a "Lexpert Rising Star," honouring Canada's leading lawyers under 40)
- *Lexpert Special Edition: Insolvency and Restructuring, Report on Business Magazine*, November 2012 (recognizing Canada's leading insolvency and restructuring lawyers)

## Professional Activities

Linc is a member of the Insolvency Institute of Canada, a limited-number, invitation-only association of senior insolvency professionals. In addition, he is currently serving on the board of directors of the Canadian Association of Insolvency and Restructuring Professionals and the board of the Toronto chapter of the Turnaround Management Association. He is also a member of the corporate advisory board of the Canadian Association of Urban Financial Professionals ("CAUFP"), dedicated to improving financial literacy in minority and underprivileged communities. Linc acts as CAUFP's pro bono counsel.

## Publications

- *Co-author: Key Developments in Canadian Insolvency Case Law in 2019*  
Restructuring & Insolvency, January 28, 2020.
- *Co-author: The syncreon Group: Landmark Case Recognizes English Schemes of Arrangements in Canada*  
Blakes Bulletin on Restructuring & Insolvency, November 14, 2019.
- *Co-author: 2018 Developments in Canadian Insolvency Case Law: What Lenders Need to Know*  
Blakes Bulletin on Restructuring & Insolvency, January 7, 2019.
- *Co-author: Concordia International Corp.'s Canada Business Corporations Act Proceedings Explained*  
Commercial Insolvency Reporter, Vol. 31, No. 2, December 2018.
- *Co-author: Concordia International Corp.'s Canada Business Corporations Act Proceedings Explained*  
Blakes Bulletin on Restructuring and Insolvency, October 18, 2018.
- *Co-author: Retail Insolvencies in Canada Series, #4: Lender Perspectives*  
Blakes Bulletin on Restructuring & Insolvency, October 4, 2018.
- *Co-author: Retail Insolvencies in Canada: Parent Perspective*  
Journal of Corporate Renewal, Turnaround Management Association, Vol. 31, No. 2, March 2018.
- *Co-author: Retail Insolvencies in Canada Series, #3: Parent Perspectives*  
Blakes Bulletin on Restructuring & Insolvency, February 28, 2018.
- *Co-author: Recent Developments in Canadian Insolvency Case Law: What Lenders Need to Know*  
Blakes Bulletin on Restructuring & Insolvency, December 6, 2017.
- *Co-author: Retail Insolvencies in Canada Series, #2: Supplier Perspectives*  
Blakes Bulletin on Restructuring & Insolvency, October 10, 2017.
- *Co-author: Retail Insolvencies in Canada Series, #1: Landlord Perspectives*  
Blakes Bulletin on Restructuring & Insolvency, July 17, 2017.

## Professional Appearances

- *Moderator: Adding Generational Perspectives – Extending the Diversity Conversation*  
Association of Corporate Counsel, Ontario Chapter, Toronto, Ontario, October 18, 2019.

- *Panellist: Recent Cases of Interest and Cases to Watch*  
Insolvency Litigation, The Advocates' Society, Toronto, Ontario, April 12, 2019.
- *Moderator: Diverse Perspectives on the Turnaround Profession*  
TMA Perspective Series, Turnaround Management Association, Toronto, Ontario, November 13, 2018.
- *Panellist: Restructuring and Insolvency: A Cross-Country Year in Review*  
Blake, Cassels & Graydon LLP Seminar, Toronto, Ontario, January 24, 2018.
- *Moderator: Opportunities, Challenges, and Initiatives for Fostering Diversity in Law Developments*  
Association of Corporate Counsel, Ontario Chapter, Toronto, Ontario, November 28, 2017.
- *Debater: Whether to Adopt U.S. Style Cram Down in Canada*  
Insolvency Institute of Canada Annual Conference and General Meeting, Banff, Alberta, September 15, 2017.
- *Presenter: Restructuring and Insolvency: Recent Canada - U.S. Developments*  
Blakes Business Class Seminar, New York, New York, June 8, 2017.

## Education

Admitted as a Foreign Legal Consultant in the State of Illinois - 2005

Admitted to the Ontario Bar - 2000

LL.B. (Magna Cum Laude), University of Ottawa - 1998

M.A., International Affairs, Norman Paterson School of International Affairs - 1998

B.A., Political Science, University of Alberta - 1994

# **Exhibit "J"**

# Exhibit "J"

**Deloitte Restructuring Inc., CCAA Monitor of  
3113736 Canada Ltd.  
(formerly Valle Foam Industries (1995) Inc.)  
Statement of Receipts and Disbursements  
For the period March 29, 2012 to April 17, 2020**

**\$CDN**

Receipts

	For the period March 29, 2012 to October 11, 2019	For the period October 12, 2019 to April 17, 2020	For the period March 29, 2012 to April 17, 2020
Sale of assets	1,560,000.00		1,560,000.00
Accounts Receivable - Collected by Purchaser	3,777,523.31		3,777,523.31
Accounts Receivable - Collected by Applicants	175,191.95		175,191.95
Reimbursement of Legal Fees (net of payment of post-filing obligations)	631,451.21		631,451.21
Insurance Refund	51,297.00		51,297.00
Interest Earned	218,744.05	5,899.41	224,643.46
Class Action Settlements	8,872,233.56	1,906,608.23	10,778,841.79
Loan Repayment & Interest from 4362063 Canada Ltd.	838,261.00		838,261.00
Total cash receipts	16,124,702.08	1,912,507.64	18,037,209.72

Disbursements

Holdback - Legal & Monitor Fees	110,699.70	-	110,699.70
Holdback - Directors Fees	200,000.00	-	200,000.00
CCAA Monitor's Fees	291,643.48	17,202.50	308,845.98
HST on CCAA Monitor's Fees	37,913.66	2,236.34	40,150.00
Legal Fees and Disbursements	1,115,136.70	81,045.04	1,196,181.74
HST Paid on Legal and Disbursements	136,699.82	10,508.84	147,208.66
Other Disbursements (Newspaper Notices, Bank Charges)	5,809.54	175.40	5,984.94
HST on Disbursements	841.14	-	841.14
PST Paid on D&O Premium	2,070.00	-	2,070.00
D&O Insurance premium	25,875.00	-	25,875.00
Post-filing Claims Paid	168,255.98	-	168,255.98
Dividend Payments	11,187,806.97	-	11,187,806.97
Commission payment on Dow Chemical Settlement	2,113,498.28	477,103.40	2,590,601.68
Total cash disbursements	15,396,250.27	588,271.52	15,984,521.79

Cash on hand	728,451.81	1,324,236.12	2,052,687.93
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Continuity of Administration Charge and Directors' Charge Holdbacks:

Administration Charge:	-	-	-
Valle Foam Holdback	-	-	-
Disbursements for professional fees	-	-	-
	-	-	-

Directors' Charge:	200,000.00		200,000.00
Adjustment - Disbursement for professional fees	(22,244.25)		(22,244.25)
Disbursements for D&O insurance, and for director's legal counsel	(62,474.41)		(62,474.41)
Remaining Funds for Valle Foam Holdback and Directors Charge	115,281.34		115,281.34

# **Exhibit "K"**

## Exhibit "K"

**Deloitte Restructuring Inc., CCAA Monitor of  
4362063 Canada Ltd.  
(formerly Domfoam International Inc.)  
Statement of Receipts and Disbursements  
For the period March 29, 2012 to April 17, 2020**

<b>\$CDN</b>	<b>For the period March 29, 2012 to October 11, 2019</b>	<b>For the period October 12, 2019 to April 17, 2020</b>	<b>For the period March 29, 2012 to April 17, 2020</b>
<u>Receipts</u>			
Sale of assets	4,050,879.66		4,050,879.66
Funds received from Domfoam RBC bank accounts	296,932.86		296,932.86
Interest earned	173,474.54	29,178.23	202,652.77
Class Action Settlement	5,972,650.43	9,785.45	5,982,435.88
Total cash receipts	<u>10,493,937.49</u>	<u>38,963.68</u>	<u>10,532,901.17</u>
<u>Disbursements</u>			
CCAA Monitor's Fees	378,079.17		378,079.17
HST on CCAA Monitor's Fees	48,306.90		48,306.90
Legal Fees and Disbursements	1,655,491.10		1,655,491.10
HST Paid on Legal and Disbursements	142,133.56		142,133.56
Other Disbursements (Newspaper Notices, bank charges)	9,874.29	136.75	10,011.04
HST & QST on Disbursements	1,280.19		1,280.19
PST Paid on D&O Premium	2,070.00		2,070.00
D&O Insurance premium	25,875.00		25,875.00
Directors' Charge	-		
Loan Payment & Interest to 3113736 Canada Ltd.	839,095.34		839,095.34
Dividend Payments	1,524,785.47		1,524,785.47
Revenu Quebec GST payment	54,241.01		54,241.01
Commission payment on Dow Chemical Settlement	1,426,879.82	2,751.21	1,429,631.03
Accrual for Deemed Trust Claim for Source Deductions	-		-
Disbursements for D&O insurance and director's legal fees	24,769.60		24,769.60
Total cash disbursements	<u>6,132,881.45</u>	<u>2,887.96</u>	<u>6,135,769.41</u>
Cash on hand	<u>4,361,056.04</u>	<u>36,075.72</u>	<u>4,397,131.76</u>
<u>Continuity of Directors' Charge Holdback:</u>			
Directors Charge	-	-	-
Disbursements for D&O insurance, and director's legal counsel	-	-	-
Funds used for dividends	-	-	-
Remaining Funds for Directors Charge	<u>-</u>	<u>-</u>	<u>-</u>



# **Exhibit "L"**

## Exhibit "L"

**Deloitte Restructuring Inc., CCAA Monitor of  
of A-Z Sponge & Foam Products Ltd.  
Statement of Receipts and Disbursements  
For the period March 29, 2012 to April 17, 2020**

<b>\$CDN</b>	<b>For the period March 29, 2012 to October 11, 2019</b>	<b>For the period October 12, 2019 to April 17, 2020</b>	<b>For the period March 29, 2012 to April 17, 2020</b>
<u>Receipts</u>			
Sale of assets	842,278.49		842,278.49
Funds received from A-Z bank account	304,564.36		304,564.36
Insurance Refund	8,517.80		8,517.80
Interest Earned	26,533.70	967.22	27,500.92
Class Action Settlement	1,157,508.43	1,906.50	1,159,414.93
Total cash receipts	<u>2,339,402.78</u>	<u>2,873.72</u>	<u>2,342,276.50</u>
<u>Disbursements</u>			
Holdback Legal and Monitors Fees and Disbursements	50,000.30		50,000.30
CCAA Monitor's Fees	55,949.84		55,949.84
HST on CCAA Monitor's Fees	7,273.49		7,273.49
Legal Fees and Disbursements	311,166.49		311,166.49
HST Paid on Legal and Disbursements	23,633.17		23,633.17
Other Disbursements (Newspaper Notice, bank charges)	1,306.88	79.27	1,386.15
HST on Disbursements	272.50		272.50
PST Paid on D&O Premium	460.00		460.00
D&O Insurance premium	5,750.00		5,750.00
Post-filing claims paid	135,372.59		135,372.59
Dividend Payments	1,332,004.25		1,332,004.25
Commission payment on Dow Chemical Settlement	279,832.60	538.72	280,371.32
Total cash disbursements	<u>2,203,022.11</u>	<u>617.99</u>	<u>2,203,640.10</u>
Cash on hand	<u>136,380.67</u>	<u>2,255.73</u>	<u>138,636.40</u>
<u>Continuity of Administration Charge Holdback:</u>			
A-Z Foam Holdback ( <i>Note</i> )	50,000.30	-	50,000.30
Less: Expense paid	43,820.55	-	43,820.55
Remaining A-Z Foam Holdback	<u>6,179.75</u>	<u>-</u>	<u>6,179.75</u>

*Note: \$0.30 remaining after paying the dividends and was added to the holdback*

# **Exhibit "M"**

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

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

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

**APPLICANTS**

**AFFIDAVIT OF CATHERINE A. HRISTOW  
(Sworn April 16, 2020)**

I, Catherine A. Hristow of the Town of Willow Beach in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

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

2. Attached hereto as Exhibit "**A**" are true copies of the invoices for fees and disbursements incurred by Deloitte in the course of the CCAA administration of the Company between October 1, 2019 to March 31, 2020 (the "**Passing of Accounts Period**"). The invoice includes a summary of the total billable hours charged on the invoice, the total fees charged per the invoice and the average hourly rate charged.

3. Attached hereto as Exhibit “B” is a schedule summarizing each invoice in Exhibit “A”, the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.

4. The total fees of the Monitor during the Passing of Accounts Period amount to \$16,557.50, together with disbursements of nil and harmonized sales tax (“HST”) in the amount of \$2,152.49 totalling \$18,709.99.

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

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

7. Following implementation of the Plan and the distribution to the Creditors of Domfoam, the 45%/45%/10% allocation of professional fees to Valle Foam, Domfoam and A-Z Foam has been reinstated.

8. However, as noted in the Nineteenth Report to the court, given the claim advanced by the Domfoam Purchaser and the potential claim from the A-Z Foam Purchaser to the Domfoam US Urethane Claim and the A-Z Foam US Urethane Claim respectively, the Monitor has suspended payment of professional fees attributable to Domfoam and A-Z Foam from the Dow Settlement Funds held by the Monitor attributable to Domfoam and A-Z Foam pending determination by the Court of entitlement to those funds. In the meantime, all such fees will be paid from the Valle Foam estate and reimbursed by Domfoam and A-Z Foam if appropriate.

9. Attached as Exhibit “N” to the Twenty-Second Report of the Monitor and filed in support of the within motion is the Affidavit of Grant Moffat which sets out the full particulars of the fees and disbursements of Thornton Grout Finnigan LLP, counsel to the Monitor, incurred during the period October 1, 2019 to March 31, 2020.

10. Thornton Grout Finnigan LLP rendered services throughout these proceedings in a manner consistent with instructions from the Monitor. The Monitor has approved all such accounts

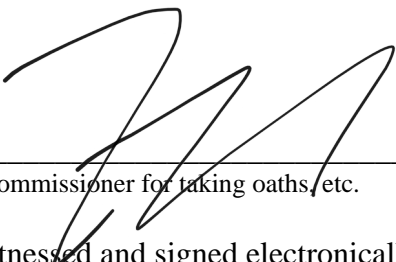
and I verily believe that the fees and disbursements of Thornton Grout Finnigan LLP are fair and reasonable in the circumstances.

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


**SWORN BEFORE ME**  
at the City of Toronto, in the  
Province of Ontario this 16th  
day of April, 2020

)  
)  
)  
)

  
Catherine A. Hristow, CPA, CMA, LIT

  
A commissioner for taking oaths, etc.  
Witnessed and signed electronically

This is Exhibit "A" referred to in the  
Affidavit of Catherine A. Hristow sworn before  
me this 16th day of April, 2020.



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A Commissioner for taking affidavits

**Invoice 8000872837****Deloitte Restructuring Inc.**

Bay Adelaide Centre  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9

ATTN: Mr. Paul Casey, CPA, CA, CIRP, Senior Vice-President  
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge &  
Foam Products Ltd c/o Deloitte Restructuring  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9  
Canada

Tel: (416) 601-6150  
Fax: (416) 601-6151  
www.deloitte.ca

Date: November 16, 2019  
Client No.: 1157762  
WBS#: VALC0046  
Engagement Partner: Paul Casey

HST Registration: 122893605RT0001

**For professional services rendered****Fees**

In connection with Deloitte Restructuring Inc., acting as Court-Appointed Monitor under the Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc. ("Valle Foam")), 4362063 Canada Ltd. (formerly Domfoam International Inc. ("Domfoam")), and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period from October 1, 2019 to October 31, 2019.

Please see the attached appendices for details.

HST applicable 6,322.50

**Sales Tax**

HST at 13.00% 821.93

**Total Amount Due (CAD) 7,144.43**

Accounts shall be due and payable when rendered. Interest shall be calculated at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty(30) days after the invoice date to the date on which the entire account is paid.





Invoice Number 8000872837

November 16, 2019

Use the following payment methods and ensure your payment contains the details provided in the example.

Client Name	Client#	Invoice#	Amount (CAD)	Comments
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge & Foam Products Ltd c/o Deloitte Restructuring	1157762	8000872837	7,144.43	Payment for invoice 8000872837

**Contact:**

Please send payment confirmation by email to: [receivablesdebitours@deloitte.ca](mailto:receivablesdebitours@deloitte.ca), and reference the invoice number(s) paid

## Payment Options

**1. EFT Payments(remittance email mandatory):**

**Preferred Method**

The Bank of Nova Scotia

Business Service Centre, 20 Queen Street West, 4th Floor, Toronto, Ontario M5H 3R3

**For CAD Dollar (\$) Payments, pay:**

**ABA/Transit Routing:** 47696002

**Account Number:** 1590219

**For USD Dollar (\$) Payments, pay:**

**ABA/Transit Routing:** 47696002

**Account Number:** 1363514

**2. Wire Payment:**

The Bank of Nova Scotia

Business Service Centre, 20 Queen Street West, 4th Floor, Toronto, Ontario M5H 3R3

**For CAD Dollar (\$) Payments, pay:**

**Account Number:** 476961590219

**Swift Code:** NOSCCATT

**For USD Dollar (\$) Payments, pay:**

**Account Number:** 476961363514

**Swift Code:** NOSCUS33

**ABA Routing Number:** 026002532

**3. Online Payment:**

Select either Deloitte LLP or Deloitte S.E.N.C.R.L./s.r.l. through your financial institution and quote the seven digits of the Client No. shown above.

**Please note we do not accept Interac e-Transfers.**

**4. Cheque payments, please mail to:**

**For CAD Dollar (\$) Payments, pay:**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567C  
PO Box 4567, Stn A  
Toronto ON M5W 0J1

**For USD Dollar (\$) Payments, pay:**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567U  
PO Box 4567, Stn A  
Toronto ON M5W 0J1

**Appendix #1****Summary of Fees - October 1 - 31, 2019**

<b>Name</b>	<b>Level</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
Casey, Paul	Partner	1.2	\$ 800.00	\$ 960.00
Bricks, Hartley	Director	0.8	\$ 700.00	\$ 560.00
Hristow, Catherine	Director	5.8	\$ 700.00	\$ 4,060.00
Brown, Rose	Trust Administrator	3.1	\$ 225.00	\$ 697.50
Keene, Ashley	Trust Administrator	0.2	\$ 225.00	\$ 45.00
<b>Total hours and fees</b>		<b>11.1</b>		<b>\$ 6,322.50</b>
Blended hourly rate		\$	569.59	

**Allocation of Fees:**

<b>Entity</b>	<b>Professional Fees</b>	<b>Taxes</b>	<b>Total</b>
Valle Foam Industries (1995) Inc. -100%	\$ 6,322.50	\$ 821.93	\$ 7,144.43
<b>Totals</b>	<b>\$ 6,322.50</b>	<b>\$ 821.93</b>	<b>\$ 7,144.43</b>

**Appendix #2****Time Details - October 1 - 31, 2019**

<b>Date</b>	<b>Name</b>	<b>Narrative</b>	<b>Hours</b>
10/7/2019	Hristow, Catherine	Correspondence with G. Moffat regarding Domfoam hearing.	0.1
10/15/2019	Hristow, Catherine	Review and approve legal disbursements and send same to R. Brown for payment.	0.1
10/16/2019	Hristow, Catherine	Review draft court report and commence affidavit of fees; review correspondence for supporting documentation regarding Revenue Canada, Fybon and A-Z.	1.5
10/16/2019	Brown, Rose	Confirm account balances with the bank and reconcile general ledger to the respective bank accounts; update statements of receipts and disbursements and send to C. Hristow for review.	1.2
10/17/2019	Hristow, Catherine	Correspondence with G. Moffat.	0.1
10/17/2019	Brown, Rose	Further review of general ledgers, prepare revisions and send same and discuss with C. Hristow.	1.9
10/17/2019	Hristow, Catherine	Review Applicants Motion record; continue with revisions to court report; finalize affidavit of fees and swear same; discussions with R. Brown regarding statements of receipts and disbursements; send draft report to H. Brick and P. Casey for review; email correspondences with A. Keene regarding posting of Applicants materials.	3.5
10/18/2019	Bricks, Hartley	Review draft court report and provide comments to C. Hristow.	0.8
10/18/2019	Casey, Paul	Review and execute 21st Report.	1.0
10/18/2019	Keene, Ashley	Update Monitor's website.	0.2
10/18/2019	Hristow, Catherine	Review comments on report and exhibits, finalize and send same to G. Moffat; correspondence with A. Keene regarding posting of motion materials and the Twenty-First Court Report.	0.4
10/21/2019	Casey, Paul	Telephone attendance with G. Moffat and deliver Monitor's report.	0.2
10/23/2019	Hristow, Catherine	Review email from R. Bengino regarding Valle et al extension hearing.	0.1
<b>Total</b>			<b>11.1</b>

**Invoice 8000902492****Deloitte Restructuring Inc.**

Bay Adelaide Centre  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9

ATTN: Mr. Paul Casey, CPA, CA, CIRP, Senior Vice-President  
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge &  
Foam Products Ltd c/o Deloitte Restructuring  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9  
Canada

Tel: (416) 601-6150  
Fax: (416) 601-6151  
www.deloitte.ca

Date: December 04, 2019  
Client No.: 1157762  
WBS#: VALC0046  
Engagement Partner: Paul Casey

HST Registration: 122893605RT0001

**For professional services rendered****Fees**

In connection with Deloitte Restructuring Inc., acting as Court-Appointed Monitor under the Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc. ("Valle Foam")), 4362063 Canada Ltd. (formerly Domfoam International Inc. ("Domfoam")), and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period from November 1, 2019 to November 30, 2019.

Please see the attached appendices for details.

HST applicable 1,297.50

**Sales Tax**

HST at 13.00% 168.68

**Total Amount Due (CAD) 1,466.18**

Accounts shall be due and payable when rendered. Interest shall be calculated at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty(30) days after the invoice date to the date on which the entire account is paid.

Use the following payment methods and ensure your payment contains the details provided in the example.

Client Name	Client#	Invoice#	Amount (CAD)	Comments
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge & Foam Products Ltd c/o Deloitte Restructuring	1157762	8000902492	1,466.18	Payment for invoice 8000902492

**Contact:**

Please send payment confirmation by email to: [receivablesdebitours@deloitte.ca](mailto:receivablesdebitours@deloitte.ca), and reference the invoice number(s) paid

## Payment Options

**1. EFT Payments(remittance email mandatory):**

**Preferred Method**

The Bank of Nova Scotia

Business Service Centre, 20 Queen Street West, 4th Floor, Toronto, Ontario M5H 3R3

**For CAD Dollar (\$) Payments, pay:**

**ABA/Transit Routing:** 47696002

**Account Number:** 1590219

**For USD Dollar (\$) Payments, pay:**

**ABA/Transit Routing:** 47696002

**Account Number:** 1363514

**2. Wire Payment:**

The Bank of Nova Scotia

Business Service Centre, 20 Queen Street West, 4th Floor, Toronto, Ontario M5H 3R3

**For CAD Dollar (\$) Payments, pay:**

**Account Number:** 476961590219

**Swift Code:** NOSCCATT

**For USD Dollar (\$) Payments, pay:**

**Account Number:** 476961363514

**Swift Code:** NOSCUS33

**ABA Routing Number:** 026002532

**3. Online Payment:**

Select either Deloitte LLP or Deloitte S.E.N.C.R.L./s.r.l. through your financial institution and quote the seven digits of the Client No. shown above.

**Please note we do not accept Interac e-Transfers.**

**4. Cheque payments, please mail to:**

**For CAD Dollar (\$) Payments, pay:**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567C  
PO Box 4567, Stn A  
Toronto ON M5W 0J1

**For USD Dollar (\$) Payments, pay:**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567U  
PO Box 4567, Stn A  
Toronto ON M5W 0J1



**Appendix #1**  
**Summary of Fees - November 1 - 30, 2019**

<b>Name</b>	<b>Level</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
Hristow, Catherine	Director	1.5	\$ 700.00	\$ 1,050.00
Brown, Rose	Trust Administrator	0.9	\$ 225.00	\$ 202.50
Keene, Ashley	Trust Administrator	0.2	\$ 225.00	\$ 45.00
<b>Total hours and fees</b>		<b>2.6</b>		<b>\$ 1,297.50</b>
Blended hourly rate		\$	499.04	

**Allocation of Fees:**

<b>Entity</b>	<b>Professional Fees</b>	<b>Taxes</b>	<b>Total</b>
Valle Foam Industries (1995) Inc. -100%	\$ 1,297.50	\$ 168.68	\$ 1,466.18
<b>Totals</b>	<b>\$ 1,297.50</b>	<b>\$ 168.68</b>	<b>\$ 1,466.18</b>

**Appendix #2****Time Details - November 1 - 30, 2019**

<b>Date</b>	<b>Name</b>	<b>Narrative</b>	<b>Hours</b>
11/1/2019	Hristow, Catherine	Review correspondence received from G. Moffat regarding class action payment; review Domfoam materials and send same to G. Moffat; email class action settlement and request information.	0.8
11/4/2019	Brown, Rose	Print disbursement voucher and invoice request.	0.1
11/4/2019	Hristow, Catherine	Review and approve legal account for payment and email R. Brown regarding same.	0.1
11/5/2019	Brown, Rose	Issue disbursement cheque and record same in Ascend.	0.2
11/15/2019	Hristow, Catherine	Review and approve legal invoices and send same to R. Brown for payment; further email regarding Cross Link Technology.	0.2
11/18/2019	Brown, Rose	Issue disbursement cheque and record same in Ascend.	0.4
11/19/2019	Brown, Rose	Issue disbursement cheque and record same in Ascend.	0.2
11/19/2019	Hristow, Catherine	Email correspondence with R. Brown enclosing invoices for payment; review and respond to email correspondence from N. Berube regarding Revenu Quebec's additional unsecured claim and extension order; email Thornton Grout Finnigan for a copy of the extension order.	0.3
11/26/2019	Keene, Ashley	As per C. Hristow, update the Monitor's website.	0.2
11/26/2019	Hristow, Catherine	Email A. Keene regarding posting of court order and endorsement to the Monitor's website.	0.1
<b>Total</b>			<b>2.6</b>

**Invoice 8001080676****Deloitte Restructuring Inc.**

Bay Adelaide Centre  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9

ATTN: Mr. Paul Casey, CPA, CA, CIRP, Sr. Vice-President  
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge &  
Foam Products Ltd c/o Deloitte Restructuring  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9  
Canada

Tel: (416) 601-6150  
Fax: (416) 601-6151  
www.deloitte.ca

Date: March 23, 2020  
Client No.: 1157762  
WBS#: VALC0046  
Engagement Partner: Paul Casey

HST Registration : 122893605RT0001

**For professional services rendered****Fees**

In connection with Deloitte Restructuring Inc., acting as Court-Appointed Monitor under the Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc. ("Valle Foam")), 4362063 Canada Ltd. (formerly Domfoam International Inc. ("Domfoam")), and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period from December 1, 2019 to February 29, 2020.

Please see the attached appendices for details.

**Sales Tax**

HST applicable 4,162.50

HST at 13.00% 541.13

**Total Amount Due (CAD) 4,703.63**

Accounts shall be due and payable when rendered. Interest shall be calculated at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty(30) days after the invoice date to the date on which the entire account is paid.





Invoice Number 8001080676

March 23, 2020

Use the following payment methods and ensure your payment contains the details provided in the example.

Client Name	Client#	Invoice#	Amount (CAD)	Comments
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge & Foam Products Ltd c/o Deloitte Restructuring	1157762	8001080676	4,703.63	Payment for invoice 8001080676

**Contact:**

Please send payment confirmation by email to: [receivablesdebitours@deloitte.ca](mailto:receivablesdebitours@deloitte.ca), and reference the invoice number(s) paid

## Payment Options

### 1. EFT Payments(remittance email mandatory) :

**\*Preferred Method\***

Bank of Nova Scotia: 44 King Street West, Toronto, Ontario M5H 1H1

**CAD Payment**

**Transit – Institution :** 47696-002

**Account Number :** 1590219

**USD Payment**

**Transit – Institution :** 47696-002

**Account Number :** 1363514

### 2. Wire Payment :

Bank of Nova Scotia: 44 King Street West, Toronto, Ontario M5H 1H1

**CAD Payment**

**Account Number :** 476961590219

**Swift Code :** NOSCCATT

**USD Payment, Beneficiary Bank (Bank of Nova Scotia) :**

**Account Number :** 476961363514

**Swift Code :** NOSCCATT

**Clearing Code :** CC000247696

Address: P.O. Box 4234 STN A, Toronto ON M4W 5P6

**USD Payment, Intermediary Bank (Bank of America NA) :**

Address: 222 Broadway, New York, NY 10038

**Account Number :** 476961363514

**Swift Code :** BOFAUS3N

**ABA Routing Number :** 026009593

Note: Intermediary Bank information may not be required for payments coming from outside the US

### 3. Online Payment :

Select either Deloitte LLP or Deloitte S.E.N.C.R.L./s.r.l. through your financial institution and quote the seven digits of the Client No. shown above.

**Please note we do not accept Interac e-Transfers.**

### 4. Cheque payments, please mail to :

**For CAD Dollar (\$) Payments, pay :**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567C  
PO Box 4567, Stn A  
Toronto ON M5W 0J1

**For USD Dollar (\$) Payments, pay :**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567U  
PO Box 4567, Stn A  
Toronto ON M5W 0J1

**Appendix #1****Summary of Fees - December 1, 2019 to February 29, 2020.**

<b>Name</b>	<b>Level</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
Hristow, Catherine	Director	5.4	\$ 700.00	\$ 3,780.00
Brown, Rose	Trust Administrator	1.0	\$ 225.00	\$ 225.00
Keene, Ashley	Trust Administrator	0.7	\$ 225.00	\$ 157.50
<b>Total hours and fees</b>		<b>7.1</b>		<b>\$ 4,162.50</b>
Blended hourly rate		\$	586.27	

**Allocation of Fees:**

<b>Entity</b>	<b>Professional Fees</b>	<b>Taxes</b>	<b>Total</b>
Valle Foam Industries (1995) Inc. -100%	\$ 4,162.50	\$ 541.13	\$ 4,703.63
<b>Totals</b>	<b>\$ 4,162.50</b>	<b>\$ 541.13</b>	<b>\$ 4,703.63</b>



## Appendix #2

Work performed from December 1, 2019 to February 29, 2020.

Date	Name	Narrative	Hours
12/6/2019	Hristow, Catherine	Review correspondence from RicePoint regarding cheques issued to A-Z Sponge and Valle Foam; email correspondence with S. Knapp, regarding new purchaser of Valle Foam; email correspondence with G. Moffat regarding cheques issued on the BASF litigation; prepare and send email to P. Farah regarding the appointment of Deloitte as Monitor, and requesting return of the \$1.8 million that was sent regarding the BASF litigation; email correspondence with A. Keene to prepare letter and send via fax; further email correspondence with G. Moffat regarding lapse of 45 day period for parties to exchange affidavit of documents.	1.0
12/6/2019	Keene, Ashley	Prepare and fax letter to owner of Valle Foam Industries.	0.7
12/10/2019	Hristow, Catherine	Email correspondence with P. Farah requesting a response to December 6th correspondence and email correspondence with G. Moffat regarding same; email RicePoint for additional information on the claims filed; telephone attendance with J. Estriga, CFO of Valle regarding \$1.8 million received.	0.8
12/11/2019	Hristow, Catherine	Telephone attendance with G. Moffat regarding funds issued under class action against BASF, and received by other parties and information on the APS that can be disclosed to the new purchaser of Valle.	0.2
12/12/2019	Hristow, Catherine	Review Third Report dated March 13, 2012 and Order dated March 16, 2012 and email G. Moffat regarding same.	0.3
12/13/2019	Hristow, Catherine	Review email correspondence from RicePoint; email correspondence and discussion with G. Moffat; email J. Estriga and send link to court report.	0.5
12/23/2019	Hristow, Catherine	Review email correspondence from J. Estriga and email G. Moffat regarding same.	0.1
1/10/2020	Brown, Rose	Deposit cheques received and record same in Ascend.	0.4
1/14/2020	Hristow, Catherine	Email J. Estriga.	0.1
1/15/2020	Hristow, Catherine	Email Blaney's regarding a cheque for Domfoam for the Urethane settlement.	0.1
1/23/2020	Brown, Rose	Deposit cheques received and record same in Ascend.	0.2
1/23/2020	Hristow, Catherine	Review email from V. Arman regarding reserved decision on the Cozy Corner Appeal hearing; review and approve legal accounts for payment and email R. Brown regarding same; further emails to R. Brown and A. Keene requesting if cheque received for Domfoam on the Urethane Settlement; confirmation cheque received today and emailed V. Arman regarding same.	0.7
1/24/2020	Brown, Rose	Issue disbursement cheques and record same in Ascend.	0.2

<b>Date</b>	<b>Name</b>	<b>Narrative</b>	<b>Hours</b>
1/24/2020	Hristow, Catherine	Telephone attendance with G. Moffat regarding mediation hearing, and advising the court regarding T. Vallecoccia's condition; email J. Estriga regarding \$1.8 million from BASF settlement; review Third Court Report and respond to his request for information; email correspondence with G. Moffat and D. Ullmann.	0.6
2/1/2020	Hristow, Catherine	Email G. Moffat and D. Ullmann regarding \$1.8 million BASF settlement funds received by the current purchaser of Valle Foam.	0.1
2/11/2020	Brown, Rose	Issue disbursement cheques and record same in Ascend.	0.2
2/12/2020	Hristow, Catherine	Correspondence with G. Moffat regarding issuance of a demand letter and ongoing litigation.	0.1
2/13/2020	Hristow, Catherine	Review and revise demand letter.	0.1
2/14/2020	Hristow, Catherine	Correspondence with G. Moffat regarding funds received by Domfoam and if confirmation was received by F. Tayer that they were being held in trust.	0.1
2/19/2020	Hristow, Catherine	Correspondence with G. Moffat regarding class action funds received by F. Tayer's client.	0.1
2/25/2020	Hristow, Catherine	Respond to email correspondence from G. Moffat regarding funds received by A-Z Sponge & Foam purchaser.	0.1
2/26/2020	Hristow, Catherine	Review revised Lex Acquisition invoices, approve same for payment and send to R. Brown.	0.2
2/27/2020	Hristow, Catherine	Email correspondence with G. Moffat regarding litigation trustee.	0.1
2/28/2020	Hristow, Catherine	Review correspondence from D. Kamachi regarding cheque from RicePoint for the BASF litigation; correspondence with RicePoint for a copy of the front and back of the cashed cheque.	0.1
<b>Total</b>			<b>7.1</b>

**Invoice 8001110904****Deloitte Restructuring Inc.**

Bay Adelaide Centre  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9

ATTN: Mr. Paul Casey, CPA, CA, CIRP, Sr. Vice-President  
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge &  
Foam Products Ltd c/o Deloitte Restructuring  
8 Adelaide Street West, Suite 200  
Toronto ON M5H 0A9  
Canada

Tel: (416) 601-6150  
Fax: (416) 601-6151  
www.deloitte.ca

Date: April 06, 2020  
Client No.: 1157762  
WBS#: VALC0046  
Engagement Partner: Paul Casey  
HST Registration : 122893605RT0001

**For professional services rendered****Fees**

In connection with Deloitte Restructuring Inc., acting as Court-Appointed Monitor under the Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc. ("Valle Foam")), 4362063 Canada Ltd. (formerly Domfoam International Inc. ("Domfoam")), and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period from March 1 to 31, 2020.

Please see the attached appendices for details.

**Sales Tax**

HST applicable 4,775.00

HST at 13.00% 620.75

**Total Amount Due (CAD) 5,395.75**

Accounts shall be due and payable when rendered. Interest shall be calculated at a simple daily rate of 0.0493% (equivalent to 18% per annum). Interest shall be charged and payable at this rate on any part of an account which remains unpaid from thirty(30) days after the invoice date to the date on which the entire account is paid.



Invoice Number 8001110904

April 06, 2020

Use the following payment methods and ensure your payment contains the details provided in the example.

Client Name	Client#	Invoice#	Amount (CAD)	Comments
3113736 Canada Ltd & 4362063 Canada Ltd & A-Z Sponge & Foam Products Ltd c/o Deloitte Restructuring	1157762	8001110904	5,395.75	Payment for invoice 8001110904

**Contact:**

Please send payment confirmation by email to: [receivablesdebitours@deloitte.ca](mailto:receivablesdebitours@deloitte.ca), and reference the invoice number(s) paid

## Payment Options

### 1. EFT Payments(remittance email mandatory) :

**\*Preferred Method\***

Bank of Nova Scotia: 44 King Street West, Toronto, Ontario M5H 1H1

**CAD Payment**

**Transit – Institution :** 47696-002

**Account Number :** 1590219

**USD Payment**

**Transit – Institution :** 47696-002

**Account Number :** 1363514

### 2. Wire Payment :

Bank of Nova Scotia: 44 King Street West, Toronto, Ontario M5H 1H1

**CAD Payment**

**Account Number :** 476961590219

**Swift Code :** NOSCCATT

**USD Payment, Beneficiary Bank (Bank of Nova Scotia) :**

**Account Number :** 476961363514

**Swift Code :** NOSCCATT

**Clearing Code :** CC000247696

Address: P.O. Box 4234 STN A, Toronto ON M4W 5P6

**USD Payment, Intermediary Bank (Bank of America NA) :**

Address: 222 Broadway, New York, NY 10038

**Account Number :** 476961363514

**Swift Code :** BOFAUS3N

**ABA Routing Number :** 026009593

Note: Intermediary Bank information may not be required for payments coming from outside the US

### 3. Online Payment :

Select either Deloitte LLP or Deloitte S.E.N.C.R.L./s.r.l. through your financial institution and quote the seven digits of the Client No. shown above.

**Please note we do not accept Interac e-Transfers.**

### 4. Cheque payments, please mail to :

**For CAD Dollar (\$) Payments, pay :**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567C  
PO Box 4567, Stn A  
Toronto ON M5W 0J1

**For USD Dollar (\$) Payments, pay :**  
DELOITTE MANAGEMENT SERVICES LP  
c/o T04567U  
PO Box 4567, Stn A  
Toronto ON M5W 0J1



## Appendix #1

### Summary of Fees

Name	Level	Hours	Rate	Amount
Casey, Paul	Partner	0.2	\$ 800.00	\$ 160.00
Hristow, Catherine	Director	5.5	\$ 700.00	\$ 3,850.00
Brown, Rose	Trust Administrator	3.4	\$ 225.00	\$ 765.00
<b>Total hours and fees</b>		<b>9.1</b>		<b>\$ 4,775.00</b>
Blended hourly rate		\$ 524.73		

### Allocation of Fees:

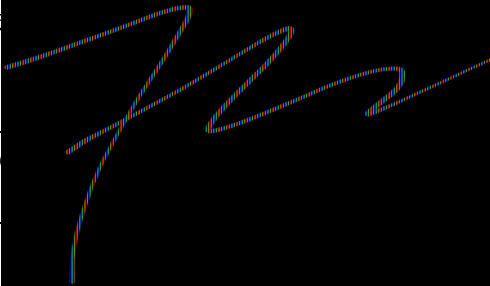
Entity	Professional Fees	Taxes	Total
Valle Foam Industries (1995) Inc. -100%	\$ 4,775.00	\$ 620.75	\$ 5,395.75
<b>Totals</b>	<b>\$ 4,775.00</b>	<b>\$ 620.75</b>	<b>\$ 5,395.75</b>

**Appendix #2****Work performed from March 1 to 31, 2020.**

<b>Date</b>	<b>Name</b>	<b>Narrative</b>	<b>Hours</b>
3/2/2020	Brown, Rose	Prepare wires for Lex Acquisition and send same for signature.	0.4
3/3/2020	Brown, Rose	Send signed wire to TD Bank and confirm with TD Bank that wire was sent; record wire in Ascend.	0.5
3/18/2020	Hristow, Catherine	Review correspondence regarding VPC Group Inc.	0.1
3/19/2020	Hristow, Catherine	Review email from V. Arman regarding VPC Group agreeing to refund the \$1.8 million and respond to same.	0.1
3/20/2020	Brown, Rose	Review correspondences from C. Hristow and prepare wire instruction sheet and print disbursement requests.	0.7
3/20/2020	Hristow, Catherine	Email R. Brown regarding wire transfer information for Valle Foam, and forward same to V. Arman; review and approve legal accounts and send same to R. Brown; correspondence with V. Arman regarding wire call back.	0.6
3/23/2020	Brown, Rose	Various correspondences with TD Bank regarding VPC Group incoming wire transfer.	0.5
3/23/2020	Hristow, Catherine	Telephone call with VPC Group confirming wire transfer information and correspond with R. Brown regarding same; review and revise draft court report; review prior reports for BASF litigation; email correspondence with V. Arman regarding no funds received.	2.5
3/24/2020	Casey, Paul	Review email from C. Hristow regarding status of Valle.	0.2
3/24/2020	Hristow, Catherine	Discussion with R. Brown regarding proposed Valle distribution; email revised draft court report to G. Moffat; status update with P. Casey; further correspondences with R. Brown and V. Arman regarding non receipt of wire transfer funds.	0.5
3/24/2020	Brown, Rose	Various communications with TD Bank checking on wire transfer from VPC Group.	0.7
3/25/2020	Brown, Rose	Print, and input disbursement requests in Ascend; check with TD Bank regarding incoming wire from VPC Group.	0.4
3/26/2020	Hristow, Catherine	Correspondence with V. Arman regarding receipt of \$1.8 million; review correspondence and decision re Cozy Corner and respond to same; discussion with G. Moffat regarding draft court report and stay proceedings; email RicePoint.	0.6
3/26/2020	Brown, Rose	Print disbursement cheques.	0.1
3/27/2020	Brown, Rose	Input wire received in Ascend and file documentation regarding same.	0.1
3/31/2020	Hristow, Catherine	Further email to RicePoint requesting copy of A-Z Sponge & Foam cheque.	0.1
3/31/2020	Hristow, Catherine	Attendance on a conference call with V. Arman regarding Cozy Corner, appointment of CRO and mediation with the purchaser of Domfoam; review mediation materials; confirmation emails with V. Arman regarding Cozy Corner costs.	1.0
<b>Total</b>			<b>9.1</b>



This is Exhibit "B" referred to in the  
Affidavit of Catherine A. Hristow sworn before  
me this 16th day of April, 2020.



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A Commissioner for taking affidavits

## **EXHIBIT “B”**

**Schedule of Invoices of  
Deloitte Restructuring Inc., CCAA Monitor of Valle Foam, Domfoam and A-Z Foam  
for the period October 1, 2019 to March 31, 2020**

<b>Invoice No.</b>	<b>Fees</b>	<b>Disbursements</b>	<b>HST</b>	<b>Hours</b>	<b>Average Rate</b>	<b>Total</b>
8000872837	6,322.50	-	821.93	11.10	569.59	7,144.43
8000902492	1,297.50	-	168.68	2.60	499.04	1,466.18
8001080676	4,162.50	-	541.13	7.10	586.27	4,703.63
8001110904	4,775.00	-	620.75	9.10	524.73	5,395.75
Total	16,557.50	-	2,152.49	29.90	553.76	18,709.99

# **Exhibit "N"**

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

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

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

**APPLICANTS**

**AFFIDAVIT OF GRANT B. MOFFAT  
(Sworn April 16, 2020)**

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

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and am a partner with Thornton Grout Finnigan LLP ("**TGF**"), lawyers for Deloitte Restructuring Inc. in its capacity as monitor (the "**Monitor**") of the property, assets and undertakings of 3113736 Canada Ltd., 4362063 Canada Ltd. and A-Z Sponge & Foam Products Ltd. and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. Attached hereto as Exhibit "**A**" are true copies of the invoices forwarded to the Monitor by TGF for fees and disbursements incurred by TGF in the course of the within proceeding for the period October 1, 2019 to March 31, 2020.
3. Attached hereto as Exhibit "**B**" is a schedule summarizing each invoice in Exhibit "**A**", the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.

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

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

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

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

**SWORN BEFORE ME**

at the City of Toronto, in the  
Province of Ontario this 16<sup>th</sup>  
day of April, 2020.

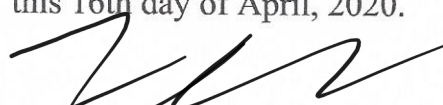
  
A commissioner for taking oaths, etc.

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)  
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\_\_\_\_\_  
**Grant B. Moffat**

Witnessed and signed electronically

This is Exhibit "A" referred to in the  
Affidavit of Grant B. Moffat sworn before me  
this 16th day of April, 2020.

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

A Commissioner for taking affidavits

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

(the "Applicants")

**EIGHTIETH BILL OF COSTS OF THE MONITOR**

**For the period ending October 31, 2019**

Oct-03-19	Review reports regarding Dow settlement funds;	0.40	GBM
Oct-04-19	Review Domfoam case conference brief;	0.40	GBM
Oct-06-19	Review materials filed in connection with Domfoam case conference; review prior reports;	1.00	GBM
Oct-07-19	Prepare for and attend case conference;	2.50	GBM
Oct-09-19	Receive email from G. Moffat and respond to same; review of email from G. Moffat regarding additional party to be served;	0.20	BJB
Oct-15-19	Review correspondence regarding Revenu Quebec claim;	0.20	GBM
	Draft Twenty-First Report to the Court;	2.90	GBM
	Commence preparation of Affidavit of G. Moffat, along with exhibit "B" and exhibit "C"; review of relevant accounts; email to G. Moffat;	0.40	BJB
Oct-16-19	Draft/revise -Correspondence regarding mediation; correspondence regarding report;	0.20	GBM
Oct-17-19	Review motion record regarding stay extension;	0.20	GBM
	Discussion with G. Moffat with respect to court motion on Wednesday;	0.10	RB
	Receive and review email from client and G. Moffat; finalize fee affidavit for G. Moffat; email to G. Moffat; email to client; email to client enclosing G. Moffat's fee affidavit; email to C. Hristow enclosing her fee affidavit;	0.50	BJB



Oct-18-19	Review report and exhibits; correspondence with C. Hristow regarding same;	0.40	GBM
	Review emails with respect to court motion on Wednesday;	0.10	RB
	Review of 21st Report of the Monitor; compiling exhibits; email from G. Moffat; finalizing 21st Report; review of Service List; prepare email to Service List; office conference with G. Moffat; serve 21st Report; email to client;	0.80	BJB
Oct-21-19	Discussion with G. Moffat with respect to matter; review motion materials;	0.30	RB
	Preparing Report for filing with Court and preparation of Affidavit of Service;	0.30	BJB
Oct-22-19	Review motion record for motion returnable tomorrow; review Monitor's report in connection with stay extension motion;	1.20	RB
Oct-23-19	Prepare for and attend stay extension motion; draft and send email summary of same to each of G. Moffat and the Monitor;	2.00	RB

<u>Lawyer</u>	<u>Hours</u>	<u>Amount</u>
Grant B. Moffat	8.20	6,970.00
Rachel Bengino	3.70	1,850.00
Bobbie-Jo Brinkman (Law C	2.20	550.00

<b>TOTAL FEE HEREIN</b>	<b>\$9,370.00</b>	
<b>HST on Fees</b>	<b><u>\$1,218.10</u></b>	
<b>Total Fees and HST</b>		<b>\$10,588.10</b>

**Disbursements:**

Photocopies	\$122.00
Binding	\$4.18
<b>Total Taxable Disbursements</b>	<b>\$126.18</b>

<b>HST on Disbursements</b>	<b>\$16.40</b>	
<b>Total Non-Taxable Disbursements</b>	<b><u>\$0.00</u></b>	
<b>Total Disbursements and HST</b>		<b><u>\$142.58</u></b>
<b>Total Fees, Disbursements &amp; HST</b>		<b>\$10,730.68</b>

<b>OUR ACCOUNT HEREIN</b>	<b><u>\$10,730.68</u></b>
---------------------------	---------------------------



**ThorntonGroutFinnigan LLP**

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

  
Grant B. Moffat

E. & O. E.    HST No. 87042 1039RT    \*HST Exempt

Matter No.        533-029  
Invoice No.        34061  
Date:                Nov 12/19

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

(the "Applicants")

**EIGHTY FIRST BILL OF COSTS OF THE MONITOR**

**For the period ending November 30, 2019**


Nov-01-19	Correspondence with F. Tayar; correspondence with C. Hristow regarding further distribution in US litigation;	0.30	GBM
Nov-04-19	Correspondence with F. Tayar; correspondence with C. Hristow;	0.20	GBM
	Communicate (other outside counsel) -Telephone call with A. Teodorescu;	0.30	GBM
Nov-20-19	Emails with respect to stay extension order;	0.10	RB
Nov-22-19	Review APA and correspondence to Buyer; meeting with R. Bengino regarding release from Buyer;	0.60	GBM
Nov-27-19	Review affidavit of documents;	0.20	GBM
	Telephone call with D. Ullman;	0.20	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Amount</u>
Grant B. Moffat	1.80	1,530.00
Rachel Bengino	0.10	50.00
<b>TOTAL FEE HEREIN</b>		<b>\$1,580.00</b>
<b>HST on Fees</b>		<b><u>\$205.40</u></b>

**Total Fees and HST** **\$1,785.40**

**OUR ACCOUNT HEREIN** **\$1,785.40**

**ThorntonGroutFinnigan LLP**



Per: Grant B. Moffat

E. & O. E. HST No. 87042 1039RT \*HST Exempt

Matter No. 533-029  
Invoice No. 34220  
Date: Dec 12/19

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6.00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

(the "Applicants")

**EIGHTY SECOND BILL OF COSTS OF THE MONITOR**

**For the period ending January 31, 2020**

Dec-06-19	Review correspondence regarding funds payable in class action proceeding; telephone call with C. Hristow;	0.20	GBM
Dec-11-19	Telephone call with C. Hristow;	0.20	GBM
	Receive instructions to review Orders relating to APA for Valle Foam; review Orders; office conference with G. Moffat; receive additional instructions from G. Moffat; review Reports;	0.90	BJB
Dec-13-19	Review/analyze -Review Third Report;	0.20	GBM
Jan-12-20	Review Valle Foam APA; review correspondence regarding claim to class action settlement; correspondence with C. Hristow regarding same;	0.80	GBM
Jan-15-20	Communicate (other outside counsel) -Telephone call with C. Hristow;	0.20	GBM
Jan-20-20	Review correspondence regarding mediation; telephone call with D. Ullman;	0.20	GBM
Jan-23-20	Correspondence with C. Hristow; telephone call with D. Ullman;	0.20	GBM
Jan-24-20	(2x) Telephone call with D. Ullman; correspondence with F. Tayar and D. Ullman; telephone call with C. Hristow;	0.40	GBM
Jan-30-20	Telephone call with F. Tayar, D. Ullman and Justice Cumming regarding mediation protocol; telephone call with D. Ullman regarding litigation guardian;	0.50	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Amount</u>
Grant B. Moffat	2.90	2,580.00
Bobbie-Jo Brinkman (Law C	0.90	225.00

**TOTAL FEE HEREIN**  
**HST on Fees**

**\$2,805.00**  
**\$364.65**

**Total Fees and HST**

**\$3,169.65**

**Disbursements:**

**Total Fees, Disbursements & HST**

**\$3,169.65**

**OUR ACCOUNT HEREIN**

**\$3,169.65**

**ThorntonGroutFinnigan LLP**



Per: Grant B. Moffat

E. & O. E. HST No. 87042 1039RT \*HST Exempt

Matter No. 533-029  
Invoice No. 34512  
Date: Feb 18/20

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





Thornton Grout Finnigan LLP

2.

We trust you find the enclosed satisfactory. However, should you have any questions with respect to our bill of costs, please do not hesitate to contact the undersigned.

Yours very truly,

**Thornton Grout Finnigan LLP**

A handwritten signature in dark ink, appearing to read 'Grant B. Moffat'.

Grant B. Moffat

GBM/gk  
Encl.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

(the "Applicants")

**EIGHTY THIRD BILL OF COSTS OF THE MONITOR**

**For the period ending February 29, 2020**

Feb-04-20	Research regarding terms of appointment of Litigation Trustee or CRO;	4.70	PF
Feb-12-20	Telephone call with D. Ullman; correspondence C. Hristow;	0.20	GBM
Feb-13-20	Review correspondence to Valle Foam purchaser; correspondence with V. Arman;	0.20	GBM
Feb-17-20	Review memo regarding litigation trustee; consider scope of engagement;	0.60	GBM
Feb-24-20	Review correspondence regarding class settlement; draft 22nd Report;	3.90	GBM
Feb-25-20	Correspondence with C. Hristow regarding A-Z Foam; review correspondence regarding settlement funds;	0.20	GBM
Feb-27-20	Correspondence with C. Hristow; correspondence from A-Z purchaser's counsel;	0.20	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Amount</u>
Grant B. Moffat	5.30	4,770.00
Puya Fesharaki	4.70	2,350.00
<b>TOTAL FEE HEREIN</b>		<b>\$7,120.00</b>
<b>HST on Fees</b>		<b><u>\$925.60</u></b>

**Total Fees and HST** **\$8,045.60**

**OUR ACCOUNT HEREIN** **\$8,045.60**

**ThorntonGroutFinnigan LLP**



Per: Grant B. Moffat

E. & O. E. HST No. 87042 1039RT \*HST Exempt

Matter No. 533-029  
Invoice No. 34612  
Date: Mar 09/20

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6.00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

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

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

(the "Applicants")

**EIGHTY FOURTH BILL OF COSTS OF THE MONITOR**

**For the period ending March 31, 2020**

Mar-02-20	Telephone call with D. Ullman;	0.20	GBM
Mar-05-20	Draft 22nd Report;	2.80	GBM
	Correspondence with D. Ullman; review correspondence regarding polyols settlement funds;	0.20	GBM
Mar-09-20	Correspondence with Company counsel; review correspondence regarding Valle Foam purchaser; correspondence with C. Hristow regarding same;	0.40	GBM
Mar-17-20	Review correspondence regarding claim to funds paid to Valle Foam purchaser;	0.20	GBM
Mar-18-20	Considered method to address CRO and stay extension;	0.30	GBM
	Review correspondence regarding claim to funds held by Valle Foam purchaser; correspondence regarding CRO;	0.40	GBM
	Revise 22nd report; review correspondence regarding CRO and claims to funds held by Monitor;	2.00	GBM
	Email from G. Moffat to update Report; updating Report; subsequent emails with G. Moffat;	0.30	BJB
Mar-19-20	Correspondence regarding Valle Foam funds; review draft report regarding same;	0.20	GBM
Mar-23-20	Review correspondence regarding mediation;	0.20	GBM

Mar-24-20	Review revisions to court report;	0.20	GBM
Mar-25-20	Review Twenty-Second Report; preparing exhibits to Twenty Second Report; email to G. Moffat;	0.20	BJB
Mar-26-20	Telephone call C. Hristow;	0.20	GBM
	Correspondence Company counsel; correspondence C. Hristow;	0.20	GBM
Mar-31-20	Telephone call with Domfoam counsel, company counsel and Justice Cumming;	0.40	GBM

<b><u>Lawyer</u></b>	<b><u>Hours</u></b>	<b><u>Amount</u></b>
Grant B. Moffat	7.90	7,110.00
Bobbie-Jo Brinkman (Law Clerk)	0.50	137.50

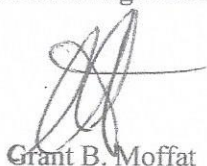
<b>TOTAL FEE HEREIN</b>	<b>\$7,247.50</b>
<b>HST on Fees</b>	<b><u>\$942.18</u></b>
<b>Total Fees and HST</b>	

**\$8,189.68**

**OUR ACCOUNT HEREIN**

**\$8,189.68**

**ThorntonGroutFinnigan LLP**



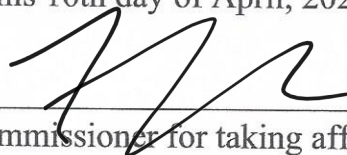
Per: **Grant B. Moffat**

E. & O. E. HST No. 87042 1039RT \*HST Exempt

Matter No. 533-029  
 Invoice No. 34780  
 Date: Apr 08/20

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6.00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

This is Exhibit "B" referred to in the  
Affidavit of Grant B. Moffat sworn before me  
this 16th day of April, 2020.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, positioned above a horizontal line.

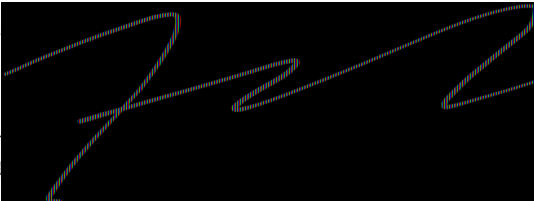
A Commissioner for taking affidavits

## EXHIBIT "B"

**Calculation of Average Hourly Billing Rates of  
Thornton Grout Finnigan LLP  
for the period October 1, 2019 to March 31, 2020**

<b>Invoice No.</b>	<b>Fees</b>	<b>Disbursements</b>	<b>HST</b>	<b>Hours</b>	<b>Average Rate</b>	<b>Total</b>
34061	\$9,370.00	\$126.18	\$1,234.50	14.1	\$664.54	\$10,730.68
34220	\$1,580.00	\$0.00	\$205.40	1.90	\$831.58	\$1,785.40
34512	\$2,805.00	\$0.00	\$364.65	3.80	\$738.16	\$3,169.65
34612	\$7,120.00	\$0.00	\$925.60	10.00	\$712.00	\$8,045.60
34780	\$7,247.50	\$0.00	\$942.18	8.40	\$862.80	\$8,189.68
<b>TOTAL</b>	<b>\$28,122.50</b>	<b>\$126.18</b>	<b>\$3,672.33</b>	<b>38.2</b>		<b><u>\$31,921.01</u></b>

This is Exhibit "C" referred to in the  
Affidavit of Grant B. Moffat sworn before me  
this 16th day of April, 2020.



---

A Commissioner for taking affidavits

## EXHIBIT "C"

### Billing Rates of Thornton Grout Finnigan LLP

For the period October 1, 2019 to December 31, 2019

	<u>Rate</u>	<u>Year of Call</u>
Grant B. Moffat	\$850.00	1991
Rachel Bengino	\$500.00	2015
Bobbie-Jo Brinkman	\$250.00	Law Clerk

For the period January 1, 2020 to March 31, 2020

	<u>Rate</u>	<u>Year of Call</u>
Grant B. Moffat	\$900.00	1991
Puya Fesharaki	\$500.00	2016
Bobbie-Jo Brinkman	\$275.00	Law Clerk



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

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

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

Proceedings commenced at Toronto

**AFFIDAVIT OF GRANT B. MOFFAT  
(SWORN APRIL 16, 2020)**

**Thornton Grout Finnigan LLP**  
Barristers & Solicitors  
Suite 3200, TD West Tower  
100 Wellington Street West  
P.O. Box 329, Toronto-Dominion Centre  
Toronto, ON M5K 1K7

**Grant B. Moffat** (LSUC# 32380L)  
Tel: 416-304-0599  
Fax: 416-304-1313  
Email: [gmoffat@tgf.ca](mailto:gmoffat@tgf.ca)

Lawyers for the Monitor

# TAB 3



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

THE HONOURABLE	)	TUESDAY, THE 28 <sup>TH</sup>
	)	
JUSTICE CONWAY	)	DAY OF APRIL, 2020

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

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

(the “**Applicants**”)

**ORDER  
(CRO Appointment)**

**THIS MOTION** made by Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) in its capacity as the Court-appointed Monitor (in such capacity, the “**Monitor**”) of 3113736 Canada Ltd., 4362063 Canada Ltd., and A-Z Sponge & Foam Products Ltd. (collectively, the “**Applicants**”), for an order appointing Linc Rogers, a partner with the law firm of Blake, Cassels & Graydon LLP (“**Blakes**”) in Toronto, as Chief Restructuring Officer (in such capacity, the “**CRO**”) of the Applicants, was heard on this day by a Judge of the Ontario Superior Court of Justice (Commercial List) through electronic or telephonic means.

**ON READING** the Twenty-Second Report of the Monitor (the “**Twenty-Second Report**”), and on hearing submissions of counsel to the Monitor, no one else appearing, although properly served as appears from the affidavit of service of [Name] sworn [Date], filed,

## **DEFINITIONS**

1. **THIS COURT ORDERS** that any capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Twenty-Second Report.

## **SERVICE**

2. **THIS COURT ORDERS** that (a) the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof, and (b) authorizes and validates service of the Notice of Motion and the Motion Record via electronic means.

## **APPOINTMENT OF CHIEF RESTRUCTURING OFFICER**

3. **THIS COURT ORDERS** that Mr. Linc Rogers is hereby appointed as CRO, an officer of this Court, over and in respect of the Applicants and shall have the powers and duties specified in this Order.

## **CRO'S DUTIES**

4. **THIS COURT ORDERS** that, subject to the terms of this Order, the CRO is hereby empowered, authorized and directed to:

- (a) in consultation with the Monitor, take any and all steps required in order to resolve:
  - (i) the entitlement of the Domfoam Purchaser's claim to the Dow Settlement Funds and the Domfoam Canadian Polyols Funds; and (ii) the entitlement of the A-Z Purchaser to A-Z Foam's share of the Residual Dow Settlement Funds and the A-Z Canadian Polyols Funds; and

- (b) perform such other duties as required by this Order or by this Court from time to time and such other duties as the CRO and the Monitor may from time to time agree

(collectively, the “**CRO Duties**”).

## **CRO’S POWERS**

5. **THIS COURT ORDERS** that, subject to the terms of this Order, the CRO, in the discharge and fulfilment of the CRO’s Duties, is hereby empowered and authorized to:

- (a) take any and all steps for and in the name of, and on behalf of, the Applicants in connection with the proceedings herein and to instruct counsel to the Applicants in connection with any such steps;
- (b) represent the Applicants in any negotiations with any other party, including creditors, customers, litigants and stakeholders of the Applicants;
- (c) communicate with and provide information to the Monitor and other stakeholders regarding the affairs of the Applicants;
- (d) report to the Court at such times and intervals as the CRO may deem appropriate with respect to any matters that may be relevant to the proceedings herein;
- (e) have full and complete access to the Property, as defined in the Initial Order of this Court dated January 12, 2012 (the “**Initial Order**”);
- (f) engage, give instructions to and pay counsel, consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on

whatever basis the CRO may agree, in consultation with the Monitor, to assist with the exercise of the CRO's powers and obligations;

- (g) take all such steps and actions, enter into and execute all such agreements and documents in the name of and on half of the Applicants, and incur such expenses and obligations necessary or incidental to the exercise of the foregoing powers;

provided that:

- (i) each of the foregoing actions, agreements, expenses and obligations shall be construed to be those of the Applicants and not of Blakes, the CRO, nor any of his partners, employees (and/or employees of Blakes), representatives or agents; and,
- (ii) the Applicants (directly or through its counsel) shall
  - (1) advise the CRO of all material steps taken by the Applicants in these proceedings; and
  - (2) cooperate fully with and provide the CRO with the assistance necessary to enable the CRO to exercise its powers and discharge the CRO Duties.

## **LIMITATION OF LIABILITY**

6. **THIS COURT ORDERS** that the CRO shall not be in Possession of the Property (as such terms are defined in the Initial Order) and shall not, by fulfilling its obligations hereunder be deemed to have taken or maintained Possession of the Property or any part thereof. Without limiting the foregoing, the CRO shall not take possession or be deemed to take possession of any Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the Environmental Legislation (as defined in the Initial Order), provided however that nothing herein shall exempt the CRO from any duty to report or make disclosure imposed by applicable Environmental Legislation. The CRO shall not, as a result of this Order or anything done in pursuance of the CRO's Duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless he is actually in possession.

7. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the CRO as an officer of this Court, neither the CRO nor any other CRO Indemnified Party (as defined below) shall be deemed to be a director or trustee of any of the Applicants and the CRO shall incur no liability or obligation as a result of his appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part.

#### **INDEMNITY AND INDEMNIFIED PARTIES**

8. **THIS COURT ORDERS** that the Applicants shall indemnify and hold harmless the CRO and any of his partners, employees (and/or employees of Blakes), agents or representatives who may assist the CRO with the exercise of his powers and obligations under this Order (collectively, with the CRO, the "**CRO Indemnified Parties**") with respect to any liability or obligation that the CRO Indemnified Parties may incur as a result of the appointment of the CRO or the fulfilling of the CRO's Duties, including any claims or liabilities subject to indemnification pursuant to this Order, except to the extent the obligation or liability was incurred as a result of the CRO Indemnified Parties' gross negligence or wilful misconduct. The CRO Indemnified Parties shall be treated as unaffected parties, and the foregoing indemnity shall

be treated as unaffected and may not be compromised, for the purpose of this proceeding or any bankruptcy proceeding with respect to one or more of the Applicants.

9. **THIS COURT ORDERS** that no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the CRO Indemnified Parties, and all rights and remedies of any person against or in respect of the CRO Indemnified Parties are hereby stayed and suspended, except with the written consent of the CRO or with leave of this Court on notice to the Applicants, the Monitor and the CRO. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO at least seven (7) days' prior to the return date of any such motion for leave.

10. **THIS COURT ORDERS** that the Applicants' indemnity in favour of the CRO Indemnified Parties shall survive any termination, replacement or discharge of the CRO.

11. **THIS COURT ORDERS** that the appointment of the CRO and the granting of powers and responsibilities of the CRO hereunder will not constitute the sale or disposition of any of the Property.

#### **PROFESSIONAL FEES AND PASSING OF ACCOUNTS**

12. **THIS COURT ORDERS** that the Monitor on behalf of the Applicants is hereby authorized to pay to the CRO a retainer in the amount of \$25,000 to be held by the CRO as security for payment of his respective fees and disbursements, outstanding from time to time

13. **THIS COURT ORDERS** that the CRO Indemnified Parties shall submit their accounts to the Monitor for payment by the Applicants, provided however each CRO Indemnified Party

shall not be required to submit a separate account and the CRO may submit consolidated accounts showing the professional fees and disbursements of the CRO Indemnified Parties (the “**CRO Accounts**”). The CRO and the other CRO Indemnified Parties shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings, or such alternate rates as may be agreed to by the Monitor. The Applicants are authorized and directed to pay the CRO Accounts on a bi-weekly basis or such other timeframe as the Monitor and the CRO mutually agree.

14. **THIS COURT ORDERS** that the CRO shall pass the CRO Accounts from time to time and for this purpose the CRO Accounts are hereby referred to a Judge of the Ontario Superior Court of Justice (Commercial List).

15. **THIS COURT ORDERS** that the CRO Indemnified Parties shall be entitled to the benefit of the Administration Charge (as defined in the Initial Order) as security for their professional fees and disbursements incurred in respect of these proceedings.

## **GENERAL**

16. **THIS COURT ORDERS** that the CRO shall consult with the Monitor regarding all material issues relating to these proceedings.

17. **THIS COURT ORDERS** that the CRO may resign or the appointment of the CRO may be terminated by further order of this Court at any time.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the CRO 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 CRO as may be necessary or desirable to give effect to this Order or to assist the CRO and his agents in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that the CRO is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the CRO is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

20. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order at least seven (7) days' notice to the CRO and the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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

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

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

Proceedings commenced at Toronto

**ORDER**  
**(APRIL 28, 2020)**

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Lawyers for the Monitor

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**MOTION RECORD OF THE MONITOR**  
(returnable April 28, 2020)  
(Re Appointment of CRO)

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