

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**”)

MOTION RECORD

(Approval of Settlement Agreement, returnable January 18, 2022)

January 12, 2022

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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(the “**Applicants**”)

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**ONTARIO
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FOAM PRODUCTS LTD.

(the “Applicants”)

NOTICE OF MOTION

(Approval of Settlement Agreement, returnable January 18, 2022)

The Applicants will make a motion to a judge presiding over the Commercial List on
January 18, 2022, at 10:00 a.m., or as soon after that time as the motion can be heard.

THIS MOTION will come on for a hearing

☐ In writing

☐ In person

☐ By telephone conference

☒ By video conference

at the following location: **[to be provided prior to motion]**

1. **THE MOTION IS FOR:**

- (a) An Order substantially in the form attached hereto as Schedule “A”, for relief
including, *inter alia*:

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- (i) if necessary, abridging the time for service of this notice of motion and the motion record and dispensing with service on any person other than those served;
 - (ii) approving the settlement agreement between the Applicants and 0932916 BC Ltd. (the “**Purchaser**”) with Minutes of Settlement executed by the Applicants on December 10, 2021 and by the Purchaser on December 23, 2021 (the “**Settlement Agreement**”), including the Release appended to the Settlement Agreement; and
 - (iii) confirming that the payment of the settlement funds under the Settlement Agreement is fair and reasonable in the circumstances, is made in good faith, and does not violate the interest of any person who may claim against the Vendor (as described below); and
- (b) Such further and other relief as to this Honourable Court may seem just.

2. **THE GROUNDS FOR THE MOTION ARE:**

- (a) The Applicants were in the business of manufacturing and distributing flexible polyurethane foam product from facilities located in Ontario, Quebec and British Columbia;
- (b) Pursuant to an Initial Order of the Ontario Superior Court of Justice dated January 12, 2012, 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.), 4362063 Canada Ltd. (formerly known as Domfoam International Inc.), and A-Z Sponge & Foam Products Ltd. (the “**Vendor**”; collectively, the

“**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) and Deloitte Restructuring Inc. (as it is now called) was appointed monitor (in such capacity, the “**Monitor**”);

- (c) The Vendor was a claimant in a US class action lawsuit relating to the polyether polyols industry styled as *In Re: Urethane Anti-Trust Litigation* which matter was brought before the United States District Court of Kansas (the “**US Class Action**”);
- (d) The Vendor was also a claimant in a parallel class action in Canada with the style of cause *Crosslink Technology Inc. v. BASF Canada et al*, before the Ontario Superior Court of Justice bearing court file number 50305 CP (the “**Canadian Class Action**” and together with the US Class Action, the “**Class Actions**”);
- (e) In February 2012, the Vendor entered into an Asset Purchase Agreement (“**APA**”) with the Purchaser, which APA was approved by the Court;
- (f) The Monitor is in possession of certain remaining proceeds of settlement of the Class Actions, net of agent fees, in the amount of CAD\$324,719.45, plus interest accruing (the “**Class Action Proceeds**”);
- (g) The Purchaser asserted in November 2018 that, pursuant to the APA, it had acquired the Class Action Proceeds, which the Vendor contested (the “**Dispute**”);
- (h) The Monitor agreed not to distribute the remaining Class Action Proceeds that would otherwise be distributed to the Vendor’s creditors pending disposition of the Dispute;

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- (i) In November 2021, the Vendor and Purchaser finalized a settlement of the Dispute, subject to this Court's approval, with Minutes of Settlement executed on December 10 and 23, 2021;
- (j) The Settlement Agreement is fair and reasonable in the circumstances and is consistent with the purposes of the CCAA, given:
 - (i) The litigation risk associated with proceeding to adjudication;
 - (ii) The professional costs associated with proceeding to adjudication, which includes the costs of the Monitor, the Monitor's counsel, the Chief Restructuring Officer, and the Applicants' counsel; and
 - (iii) The time value of money.
- (k) The Monitor, the Vendor's largest creditors, and the Chief Restructuring Officer support the Settlement Agreement;
- (l) The Settlement Agreement is made in good faith and does not prejudice the interest of any person who may claim against the Vendor;
- (m) The Mutual Release attached to the Settlement Agreement provides a comprehensive release by the Purchaser to the Vendor in respect of the Dispute, the APA, the Class Action Proceeds, this CCAA proceeding and the motion, including all allegations and assertions made by the parties therein;
- (n) The Settlement Agreement and Release will become effective only once Court approval is obtained;

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- (o) The provisions of the CCAA, including section 11, and the inherent and equitable jurisdiction of this Court;
- (p) Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended;
- (q) Such further and other grounds as the lawyers may advise.

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

- (a) The affidavit of Linc Rogers, sworn January 11, 2022;
- (b) The Twenty-Seventh Report of the Monitor; and,
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 12, 2022

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SCHEDULE "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	DAY, THE
)	
JUSTICE)	DAY OF JANUARY, 2022

B E T W E E N:

(Court Seal)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 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
(Settlement Approval Order)

THIS MOTION by the Applicants for an order approving a settlement agreement between the Applicants and 0932916 BC Ltd. (the "**Purchaser**"), was heard this day by videoconference.

ON READING the Motion Record, the Twenty-Seventh Report of Deloitte Restructuring Inc., (the "**Twenty-Seventh Report**") in its capacity as Court-appointed monitor of the Applicants (the "**Monitor**"), and the Applicants' Factum, and on hearing the submissions of the lawyers for the Applicants, no other party making submissions:

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1. **THIS COURT ORDERS** that the time for service and manner of service of the Applicants' Motion Record and Factum are hereby abridged and validated, and any further service thereof is hereby dispensed with so that this motion was properly returnable January 18, 2022, in all proceedings set out in the styles of cause hereof.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings attributed to those terms in the minutes of settlement and release between the Applicants and the Purchaser (together, the "**Settling Parties**"), executed by the Applicants on December 10, 2021 and by the Purchaser on December 23, 2021 (the "**Settlement Agreement**").
3. **THIS COURT ORDERS** that the Settlement Agreement is fair and reasonable and is hereby approved, and the parties thereto are hereby bound by this Order and by those terms of the Settlement Agreement that are conditional upon the granting of this Order, and the Applicants are authorized and directed to comply with their obligations thereunder.
4. **THIS COURT ORDERS** that the Monitor is directed and authorized to take any steps and perform any actions that are required to be taken or performed by the Monitor pursuant to the Settlement Agreement, including, without limiting the generality of the foregoing, to pay the Settlement Amount to the Purchaser from funds held in the Applicants' Estate Account.
5. **THIS COURT ORDERS** that in accordance with the terms and conditions of the Settlement Agreement, as of the Settlement Date, the Settled Matters as defined in the Release appended to the Settlement Agreement are irrevocably, absolutely, and unconditionally fully, finally, and forever released, remised and discharged in accordance with the terms of said Release.

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6. **THIS COURT ORDERS** that, due to the COVID-19 pandemic, this Order is immediately effective and enforceable without any need for entry and filing.

Justice

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 31133736 CANADA LTD., 4362063 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

Applicants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

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**ONTARIO
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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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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.

**AFFIDAVIT OF LINC ROGERS
CHIEF RESTRUCTURING OFFICER**

I, **LINC ROGERS**, of the City of Toronto in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am a lawyer and partner in the Restructuring and Insolvency Group in the Toronto office of Blake, Cassels & Graydon LLP. Pursuant to the Order of the Honourable Justice Conway dated June 8, 2020 (the “**Appointment Order**”), I was appointed as the Chief Restructuring Officer (“**CRO**”) of 3113736 Canada Ltd., formerly known as Valle Foam Industries (1995) Inc. (“**Valle Foam**”), 4362063 Canada Ltd., formerly known as Domfoam International Inc. (“**Domfoam**”), and A-Z Sponge & Foam Products Ltd. (the “**Vendor**” and together with Valle Foam and Domfoam, the “**Applicants**”), and as such have knowledge of the matters to which I hereinafter depose.

2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief, and do verily believe it to be true.

3. To the extent that any of the information set out in this affidavit is based on my review of documents, I verily believe the information in such documents to be true.

4. I swear this affidavit in support of the Applicants' motion for an order approving the minutes of settlement executed by the Applicants on December 10, 2021 and by the Purchaser on December 23, 2021 (the "**Settlement**",) and the appended related release (the "**Release**") of the Applicants by 0932916 BC Ltd. (the "**Purchaser**") in connection with a dispute (the "**Dispute**") arising from an Asset Purchase Agreement (the "**APA**") between the Vendor and the Purchaser dated February 21, 2012, which APA was approved by this Court.

5. I am of the view that the Settlement is fair and reasonable in light of all the relevant circumstances. The Settlement is recommended by the Monitor and supported by the largest creditors of the Applicants.

A. Background

6. The Applicants were in the business of manufacturing and distributing flexible polyurethane foam product from facilities located in Ontario, Quebec and British Columbia. The Applicants sought and obtained protection under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") on January 12, 2012, pursuant to an Order of this Court granted the same day (the "**Initial Order**").

7. Pursuant to the Initial Order, Deloitte Restructuring Inc. (as it is now called) was appointed as monitor in respect of the Applicants (in such capacity, the "**Monitor**"). During these proceedings, the Applicants have sold substantially all of their operating assets pursuant to various sale approval and vesting orders issued by this Court. Interim distributions of such proceeds have

been made to the Applicants' creditors holding proven claims. The remaining proceeds of the Applicants' assets are being held by Monitor.

8. This Court has extended the stay of proceedings provided for in the Initial Order many times, most recently on October 28, 2021 by order of Justice Pattillo. It is currently set to expire on January 18, 2022.

(a) CRO Appointment

9. As noted in the Twenty-Second Report of the Monitor dated April 22, 2020 (the "**Twenty-Second Report**") filed in support of my appointment as CRO, the Monitor was advised by Applicants' counsel, Blaney McMurtry LLP ("**Blaneys**") that counsel was unable to obtain instructions from the sole remaining director of the Vendor, Anthony Vallecoccia. On April 16, 2020, Mr. Vallecoccia advised that he no longer felt capable of continuing his duties as a director. At the request of the Monitor, I was appointed by this Court as CRO to fill the corporate governance void. Part of my mandate was to resolve the Dispute, either by way of consensual resolution or by adjudication. As noted above, the Appointment Order was issued on June 8, 2020.

(b) The Dispute

10. The Dispute arises because the Purchaser sought to have certain proceeds (the "**Class Action Proceeds**") paid to it, which were paid to the Vendor as a result of litigation settlements in class action lawsuits in the United States and Canada in which the Vendor was a claimant (the "**Class Actions**"). Most of the Class Action Proceeds received by the Vendor under the US Class Action were distributed by the Monitor to the Vendor's creditors holding proven claims pursuant to the Order of this Court dated May 29, 2018. The Monitor continues to hold the remaining US Class Action Proceeds and all of the Canadian Class Action Proceeds in the total amount of

CAD\$384,538.89. A payment of CAD\$59,818.68 (the “**Agent Fee**”) is payable to the claims agent, Lex Acquisition Group, LLC, in respect of the Class Action Proceeds from the Canadian Class Action (fees in respect of the US Class Action have been paid).

11. The Purchaser took the position in November 2018 that it had purchased the US Class Action Proceeds pursuant to the terms of the APA. The Vendor took the position that the Purchaser did not purchase the US Class Action Proceeds and in any event the Purchaser is estopped from asserting a claim to the remaining US Class Action Proceeds at this time. Following receipt by the Vendor of the Canadian Class Action Proceeds in November 2020, each of the Purchaser and the Vendor asserted the same position with respect to the Canadian Class Action Proceeds.

B. Settlement

12. In November 2021, the Applicants and the Purchaser finalized a settlement in respect of the Dispute. I was the principal negotiator of the Settlement on behalf of the Applicants, however, I consulted with the Monitor and the major creditors in all material respects. The Minutes of Settlement were executed by the Parties on December 10 and 23, 2021.

13. In essence, the Settlement involves a single payment by the Monitor of \$60,000, for and on behalf of the Vendor, to the Purchaser in full and final settlement of any and all claims the Purchaser may have against the Applicants arising out of these CCAA proceedings, the APA, and settles the Dispute. A copy of the executed Minutes of Settlement and the accompanying release is attached as Exhibit “A” hereto. The Settlement remains subject to court approval.

14. In recommending the approval of the Settlement, I have taken into account, among other things, the following factors:

- a) The litigation risk associated with proceeding to adjudication;
- b) The professional costs associated with proceeding to adjudication which includes the cost of the Monitor, the Monitor's counsel, the CRO and counsel for the Applicants;
- c) The time value of money; and,
- d) The Monitor and the Vendor's largest creditors support the Settlement.

C. Conclusion

15. The affidavit is filed in support of an order approving the Settlement and certain ancillary and related relief. I am of the view that the approval of the Settlement on the terms set out in the Minutes of Settlement are in the best interest of the Vendor's estate.

Sworn before me by video conference by Linc Rogers of the City of Toronto, in the Province of Ontario, before me at the City of Brampton, in the Regional Municipality of Peel, on January 11, 2022, in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits



LINC ROGERS

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors Expires July 13, 2024.

This is Exhibit "A" referred to in the Affidavit of Linc Rogers sworn by Linc Rogers at the City of Toronto, in the Province of Ontario, before me on January 11, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

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MINUTES OF SETTLEMENT

WHEREAS, pursuant to an Initial Order of the Ontario Superior Court of Justice (the “**Court**”) dated January 12, 2012 in this proceeding (the “**CCAA Proceeding**”), 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.), 4362063 Canada Ltd. (formerly known as Domfoam International Inc.), and A-Z Sponge & Foam Products Ltd. (the “**Vendor**”; collectively, the “**Applicants**”) were granted protection under the *Companies' Creditors Arrangement Act* (Canada) (“**CCAA**”) and Deloitte & Touche Inc. (now Deloitte Restructuring Inc.) was appointed monitor (in such capacity, the “**Monitor**”);

WHEREAS in February 2012, the Vendor entered into an Asset Purchase Agreement (the “**APA**”) with 0932916 BC Ltd. (the “**Purchaser**”), which APA was approved by the Court;

WHEREAS the Monitor controls disbursements from the bank account in which are held certain remaining proceeds of settlement derived from a class action, in which the Vendor was a claimant, relating to the polyether polyols industry and with the style of cause, *In Re: Urethane Anti-Trust Litigation*, which matter was brought before the United States District Court of Kansas bearing court file number 04-md-1616-JWL-JPO (the “**US Class Action**”) and from a parallel class action in Canada, in which the Vendor was also a claimant, with the style of cause *Crosslink Technology Inc. v. BASF Canada et al*, before the Ontario Superior Court of Justice bearing court file number 50305 CP (the “**Canadian Class Action**” and together with the US Class Action, the “**Class Actions**”);

WHEREAS the Vendor has represented that, following a distribution of certain of the proceeds of settlement of the US Class Action made to creditors of the Vendor pursuant to orders of the Court, the remaining proceeds of settlement of the US Class Action (the “**US Class Action Proceeds**”) and the proceeds of settlement of the Canadian Class Action in the amount of \$239,274.74 (the “**Canadian Class Action Proceeds**”) now held by the Monitor in the estate account for the Vendor (the “**Vendor’s Account**”) are in the total amount of CAD\$384,538.89 (prior to payment of the Agent Fee, as defined below as of the date hereof (together with interest that accrues thereon from and after the date hereof, the “**Class Action Proceeds**”);

WHEREAS (i) in response to a request to clarify its position by the Monitor, the Purchaser asserted on November 22, 2018, that pursuant to the APA, the Purchaser acquired the rights to the US Class Action Proceeds, and was asserting a claim to such US Class Action Proceeds on a “going forward basis” only; and (ii) following receipt of the Canadian Class Action Proceeds by the Monitor, the Purchaser also asserted that it acquired the rights to the Canadian Class Action Proceeds pursuant to the APA (the claims in (i) and (ii) together, the “**Purchaser’s Claim**”);

WHEREAS the Vendor disputed that the Purchaser had acquired rights to the Class Action Proceeds under the APA, and, to the extent the Purchaser had acquired such rights, it should be estopped from pursuing such rights (the “**Dispute**”);

WHEREAS the Monitor agreed that it would not distribute the Class Action Proceeds pending resolution of the Dispute;

NOW THEREFORE the Applicants, including the Vendor, and the Purchaser (collectively, the “**Parties**”) agree to settle the Dispute, and all and any matters related to the APA, on the following terms:

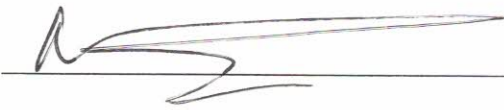
1. **No Contra Proferentum.** The Parties acknowledge and agree that they have participated in the drafting or review of these Minutes of Settlement by legal counsel, and any rule of law providing that ambiguities shall be construed against the drafting party shall be of no force and effect.
2. **Settlement Amount.** The Parties agree that, on the Settlement Date (as that term is defined below):

- (a) the Monitor, pursuant to an Order of the Court approving this settlement (the “**Court Approval Order**”) shall pay from the Vendor’s Account to the Purchaser, for and on behalf of the Vendor, a sum equal to CAD\$60,000 (the “**Settlement Amount**”), by wire transfer or bank draft;
 - (b) the Monitor, pursuant to the Court Approval Order, shall pay from the Vendor’s Account for and on behalf of the Vendor, the outstanding agent fee in the amount of CAD\$59,818.69 (the “**Agent Fee**”) due to Lex Acquisition Group, LLC with respect to the Canadian Class Action Proceeds; and
 - (c) the Purchaser shall release any claim that it has with respect to any and all matters related to each of the CCAA Proceeding, the APA and the Class Actions, including, without limitation, to the balance of the Class Action Proceeds remaining after payment of the Settlement Amount, which release shall become effective immediately upon payment of the Settlement Amount, without any further action required by the Purchaser.
3. **Release.** The Purchaser will execute and deliver a release in the form attached to these Minutes of Settlement as Schedule “A” (the “**Release**”).
4. **Court Approval.** The Parties acknowledge that these Minutes of Settlement are subject to and conditional on Court approval, such approval to be sought by the Vendor as soon as practicable with the consent of the Purchaser, and the “Settlement Date” for the purposes of implementation of these Minutes of Settlement, including payment to the Purchaser of the Settlement Amount, shall be two business days after the issuance of the Court Approval Order, or such earlier or later date as the parties may agree with the consent of the Monitor.
5. **General.** The Parties agree that:
- (a) neither Party admits any liability to the other or others, and such liability is specifically and expressly denied;
 - (b) these Minutes of Settlement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein;

- (c) any and all disputes concerning the implementation or interpretation of these Minutes of Settlement shall be subject to the exclusive jurisdiction of a judge of the Ontario Superior Court of Justice, Commercial List;
- (d) these Minutes of Settlement shall inure to the benefit of and be binding upon the Parties, and their respective administrators, legal personal representatives, successors and assigns;
- (e) these Minutes of Settlement can be signed in counterparts and scanned copies of the signatures sent by email are deemed to be and count as originals in all respects; and
- (f) each party shall bear its own costs.

DATED AT Delta, this 23rd day of December, 2021

0932916 BC LTD.

Per: 
(I have authority to bind the corporation)

DATED AT _____, this day of December, 2021

4362063 CANADA LTD.

Per: _____
(I have authority to bind the corporation)

- (c) any and all disputes concerning the implementation or interpretation of these Minutes of Settlement shall be subject to the exclusive jurisdiction of a judge of the Ontario Superior Court of Justice, Commercial List;
- (d) these Minutes of Settlement shall inure to the benefit of and be binding upon the Parties, and their respective administrators, legal personal representatives, successors and assigns;
- (e) these Minutes of Settlement can be signed in counterparts and scanned copies of the signatures sent by email are deemed to be and count as originals in all respects; and
- (f) each party shall bear its own costs.

DATED AT _____, this day of December, 2021

0932916 BC LTD.

Per: _____

(I have authority to bind the corporation)

DATED AT *Toronto*, this *10th* day of December, 2021

4362063 CANADA LTD.

Per:  _____

(I have authority to bind the corporation)

DATED AT *Toronto* , this *10th* day of December, 2021

3113736 CANADA LTD.

Per: *Lin Hye*
(I have authority to bind the corporation)

DATED AT *Toronto* , this *10th* day of December, 2021

A-Z SPONGE & FOAM PRODUCTS LTD.

Per: *Lin Hye*
(I have authority to bind the corporation)

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

MINUTES OF SETTLEMENT

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Tel: 416 956 0110

Lawyers for the Applicants

SCHEDULE "A"

RELEASE

IN CONSIDERATION OF the sum of SIXTY-THOUSAND DOLLARS (\$60,000.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the undersigned, **0932916 BC LTD.**, hereinafter referred to as the "Releasor" (which term includes its associated and related companies, and its and their respective officers, directors, employees, shareholders, partners, administrators, agents, assigns, successors, and subcontractors) does hereby remise, release and forever discharge **3113736 CANADA LTD., 4362063 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.**, hereinafter referred to as the "Releasees" (which term includes their respective associated and related companies, and their respective officers, directors, employees, shareholders, partners, administrators, agents, assigns, successors, and subcontractors) from any and all claims, actions, demands, manner of actions, causes of actions, suits, debts, duties, accounts, bonds, warranties, claims over, indemnities, contracts, losses, injuries, undertakings, covenants and liabilities of whatever nature and kind whether past, present and future, known or unknown, and whether in equity or at law, which against the Releasees, the Releasor now has or may hereafter, can or shall have for or by reason of any cause, matter or thing whatsoever arising out of or related to each of the Dispute, the Class Actions, all matters related to the APA and all matters related to the CCAA Proceeding (as those terms are defined in the Minutes of Settlement dated December ____, 2021) (collectively, the "**Settled Matters**").

AND THE RELEASOR ACKNOWLEDGES and agrees that it has not been induced to execute this release by reason of any representation or warranty of any nature or kind whatsoever and that there is no condition express or implied or collateral agreement affecting the said release.

AND FOR THE SAID CONSIDERATION the Releasor further covenants and agrees not to make any claim or demand or commence, maintain or prosecute any action, cause or proceeding for damages, compensation, loss or any relief whatsoever against the said Releasees in respect of the claims subject to this Release. The Releasor further agrees that this Release shall operate conclusively as an estoppel in the event of any such claim, action or proceeding and may be pleaded accordingly.

AND FOR THE SAID CONSIDERATION the Releasor covenants and agrees not to make claim or to commence or take proceedings against any other person, firm, partnership, business or corporation who or which might claim contribution from, or to be indemnified by, the Releasees, under the provisions of any statute or otherwise in respect of those matters to which this release applies.

AND IT IS UNDERSTOOD that upon providing this release the Releasor and the Releasees, and each of them, do not admit any liability to the other or others and that such liability is specifically and expressly denied.

THIS RELEASE AND INDEMNITY shall be deemed to have been made in and shall be construed in accordance with the laws of the Province of Ontario.

THIS RELEASE AND INDEMNITY shall be binding upon the undersigned and each of its respective administrators, legal personal representatives, successors and assigns.

THIS RELEASE AND INDEMNITY shall inure to the benefit of the Releasees and each of its respective administrators, legal personal representatives, successors and assigns.

THIS RELEASE AND INDEMNITY may be executed by facsimile or scan sent by email and, if so executed, shall be considered an original Release.

THE RELEASOR 0932916 BC LTD. has hereunto set its hand this _____ day of _____, 2021.

0932916 BC LTD.

Per: _____

*(I have authority to bind the
corporation)*

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 31133736 CANADA LTD., 4362063 CANADA LTD., and A-Z
SPONGE & FOAM PRODUCTS LTD.
Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF LINC ROGERS

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Lawyers for the Applicants

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 31133736 CANADA LTD., 4362063 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

Applicants

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(Approval of Settlement Agreement,
returnable January 18, 2022)

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Counsel

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