

**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

**SUPPLEMENTARY MOTION RECORD
(Returnable August 18, 2020)**

August 12, 2020

**FRED TAYAR & ASSOCIATES
Professional Corporation**
65 Queen Street West | Suite 1200
Toronto, ON M5H 2M5

**FRED TAYAR – LSO No. 23909N
COLBY LINTHWAITE – LSO No. 49599K**
T: 416-363-1800
F: 416-363-3356

Lawyers for Domfoam Inc.

TO: David Ullmann and Varoujan Aman
Blaney McMurtry LLP
2 Queen Street East | Suite 1500
Toronto, ON M5C 3G5
E: dullmann@blaney.com | yaman@blaney.com

Lawyers for the Applicants

AND TO: Grant B. Moffat
Thornton Grout Finnigan LLP
100 Wellington St. W. | Suite 3200
Toronto, ON M5K 1K7
E: gmoffat@tgf.ca

Lawyers for the Monitor
Deloitte Restructuring Inc.

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B	Affidavit of Tony Vallecoccia sworn April 18, 2019 (without exhibits)
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G	Twenty-Second Report of the Monitor dated April 22, 2020
H	Email from Linthwaite to Grant Moffat dated April 24, 2020
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J	Emails between Linthwaite and Varoujan Arman between May 1 and May 11, 2020

Tab 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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Applicants

**AFFIDAVIT OF MINDY TAYAR
(Affirmed August 12, 2020)**

I, **MINDY TAYAR**, of the City of Toronto, in the Province of Ontario, solicitor,

AFFIRM AND SAY AS FOLLOWS:

1. I am a lawyer with the law firm of Fred Tayar & Associates Professional Corporation, the lawyers for Domfoam Inc. ("**Domfoam**"), and as such have knowledge of the matters to which I hereinafter depose. Where I do not have such knowledge, I have identified the source of my information and verily believe that information to be true.

2. This affidavit is supplementary to my affidavit affirmed July 27, 2020, (my "**First Affidavit**") and uses terms defined therein. This affidavit is also in response to the affidavit of Linc Rogers ("**Rogers**") sworn August 9, 2020 (the "**Rogers Affidavit**").

3. On November 16, 2018, Tony Vallecoccia ("**Vallecoccia**") swore an affidavit in this proceeding in support of the applicants' motion for an order extending the stay period. A true copy of this affidavit, without exhibits, is attached hereto as **Exhibit "A"**.

4. On April 18, 2019, Vallecoccia swore another affidavit in this proceeding in support of a motion by the applicants for an extension of the stay period. This affidavit was served as part of the motion record of the applicants dated April 18, 2019. A true copy of this affidavit is attached hereto as **Exhibit "B"**.

5. On January 20, 2020, Ullmann wrote to Tayar enclosing a draft affidavit of documents. In his covering letter, Ullmann asserted that "*apparently Mr. Vallecoccia has had a stroke which has likely left him unable to provide us with instructions, including reviewing and signing off on this affidavit*". A true copy of this letter is attached as Exhibit "T" to my First Affidavit. For ease of reference, another copy is attached hereto as **Exhibit "C"**.

6. Tayar replied to Ullmann's letter on January 21, 2020. In his letter, Tayar wished Mr. Vallecoccia a complete and speedy recovery and asked that Ullmann "*provide my client with a medical report from the attending physician of Mr. Vallecoccia which articulates the date during which he suffered this unfortunate*

stroke, the diagnosis and prognosis". A true copy of this letter is attached hereto as **Exhibit "D"**.

7. I have been advised by Tayar that he did not receive a response to his January 21, 2020 letter.

8. I have been advised by Tayar that on January 30, 2020 he spoke to Ullmann on the telephone and again asked for production of a medical record concerning Vallecoccia and the stroke which Ullmann had said Vallecoccia had suffered. Attached hereto as **Exhibit "E"** is a true copy of Tayar's handwritten note concerning that telephone conversation.

9. Tayar has advised me that he did not receive a response from Ullmann concerning his (Tayar's) request for production of medical evidence of Mr. Vallecoccia's stroke.

10. On March 17, 2020, Linthwaite wrote Ullmann as follows.

When we last spoke, you said that you were going to bring a motion concerning your ability to obtain instructions. We haven't been served with any material, and the motion can't now proceed in advance of the scheduled mediation. Is Mr. Vallecoccia now well enough to instruct you?

A true copy of this email is attached hereto as **Exhibit "F"**.

11. I have been advised by Linthwaite that he did not receive a response to his email.

12. On April 22, 2020, the Monitor served its motion record respecting its motion for an order appointing a chief restructuring officer for the Vendor. The Twenty-Second Report of the Monitor dated April 22, 2020, which was filed in support of this motion, is Exhibit "W" to my First Affidavit. Another copy of this document is attached hereto as **Exhibit "G"**, for ease of reference. In paragraph 61 of the Report, under the subheading "*Appointment of CRO*" the following statements are made.

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.

13. On April 24, 2020, Linthwaite wrote Grant Moffat, lawyer to the Monitor, copying Ullman, to state in part that Domfoam proposed to examine Mr. Vallecoccia under Rule 39.03. A true copy of this email is attached hereto as **Exhibit "H"**.

14. On May 1, 2020, Linthwaite wrote to Ullmann as follows.

During the tele-hearing with Justice Conway, you said that there was an issue with the examination of Mr. Vallecoccia. Justice Conway prevented you from describing that issue, on the basis that counsel should work it out amongst themselves. I would like to comply with Justice Conway's direction. Please describe the issue. If you will not, then please provide Mr. Vallecoccia's availability for his examination.

A true copy of this email is attached hereto as **Exhibit "I"**.

15. Linthwaite's email to Ullman led to a series of email exchanges between Linthwaite and Varoujan Arman, Ullman's partner. A true copy of the relevant May 1 to May 11, 2020 email chain is attached as Exhibit "E" to the Rogers Affidavit. Another true copy of this email chain is attached hereto as **Exhibit "J"**, for ease of reference.

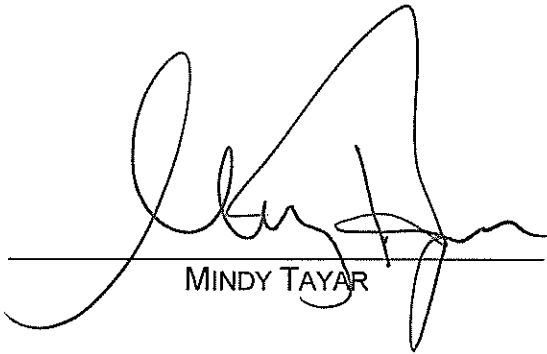
The Applicants' Cross Motion

16. At paragraph 25 of his affidavit, Rogers states that it is "*not known if the Purchasers submitted an independent claim in the class action proceeding or took some other affirmative action in order to obtain*" the cheque for \$1,399,002.24 which is the subject-matter of the Vendor's cross-motion. I am not aware that the purchaser took any affirmative action in order to obtain these funds.

AFFIRMED before me at the City
of Toronto, in the Province of
Ontario, this 12th day of August 2020


A Commissioner, etc.

COLBY LINTHWAITE


MINDY TAYAR

Tab A

This is Exhibit "A" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COLBY LINTWAITE

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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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.

(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

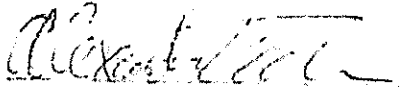
36. Although the business of A-Z Foam has been ceased for several years at this point in time, it is an affiliated entity of the Applicants, and the continuation of the stay is convenient as there remain amounts to collect from the Polyols Settlement and inter-company accounting to be resolved.

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.

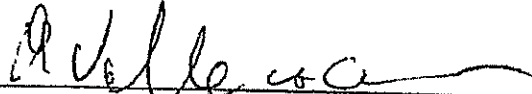
38. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the Stay Period to and including April 30, 2019, and for no improper purpose.

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)
16th of November, 2018)



(A commissioner for taking affidavits))
Alexandra Teodorescu)



TONY VALLECOCCIA

Tab B

This is Exhibit "B" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COLBY VINTAWATE

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

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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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.
(the "**Applicants**")

AFFIDAVIT OF TONY VALLECOCCIA
(Sworn April 18, 2019)

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. All defined terms not otherwise set out in this affidavit have the meaning ascribed to them in my affidavit, sworn November 16, 2018.

4. 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 October 31, 2019, and approving the Twentieth Report of the Monitor, to be filed separately.

Extension of the Stay Period

5. The background to these proceedings is set out in my affidavit, sworn November 16, 2018 ("November Affidavit"), a copy of which is attached hereto and marked as **Exhibit "A"**.

6. I am advised by our counsel, Alexandra Teodorescu, that the Stay Period expires on April 30, 2019. A copy of Justice Wilton-Siegel's Order, dated November 29, 2018, extending the Stay Period to and including April 30, 2019 is attached hereto and marked as **Exhibit "B"**.

7. I understand that there are outstanding issues which need to be resolved before the estates can be completed. As such, the Applicants are seeking to extend the Stay Period up to and including October 31, 2019.

8. I believe that the Applicants are acting 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 Ms. Teodorescu that the Monitor supports the request to extend the Stay Period to October 31, 2019.

9. An extension of the Stay Period is required to allow the Applicants to deal with a motion brought by the Purchaser (as defined below) with respect to its claim to a large amount of funds recently received by Domfoam, and to allow Valle Foam to continue its collection efforts.

10. In particular, I understand that the entity which purchased Domfoam (now known as 4362063 Canada Ltd.), Domfoam Inc. (formerly known as 4037057 Canada Inc.) (“**Purchaser**”), is claiming that it owns certain amounts received by Domfoam from the Polyols Settlement. The amount is a multi-million dollar amount, which, I am advised by my counsel, would otherwise be paid to the creditors of Domfoam. I am advised by Ms. Teodorescu that the Purchaser’s motion was originally scheduled for November 29, 2018, but has not yet been heard.

11. I am advised by my counsel, Alexandra Teodorescu, that a motion was heard on November 29, 2018 and that the decision was released on February 13, 2019. The Court’s decision is attached hereto and marked as **Exhibit “C”**.

12. I am further advised by Ms. Teodorescu that the February 13th decision allows for the examination of Mr. Terry Pomerantz in connection with the Purchaser’s motion to deal with the Polyols Settlement.

13. I am advised by Ms. Teodorescu and verily believe that the examination of Mr. Pomerantz is currently scheduled for April 22, 2019, and that the parties hope to book a return date for the Purchaser’s motion following that examination, which will be significantly after the current stay expires on April 30, 2019.

Canadian Class Action

14. I am advised by my counsel, Alexandra Teodorescu, that the Applicants filed placeholder claims in the Canadian Urethane Proceeding in February 2019.

15. I am further advised by Ms. Teodorescu that, on April 1, 2019, she received an e-mail from the claims administrator in the Canadian Urethane Proceeding stating that the Applicants’ claims

were selected for an audit, and seeking supporting documentation for the claims. The Applicants are in the process of responding to this request. The Applicants hope to recover additional funds from the Canadian Urethane Proceeding for the benefit of the creditors of the respective estates.

Valle Foam Collection Efforts

16. As set out in my November Affidavit, Valle Foam has two outstanding collection actions.

17. I am advised by the Applicant's counsel, Varoujan Arman, that in respect of Valle Foam's action against Cozy Corner Bedding Inc., a summary judgment motion was heard on March 29, 2019. I am further advised by Mr. Arman that the decision was released on April 8, 2019, and Valle Foam was entitled to judgment against the defendant in the amount of \$184,319.34, plus interest. A copy of the summary judgment decision is attached hereto and marked as **Exhibit "D"**.

18. With respect to the second outstanding matter, I am advised by Mr. Arman that a mediation was held on April 15, 2019, but no settlement was reached.

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

A-Z Foam

20. 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 remains inter-company accounting to be resolved.

21. 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.

22. I swear this affidavit in support of the Applicants' motion for an Order, *inter alia*, extending the Stay Period to and including October 31, 2019, and for no improper purpose.

SWORN before me at the Town of)
Milton in the Province of Ontario, this)
11th of April, 2019)

Matthew Wilks)

(A commissioner for taking affidavits))
)

Tony Vallecoccia

TONY VALLECOCCIA

**Matthew Barry Wilks, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires March 10, 2020.**

Tab C

This is Exhibit "C" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COLBY LINTHWATE

David T. Ullmann
T: (416) 596-4289 F: (416) 594-2437
E: dullmann@blaney.com

January 20, 2020

**BY COURIER & COURTESY COPY
OF LETTER BY EMAIL**

Mr. Fred Tayar
Fred Tayar & Associates
Professional Corporation
Barristers & Solicitors
65 Queen Street West, Suite 1200
Toronto, ON, M5H 2M5

Dear Mr. Tayar:

Re: 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)

Enclosed you will find our draft affidavit of documents. It is being delivered to you in draft because we have discovered that we may have a capacity issue with Mr. Tony Vallecoccia. Apparently Mr. Vallecoccia has had a stroke which has likely left him unable to provide us with instructions, including reviewing and signing off on this affidavit. We had hoped that his condition might improve over the holiday period, but we have no information that this has happened.

As such, we are providing this to you in draft so that you can begin your review and prepare for the pending mediation, mindful of the fact that the affidavit may change when we are able to get complete instructions.

With respect to Mr. Vallecoccia's capacity issues, we have reviewed this with the Monitor and intend to schedule a 9:30 with the court to discuss appropriate alternatives to ensure that the litigation and the CCAA are able to continue. We are intending to schedule this for later this week or early next week.

Yours very truly,
Blaney McMurtry LLP



David T. Ullmann
DTU/ab

Encl.: *Sent by courier only*
cc: Grant Moffat – *letter only*
Varoujan Arman
Alex Fernet Brochu

Tab D

This is Exhibit "D" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COLBY VINTAWATE

025

FRED TAYAR & ASSOCIATES
PROFESSIONAL CORPORATION
BARRISTERS & SOLICITORS

65 QUEEN STREET W, SUITE 1200
TORONTO, CANADA M5H 2M5

TELEPHONE (416) 363-1800
FACSIMILE (416) 363-3356
fred@fredtayar.com

FILE NO. 18-2985
WRITER'S EXTENSION: 200

January 21, 2020

VIA EMAIL

Messrs. David Ullmann and Varoujan Arman
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Dear Sirs:

Re: Domfoam Inc. and 4362063 Canada Ltd.

Thank you for your letter of January 20, 2020.

Firstly, I am terribly sorry to hear that Mr. Vallecoccia recently suffered a stroke. I wish him a complete and speedy recovery.

With respect to your current inability to obtain instructions, and in light of the fact that you propose to see a judge in that regard, would you please ensure:

- a) that you confer with me with respect to scheduling any and all court hearings; and
- b) that before scheduling a date, you please provide my client with a medical report from the attending physician of Mr. Vallecoccia which articulates the date during which he suffered this unfortunate stroke, the diagnosis and prognosis.

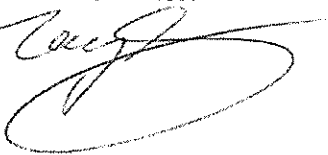
I look forward to hearing from you with respect to the foregoing.

Yours very truly,

FRED TAYAR & ASSOCIATES
PROFESSIONAL CORPORATION

Per:

Fred Tayar
/mp



cc: Grant Moffat, Thornton Grout

Tab E

This is Exhibit "E" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COBY LINTHWAITÉ

confTC: Ullman

Jan 30, 2020

stucke → when? Medical Record? ; David needs to
 → we tried to meet with him after
 our last extension order
 → biggest creditor is the class claimant
 ② → Competition Bureau
 for \$10 million
 → ≈ Nov 30/2020

FT - You'd have to get evidence about
 the medical Record.

Tab F

This is Exhibit "F" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COLBY LINTAWARTE

Colby Linthwaite

From: Colby Linthwaite
Sent: Tuesday, March 17, 2020 10:22 AM
To: David T. Ullmann (DUllmann@blaney.com)
Cc: 'gmoftat@tgf.ca'
Subject: Domfoam

Dear David,

When we last spoke, you said that you were going to bring a motion concerning your ability to obtain instructions. We haven't been served with any material, and the motion can't now proceed in advance of the scheduled mediation. Is Mr. Vallecoccia now well enough to instruct you?

Regards,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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Tab G

This is Exhibit "G" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COLBY VINTWAITE

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

APPLICANTS

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

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EXHIBITS

- EXHIBIT A: Initial Order dated January 12, 2012
- EXHIBIT B: U.S. Recognition Order dated February 24, 2012
- EXHIBIT C: Claims Solicitation Procedure Order dated June 15, 2012
- EXHIBIT D: Distribution Order dated September 29, 2015
- EXHIBIT E: Sanction Order dated January 24, 2017
- EXHIBIT F: Second Distribution Order dated May 29, 2018
- EXHIBIT G: Copy of Email dated March 5, 2019 from the Monitor to Fybon
- EXHIBIT H: Affidavit of Mr. Vallecoccia sworn on November 16, 2018
- EXHIBIT I: CV of CRO Candidate
- EXHIBIT J: Statement of Receipts and Disbursements for Valle Foam for the period March 29, 2012 to April 17, 2020
- EXHIBIT K: Statement of Receipts and Disbursements for Domfoam for the period March 29, 2012 to April 17, 2020
- EXHIBIT L: Statement of Receipts and Disbursements for A-Z Foam for the period March 29, 2012 to April 17, 2020
- 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 (the “**Monitor’s Website**”). The Monitor has also established a dedicated e-mail address at 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).

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

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 "F".
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 that reads "P. Casey". The signature is written in a cursive style with a large initial "P" and a small "Casey" following it.

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

Tab H

This is Exhibit "H" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COBY LINTAW ATE

Fred Tayar

From: Colby Linthwaite
Sent: April 24, 2020 3:58 PM
To: GMoffat@tgf.ca
Cc: David T. Ullmann (DULLmann@blaney.com); Fred Tayar
Subject: Domfoam

Dear Grant,

Further to your email of earlier today, we propose to examine Mr. Vallecoccia under rule 39.03, as previously advised. We suggest that that examination be held by videoconference through Zoom on April 29 (in the a.m.) or any time on Thursday, April 30 or Friday, May 1. By a copy of this email to Mr. Ullmann I ask whether any of those dates or times are convenient for him and Mr. Vallecoccia.

Once we have completed that examination, we will provide written questions to the Monitor within the following 48 hours.

We then can reschedule your motion to be returnable during the week of May 11, so long as you and the Court are content that any factums may be delivered on short notice.

Regards,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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Tab I

This is Exhibit "I" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

Colby McIntyre

Fred Tayar

From: Colby Linthwaite
Sent: May 1, 2020 1:55 PM
To: David T. Ullmann (DULLmann@blaney.com); Varoujan Arman
Cc: Fred Tayar
Subject: Domfoam

David,

During the tele-hearing with Justice Conway, you said that there was an issue with the examination of Mr. Vallecoccia. Justice Conway prevented you from describing that issue, on the basis that counsel should work it out amongst themselves. I would like to comply with Justice Conway's direction. Please describe the issue. If you will not, then please provide Mr. Vallecoccia's availability for his examination.

Yours,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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Tab J

This is Exhibit "J" referred to in
the Affidavit of Mindy Tayar
affirmed August 12, 2020



A Commissioner for Taking Affidavits

COLBY UNTCHAWATTIZ

Colby Linthwaite

From: Colby Linthwaite
Sent: Monday, May 11, 2020 10:31 AM
To: Varoujan Arman; Fred Tayar
Cc: 'Grant Moffat'; David T. Ullmann; 'Robert G. Tanner'
Subject: RE: Domfoam

Dear Varoujan,

The following will respond to your statements in the order in which they were made.

Our client is not bound by your estimation of whether the examination of Mr. Vallecoccia would be "of value".

We have been trying to move this matter to a hearing for more than a year. It is your client - first with its request to examine new witnesses after having completed its cross, then by taking the position that discovery and a trial were necessary - that has delayed the matter.

We do not "know" that Tony is not well. This is because we have seen no evidence of an illness, despite many requests therefor. Commencing some months ago, Mr. Ullman said (verbally) to us that he had had recent trouble getting instructions from Mr. Vallecoccia. Mr. Ullman said at first that this may be because Mr. Vallecoccia had had a stroke and later because he had had a heart attack. It may be the case that Mr. Ullman had trouble getting instructions because Mr. Vallecoccia wanted to resign his directorship. Commencing the same number of months ago, we asked for evidence of the alleged illness, and have been ignored. There is no such evidence anywhere in the Court file, including the monitor's recent report, which relies on hearsay from Mr. Vallecoccia's attorney to the effect that Mr. Vallecoccia no longer wishes to be involved in the applicant's affairs.

This is the first time it has been asserted that Tony's memory has deteriorated.

When you, Grant Moffat, and I spoke three weeks ago about the examination of Mr. Vallecoccia, you did not raise the possibility that he was medically impaired, or that his memory was untrustworthy. You did say that your office had not spoken to Mr. Vallecoccia in quite some time.

Neither I nor Fred "raised concerns about" Mr. Vallecoccia's memory when we examined him.

The \$1.3 million is being held in an interest-bearing account. This information is intended to give your client comfort, but it is without prejudice to our client's right take the position that there is no reason to hold those funds without using them. There is no Mareva injunction in place. Our client is prepared to give Blaney's seven days notice of any change in our client's position.

We agree that until the issue of the examination of Mr. Vallecoccia and the appointment of a CRO has been resolved, the mediation cannot go ahead, and that Justice Cumming should be apprised of that.

Regards,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation

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From: Varoujan Arman <VArman@blaney.com>
Sent: Thursday, May 7, 2020 5:55 PM
To: Colby Linthwaite <colby@fredtayar.com>; Fred Tayar <fred@fredtayar.com>
Cc: 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>; 'Robert G. Tanner' <rgtanner@tannerguiney.com>
Subject: RE: Domfoam

Fred and Colby,

Thank you for your email. As you know, we wanted, and still want, to have a (virtual) meeting to try to discuss how this matter goes forward. We do not agree that examining Tony Vallecoccia is appropriate or, more importantly, of any value towards the pending Monitor's motion. Indeed, the purpose behind the Monitor's motion seems to be to enable the litigation to move forward, which we would have thought would be in our mutual interest. We were surprised by your opposition to it, especially since you have known for months that such a motion was coming.

We oppose any examination of Tony. As you know, Tony is not well and has not been able to provide us with useful instructions for some time. You yourself raised concerns about his memory when you last examined him. To the extent he is able to understand this matter at all, he has asked that he be removed from this process. Robert Tanner spoke with Tony three weeks ago, and reported that Tony advised that both his strength and his memory have been left significantly diminished. David and I spoke with Tony's wife last week to follow up on this. His wife advised that Tony is now under the care of psychiatrists, and he does not have capacity to serve as a director. She described his memory as being significantly challenged and confirmed again that he had suffered a heart attack last year. Although this was not expressly said in the Monitor's materials, this is the circumstance we are facing.

We cannot imagine what evidence you could extract from Tony which would assist you in opposing the Motion. If you persist in pursuing an examination without meeting with us to explain its purpose, it will be opposed and you will have to bring a motion. We encourage you to reconsider. We have no doubt that the court will protect Tony from a pointless interrogation which will likely only frustrate you and embarrass him.

Status of Funds Received by Domfoam Inc.

We would also like to meet with you to discuss why it is that you have not responded to our letter of April 14, 2020, despite follow up, to confirm that your client has paid the \$1,399,002.24 it received into your firm's trust account. You have known for some time that our client asserts an interest in those funds. We are growing concerned about the whereabouts and safekeeping of these funds. Please immediately advise if the funds are in your firm's trust account. If the funds are not in your trust account already, please confirm the funds will be paid into trust by no later than end of business on May 13, 2020. Failing that, we expect to be instructed to bring a motion to have the funds paid into court, and in that case, costs will be sought against your client.

Mediation Dates (May 25 and June 24 Reserved)

Given the adjournment of the Monitor's motion to appoint a CRO, the mediation dates need to be revisited. At a minimum, the May date is not going to be feasible, so we suggest that we update Justice Cumming, and perhaps also reserve an additional date in July in case it becomes necessary.

We are available to meet with you on Tuesday or Wednesday next week in the early afternoon on either day to discuss the above.

Regards,
Varoujan

Varoujan Arman

Partner

varman@blaney.com

① 416-596-2884 | ② 416-593-2960

063

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]

Sent: May 7, 2020 2:53 PM

To: Varoujan Arman <VArman@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>

Subject: RE: Domfoam

Varoujan,

Please respond respecting Mr. Vallecoccia's availability for examination. The applicant's refusal to do so, and its refusal to explain why it is refusing to do so, are holding up this case. Mr. Vallecoccia has both a corporate lawyer and a personal lawyer he is instructing. He is capable of swearing affidavits, and he therefore is quite capable of being examined as a witness.

Regards,

Colby Linthwaite

Barrister and Solicitor

Fred Tayar & Associates

Professional Corporation

65 Queen Street West, Suite 1200

Toronto, ON M5H 2M5

416.363.1800 ext. 300

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From: Colby Linthwaite

Sent: Friday, May 1, 2020 4:44 PM

To: Varoujan Arman <VArman@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>

Subject: RE: Domfoam

Varoujan,

I did not misstate the facts. You did not raise the possibility that Mr. Vallecoccia might not "be capable of attending an examination" *for medical reasons*. The only reason you gave for a video conference perhaps not being possible was that the home-bound Mr. Vallecoccia might not have Zoom or the technological savvy (or access to people with such savvy) to make a video-conference work, to which I responded that he could attend at a Court reporter's office in order to be examined via video-link, which you acknowledged might be possible.

If you have evidence of Mr. Vallecoccia's illness, please provide it. Please also state what this additional information is.

Again, please confirm that Mr. Vallecoccia will be produced for his examination. Once we have that, we can discuss the rest of your agenda.

Yours,

Colby Linthwaite
 Barrister and Solicitor
 Fred Tayar & Associates
 Professional Corporation
 65 Queen Street West, Suite 1200
 Toronto, ON M5H 2M5
 416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 4:28 PM
To: Colby Linthwaite <colby@fredtayar.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Colby,

Please don't misstate the facts. I indicated I would firstly speak with Mr. Tanner to determine whether Mr. Vallecoccia would even be capable of attending an examination. I was very careful to caution you that a video examination of Mr. Vallecoccia may not be possible.

We have additional information to share with you and a number of other topics we'd like to discuss, as evidenced by my agenda below. A phone call is the easiest way to handle this. Just two emails ago you agreed we could have a call early next week. So again, we are requesting your available times. I think we should budget 30 minutes.

Regards,
 Varoujan

Varoujan Arman
 Partner
varman@blaney.com
 ☎ 416-596-2884 | ☎ 416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]
Sent: May 1, 2020 4:13 PM
To: Varoujan Arman <VArman@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Varoujan,

The Monitor's motion was adjourned for the purpose of an examination of Mr. Vallecoccia pursuant to Rule 39.03, to be followed by questions of the Monitor. When you, me and Grant finished our conference call of last week you said that you would speak to Mr. Tanner about dates for the examination of his client. No "issue" was mentioned.

Despite a number of requests going back months, we have not seen any evidence of Mr. Vallecoccia's alleged illness. If you have some, please provide it.

Please confirm that Mr. Vallecoccia will be produced for his examination. Once we have that, we can discuss the rest of your agenda. 065

Regards,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 3:55 PM
To: Colby Linthwaite <colby@fredtayar.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Colby,

Here is a proposed agenda for the call:

1. Monitor's motion for CRO and discussion of incapacity of Tony Vallecoccia, and need for and appropriateness of examination
2. Status of \$1,399,002.24 received by Domfoam Inc. and lack of response to our letter of April 14, 2020
3. Mediation dates

Please get back to me with your availability.

Regards,
Varoujan

Varoujan Arman
Partner
varman@blaney.com
☎ 416-596-2884 | ☎ 416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]
Sent: May 1, 2020 3:27 PM
To: Varoujan Arman <VArman@blaney.com>; David T. Ullmann <DUllmann@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>
Subject: RE: Domfoam

Varojan,

We can set up a call for next week, but I'd like to know what the issue is before then, so that we can have an informed discussion.

Thanks.

Colby Linthwaite
 Barrister and Solicitor
 Fred Tayar & Associates
 Professional Corporation
 65 Queen Street West, Suite 1200
 Toronto, ON M5H 2M5
 416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 2:52 PM
To: Colby Linthwaite <colby@fredtayar.com>; David T. Ullmann <DUllmann@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>
Subject: RE: Domfoam

Colby,

There are a few matters we'd like to speak with you and Fred about, that being one of them. Can you please let me know your availability for a call early next week?

Regards,
 Varoujan

Varoujan Arman
 Partner
varman@blaney.com
 ☎ 416-596-2884 | ☎ 416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]
Sent: May 1, 2020 1:55 PM
To: David T. Ullmann <DUllmann@blaney.com>; Varoujan Arman <VArman@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>
Subject: Domfoam

David,

During the tele-hearing with Justice Conway, you said that there was an issue with the examination of Mr. Vallecoccia. Justice Conway prevented you from describing that issue, on the basis that counsel should work it out amongst themselves. I would like to comply with Justice Conway's direction. Please describe the issue. If you will not, then please provide Mr. Vallecoccia's availability for his examination.

Yours,

Colby Linthwaite
 Barrister and Solicitor
 Fred Tayar & Associates
 Professional Corporation

65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

067

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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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

AFFIDAVIT OF MINDY TAYAR
(Affirmed August 12, 2020)

FRED TAYAR & ASSOCIATES
Professional Corporation
65 Queen Street West | Suite 1200
Toronto, ON M5H 2M5

FRED TAYAR – LSO No. 23909N
COLBY LINTHWAITE – LSO No. 49599K
T: 416-363-1800
F: 416-363-3356

Lawyers for Domfoam Inc.

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

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

**SUPPLEMENTARY MOTION RECORD
(Returnable August 18, 2020)**

FRED TAYAR & ASSOCIATES
Professional Corporation
65 Queen Street West | Suite 1200
Toronto, ON M5H 2M5

FRED TAYAR – LSO No. 23909N
COLBY LINTHWAITE – LSO No. 49599K
T: 416-363-1800
F: 416-363-3356

Lawyers for Domfoam Inc.