

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

(the "Applicants")

**APPLICATION RECORD**  
(returnable January 12, 2012)  
**VOLUME I**

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Court File No.

CV-12-9545-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

(the "Applicants")

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicants. The claim made by the Applicants appears on the following pages.

**THIS APPLICATION** will come on for a hearing on Thursday, the 12<sup>th</sup> day of January, 2012, at 10:00 o'clock, at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your

lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: January 11, 2012

Issued by: \_\_\_\_\_



Address of  
court office:

330 University Avenue  
7<sup>th</sup> floor  
Toronto ON M5G 1R7

**Natasha Brown  
Registrar**

**TO: THE SERVICE LIST ATTACHED**

APPLICATION

**THE APPLICANTS, VALLE FOAM INDUSTRIES (1995) INC., DOMFOAM INTERNATIONAL INC., AND A-Z SPONGE & FOAM PRODUCTS LTD. (COLLECTIVELY, THE “APPLICANTS”), MAKE APPLICATION FOR:**

1. an Order substantially in the form attached as Schedule “A” hereto (blacklined against the Commercial List Model):

- (a) abridging the time for service of this Notice of Application and Application Record and dispensing with service on any person other than those served;
- (b) declaring that the Applicants are parties to which the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) applies;
- (c) declaring that the Applicants shall enjoy the benefit of the protections provided to the Applicants under the Initial Order;
- (d) appointing Deloitte & Touche Inc. as an officer of this Honourable Court to monitor the assets, business and affairs of the Applicants (in such capacity, the “**Monitor**”);
- (e) staying all proceedings taken or that might be taken in respect of the Applicants, their directors and officers, and the Monitor;

- (f) authorizing the Applicants to file with this Honourable Court a plan of compromise or arrangement;
- (g) granting the following priority charges over the property of the Applicants such charges to rank ahead of all other existing security interests of any persons, except for any person who is a “secured creditor”, as defined in the CCAA, as of the date of the Initial Order and who has not received notice of this Notice of Application:
  - (i) a charge in favour of counsel to the Applicants, the Monitor, and the Monitor’s counsel in the maximum amount of \$500,000.00 to secure payment of their fees and disbursements incurred in connection with this proceeding, including services rendered to the Applicants both before and after the commencement of the CCAA proceedings (the **“Administration Charge”**); and,
  - (ii) a charge to protect the directors and officers of the Applicants from certain potential liabilities in the amount of \$1 million (the **“Directors’ Charge”**);

2. Such further and other relief the nature of this proceeding may require and this Honourable Court deem just.

**THE GROUNDS FOR THE APPLICATION ARE:**

1. The Applicants collectively operate as one of Canada's largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. They collectively employ approximately 550 people.
2. The head office for Valle Foam is located in Brampton, Ontario.
3. All major decisions for the Applicants were made by the board of directors for all three companies, all of whom are located in Toronto or Brampton and who met most often at the Valle Foam location. That board of directors authorized the filing of this Application.
4. Foam is manufactured by the reaction resulting from the combination of two main chemicals. The resultant foam can be made into a variety of densities and hardness. Due to the versatility of foam, it is used in a variety of industries and applications.

5. This manufacturing process involves the use of chemicals in the course of manufacturing its products. Some of these products are hazardous and all of these products have to be carefully managed.
6. The Applicants require ongoing supply from their suppliers in order to continue to operate during the proposed restructuring. The business of applicants cannot sustain their market share or going concern value if the business is shut down.
7. The Applicants are involved in an industry that is in transition. Certain products which were formerly the backbone of the Applicants sales are no longer widely consumed and the industry is also experiencing significant pressures from overseas production sources.
8. These systemic factors have led to a decline in the Applicant's financial performance over the past three years.
9. Each of Valle Foam and Domfoam suffered a loss in excess of \$5 million in fiscal 2011. A-Z Foam also suffered a loss in excess of \$50,000.00.
10. Valle Foam and Domfoam were recently charged with and on January 5, 2012, pled guilty to certain offences under the *Competition Act*, RSC 1985, c C-34 in connection with a price fixing conspiracy conducted with other

members of their industry. Although not charged, A-Z also participated to some extent on a lesser basis in the prohibited acts.

11. Domfoam was fined \$6 million and Valle Foam was fined \$6.5 million. No fine was assessed against A-Z as no charges were laid against A-Z. In accordance with the terms of the plea, Valle Foam paid \$500,000.00 to the Crown on that date. The balance of the fine remains outstanding.

12. In connection with the alleged price fixing, the Applicants have been named as a defendant in five class action lawsuits in Canada, and dozens of class action lawsuits in the United States (together, the “**Class Actions**”).

13. In each of the Class Actions, the proposed class plaintiffs allege that the Applicants Domfoam and Valle Foam are jointly and severally liable with other foam manufacturers for amounts in excess of \$100 million of damages to the putative class members (i.e., purchasers of foam from 1999 to 2010).

14. A potential civil judgment in any of these Class Actions would vastly exceed the Applicant’s current cash resources.

15. As a result of the plea agreement reached with the Competition Bureau and the admissions contained therein, it is almost a certainty that there would be finding of civil liability against the Applicants in respect of these claims.

16. The Applicants have successfully negotiated a settlement with the three categories of plaintiffs in the US.
17. It is a condition of the settlements that the Applicants file for insolvency protection by January 31, 2012.
18. The settlements were finalized during the week of January 9, 2012, and the United States District Court for the Northern District of Ohio will be advised on January 11, 2012, that the actions are to be suspended. The class action plaintiffs reserve the right to file their claims within these CCAA proceedings.
19. The Applicants have also successfully negotiated a settlement with the class action plaintiffs in Canada which agreements were executed on January 11, 2012. The agreements are conditional on the Applicants filing for insolvency protection within 30 days of the execution of the agreements.
20. The Canadian class action plaintiffs reserve the right to file claims in these CCAA proceedings.
21. In summary, for the reasons described above, the Applicants are insolvent and have debts which are in excess in of \$5 million. The Applicants require the protection of the CCAA in order to restructure.

22. The Applicants require a stay of proceedings and the other relief sought herein in order to maintain their operations to provide the necessary time to facilitate a sale of some or all of the business and/or an orderly wind down of operations.

23. Deloitte & Touche Inc. has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval.

24. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

25. Rules 2.03, 3.02, 14.05(2), 16 and 38 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.

26. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

	<b>DATE</b>	<b>DESCRIPTION</b>
1.	January 11, 2012	Affidavit of Tony Vallecoccia and the exhibits attached thereto.

**DATE**                      **DESCRIPTION**

2.            Such other material as counsel may advise and this Honourable Court may permit

January 11, 2012

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Lawyers for the Applicants

January 15, 2010

**SCHEDULE "A"**

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE — MR. ) ~~WEEKDAY~~THURSDAY, THE #12<sup>th</sup>  
JUSTICE — NEWBOULD )  
DAY OF MONTH JANUARY,  
20~~YR~~2012

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

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

(the "ApplicantApplicants")

**INITIAL ORDER**

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

**ON READING** the affidavit of ~~[NAME]~~ Tony Vallecoccia sworn ~~[DATE]~~ January 11, 2012 and the Exhibits thereto, and on being advised that the secured

~~creditors who are likely to be affected by the charges created herein were given notice~~exhibits thereto (the “Vallecoccia Affidavit”), and on hearing the submissions of counsel for ~~[NAMES]~~the Applicants, no one else appearing for ~~[NAME]~~<sup>1</sup> although duly served as appears from the affidavit of service of ~~[NAME]~~Victoria Stewart sworn [DATE] and on reading the consent of ~~[MONITOR'S NAME]~~Deloitte & Touche Inc. to act as the Monitor,

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the ~~Applicant is a company~~Applicants are companies to which the CCAA applies.

## **PLAN OF ARRANGEMENT**

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

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<sup>1</sup> Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

<sup>2</sup> If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

## POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall remain in possession and control of ~~its~~their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the "Property"). Subject to further Order of this Court, the ~~Applicant~~Applicants shall continue to carry on business in a manner consistent with the preservation of ~~its business~~ (their respective businesses (collectively, the "Business")) and Property. The ~~Applicant~~Applicants shall each be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, appraisers, accountants, counsel and such other persons (collectively, "Assistants") currently retained or employed by ~~it~~them, with liberty to retain such further Assistants as ~~it deems~~they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

~~5. [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash~~

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<sup>3</sup> This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross-border and inter-company transfers of cash.

~~Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]~~

~~5.~~ **6. THIS COURT ORDERS** that, the ~~Applicant~~Applicants shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

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

Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings; and

- (d) amounts owing for goods and services actually supplied to the Applicants, or to obtain the release of goods contracted for prior to the date of this Order by other suppliers, solely where such goods were ordered by the Applicants or any of them after November 30, 2011 on the express understanding that such goods or services were to be paid for on a cash on delivery basis and in respect of which such payment has not been made by the Applicants or any of them.

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

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment, including the posting of letters of credit, for goods or services actually supplied or to be supplied to the ~~Applicant~~Applicants following the date of this Order;

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

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

8. ~~9.~~ **THIS COURT ORDERS** that until a real property lease is disclaimed<sup>†</sup>, terminated, repudiated or resiliated<sup>†</sup> in accordance with the CCAA, the

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<sup>†</sup> The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

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

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

## **RESTRUCTURING**

10. ~~11.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall, subject to such requirements as are imposed by the CCAA ~~and such covenants as may be contained in the Definitive Documents (as hereinafter defined),~~ have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of ~~its business~~their respective businesses or operations, ~~and to dispose of non-profitable, redundant or non-material assets and operations,~~ and to

dispose and sell such assets or operations not exceeding \$•100,000.00 in any one transaction or \$•1 million in the aggregate<sup>5</sup>;

- (b) terminate the employment of such of ~~its~~their employees or lay off or temporarily or indefinitely lay off such of ~~its employees as it deems appropriate~~;<sup>6</sup> and their employees as the relevant Applicant deems appropriate on such terms as may be agreed upon between the relevant Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan
- (c) in accordance with paragraphs 10 (a) and (d), vacate, abandon, resiliate, or quit any leased premises and/or disclaim, cancel, terminate or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) disclaim, terminate, repudiate or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of their arrangements, agreements or contracts of any nature whatsoever with whomsoever, whether oral or written, as the Applicants deem appropriate, in accordance with Section 32 of the CCAA, with such

<sup>5</sup> Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

<sup>6</sup> It is not clear to the Model Order Subcommittee whether the termination of an employee is a "disclaimer or resiliation" of the employment agreement within the meaning of Section 32 of the amended CCAA; since the termination of an employee may not be a matter governed by Section 32 of the amended CCAA (except to the extent that collective agreements are exempted from the application of that Section), the Subcommittee has left this provision in the Model Order.

disclaimers, repudiation, termination, or resiliations to be on such terms as may be agreed upon between the relevant Applicants and such counter-parties, or failing such agreements, to deal with the consequences thereof in the Plan; and

- (e) ~~(e)~~ pursue all avenues of refinancing of ~~its~~the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing;

A— all of the foregoing to permit the ~~Applicant~~Applicants to proceed with an orderly restructuring or winding down of some or all of the respective Business (the “Restructuring”).

~~11.~~ **12. THIS COURT ORDERS** that the ~~Applicant~~Applicants shall each provide each of the relevant landlords with notice of the relevant Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Applicant, or by further Order of this Court upon application by the relevant Applicant on at least two (2) days notice to such landlord and any such secured creditors. If ~~the~~an Applicant ~~disclaims—{or, resiliates},~~ repudiates or terminates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer-~~{, termination or~~

resiliation} of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

~~12.~~ ~~13.~~ **THIS COURT ORDERS** that if a lease is repudiated or if a notice of disclaimer ~~{or termination~~ or resiliation} is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer ~~{, termination, repudiation~~ or resiliation}, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant's and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer ~~{or termination~~ or resiliation}, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the ~~Applicant~~Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the ~~Applicant~~Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

**NO PROCEEDINGS AGAINST THE ~~APPLICANT~~APPLICANTS OR THE PROPERTY**

~~13.~~ ~~14.~~ **THIS COURT ORDERS** that until and including ~~{DATE—MAX. 30 DAYS}~~February 10, 2012, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the ~~Applicant~~Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or with

leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

~~14.~~ ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the ~~Applicant~~Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~Applicants to carry on any business which the ~~Applicant is~~Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH RIGHTS**

~~15.~~ ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, authorization, licence or permit in favour of or held by the ~~Applicant~~Applicants, except with the written consent of the ~~Applicant~~Applicants and the Monitor, or leave of this Court.

## CONTINUATION OF SERVICES

~~16.~~ ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the ~~Applicant~~Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all waste disposal service providers, all computer software, information technology services, communication and other data services, programming supply, computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the ~~Applicant~~Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the ~~Applicant~~Applicants, and that the ~~Applicant~~Applicants shall be entitled to the continued use of ~~its~~their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the ~~Applicant~~Applicants in accordance with normal payment practices of the ~~Applicant~~Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the ~~Applicant~~Applicants and the Monitor, or as may be ordered by this Court.

## NON-DEROGATION OF RIGHTS

~~17.~~ ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring ~~immediate~~ payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise

extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>7</sup>

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

~~18.~~ ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers (or their estates) of the ~~Applicant~~Applicants with respect to any claim against ~~the~~such directors or officers that arose before the date hereof and that relates to any obligations of the ~~Applicant~~Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment ~~of,~~ performance or breach of such obligations, acts, or actions until a compromise or arrangement in respect of the ~~Applicant~~Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the ~~Applicant~~Applicants or this Court.

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

~~19.~~ ~~20.~~ **THIS COURT ORDERS** that the ~~Applicant~~Applicants shall jointly indemnify ~~its~~their directors and officers from and against all claims, costs, charges, expenses, obligations and liabilities that they may incur as directors or officers of the ApplicantApplicants, after the commencement of the within proceedings.<sup>8</sup> date hereof except to the extent that, with respect to any officer or director, ~~the~~such claim, cost, charge, expense, obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

<sup>7</sup> ~~This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).~~

<sup>8</sup> ~~The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.~~

~~20.~~ ~~21.~~ **THIS COURT ORDERS** that the directors and officers of the ~~Applicant~~Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>9</sup> on the Property, which charge shall not exceed an aggregate amount of ~~\$~~1 million as security for the indemnity provided in paragraph ~~{20}~~19 of this Order. The Directors'' Charge shall have the priority set out in paragraphs ~~{38}~~ and ~~{40}~~paragraph 31 herein.

~~21.~~ ~~22.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the ~~Applicant's~~Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~{20}~~19 of this Order.

## **APPOINTMENT OF MONITOR**

~~22.~~ ~~23.~~ **THIS COURT ORDERS** that ~~{MONITOR'S NAME}~~Deloitte & Touche Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the ~~Applicant~~Applicants with the powers and obligations set out in the CCAA or set forth herein and that the ~~Applicant~~Applicants and ~~its~~their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the ~~Applicant~~Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the

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<sup>9</sup> Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

~~23.~~ **24. THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the ~~Applicant's~~Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) ~~assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a [TIME INTERVAL] basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;~~
- (d) ~~advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than [TIME INTERVAL], or as otherwise agreed to by the DIP Lender;~~
- (e) ~~advise the Applicant in its~~and advise the Applicants in their development of the Plan and any amendments to the Plan; or winding down, downsizing and any amendments to the Plan, any restructuring steps taken pursuant to paragraphs 5 and 10 hereof, and the implementation of the Plan;
- (d) advise the Applicants in the preparation of their cash flow statements;
- (e) ~~(f) assist and advise the Applicant~~Applicants, to the extent required by the ApplicantApplicants, with the negotiations with creditors and the holding

and administering of creditors' (or shareholders' meetings) for voting on the Plan;

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

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

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

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

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

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

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

28. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the ~~Applicant~~Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the ~~Applicant~~Applicants as part of the costs of these proceedings. ~~The Applicant is,~~ including completing and implementation of the settlements with the class action plaintiffs. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the ~~Applicant~~Applicants on a ~~[TIME INTERVAL]~~an hourly basis and, in addition, the ~~Applicant is~~Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the ~~Applicant~~Applicants, retainers in the amount[s] of \$~~• [ , respectively, ]~~100,000.00 and \$50,000.00, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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

~~30.~~ ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, if any, and the ~~Applicant's~~Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~500,000.00~~, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings, including completing the settlements with the class action plaintiffs. The Administration Charge shall have the priority set out in paragraphs ~~[38]~~ and ~~[40]~~paragraph 31 hereof.

#### ~~DIP FINANCING~~

~~32.~~ ~~THIS COURT ORDERS~~ that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$~~0~~ unless permitted by further Order of this Court.

~~33.~~ ~~THIS COURT ORDERS THAT~~ such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicant and the DIP Lender dated as of ~~[DATE]~~ (the "Commitment Letter"), filed.

~~34.~~ ~~THIS COURT ORDERS~~ that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. ~~THIS COURT ORDERS~~ that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs [38] and [40] hereof.

36. ~~THIS COURT ORDERS~~ that, notwithstanding any other provision of this Order:

(a) ~~the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;~~

(b) ~~upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon • days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and~~

(e) ~~the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.~~

37. ~~THIS COURT ORDERS AND DECLARES~~ that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

## VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

31. ~~38.~~ **THIS COURT ORDERS** that the priorities of the Directors' Charge, and the Administration Charge ~~and the DIP Lender's Charge,~~ as among them, shall be as follows<sup>40</sup>:

First ~~—~~ Administration Charge (to the maximum amount of \$●);

Second ~~—~~ ~~DIP Lender's Charge;~~ and Third — Directors' Charge (to the maximum amount of \$●).

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

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

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<sup>40</sup> ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

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

35. ~~42.~~ **THIS COURT ORDERS** that the Directors' Charge, and the Administration Charge, ~~the Commitment Letter, the Definitive Documents and the DIP Lender's Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") ~~and/or the DIP Lender thereunder~~ shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the ApplicantApplicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) ~~neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or~~ shall not be deemed to constitute a breach by any of the ApplicantApplicants of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any ~~breach of any Agreement caused by or resulting from the Applicant entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents;~~ and
- (c) the payments made by the ~~Applicant~~Applicants pursuant to this Order, ~~the Commitment Letter or the Definitive Documents,~~ and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers, settlements at undervalue, oppressive conduct, or other challengeable or void or voidable transactions or reviewable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

37. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in [newspapers specified by the Court] a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the ~~Applicant~~Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

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

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

## **GENERAL**

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

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

~~42.~~ 49. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the ~~Applicant~~Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Applicant~~Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the ~~Applicant~~Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

~~43.~~ 50. **THIS COURT ORDERS** that the Monitor is hereby authorized, as the foreign representative of the Applicants, to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code.

~~44.~~ **THIS COURT ORDERS** that each of the ~~Applicant~~Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~45.~~ 51. **THIS COURT ORDERS** that any interested party (including the ~~Applicant~~Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to

be affected by the order sought or upon such other notice, if any, as this Court may order.

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

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

Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at TORONTO

INITIAL ORDER

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

Court File No. CV-12-9645-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**NOTICE OF APPLICATION**

**MINDEN GROSS LLP**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

(the "Applicants")

**AFFIDAVIT OF TONY VALLECOCCIA  
(sworn January 11, 2012)**

**I, TONY VALLECOCCIA**, of the City of Brampton, Province of Ontario,

**MAKE OATH AND SAY:**

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

**I. INTRODUCTION**

2. This affidavit is sworn in support of an application by Valle Foam Industries (1995) Inc. (“**Valle Foam**”), and its affiliated companies, Domfoam International Inc. (“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z**”) (collectively, the “**Applicants**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

3. The Applicants collectively operate as one of Canada’s largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. As described in greater detail below, as a result of declining sales, fines imposed by the Competition Bureau of Canada, and class action lawsuits commenced against the Applicants in Canada and the United States, the Applicants are both not able to meet their liabilities as they come due and their liabilities exceed the value of their assets, and are therefore insolvent.

4. This application has been authorized by the Board of Directors of each of the Applicants.

## II. APPLICANTS

### Corporate Structure

5. At all material times, the business and affairs of Valle Foam and Domfoam have been operated under my control as CEO, a shareholder and director. I was a principal shareholder and CEO of Valle Foam from the period of 1986 to and until 1994. In 1994, the major shareholders of Domfoam, including a CIBC Wood Gundy Capital Fund (“**Wood Gundy**”), entered into an agreement whereby Domfoam would purchase Valle Foam. I, and other Valle Foam shareholders, would become shareholders in Domfoam, and I would become its President and CEO. In this way, Valle Foam and Domfoam became affiliated. In 1997, Wood Gundy was bought out as were others with interests in Domfoam. In 1999, A-Z Foam was acquired by Domfoam.

6. The head office for Valle Foam is located in Brampton, Ontario. The head office for Domfoam was located in the Valle Foam office until May 22, 2007 when it was transferred from the Valle Foam office to the St. Leonard office of Domfoam. The transfer of the head office was done on the advice of Valle Foam’s corporate counsel, but did not impact the fact that I remained in control of the

Applicants from my office in Brampton. The head office for A-Z is located in Annacis Island, Delta, British Columbia.

7. All major decisions for the Applicants have always been made principally by me, or with the Board of Directors and by the officers for all three companies. The board members and substantially all the shareholders are located in the Greater Toronto Area.

### **Overview of Business**

8. The foam used in the Applicants' business is manufactured by the reaction resulting from the combination of two main chemicals: an isocyanate, such as Methylene Diphenyl Di-isocyanate ("MDI") or Toluene Di-isocyanate ("TDI"), and a polyurethane polymer called Polyol. The resultant foam can be made into a variety of densities and hardness, from flexible foam to rigid foam, depending on the mixing ratio of the chemicals.

9. Due to the versatility of foam, the foam manufactured by the Applicants is used in a variety of industries and applications, including, but not limited to:

- Furniture Manufacturing: used in cushions, upholstered furniture, office chairs, stadium seating and auditorium seating;

- Carpet Cushion (or underlay): used to improve the comfort and lifespan of carpets;
- Bedding: used as the primary material for adding support and comfort to padded bedding products;
- Packaging: provides protection and cushioning to packaged products. Polyurethane foams are often used to package highly sensitive equipment such as electronics, printed circuit boards, jewellery and delicate foods; and
- Textiles and Fibres: used as insulation for fabric products including clothing. It provides thermal insulation, tear resistance, fire resistance and light weight to a variety of textiles and fibres including leather products, shoe uppers, tents, life rafts, labels, hand bags and insulation liners.

### **Employees**

10. Currently, the Applicants collectively employ between 525 to 550 people.
11. Valle Foam is the largest employer, employs 278 full time employees plus between 15 and 20 temporary employees at four locations in and around Brampton, Ontario. The Valle Foam employees are not unionized.

12. Domfoam employs 172 full time employees and between 15 and 45 temporary employees at three locations in and around Montreal, Quebec. The 127 factory floor employees of Domfoam are members of Teamsters Local 973 (the “**Domfoam Union**”).

13. A-Z employs 34 employees in Annacis Island, Delta, British Columbia. Certain of the employees of A-Z are members of Pulp and Paper Workers Local #5 (the “**A-Z Union**”).

### **Premises**

14. Each of the Applicants lease their respective business premises at the following locations:

a) Valle Foam:

- 4 West Drive, Brampton, Ontario;
- 170 Glidden Road, Brampton, Ontario;
- 317 Orenda Road, Brampton, Ontario;
- 11 Finley Road, Brampton, Ontario;

b) Domfoam:

- 8785 Langelier Boulevard, (Saint-Leonard) Montreal, Québec;
- 6675 Bombardier Avenue, (Saint-Leonard) Montreal, Québec;
- 7525 Henri Bourassa East, Montreal, Québec;

c) A-Z:

- 811 Cundy Avenue, Annacis Island, Delta, British Columbia.

15. The Applicants are in arrears of their rental obligations at several locations, including the principal Valle Foam and Domfoam location where rent is two months in arrears.

16. The business of the Applicants involves the use of chemicals in the course of manufacturing its products. Some of these products are hazardous and all of these products have to be carefully managed. The premises of each of the Applicants have been specifically designed or modified to allow for the use of these chemical agents.

17. The facilities operated by the Applicants include special exhaust gas activated charcoal scrubbers to deal with waste products from the manufacturing

process. Hazardous chemicals are also stored on site or are picked up and disposed of by companies under license who have agreements with the Applicants.

18. In order to properly dispose of these chemicals in the event the business of the Applicants, or any of them were to cease, the Applicants would require a detailed disposal plan to be implemented under supervision and in keeping with environmental guidelines. The premises cannot be safely abandoned or rendered inoperative without such efforts.

### **Supply Chain and Customers**

19. The Applicants purchase their principal supplies separately, but often from the same suppliers.

20. Chemicals and other production inputs are delivered to the Applicants through different methods. Valle Foam takes delivery by way of tank truck whereas Domfoam and A-Z take the majority of their delivery by way of railcar directly into their facility.

21. As a result, Valle Foam is unable to accumulate much inventory of some products, and at any point in time never has more than 8 to 10 days worth of certain key chemicals.

22. Domfoam, on the other hand, can have as much as 6 to 8 weeks worth of supply of certain products at certain points in time by being able to take larger volume deliveries.

23. A-Z typically has as much as six or more weeks of inventory.

24. Many suppliers, most notably Bayer, the Applicants' largest supplier of Polyol, have contacted the Applicants in order to determine the status of their outstanding accounts. Bayer in particular is owed in excess of approximately \$2.7 million from the Applicants collectively. Since December 1, 2011, we have been paying suppliers, including Bayer, on a COD basis. Although the Applicants have sufficient cash flow to order supply on a COD basis, the Applicants' cash flow is insufficient to pay the accrued arrears owing to these suppliers along with paying COD for new supply.

25. For each of the Applicants, over 40% of their business is done with their key customers. In the case of Domfoam, these key customers account for receivables currently owing to the company in excess of \$2 million. In the case of Valle Foam, these 25 key customers account for 60% of the receivables. In the case of A-Z, these key customers account for 80%.

26. A large number of these customers, for example in the case of Domfoam over 30%, buy 100% of their needs of foam directly from Domfoam. In the event there is any cessation of supply to these customers, these customers will need to seek alternative arrangements immediately. It would be similar for the other Applicants.

27. Other than those customers who purchase the Applicants' proprietary visco-elastic foam product, there is nothing unique about the products provided by the Applicants which could not be replaced by one of the Applicants' competitors should such customers seek to source their supply from those competitors and would be unlikely to return to the Applicants even if supply was later restored

28. In the last several days since the Competition Act plea discussed below became public, several customers have contacted the Applicants to express concerns about their future supply from the Applicants and have indicated their intent to seek supply elsewhere. Several customers have not placed orders of their usual size this week and I believe they have already begun to seek new sources of supply as a result of their concerns.

29. Other customers have contacted the Applicants seeking confirmation that rebates which they assert are owed to them pursuant to volume purchasing

arrangements they have with the Applicants will be paid to them when due on January 15, 2012.

Assets

30. Attached hereto and marked as **Exhibits "A"** and **"B"** are the Audited Financial Statements for the year ending April 30, 2011 for Valle Foam and Domfoam. The April 30, 2011 Financial Statements of A-Z which are on a review engagement basis are attached as **Exhibit "C"**.

31. While the financials demonstrate the book value of the Applicants, I am of the view that these book values, while reasonable for accounting purposes, are not likely to be realized in the event of a forced or even orderly sale of the business as a result of its insolvency.

32. When added to the ordinary liabilities to trades, which are substantial and are increasing, as detailed below, the out of the ordinary course liabilities to the Competition Bureau described below and possible exposure to class action liability greatly exceeds the realizable value of the assets.

### III. FINANCIAL DIFFICULTIES AND THE NEED FOR CCAA PROTECTION

#### Causes of Financial Difficulties

33. The Applicants are involved in an industry that is in transition. Certain products which were formerly the backbone of the Applicants' sales are no longer widely consumed. In particular, the demand for carpet under-padding has been eroded by a move in construction and consumers away from carpeting in favour of hardwood flooring and tile.

34. The industry is also experiencing significant pressures from overseas production sources, most notably China, which are able to produce the foam at greater margins due to lower labour costs or other geographic advantages. That Chinese manufactured foam is supplied to the Chinese manufacturing industry who then manufacture finished product which includes this foam, which products used to be finished or manufactured in Canada using Canadian produced foam.

35. These systemic factors have led to a decline in the Applicants' financial performance over the past several years.

36. Each of Valle Foam and Domfoam suffered a loss in excess of \$5 million in fiscal 2011. A-Z Foam also suffered a loss in excess of \$57,000.00. The following

is a chart setting out the operating results for the fiscal years ended April 30, 2009 to 2011 for each of the Applicants:

**Valle Foam Industries (1995) Inc.**  
**Operating Results for the Fiscal Years Ended April 30, 2009 to 2011**  
(in \$000's)

	30-Apr-09 (audited)		30-Apr-10 (audited)		30-Apr-11 (audited)	
	\$	%	\$	%	\$	%
<b>Sales</b>	48,612	100.0%	43,651	100.0%	40,466	100%
<b>Costs of sales</b>	44,078	90.7%	39,331	90.1%	38,141	94.3%
<b>Gross profit</b>	4,534	9.3%	4,321	9.9%	2,324	5.7%
<b>Expenses</b>						
Administrative and General	2,289	4.7%	2,171	5.0%	3,035	6.8%
Selling and Delivery	2,829	5.8%	2,681	6.1%	2,710	6.7%
	5,118	10.5%	4,852	11.1%	5,474	13.5%
<b>Income (loss) from operations</b>	(584)	-1.2%	(531)	-1.2%	(3,350)	-7.8%
<b>Other income (expenses)</b>						
Gain (loss) on disposal of assets	(6)	0.0%	(6)	0.0%	3	0.0%
Investment tax credits earned	-	0.0%	14	0.0%	-	0.0%
Government grant	-	0.0%	197	0.5%	-	0.0%
Impairment loss to goodwill	-	0.0%	-	0.0%	(2,702)	-6.7%
	(590)	-1.2%	(325)	-0.7%	(5,849)	14.5%
<b>Income (before income taxes)</b>	(590)	-1.2%	(325)	-0.7%	(5,849)	14.5%
<b>Income taxes (recovered)</b>	(57)	-0.1%	(40)	-0.1%	(314)	-0.8%
	(533)	-1.1%	(285)	-0.7%	(5,535)	13.7%

**Domfoam International Inc.**  
**Operating Results for the Fiscal Years Ended April 30, 2009 to 2011**  
(in \$000's)

	30-Apr-09 (audited)		30-Apr-10 (audited)		30-Apr-11 (audited)	
	\$	%	\$	%	\$	%
<b>Sales</b>	45,182	100.0%	39,665	100.0%	37,153	100%
<b>Cost of Sales</b>	39,144	86.6%	34,311	86.5%	33,875	91.2%
<b>Gross profit</b>	6,038	13.4%	5,354	13.5%	3,278	8.8%
<b>Expenses</b>						
Administrative and General	908	2.0%	2,092	5.3%	2,889	7.8%
Selling and Delivery	3,643	8.1%	3,704	9.3%	3,821	10.3%

	30-Apr-09 (audited)		30-Apr-10 (audited)		30-Apr-11 (audited)	
	\$	%	\$	%	\$	%
	4,551	10.1%	5,796	14.6%	6,711	18.1%
<b>Income (loss) from operations</b>	<b>1,487</b>	<b>3.3%</b>	<b>(442)</b>	<b>-1.1%</b>	<b>(3,432)</b>	<b>-9.2%</b>
<b>Other income (expenses)</b>						
Dividend Income	-	0.0%	-	0.0%	-	0.0%
Gain (loss) on disposal of assets	-	0.0%	-	0.0%	-	0.0%
Interest Income	143	0.3%	10	0.0%	4	0.0%
Investment tax credits earned	55	0.1%	23	0.1%	-	0.0%
Legal settlement	-	0.0%	-	0.0%	560	1.5%
Impairment to goodwill	-	0.0%	-	0.0%	(3,605)	-9.7%
<b>Income (before income taxes)</b>	<b>1,684</b>	<b>3.7%</b>	<b>(410)</b>	<b>-1.0%</b>	<b>(6,473)</b>	<b>17.4%</b>
<b>Income taxes (recovered)</b>	<b>648</b>	<b>1.4%</b>	<b>91</b>	<b>0.2%</b>	<b>(693)</b>	<b>-1.9%</b>
<b>Net income for the year</b>	<b>1,036</b>	<b>2.3%</b>	<b>(500)</b>	<b>-1.3%</b>	<b>(5,781)</b>	<b>15.6%</b>

**A-Z Sponge & Foam Products Ltd.**  
**Operating Results for the Fiscal Years Ended April 30, 2009 to 2011**  
(in \$000's)

	30-Apr-09 (unaudited)		30-Apr-10 (unaudited)		30-Apr-11 (unaudited)	
	\$	%	\$	%	\$	%
<b>Sales</b>	<b>6,453</b>	<b>100.0%</b>	<b>5,419</b>	<b>100.0%</b>	<b>5,285</b>	<b>100%</b>
<b>Cost of Sales</b>	<b>5,132</b>	<b>79.5%</b>	<b>4,525</b>	<b>83.5%</b>	<b>4,524</b>	<b>85.6%</b>
<b>Gross profit</b>	<b>1,321</b>	<b>20.5%</b>	<b>894</b>	<b>16.5%</b>	<b>761</b>	<b>14.4%</b>
<b>Expenses</b>						
Administrative and General	499	7.7%	555	10.2%	478	9.0%
Selling and Delivery	351	5.4%	360	6.6%	368	7.0%
	850	13.1%	915	16.8%	846	16.0%
<b>Income (loss) from operations</b>	<b>471</b>	<b>7.3%</b>	<b>( 21)</b>	<b>-0.3%</b>	<b>(85)</b>	<b>-1.6%</b>
<b>Other income (expenses)</b>						
Dividend Income	-	0.0%	-	0.0%	-	0.0%
Gain (loss) on disposal of assets	-	0.0%	-	0.0%	-	0.0%
Interest Income	-	0.3%	-	0.0%	-	0.0%
Investment tax credits earned	28	0.4%	18	0.3%	19	0.4%
Legal settlement	-	0.0%	-	0.0%	-	0.0%
Impairment to goodwill	-	0.0%	-	0.0%		0.0%
<b>Income (before income taxes)</b>	<b>499</b>	<b>7.7%</b>	<b>( 3)</b>	<b>-0.1%</b>	<b>( 65)</b>	<b>-1.3%</b>
<b>Income taxes (recovered)</b>	<b>139</b>	<b>2.2%</b>	<b>16</b>	<b>0.3%</b>	<b>( 8)</b>	<b>-0.2%</b>
<b>Net income for the year</b>	<b>360</b>	<b>5.5%</b>	<b>( 19)</b>	<b>-0.4%</b>	<b>(57)</b>	<b>-1.1%</b>

37. The Applicants, excluding A-Z, are forecast to suffer an aggregate \$8.4 million net loss before taxes in fiscal 2012, without accounting for any payment of Competition Bureau fines or costs of any of the outstanding litigation. The operating loss, prior to interest, taxes, depreciation and amortization and professional fees, is forecast to total \$4.5 million. Fiscal 2012 net sales are forecast to be \$71.5 million, which is a decrease of approximately \$6.1 million or 7.9% compared to fiscal 2011.

38. For the Applicants, other than A-Z, the fiscal 2012 net cash outflow is forecast to be \$8.4 million, which includes payment of legal fees of \$2.4 million associated with the matter regarding the Competition Bureau (Canada) and the class action lawsuits in the United States and Canada (discussed in greater detail below).

39. Based on the current cost structure of the Applicants, excluding A-Z, in order to break even, the aggregate net sales for Domfoam and Valle Foam for fiscal 2012 would have to be approximately \$81.4 million or \$9.9 million greater than the current level of forecast sales, again, without accounting for the payment of any fines or settlement amounts. I do not believe the Applicants can reach this

threshold. There is also full impact of the fines and significant costs and other exposure to class action litigation discussed below without restructuring.

### **Valle Foam**

40. Valle Foam's annual sales decreased by approximately \$37 million from fiscal 2007 to 2011. The decrease in or elimination of sales related to two customers, Spin Master and DHU, accounted for approximately 52% of the decrease and Valle Foam has not been able to replace these sales.

41. Valle Foam's sales of carpet underlay have decreased by 62% (\$13.1 million to \$5 million) from fiscal 2007 to 2011. Valle Foam internally generates all the scrap it requires to manufacture carpet underlay. Gross margins generated on the sale of carpet underlay are significantly higher than on foam products and as such, the loss of a large portion of the carpet underlay business has considerably decreased Valle Foam's gross margins. Due to competition and changes in the market place, the price for foam scrap upon which Valle Foam relied for profit has dropped by nearly 50% against historic levels. The overall market for underlay as reported by an industry group in which we are a member has declined by 50%. Although Domfoam also profited from the sale of scrap, it was not to the same

degree as Valle Foam, and therefore they are not impacted as severely by this market change.

42. Valle Foam is projected to lose approximately \$100,000.00 per week if it continues to operate in keeping with its current circumstances and market trends.

43. Attached hereto and marked as **Exhibit "D"** is a copy of an internal Statement of Income for the 6 month period ending October 31, 2011 for Valle Foam.

#### **Domfoam**

44. Since fiscal 2007, Domfoam's sales for carpet underlay and the other slab foam products have decreased from \$13.5 million to \$4.1 million and \$44.3 million to \$33 million, respectively, and the selling price per board foot ("BF"), a standard measure in the industry, for carpet underlay has decreased by 32% resulting in a substantial deterioration Domfoam's gross margin.

45. Domfoam continues to lose money on a monthly basis, although I believe it could operate at a break even basis if properly restructured and ultimately return to profitability in the future. Attached hereto and marked as **Exhibit "E"** is a copy of

an internal Statement of Income for the six month period ending October 31, 2011 for Domfoam.

A-Z

46. For similar reasons to those suffered by the other Applicants, A-Z is also declining. Since fiscal 2009, A-Z's income from operations has dropped from \$471,000.00 to a loss of \$21,000.00 in 2010 to a loss of \$85,000.00 in 2011. Over that same period the gross profit margin of their products have declined from 20.5% to 16.5% to 14.4%.

47. Attached hereto and marked as **Exhibit "F"** is a copy of an internal Statement of Income for the six month period ending October 31, 2011 for A-Z.

Competition Bureau Fines

48. Both Domfoam and Valle Foam were recently charged with, and on January 5, 2012, pled guilty to certain offences under the *Competition Act*, R.S.C. 1985, c C-34 (the "*Competition Act*"). Although not charged, A-Z also participated, to a lesser extent in the underlying events. Through agreement with the Director of Public Prosecutions, the resolution of the charges under the *Competition Act* included A-Z.

49. From January 1, 1999 to March 11, 2010, Domfoam and Valle Foam committed an indictable offence contrary to s. 45(1)(c) of the *Competition Act* by conspiring, combining, agreeing or arranging to prevent or lessen, unduly, competition in the sale or supply of slab foam and carpet cushion (underlay) foam products within Canada. From March 12, 2010 to July 27, 2010, Domfoam and Valle Foam also engaged in conduct contrary to ss. 45(1) (a) of the *Competition Act*, R.S.C. 2009, Chap C-2. s. 410 by conspiring, agreeing or arranging to fix, maintain, increase or control the price for the supply of slab foam and carpet cushion (underlay) foam products within Canada, thereby committing an indictable offence contrary to s.45(2) of the *Competition Act*, R.S.C. Chap C-2, s.410.

50. This conduct by Domfoam and Valle Foam, in collusion with other major manufacturers in their industry, enabled the manufacturers to coordinate and implement price increases to their respective customers (i.e. customers received price increase letters on or near the same day, with similar or identical percentage increases and effective implementation dates).

51. In July, 2010, search warrants were executed by the Competition Bureau at the business premises of Domfoam and Valle Foam. Consequently, Domfoam and Valle Foam learned that the Competition Bureau was in possession of wiretap and

documentary evidence detailing the alleged conspiracy. Additionally, it became known that the Competition Bureau had secured the cooperation of one of the alleged co-conspirators, in building its case against the others, including Domfoam and Valle Foam.

52. Domfoam and Valle Foam engaged counsel to review the matter. As a consequence of that review, Domfoam and Valle Foam undertook to participate in the Competition Bureau's Leniency Programme. In doing so, Domfoam and Valle Foam agreed to cooperate fully in the investigation; plead guilty; and, continue to provide cooperation on a going forward basis. In return, no current or future directors, officers, agents, independent contractors or employees would be charged; the fines to be imposed on the companies would be 50% of what they would otherwise have been; and, all matters under the *Competition Act* involving the conduct of Domfoam and Valle Foam, as well as A-Z and other affiliates, subsidiaries and predecessors, would be deemed to have been resolved. Domfoam and Valle Foam provided the expected pre-charge cooperation and then negotiated the details of their guilty pleas. This entire process took over 17 months to complete. I strongly believe that this plea was reasonable and am satisfied that Domfoam and Valle Foam were culpable of the alleged violations under the *Competition Act*.

53. As such, on the advice of counsel and as authorized by a specific resolution of the Board of Directors of each of Domfoam and Valle Foam, on January 5, 2012, the companies entered pleas of guilty before the Ontario Superior Court to the above-noted offences under s.45(1) (c) of the *Competition Act* for the period of January 1999 to March 2010, and ss.45(1) (a) and 45(2) of the amended *Competition Act* (as enacted by S.C. 2009, Chap. C- 2, s. 410), for the period of March 2010 to July 2010. Attached hereto and marked as **Exhibit "G"** is a copy of the Statement of Admissions and Indictment.

54. As noted previously, A-Z was released from all possible liability in conjunction with this matter as a result of the plea arrangement.

55. Domfoam was fined a total of \$6 million and Valle Foam was fined a total of \$6.5 million. No fine was assessed against A-Z as no charges were laid against A-Z. In accordance with the terms of the sentence imposed, on the day of the guilty pleas, Valle Foam paid \$500,000.00 in partial payment of the fines imposed against it.

56. As a result of the foregoing, Valle Foam has an outstanding liability of \$6 million in outstanding fines, and Domfoam has an outstanding liability of \$6

million. Attached hereto and marked as **Exhibit “H”** is a copy of the Competition Bureau Press Release dated January 6, 2012.

57. These liabilities are to be paid in accordance with the terms of the sentences imposed. Specifically, Domfoam and Valle Foam are to each pay \$1 million on the 1<sup>st</sup> of January of each year, commencing 2013 and ending in 2018.

58. Full disclosure of the Applicants’ financial difficulties was made to the Crown prior to finalizing the Statement of Admissions and entry of the pleas. The Crown was specifically advised of the Applicants’ precarious financial condition, and were advised of the Applicants’ intention to file for protection under the provisions of a Canadian insolvency regime.

59. The Applicants cannot make the fine payments from their cash flow and remain solvent given the forecasted losses and pressures on their industry. They will also be unable to secure new or additional financing in the circumstances.

### **Class Actions**

60. The existence of the search warrants came to the attention of various classes of customers of the Applicants in 2010. In addition, certain of the wiretap evidence became available to the proposed class action counsel. As a result of

these disclosures, class counsel in the US and Canada initiated a number of proposed class proceedings against the Applicants in the US and in Canada in 2010, and afterwards on behalf of purchasers of polyurethane foam and products containing polyurethane foam products for lengthy class period. Some or all of the Applicants have been named as a defendant in at least five class action lawsuits in Canada, and over two dozen class action lawsuits in the United States (together, the “**Class Actions**”). Although not named in these actions, it is likely that A-Z could be added to such actions as a defendant given that A-Z was to some extent complicit or involved in the prohibited acts.

#### **US Class Action Litigation**

61. Our lawyers in New York, Skadden Arps, have successfully negotiated, on behalf of the Applicants, a settlement with the three different groups of plaintiffs in the United States which are part of a multi-district litigation proceeding styled *In re Polyurethane Foam Antitrust Litigation* in the United States District Court for the Northern District of Ohio. The settlement agreements are to be executed during the week of January 9, 2012.

62. The Applicants have reached agreement with the Direct Class and Indirect Class plaintiffs. The settlements have been signed by all relevant parties, and

pursuant to those agreements, both classes agreed to file with the United States District Court for the Northern District of Ohio on January 11, 2012, a notice that provides for the suspension of their cases as against Domfoam and Valle Foam. In both cases, the settlements are conditional upon Domfoam, Valle Foam and A-Z filing for some form of bankruptcy, restructuring or creditor protection by January 31, 2012. Attached hereto and marked as **Exhibit "I"** is a copy of the Direct Class Agreement and the Indirect Class Agreement.

63. In exchange for cooperation by certain current and former Domfoam, Valle Foam and A-Z employees (in the form of interviews, depositions, and testimony), and the production of certain available documents by the companies (to the extent practicable), these plaintiffs have agreed, subject to Court approval, to voluntarily dismiss their complaints as against the companies and to fully and forever release any of the companies' current or former employees, shareholders, or owners from any and all liability in this and potentially related matters. Pursuant to these settlement agreements, neither the companies nor any related individuals are required to pay any sum of money whatsoever to these plaintiffs or their counsel.

64. In each of these actions, the proposed plaintiff classes allege that Domfoam and Valle Foam are jointly and severally liable with other foam manufacturers.

Although they have not specified potential damage amounts (they are not required to do so at this point), such alleged damages may be in the hundreds of millions of dollars. These claims, if left outstanding, represent massive exposure for the companies, an exposure they could not possibly hope to cover in part or in full given their current financial situation. The settlement agreements described herein contemplate the dismissal of such claims without any payment whatsoever by the Applicants.

65. Pursuant to *United States Federal Rules of Civil Procedure*, these agreements are subject to both preliminary and final approval by the US court. While preliminary approval may occur within 30-60 days of filing of these agreements with that Court, final approval can take substantially longer. In any and all events, the suspension of the actions as to Domfoam and Valle Foam will remain in effect while such motions are pending.

66. Domfoam and Valle Foam have also reached settlement agreements with certain "opt-out" plaintiffs in the United States. In each case, a foam purchaser or group of purchasers filed an individual lawsuit against Domfoam, Valle Foam and other foam manufacturers alleging certain antitrust violations. The settlements have been signed by all relevant parties, and pursuant to those agreements, each

plaintiff must file with the Court a notice that provides for the suspension of their cases as against Domfoam and Valle Foam by January 11, 2012.

67. Attached hereto and marked as **Exhibit "J"** is a copy of the Opt-Out Agreement entered into with Sealy Corporation and others; it is identical in form to the other four Opt-Out Agreements.

68. In all cases, the settlements are contingent upon Domfoam, Valle Foam and A-Z filing for some form of bankruptcy, restructuring or creditor protection by January 31, 2012.

69. A CCAA order would also prove beneficial to address any new claims that may be issued as the Applicants intend to seek recognition of the order, if granted, in the United States to provide for a stay of proceedings. We have recently learned of a new claim issued on December 19, 2011, out of the United States District Court for the Northern District of Mississippi, which has not been served, but names Valle Foam and Domfoam as defendants.

70. The suspension and/or dismissal of the actions are without prejudice to the class action claimants asserting their claims as creditors within the proposed CCAA proceedings in amounts to be determined.

### Canadian Class Action Litigation

71. To the knowledge of the Applicants, there are currently five class action proceedings in Canada that are pending before the courts in Ontario, Quebec and British Columbia in connection with the Competition Bureau's investigation of price-fixing allegations in the polyurethane foam industry. The Applicants have been named (or one or more of the Applicants have been named) in four of these class proceedings. These proceedings have been brought by a coordinated group of plaintiffs (the "**Class Plaintiffs**") against a number of manufacturers of polyurethane foam in Canada and elsewhere, as well as certain individuals, and the Class Plaintiffs collectively seek to represent a broad class consisting of all purchasers of polyurethane foam and products containing polyurethane foam during a period generally ranging from 1999 to the present. The Class Plaintiffs allege that the Applicants and the other manufacturers, along with certain individuals, are jointly and severally liable for damages to the proposed class members under the *Competition Act*, at common and under civil law, and they seek millions of dollars of damages along with other relief.

72. After extended negotiations, our lawyers at Oslers LLP have reached a proposed national class settlement on behalf of the Applicants with the Class

Plaintiffs in respect of all of the Canadian Class Proceedings. The settlement agreement was executed by the Applicants and the Class Plaintiffs on January 11, 2012. Attached hereto and marked as **Exhibit “K”** is a redacted copy of the Canadian Polyurethane Foam Class Actions National Settlement Agreement. The schedule to the agreement provides the detail of the actions.

73. Under the terms of this proposed national settlement, in exchange for cooperation from certain current and former Domfoam, Valle Foam and A-Z officers, employees and agents (in the form of interviews, depositions, and testimony), and the production of certain available documents by the companies (to the extent practicable), the Class Plaintiffs have agreed, subject to separate court approvals by the Ontario Superior Court, the B.C. Supreme Court and the Quebec Superior Court, to discontinue their proceedings as against the companies and to fully and forever release any of the companies' current or former officers, employees, agents, shareholders, or owners from any and all liability in this and potentially related matters. The proposed settlement also provides for certain “bar order” protection in favour of such releasees in the event of future contribution claims by other defendants or other third parties that have been involved in this matter. The Class Plaintiffs in Canada have also agreed to dismiss proceedings

against one employee of Valle Foam that was individually named in the class proceedings in Ontario.

74. Pursuant to this proposed settlement, the companies are not required to make a contribution of cash to a settlement fund. However, the proposed settlement does provide for an assignment of certain proceeds of an unrelated class action proceeding known as the *U.S. Urethane Antitrust Litigation* up to \$200,000.00. The assignment is made expressly subject to any order of this Honourable Court. Under the terms of the settlement, the Class Plaintiffs have agreed to bear any risk relating to the validity or enforceability of the assignment. In addition, the proposed settlement also provides for the payment of \$1.2 million by certain individuals who are parties to the settlement agreement.

75. The proposed settlement specifically contemplates that the Applicants may file for protection under the CCAA, and under the terms of the proposed settlement, the discontinuance of the Canadian Class Proceedings against the companies is without prejudice to the ability of the Class Plaintiffs and putative class members to asserting their claims as creditors within the proposed CCAA proceedings in amounts to be determined. It is a condition of the proposed

settlement that the Applicants make an application under the CCAA or other insolvency legislation within 30 days of execution of the proposed settlement.

76. This proposed settlement is without any admission of liability by the Applicants, and it is subject to independent court approval under the Ontario *Class Proceedings Act, 1992* and related legislation in Quebec and B.C. The process for obtaining court approval in three provinces may take a number of months. During this period, the Class Plaintiffs have agreed to suspend the active pursuit of proceedings as against the Applicants while the motions for court approval are pending.

77. As noted above, the proposed settlement does contemplate that the Applicants will be actively seeking court approval while a potential restructuring is being pursued under CCAA protection. In addition, the proposed settlement contemplates that the Applicants and certain current officers of the Applicants will be providing ongoing cooperation to the Class Plaintiffs while a potential restructuring is being pursued under CCAA protection.

78. In each of these Canadian Class Proceedings where the Applicants have been named, the class plaintiffs allege that the Applicants are jointly and severally liable with other foam manufacturers for damage to Class Members. In the Ontario

class proceedings alone, the Class Plaintiffs are seeking damages as against Dom Foam and Valle Foam and other manufacturers in the amount of \$100 million or more. These claims, if left outstanding, represent massive exposure for the companies, an exposure they could not possibly hope to cover in part or in full given their current financial situation. The proposed settlement described herein contemplates the discontinuance of these contested proceeding as against the Applicants, subject to future rights of the Class Plaintiffs and putative class members to be pursued in the restructuring process under the CCAA.

79. I have been informed by Christopher Naudie at Oslers, lead counsel for the Applicants in the Canadian Class Proceedings, regarding the potential risks and exposures for the Applicants in the Canadian Class Proceedings if liability is established at trial. Without waiving any applicable privilege and without admitting any liability or waiving any defences that the Applicants may have in the event that the settlement is terminated, I am advised by Christopher Naudie at Oslers as follows:

- Certain of these civil actions seek full joint and several liability, and if they are successful, the Applicants will be exposed to a

potentially massive liability arising from all sales of all defendants.

- While the Applicants have a number defences to the civil claims, the Applicants have admitted the underlying offence in the plea and as a result, face a significant risk of civil liability.
- During the class period, the Applicants had approximately \$975 million in sales in Canada.
- In the Competition Bureau process, the Applicants agreed to a fine of \$12.5 million based on a number of factors, including the Bureau's practice of assuming a 20% overcharge, the statutory maximum fine and a significant 50% leniency reduction.
- In the absence of settlement or restructuring, civil plaintiffs will likely seek significantly higher damages at trial – since there is no statutory maximum on damages or leniency reduction in civil cases.

- If this matter proceeds to trial in the absence of settlement or restructuring, even if the Applicants are only exposed to several liability and the Court calculates damages based on a modest 5% overcharge, the Applicants could be exposed to damages of \$48.75 million. If the Applicants are exposed to joint and several liability, their damages would be substantially higher.
- In short, while the Applicants deny civil liability and have a number of defences, they still face a significant risk of exposure that greatly exceeds their available assets.
- The discontinuance of the Canadian Class Proceedings are without prejudice to the Class Plaintiffs and putative class members asserting their claims as creditors within the proposed CCAA proceedings.

80. As noted above, the Applicants have expended in excess of \$2.4 million in professional fees for the year ending April, 2011, both in Canada and in the United States to deal with both the Competition Bureau and Class Action claims. Since April, a further \$1.1 million has been expended. These professional costs have had a significant impact on the financial performance of the Applicants and are not

sustainable. By filing for protection from their creditors and bringing to an end these actions, the Applicants will be able to minimize this burden and be able to focus instead on restructuring.

## **Liabilities**

### ***Secured Creditors***

81. The only material unrelated secured creditor of the Applicants was Royal Bank of Canada (“RBC”).

82. Attached hereto and marked as **Exhibit “L”** are *Personal Property Security Act* searches conducted against each of the Applicants, conducted in each of British Columbia, Ontario and Quebec. RBC has registered financing statements against Domfoam, A-Z and Valle Foam in Ontario, Quebec and British Columbia.

83. The only other creditors with registered security interests under the relevant *Personal Property Security Act* legislation against the Applicants are, Domfoam with respect to A-Z Foam, and various leasing companies for various equipment used in the Applicants’ operations.

84. The Applicants are reviewing their leases with these entities to determine the status of those leases and also to ascertain whether or not they require any of the equipment subject to lease in their ongoing restructuring.

85. RBC had provided the Applicants with an operating loan in the amount of \$4.5 million. In the ordinary course, the Applicants provided their year end financial statements to RBC when they became available from the Applicants' auditors at the end of September 2011. The company met with RBC on November 25, 2011 to review these financial statements. In light of the financial condition of the Applicants, they were advised at that meeting that RBC was immediately terminating its lending arrangement with the Applicants, and that no further overdrafts or use of the revolving loan would be tolerated by RBC.

86. The Applicants repaid the entire amount in respect of their facility to RBC at the end of November, 2011. To my knowledge, there is no further amount owing to RBC at this time. The Applicants continue to do regular banking at RBC and maintain a positive cash balance.

87. The absence of a revolving facility is putting a strain on the Applicants' cash flow and their ability to meet their day-to-day obligations.

**Other Liabilities**

88. In addition to the foregoing, as at December 1, 2011, the Applicants have, in the aggregate, approximately \$9,018,000.00 of accrued and unpaid liabilities, including:

<b>Liability</b>	<b>Valle Foam</b>	<b>Domfoam</b>	<b>A-Z</b>
Trade Payables	\$3,100,000.00	\$2,778,000.00	\$92,000.00
Accrued Payroll (including statutory liabilities) and Accrued Vacation Pay	\$725,000.00	\$400,000.00	\$143,000.00
Accrued Sales Taxes	\$164,000.00	\$33,000.00	\$21,000.00
Other Payables and Accrued Liabilities	\$40,000.00	\$1,516,000.00	\$6,000.00
<b>Total</b>	<b>\$4,029,000.00</b>	<b>\$4,727,000.00</b>	<b>\$262,000.00</b>

**The Applicants are Insolvent**

89. In summary, for the reasons described above, the Applicants are insolvent and have debts which are in excess of \$5 million. The Applicants require the protection of the CCAA in order to restructure, complete the Sales Process described below and to have the orderly shut down of its non-core business.

**Restructuring Plan**

90. Although the Applicants have suffered a variety of setbacks as set out in this Affidavit, it is my view that the business carried on by the Applicants can be salvaged.

91. The business of Valle Foam experiences different market conditions than does Domfoam. In particular, it is a characteristic of the products produced by the Applicants that the products must be produced relatively close to its marketplace. The Toronto marketplace in which Valle Foam operates has several competitors, the main previous competitor in Quebec, being Foamex International Inc. filed for creditor protection in 2009 and has not recommenced operation at their previous levels. It is no longer a competitor of Domfoam and it no longer manufactures

foam. As such, Domfoam has a geographic advantage in its current marketplace. A-Z has a similar advantage out west.

92. There is a predatory pricing environment being experienced by Valle Foam in Ontario which is not being experienced to the same extent by Domfoam in Quebec or by A-Z in British Columbia.

93. Domfoam has recently been contacted by an entity familiar with its business who is proposing to purchase the business of Domfoam on a going concern basis subject to Domfoam entering into a restructuring scenario which properly manages the creditors of Domfoam and allows for the acquisition of Domfoam on a free and clear basis. The Company and this party have not been able to reach an agreement on this offer at this time, although I believe we will be able to do so.

94. The entity referred to in paragraph 93 is the landlord of the principal Domfoam premises. This entity was formerly an owner of the Domfoam business before my involvement with the business. I am aware that this entity is therefore familiar with the business and has an interest in seeing the business continue in that premises.

95. The Applicants are of the view that a period of protection from its creditors and a period of stability to allow for the marketing and sale of its businesses, either to this entity or another, is the best available scenario for all stakeholders.

96. There have been a number of other preliminary expressions of interest to purchase various parts of the Applicants. The uncertainty surrounding the Competition charges and the class action proceedings have made it difficult to move any of those discussions forward. Now that they have been resolved, and subject to any order of this Honourable Court, I am hopeful that the Applicants will be in a position to explore various alternatives to restructure, sell or wind down operations.

97. In the event that an Initial Order is granted, the Applicants will, with assistance from the proposed Monitor, undertake a review of the various options available in light of the stabilization of the business. It is anticipated the Applicants will report back to Court to make any proposed sale or sale process available to the Court for consideration and approval.

98. However, I am also aware that it may be that the Applicants, particularly Domfoam, may not be able to sustain their market position without quickly announcing a sale of the business or some other injection of capital to assure the

market that Domfoam will be able to continue to supply its customers. Domfoam may have to quickly return to Court to seek the approval of the best available sale in order to preserve the maximum number of jobs and capitalize on the enterprise value of its business.

99. A principal goal of the restructuring is to protect as many of the temporary and full time jobs and to secure the greatest possible value to be realized from the assets.

100. The Applicants will work with the Monitor to put forward a plan of arrangement in order to distribute the proceeds from the restructuring to the creditors of the Applicants. Given the absence of any material secured creditor debt, it is anticipated that there will be funds available to the unsecured creditors which could then be dealt with through a plan, which could address the various categories of creditors.

101. As at November 30, 2011, mindful of the possible restructuring, the Applicants began paying their major suppliers on a cash on delivery (“COD”) basis and have been making payments as such. The Applicants intend to pay the COD amount owing in respect of the most recent deliveries or any deliveries in transit that are outstanding as of the date of this filing.

#### IV. PROPOSED INITIAL ORDER

##### Directors' and Officers' Charge

102. The Applicants require the continued participation of their officers and other executives who manage the business, commercial activities and internal affairs of the Applicants. These individuals are essential to the ongoing stability of the Applicants business while these proceedings are underway.

103. As of January 6, 2012, the Applicants are liable for unpaid accrued wages, vacation pay, statutory employee deductions and unpaid sales and services taxes of approximately:

<b>Valle Foam</b>	<b>\$700,000.00</b>
<b>Domfoam</b>	<b>\$351,000.00</b>
<b>A-Z</b>	<b>\$135,000.00</b>

104. The Applicants maintain directors' and officers' liability insurance (the "D&O Insurance") for the directors and officers of the Applicants. The current D&O Insurance policy provides a total of \$5 million in coverage. The deductible for certain claims is \$50,000.00 and the presence of a large number of exclusions

creates a degree of uncertainty, especially in light of the possible environmental issues which may be director or officers liabilities.

105. The proposed Initial Order contemplates the establishment of a charge (the “**Directors’ Charge**”) on the Property in the amount of \$1 million to protect the directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the CCAA proceedings, except to the extent that the obligation or liability was incurred as a result of the individual’s gross negligence or wilful misconduct.

106. It is expected that the D&O Insurance will provide sufficient coverage to protect the directors and officers from all of the above costs and expenses, and the proposed Initial Order provides that the charge shall only apply to the extent that the D&O Insurance is not adequate.

107. The continued involvement of the directors and officers is required in order to implement the restructuring plan.

#### **Administration Charge**

108. The Applicants are also seeking a first-ranking charge on the Property (the “**Administration Charge**”) to rank ahead of all other charges and ahead of all

other existing security interests of any persons, except for any person who is a “secured creditor”, as defined in the CCAA, as of the date of the Initial Order and who has not received notice of this application, in the maximum amount of \$500,000.00 to secure the fees and disbursements incurred in connection with services rendered to the Applicants both before and after the commencement of the CCAA proceedings by counsel to the Applicants, the Monitor, and the Monitor’s counsel.

109. The Applicants believe it to be reasonable and appropriate in view of the complexities of the Applicants’ CCAA proceedings and the services to be provided by the beneficiaries of the Administration Charge.

**Summary of the Proposed Rankings of the Court-Ordered Charges**

110. The effect of the proposed Court-ordered charges in relation to each other:

- a) First – the Administration Charge; and,
- b) Second – the Directors’ Charge.

111. It is proposed that the Court-ordered charges will rank ahead of all other existing security interests of any persons, except for any person who is a “secured creditor”, as defined in the CCAA, as of the date of the Initial Order and who has

not received notice of this application. As stated above, the only secured creditors of the Applicants are the equipment lessors and related parties.

## V. OVERVIEW OF THE 13-WEEK CASH FLOW FORECAST

112. As at January 7, 2012, the Applicants' cash balance was as follows on a company by company basis:

<b>Valle Foam</b>	<b>\$2,661,720.00</b>
<b>Domfoam</b>	<b>\$1,616,213.00</b>
<b>A-Z</b>	<b>\$449,285.00</b>

113. The Applicants have prepared a company by company Cash Flow Forecast for the period of January 7, 2012 to March 31, 2012 (the "**Cash Flow Forecast**") which each forecasts the Applicants' receipts and disbursements and cash position.

114. The cash flows have been prepared by the Chief Financial Officers of the Applicants, in consultation with me, the management of the Applicants and with some input from Deloitte & Touche LLP., and in accordance with generally accepted accounting methods and principles.

115. Copies of the Cash Flow Forecasts are attached as **Exhibit "M"**.

116. The principal assumptions used in determining the Cash Flow Forecast were as follows:

- a) That the Applicants will be granted the order being sought herein on January 12, 2011;
- b) That Valle Foam will cease operations in the near future while Domfoam and A-Z continue to operate on a business as usual basis, subject to the terms of the order being sought or as set out below;
- c) That the business being conducted by Domfoam after January 12, 2012 will service certain underlay customers of Valle Foam;
- d) That there will be no disbursements of accrued liabilities post filing other than those authorized by the order being sought;
- e) That customers continue to pay as usual with respect to Domfoam and A-Z but that there will be greater difficulty in collecting the receivables of Valle Foam if it ceases operating;
- f) That Valle Foam will continue to pay any outstanding pre filing debts owing to Domfoam as and when due; and,

g) That certain customers will set off their accrued customer rebates against receivables owing to the Applicants from those customers. (Many customers accrued rebates under arrangements with the company throughout 2011 which rebates would, in the ordinary course be paid as credit notes against future purchases by those customers. It is anticipated many customers will set off those anticipated rebates against receivables owing to the Applicants. The Applicants have not determined whether or not this is a valid set off.

117. As set out in the cash flows, each of the Applicants anticipate being cash positive for the entire period forecast by the cash flow.

118. In addition, Valle Foam has advised Domfoam that it is prepared to provide a loan to Domfoam, on a secured basis, of up to \$1 million, to provide additional stability to the cash position of Domfoam, if requested by Domfoam. A condition of any such loan will be that the security for such a loan will be a first priority charge on the assets of Domfoam, subject only to such then existing court ordered charges. As set out in the cash flow, Valle Foam has the available cash in hand now in order to be able to do this now or at any time during the cash flow period.

As set out above, there are no material secured creditors of Domfoam who would be prejudiced by such security being granted to Valle Foam.

## **VI. MONITOR**

119. On or about June 15, 2011, Deloitte & Touche Inc. was retained by the Applicants to provide advice on their issues with the Competition Bureau, which assignment also involved the discussion of the restructuring options available to the Applicants.

120. Those discussions included the proposal that Deloitte & Touche Inc. (“Deloitte”) would act as Monitor in CCAA proceedings should such proceedings be necessary and if appointed by the Court.

121. In the course of fulfilling its mandate, Deloitte has become intimately familiar with the Applicants’ business and their current financial difficulties. Deloitte is a trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and is not subject to any of the restrictions on who may be appointed as Monitor set out in section 11.7(2) of the CCAA.

122. Deloitte has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval.

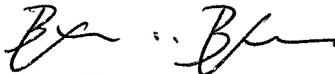
**VII. PURPOSE OF AFFIDAVIT**

123. This affidavit is sworn in support of the Applicants' application for protection pursuant to the CCAA and for no improper purpose.

SWORN before me at the City )  
 )  
of Toronto, in the Province of )  
 )  
Ontario, this 11<sup>th</sup> day of )  
 )  
January, 2012. )



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



Commissioner For Taking Affidavits

#1829678 | 4079509

**Benjamin Young Bloom, a  
Commissioner etc., Province of Ontario,  
while a Student-at-Law.  
Expires August 18, 2014.**

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This is Exhibit "A" referred to  
in the Affidavit of Tony Vallecoccia

Sworn this 11th  
day of January, 2012.

  
A Commissioner for Taking Affidavits

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**VALLE FOAM INDUSTRIES (1995) INC.**

**Financial Statements**

**Year Ended April 30, 2011**

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Index to Financial Statements**  
**Year Ended April 30, 2011**

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**NEWMAN & SVERSKY LLP**  
CHARTERED ACCOUNTANTS

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**INDEPENDENT AUDITORS' REPORT**

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To the Shareholders of Valle Foam Industries (1995) Inc.

We have audited the accompanying financial statements of Valle Foam Industries (1995) Inc., which comprise the balance sheet as at April 30, 2011, and the statements of retained earnings, loss and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information. These financial statements have been prepared in accordance with Canadian generally accepted accounting principles using differential reporting options available to non-publicly accountable enterprises, as described in Note 3 to the financial statements.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian generally accepted accounting principles, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

(continues)

Independent Auditors' Report to the Shareholders of Valle Foam Industries (1995) Inc. (continued)

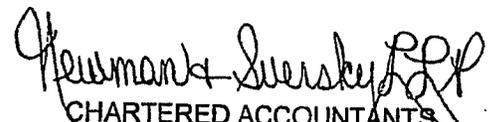
**Opinion**

In our opinion, the financial statements present fairly, in all material respects, the financial position of Valle Foam Industries (1995) Inc. as at April 30, 2011, and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

**Emphasis of Matter**

We draw attention to Note 1 to the financial statements which describes the uncertainty related to the outcome of the criminal investigation from the Competition Bureau of Canada filed against the company. Our opinion is not qualified in respect of this matter.

Toronto, Ontario  
September 21, 2011

  
CHARTERED ACCOUNTANTS  
Licensed Public Accountants

**VALLE FOAM INDUSTRIES (1995) INC.****Balance Sheet****As at April 30, 2011**

	2011	2010
<b>ASSETS</b>		
<b>CURRENT</b>		
Cash	\$ 2,966,389	\$ 7,284,628
Accounts receivable	6,894,156	6,151,495
Inventory (Note 4)	3,046,980	3,646,082
Income taxes recoverable	410,408	307,230
Sundry	711,734	422,804
	<b>14,029,667</b>	<b>17,812,239</b>
<b>PROPERTY, PLANT AND EQUIPMENT (Note 5)</b>	<b>5,302,166</b>	<b>6,073,522</b>
<b>DUE FROM RELATED PARTY (Note 6)</b>	<b>1,207,076</b>	<b>157,254</b>
<b>GOODWILL (Note 7)</b>	<b>-</b>	<b>2,701,600</b>
	<b>\$ 20,538,909</b>	<b>\$ 26,744,615</b>
<b>LIABILITIES</b>		
<b>CURRENT</b>		
Accounts payable	\$ 3,465,463	\$ 4,298,425
Harmonized sales tax payable	137,519	63,898
Employee deductions payable	49,746	48,780
	<b>3,652,728</b>	<b>4,411,103</b>
<b>SHAREHOLDERS' EQUITY</b>		
Share capital (Note 8)	201	201
Contributed surplus	4,804,529	4,804,529
Retained earnings	12,081,451	17,528,782
	<b>16,886,181</b>	<b>22,333,512</b>
	<b>\$ 20,538,909</b>	<b>\$ 26,744,615</b>

*Going concern (Note 1)**Contingent liability (Note 12)***ON BEHALF OF THE BOARD**\_\_\_\_\_  
*Director*\_\_\_\_\_  
*Director*

See notes to financial statements

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Statement of Retained Earnings**  
**Year Ended April 30, 2011**

	2011	2010
<b>RETAINED EARNINGS - BEGINNING OF YEAR</b>	<b>\$ 17,528,782</b>	<b>\$ 17,814,224</b>
Net loss	(5,447,331)	(285,442)
<b>RETAINED EARNINGS - END OF YEAR</b>	<b>\$ 12,081,451</b>	<b>\$ 17,528,782</b>

See notes to financial statements

**VALLE FOAM INDUSTRIES (1995) INC.**

**Statement of Loss**

**Year Ended April 30, 2011**

	2011	2010
<b>SALES</b>	<b>\$ 40,465,588</b>	<b>\$ 43,651,487</b>
<b>COST OF SALES</b>		
Materials	24,206,040	25,535,812
Direct labour	8,495,599	8,176,335
Rent	1,637,607	1,682,796
Factory	1,309,641	1,342,972
Utilities	873,184	942,851
Amortization	697,187	809,553
Realty taxes	613,613	620,312
Insurance	237,782	220,244
	<b>38,070,653</b>	<b>39,330,875</b>
<b>GROSS PROFIT</b>	<b>2,394,935</b>	<b>4,320,612</b>
<b>EXPENSES</b>		
Schedule of Administrative and General Expenses (Schedule 1)	3,035,321	2,170,567
Schedule of Selling and Delivery Expenses (Schedule 2)	2,709,822	2,681,136
	<b>5,745,143</b>	<b>4,851,703</b>
<b>LOSS FROM OPERATIONS</b>	<b>(3,350,208)</b>	<b>(531,091)</b>
<b>OTHER INCOME (EXPENSES)</b>		
Gain (loss) on disposal of assets	3,084	(5,931)
Investment tax credits earned	16,981	14,171
Government grant	-	197,447
Legal settlement	270,709	-
Impairment to goodwill (Note 7)	(2,701,600)	-
	<b>(2,410,826)</b>	<b>205,687</b>
<b>LOSS BEFORE INCOME TAXES</b>	<b>(5,761,034)</b>	<b>(325,404)</b>
Income taxes (recovered)	(313,703)	(39,962)
<b>NET LOSS</b>	<b>\$ (5,447,331)</b>	<b>\$ (285,442)</b>

**VALLE FOAM INDUSTRIES (1995) INC.**

**Statement of Cash Flows**

**Year Ended April 30, 2011**

	2011	2010
<b>OPERATING ACTIVITIES</b>		
Net loss	\$ (5,447,331)	\$ (285,442)
Items not affecting cash:		
Amortization of property, plant and equipment	792,515	931,246
Loss (gain) on disposal of assets	(3,084)	5,931
Impairment to goodwill	2,701,600	-
	<u>(1,956,300)</u>	<u>651,735</u>
Changes in non-cash working capital:		
Accounts receivable	(742,661)	1,019,098
Inventory	599,102	(443,434)
Accounts payable	(832,962)	(230,600)
Income taxes payable	(103,178)	84,913
Harmonized sales tax payable	73,621	47,947
Sundry	(288,930)	2,474
Employee deductions payable	966	(1,251)
	<u>(1,294,042)</u>	<u>479,147</u>
<b>Cash flow from (used by) operating activities</b>	<u>(3,250,342)</u>	<u>1,130,882</u>
<b>INVESTING ACTIVITIES</b>		
Purchase of property, plant and equipment	(18,075)	(338,928)
Proceeds on disposal of property, plant and equipment	-	14,530
<b>Cash flow used by investing activities</b>	<u>(18,075)</u>	<u>(324,398)</u>
<b>FINANCING ACTIVITY</b>		
Advances to related parties	(1,049,822)	(12,254)
<b>INCREASE (DECREASE) IN CASH FLOW</b>	<u>(4,318,239)</u>	<u>794,230</u>
<b>CASH - BEGINNING OF YEAR</b>	<u>7,284,628</u>	<u>6,490,398</u>
<b>CASH - END OF YEAR</b>	<u>\$ 2,966,389</u>	<u>\$ 7,284,628</u>

See notes to financial statements

# VALLE FOAM INDUSTRIES (1995) INC.

## Notes to Financial Statements

Year Ended April 30, 2011

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### 1. GOING CONCERN

The accompanying financial statements have been prepared using Canadian generally accepted accounting principles on the going concern assumption that the corporation will be able to realize its assets and discharge its liabilities in the normal course of business. Over the past five years sales have decreased due to loss of customers and competitive pricing. This has resulted in severe cash flow problems. Additionally, in the current year the corporation has incurred significant legal expenses to defend itself in a criminal investigation from the Competition Bureau of Canada. The pending verdict of the criminal investigation and the legal expenses incurred will result with a significant liability that may cast significant doubt on the ability of the corporation to pay the liability without increased financing. These material uncertainties may cast significant doubt about the appropriateness of the going concern assumption. Management is currently evaluating options to mitigate the risk of the going concern. These options include a restructuring of the corporation's operations through downsizing and additional financing from an external source. There can be no assurance that the options evaluated by management will be successful.

These financial statements do not reflect adjustments in the carrying values of the assets and liabilities, the reported revenues and expenses, and the balance sheet classifications used, that would be necessary if the company were unable to realize its assets and settle its liabilities as a going concern in the normal course of operations, such adjustments could be material.

### 2. DESCRIPTION OF BUSINESS

Valle Foam Industries (1995) Inc. is incorporated under the Business Corporations Act of Ontario. The company's principal business activity is the manufacture and wholesale of sponge and polyurethane foam.

### 3. SIGNIFICANT ACCOUNTING POLICIES

#### Going concern

These financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. Should the corporation be unable to continue as a going concern, it may be unable to realize the carrying value of its assets and to meet its liabilities as they become due.

The corporation's ability to continue as a going concern is dependent upon its ability to attain profitable operations and generate funds therefrom, and to continue to obtain borrowings from third parties sufficient to meet current and future obligations and/or restructure the existing debt and payables. These financial statements do not reflect the adjustments or reclassification of assets and liabilities, which would be necessary if the corporation were unable to continue its operations.

#### Differential reporting

The company, with the unanimous consent of its shareholders, has elected to prepare its financial statements in accordance with Canadian generally accepted accounting principles, using the differential reporting options available to non-publicly accountable enterprises described in the following paragraphs:

(continues)

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Notes to Financial Statements**  
**Year Ended April 30, 2011**

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**3. SIGNIFICANT ACCOUNTING POLICIES** *(continued)*

a) **Goodwill**

The company has elected to apply the differential reporting measurement option for goodwill and accordingly, will test goodwill not subject to amortization for impairment only when an event or circumstance occurs that indicates that the fair value of a reporting unit may be less than its carrying amount or its carrying amount may not be recoverable. Any impairment loss is recorded as a charge to income in the year the loss is recognized.

b) **Income taxes**

The company has elected to apply the differential reporting measurement option allowed for income taxes and, accordingly, to account for income taxes using the taxes payable method.

In addition, the company has applied the following accounting policies without reference to differential reporting:

**Foreign currency translation**

Accounts in foreign currencies have been translated into Canadian dollars using the temporal method. Under this method, monetary assets and liabilities have been translated at the year end exchange rate. Non-monetary assets, revenue and expenses have been translated at the rate of exchange prevailing at the date of transaction.

**Inventory**

The company's inventory of raw materials is recorded at the lower of cost and net realizable value. Work-in-process and finished goods are valued at the lower of cost and net realizable value. Net realizable value is defined as the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Cost of inventory is determined on a first-in, first-out basis.

**Investment tax credit**

The corporation claims investment tax credits as a result of research and development. Investment tax credits are recognized when the related expenditures are incurred and there is reasonable assurance of their realization. Management has made a number of estimates and assumptions in determining the expenditures eligible for the investment tax credit claim. The allowed amount of the investment tax credit claim could be significantly different from the amount recognized during the year upon assessment by Canada Revenue Agency.

*(continues)*

**VALLE FOAM INDUSTRIES (1995) INC.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

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**3. SIGNIFICANT ACCOUNTING POLICIES (continued)**

**Measurement uncertainty**

Certain amounts in the financial statements are subject to measurement uncertainty and are based on the company's best information and judgment. Actual results could differ from these estimates.

Examples of significant estimates include:

- providing for amortization of property, plant and equipment and goodwill;
- the estimated useful lives of assets;
- the allowance for doubtful accounts;
- the allowance for inventory obsolescence;
- the recoverability of tangible assets;
- the recoverability of goodwill;

**Property, plant and equipment**

Property, plant and equipment are stated at cost less accumulated amortization. Property, plant and equipment are amortized over their estimated useful lives at the following rates and methods:

Automotive equipment	30%	declining balance method
Computer hardware	20%	declining balance method
Computer software	20%	declining balance method
Furniture and fixtures	20%	declining balance method
Machinery and equipment	10%	declining balance method
Paving	8%	declining balance method
Leasehold improvements	5 years	straight-line method

The company regularly reviews its property, plant and equipment to eliminate obsolete items. Amortization is pro-rated by 50% in the year of acquisition.

**Revenue recognition**

The corporation recognizes revenues when they are earned, specifically when all the following conditions are met:

- products are delivered to customers
- there is clear evidence that an arrangement exists
- amounts are fixed or can be determined
- the ability to collect is reasonably assured.

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Notes to Financial Statements**  
**Year Ended April 30, 2011**

**4. INVENTORY**

	2011	2010
Raw materials	\$ 1,697,074	\$ 2,327,437
Work-in-process	1,264,445	1,153,109
Finished goods	85,461	165,536
	<b>\$ 3,046,980</b>	<b>\$ 3,646,082</b>

**5. PROPERTY, PLANT AND EQUIPMENT**

	Cost	Accumulated amortization	2011 Net book value	2010 Net book value
Automotive equipment	\$ 1,616,293	\$ 1,437,643	\$ 178,650	\$ 237,792
Computer hardware	318,641	258,591	60,050	75,062
Computer software	107,629	73,792	33,837	42,296
Furniture and fixtures	212,431	194,404	18,027	22,534
Machinery and equipment	15,417,337	10,760,054	4,657,283	5,161,089
Paving	373,825	141,860	231,965	252,136
Leasehold improvements	3,411,389	3,289,035	122,354	282,613
	<b>\$ 21,457,545</b>	<b>\$ 16,155,379</b>	<b>\$ 5,302,166</b>	<b>\$ 6,073,522</b>

**6. DUE FROM RELATED PARTY**

	2011	2010
Domfoam International Inc.	\$ 1,207,076	\$ 3,254
631400 Ontario Limited	-	154,000
	<b>\$ 1,207,076</b>	<b>\$ 157,254</b>

The loan receivable is unsecured, non-interest bearing and has no specific terms for repayment.

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Notes to Financial Statements**  
**Year Ended April 30, 2011**

**7. GOODWILL IMPAIRMENT LOSS**

	2011	2010
Goodwill	\$ 6,878,632	\$ 6,878,632
Accumulated amortization	(4,177,032)	(4,177,032)
Subtotal	2,701,600	2,701,600
Impairment of goodwill	(2,701,600)	-
	\$ -	\$ 2,701,600

The Goodwill was tested for impairment in the current year as the corporation was charged in a criminal investigation by the Competition Bureau of Canada. The results of this adverse legal situation combined with the consecutive years of reporting an accounting loss has decreased the corporations current operating cash flow and operating profit. The impact of the future penalty liability from the criminal investigation is expected to be significantly greater than the value of the goodwill.

**8. SHARE CAPITAL**

Authorized:

- Unlimited Class "A" shares, voting
- Unlimited Class "B" shares, non-voting

	2011	2010
Issued:		
201 Class "A" shares, voting	\$ 201	\$ 201

**VALLE FOAM INDUSTRIES (1995) INC.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

**9. INCOME TAXES**

The income tax provision recorded differs from the income tax obtained by applying the statutory income tax rate of 27.84% (2010 - 28.99%) to the income for the year and is reconciled as follows:

	2011	2010
Loss before income taxes	\$ (5,761,034)	\$ (325,404)
Income tax expense at the combined basic federal and provincial tax rate:	\$ (1,603,872)	\$ (94,335)
Increase (decrease) resulting from:		
Amortization claimed in excess of CCA	67,459	51,417
CEC claimed in excess of amortization	(6,972)	(7,908)
Non-deductible expenses	887,741	6,417
SR & ED deducted in excess of claim	928	15,342
Realized (gains)/loss for accounting purposes	(859)	1,719
Investment tax credit receivable	-	(5,205)
Taxes recovered from loss carryback in prior years	-	(7,409)
Non-capital loss carried forward	341,872	-
Effective tax expense	\$ (313,703)	\$ (39,962)

**10. RELATED PARTY TRANSACTIONS**

The following is a summary of the company's related party transactions:

	2011	2010
<b>Domfoam International Inc.</b>		
Parent company		
Sales	\$ 725,465	\$ 1,028,214
Purchases	5,786,585	6,393,378
Accounts receivable	62,164	449,529
Accounts payable	394,561	59,634
Loan receivable	1,207,076	-
<b>AZ Sponge &amp; Foam Products Ltd.</b>		
The company is under common control.		
Sales	92,176	52,426
Purchases	-	2,551
Accounts receivable	15,397	28,198
<b>Global Upholstery Co. Limited</b>		
Indirect shareholder		
Sales	5,125,634	4,674,715
Accounts receivable	456,935	383,589

(continues)

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Notes to Financial Statements**  
**Year Ended April 30, 2011**

**10. RELATED PARTY TRANSACTIONS (continued)**

	2011	2010
<b>170 Glidden Road Co-Tenancy</b>		
The company is under common control		
Rent expense	\$ 360,000	\$ 360,000
Accounts payable	101,700	360,000
<b>631400 Ontario Ltd.</b>		
The company is under common control		
Rent expense	663,948	663,948
Loan receivable	-	154,000
<b>Finley Road Investments Limited</b>		
Indirect shareholder		
Rent expense	344,450	344,450
Accounts payable	97,307	344,450

These transactions are in the normal course of operations and are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

## VALLE FOAM INDUSTRIES (1995) INC.

### Notes to Financial Statements

Year Ended April 30, 2011

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#### 11. FINANCIAL INSTRUMENTS

##### Credit risk

Credit risk arises from the potential that a counter party will fail to perform its obligations. The company is exposed to credit risk from customers. In order to reduce its credit risk, the company reviews a new customer's credit history before extending credit and conducts regular reviews of its existing customers' credit performance. An allowance for doubtful accounts is established based upon factors surrounding the credit risk of specific accounts, historical trends and other information. The company has a significant number of customers which minimizes concentration of credit risk.

##### Fair value

The company's carrying value of cash and cash equivalents, accounts receivable, and accounts payable approximates its fair value due to the immediate or short term maturity of these instruments.

##### Currency risk

Currency risk is the risk to the company's earnings that arise from fluctuations of foreign exchange rates and the degree of volatility of these rates. The company is exposed to foreign currency exchange risk on cash, accounts receivable, and accounts payable held in U.S. dollars. The company does not use derivative instruments to reduce its exposure to foreign currency risk.

##### Commodity risk

The company is exposed to fluctuations in commodity prices for natural gas, crude oil and natural gas liquids. Commodity prices are affected by many factors including supply, demand and the Canadian to U.S. dollar exchange rate. The company had no financial hedges or price commodity contracts in place at year end.

#### 12. CONTINGENT LIABILITY

On July 27, 2010 the US Department of Justice and the Canadian Competition Bureau commenced criminal investigations against the company.

The company has been named as a defendant in over 40 civil class action and direct action complaints in the United States federal district courts.

The company has been named as a defendant in 3 proposed class action proceedings in the provinces of Ontario and British Columbia that propose to represent a national class of purchasers across Canada.

As of the date of this report it is the opinion of the company's solicitors that the amount of the potential liability from the Competition Bureau of Canada is between the range of \$ 1 million and \$12 million.

**VALLE FOAM INDUSTRIES (1995) INC.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

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**13. CONTRACTUAL OBLIGATIONS**

The company has a long-term lease with respect to its premises. In addition the company has operating leases for freight delivery trucks. The future minimum annual rent payments exclusive of operating costs for which the company is responsible is as follows:

Contractual obligation repayment schedule:

2012	\$	897,521
2013		799,828
2014		761,170
2015		704,808
2016		704,808
Thereafter		<u>57,885</u>
	\$	<u>3,926,020</u>

**14. COMPARATIVE FIGURES**

Certain figures in the 2010 financial statements have been restated to conform with the basis of presentation used in 2011.

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Schedule of Administrative and General Expenses**  
**Year Ended April 30, 2011**

*(Schedule 1)*

	2011	2010
<b>ADMINISTRATIVE AND GENERAL</b>		
Bad debts	\$ 498,126	\$ 381,921
Bank charges and interest	35,430	34,298
Computer	81,788	102,569
Foreign exchange (gains)/losses	(41,289)	385,298
Insurance	66,649	76,777
Management salaries	273,996	277,509
Office and general	97,960	96,106
Office salaries	593,819	657,141
Professional fees	1,337,024	58,041
Telephone	91,818	100,907
	<b>\$ 3,035,321</b>	<b>\$ 2,170,567</b>

**VALLE FOAM INDUSTRIES (1995) INC.**  
**Schedule of Selling and Delivery Expenses**  
**Year Ended April 30, 2011**

**(Schedule 2)**

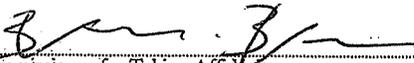
	<b>2011</b>	<b>2010</b>
<b>SELLING AND DELIVERY</b>		
Advertising and promotion	\$ 48,660	\$ 73,281
Amortization	95,329	121,692
Vehicle	740,761	675,887
Commissions and sales salaries	382,400	424,264
Delivery, freight and express	1,442,672	1,386,012
	<b>\$ 2,709,822</b>	<b>\$ 2,681,136</b>

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This is Exhibit "B" referred to  
in the Affidavit of Tony Vallecoccia

Sworn this 11th

day of January, 2012.

  
A Commissioner for Taking Affidavits

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**DOMFOAM INTERNATIONAL INC.**  
**Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

**DOMFOAM INTERNATIONAL INC.**  
**Index to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

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**NEWMAN & SVERSKY LLP**  
CHARTERED ACCOUNTANTS

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**INDEPENDENT AUDITORS' REPORT**

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To the Shareholders of Domfoam International Inc.

We have audited the accompanying non-consolidated financial statements of Domfoam International Inc., which comprise the non-consolidated balance sheet as at April 30, 2011 and April 30, 2010 and the non-consolidated statements of loss, deficit and cash flows for the year then ended, and a summary of significant accounting policies and other explanatory information. These non-consolidated financial statements have been prepared in accordance with Canadian generally accepted accounting principles using differential reporting options available to non-publicly accountable enterprises, as described in Note 3 to the non-consolidated financial statements.

**Management's Responsibility for the Non-consolidated Financial Statements**

Management is responsible for the preparation and fair presentation of these non-consolidated financial statements in accordance with Canadian generally accepted accounting principles, and for such internal control as management determines is necessary to enable the preparation of non-consolidated financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these non-consolidated financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the non-consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the non-consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the non-consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the non-consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the non-consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

*(continues)*

Independent Auditors' Report to the Shareholders of Domfoam International Inc. (continued)

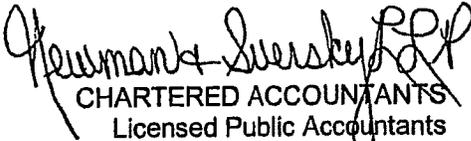
**Opinion**

In our opinion, the non-consolidated financial statements present fairly, in all material respects, the financial position of Domfoam International Inc. as at April 30, 2011 and April 30, 2010, and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

**Emphasis of Matter**

We draw attention to Note 1 to the financial statements which describes the uncertainty related to the outcome of the criminal investigation from the Competition Bureau of Canada filed against the company. Our opinion is not qualified in respect of this matter.

Toronto, Ontario  
September 21, 2011

  
CHARTERED ACCOUNTANTS  
Licensed Public Accountants

**DOMFOAM INTERNATIONAL INC.**  
**Non-Consolidated Balance Sheet**  
**April 30, 2011**

	2011	2010
<b>ASSETS</b>		
<b>CURRENT</b>		
Accounts receivable	\$ 4,553,003	\$ 4,856,384
Inventory (Note 4)	5,312,105	6,564,405
Income taxes recoverable	689,377	139,585
Sundry	266,226	499,907
	<b>10,820,711</b>	<b>12,060,281</b>
<b>PROPERTY, PLANT AND EQUIPMENT (Note 5)</b>	<b>4,499,386</b>	<b>4,681,088</b>
<b>INVESTMENTS (Note 6)</b>	<b>4,804,732</b>	<b>4,804,732</b>
<b>GOODWILL (Note 7)</b>	<b>-</b>	<b>3,604,749</b>
	<b>\$ 20,124,829</b>	<b>\$ 25,150,850</b>
<b>LIABILITIES</b>		
<b>CURRENT</b>		
Bank indebtedness (Note 8)	\$ 1,538,575	\$ 430,205
Accounts payable	1,710,929	3,301,088
Goods and services tax payable	78,912	6,673
	<b>3,328,416</b>	<b>3,737,966</b>
<b>DUE TO RELATED PARTY (Note 9)</b>	<b>1,207,076</b>	<b>-</b>
	<b>4,535,492</b>	<b>3,737,966</b>
<b>SHAREHOLDERS' EQUITY</b>		
Share capital (Note 10)	7,415,843	7,415,843
Contributed surplus	10,846,763	10,846,763
Retained earnings (deficit)	(2,673,269)	3,150,278
	<b>15,589,337</b>	<b>21,412,884</b>
	<b>\$ 20,124,829</b>	<b>\$ 25,150,850</b>

Going concern (Note 1)

Contingent liability (Note 14)

**ON BEHALF OF THE BOARD**

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director

See accompanying notes to the non-consolidated financial statements

**DOMFOAM INTERNATIONAL INC.**  
**Non-Consolidated Statement of Deficit**  
**Year Ended April 30, 2011**

	2011	2010
<b>RETAINED EARNINGS - BEGINNING OF YEAR</b>	<b>\$ 3,150,278</b>	<b>\$ 3,650,399</b>
Net loss	<b>(5,823,547)</b>	<b>(500,121)</b>
<b>RETAINED EARNINGS (DEFICIT) - END OF YEAR</b>	<b>\$ (2,673,269)</b>	<b>\$ 3,150,278</b>

See accompanying notes to the non-consolidated financial statements

**DOMFOAM INTERNATIONAL INC.**  
**Non-Consolidated Statement of Loss**  
**Year Ended April 30, 2011**

	2011	2010
<b>SALES</b>	<b>\$ 37,152,961</b>	<b>\$ 39,665,459</b>
<b>COST OF SALES</b>		
Materials	22,509,536	23,251,173
Direct labour	6,537,758	6,253,931
Rent	1,656,676	1,607,250
Factory	1,364,537	1,484,083
Utilities	784,250	756,503
Amortization	505,573	568,864
Realty taxes	344,084	210,947
Insurance	172,149	178,369
	<b>33,874,563</b>	<b>34,311,120</b>
<b>GROSS PROFIT</b>	<b>3,278,398</b>	<b>5,354,339</b>
<b>EXPENSES</b>		
Schedule of Administrative and General Expenses (Schedule 1)	2,889,338	2,092,496
Schedule of Selling and Delivery Expenses (Schedule 2)	3,821,305	3,703,810
	<b>6,710,643</b>	<b>5,796,306</b>
<b>LOSS FROM OPERATIONS</b>	<b>(3,432,245)</b>	<b>(441,967)</b>
<b>OTHER INCOME (EXPENSES)</b>		
Interest income	4,050	9,836
Investment tax credits earned	22,703	22,560
Legal settlement	559,813	-
Impairment to goodwill (Note 7)	(3,604,749)	-
	<b>(3,018,183)</b>	<b>32,396</b>
<b>LOSS BEFORE INCOME TAXES</b>	<b>(6,450,428)</b>	<b>(409,571)</b>
Income taxes (recovered) (Note 11)	(626,881)	90,550
<b>NET LOSS</b>	<b>\$ (5,823,547)</b>	<b>\$ (500,121)</b>

**DOMFOAM INTERNATIONAL INC.**  
**Non-Consolidated Statement of Cash Flows**  
**Year Ended April 30, 2011**

	2011	2010
<b>OPERATING ACTIVITIES</b>		
Net loss	\$ (5,823,547)	\$ (500,121)
Items not affecting cash:		
Amortization of property, plant and equipment	559,486	632,290
Goodwill impairment loss	3,604,749	-
	<b>(1,659,312)</b>	<b>132,169</b>
Changes in non-cash working capital:		
Accounts receivable	303,380	478,463
Inventory	1,252,300	(1,375,855)
Accounts payable	(1,590,159)	500,927
Income taxes payable	(549,792)	(243,758)
Sundry	233,681	39,704
Goods and services taxes payable	72,239	15,655
	<b>(278,351)</b>	<b>(584,864)</b>
<b>Cash flow used by operating activities</b>	<b>(1,937,663)</b>	<b>(452,695)</b>
<b>INVESTING ACTIVITIES</b>		
Purchase of property, plant and equipment	(390,250)	(132,192)
Proceeds on disposal of property, plant and equipment	12,467	-
<b>Cash flow used by investing activities</b>	<b>(377,783)</b>	<b>(132,192)</b>
<b>FINANCING ACTIVITIES</b>		
Bank indebtedness	1,108,370	584,887
Advances from related parties	1,207,076	-
<b>Cash flow from financing activities</b>	<b>2,315,446</b>	<b>584,887</b>
<b>INCREASE IN CASH FLOW</b>	<b>-</b>	<b>-</b>
<b>CASH - BEGINNING OF YEAR</b>	<b>-</b>	<b>-</b>
<b>CASH - END OF YEAR</b>	<b>\$ -</b>	<b>\$ -</b>

See accompanying notes to the non-consolidated financial statements

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

---

**1. GOING CONCERN**

The accompanying financial statements have been prepared using Canadian generally accepted accounting principles on the going concern assumption that the corporation will be able to realize its assets and discharge its liabilities in the normal course of business. Over the past five years sales have decreased due to loss of customers and competitive pricing. This has resulted in severe cash flow problems. Additionally, in the current year the corporation has incurred significant legal expenses to defend itself in a criminal investigation from the Competition Bureau of Canada. The pending verdict of the criminal investigation and the legal expenses incurred will result with a significant liability that may cast significant doubt on the ability of the corporation to pay the liability without increased financing. These material uncertainties may cast significant doubt about the appropriateness of the going concern assumption. Management is currently evaluating options to mitigate the risk of the going concern. These options include a restructuring of the corporation's operations through downsizing and additional financing from an external source. There can be no assurance that the options evaluated by management will be successful.

These financial statements do not reflect adjustments in the carrying values of the assets and liabilities, the reported revenues and expenses, and the balance sheet classifications used, that would be necessary if the company were unable to realize its assets and settle its liabilities as a going concern in the normal course of operations, such adjustments could be material.

**2. DESCRIPTION OF BUSINESS**

Domfoam International Inc. was incorporated under the Business Corporations Act of Quebec. The company's principal business activity is the manufacture and wholesale of sponge and polyurethane foam.

**3. SIGNIFICANT ACCOUNTING POLICIES**

**Going concern**

These financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. Should the corporation be unable to continue as a going concern, it may be unable to realize the carrying value of its assets and to meet its liabilities as they become due.

The corporation's ability to continue as a going concern is dependent upon its ability to attain profitable operations and generate funds therefrom, and to continue to obtain borrowings from third parties sufficient to meet current and future obligations and/or restructure the existing debt and payables. These financial statements do not reflect the adjustments or reclassification of assets and liabilities, which would be necessary if the corporation were unable to continue its operations.

*(continues)*

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

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**3. SIGNIFICANT ACCOUNTING POLICIES (continued)**

**Differential reporting**

The company, with the unanimous consent of its shareholders, has elected to prepare its financial statements in accordance with Canadian generally accepted accounting principles, using the differential reporting options available to non-publicly accountable enterprises described in the following paragraphs:

**a) Investments in subsidiaries**

The company has elected to apply the differential reporting measurement option allowed for accounting for subsidiaries and, accordingly, to account for its investment in subsidiaries at cost.

**b) Goodwill**

The company has elected to apply the differential reporting measurement option for goodwill and accordingly, will test goodwill not subject to amortization for impairment only when an event or circumstance occurs that indicates that the fair value of a reporting unit may be less than its carrying amount or its carrying amount may not be recoverable. Any impairment loss is recorded as a charge to income in the year the loss is recognized.

**c) Income taxes**

The company has elected to apply the differential reporting measurement option allowed for income taxes and, accordingly, to account for income taxes using the taxes payable method.

In addition, the company has applied the following accounting policies without reference to differential reporting:

**Foreign currency translation**

Accounts in foreign currencies have been translated into Canadian dollars using the temporal method. Under this method, monetary assets and liabilities have been translated at the year end exchange rate. Non-monetary assets, revenues and expenses have been translated at the rate of exchange prevailing at the date of transaction.

**Inventory**

The company's inventory of raw materials is recorded at the lower of cost and net realizable value. Work-in-process and finished goods are valued at the lower of cost and net realizable value. Net realizable value is defined as the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.

Cost of inventory is determined on a first-in, first-out basis. The inventory consists of foam products with a steady scrap market demand, therefore the company does not provide for obsolescence.

*(continues)*

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

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**3. SIGNIFICANT ACCOUNTING POLICIES** *(continued)*

**Investment tax credit**

The corporation claims investment tax credits as a result of research and development. Investment tax credits are recognized when the related expenditures are incurred and there is reasonable assurance of their realization. Management has made a number of estimates and assumptions in determining the expenditures eligible for the investment tax credit claim. The allowed amount of the investment tax credit claim could be significantly different from the amount recognized during the year upon assessment by Canada Revenue Agency.

**Measurement uncertainty**

Certain amounts in the financial statements are subject to measurement uncertainty and are based on the company's best information and judgment. Actual results could differ from these estimates.

Examples of significant estimates include:

- providing for amortization of property, plant and equipment and goodwill;
- the estimated useful lives of assets;
- the allowance for doubtful accounts;
- the recoverability of tangible assets;
- the recoverability of long-term investments;
- the recoverability of goodwill.

**Property, plant and equipment**

Property, plant and equipment are stated at cost less accumulated amortization. Property, plant and equipment are amortized over their estimated useful lives at the following rates and methods:

Automotive equipment	15%	declining balance method
Computer hardware	20%	declining balance method
Computer software	20%	declining balance method
Equipment under capital lease	10%	declining balance method
Furniture and fixtures	20%	declining balance method
Machinery and equipment	10%	declining balance method
Leasehold improvements	5 years	straight-line method

Property, plant and equipment acquired during the year but not placed into use are not amortized until they are placed into use.

Amortization is pro-rated by 50% in the year of acquisition.

*(continues)*

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

**3. SIGNIFICANT ACCOUNTING POLICIES** *(continued)*

**Revenue recognition**

The corporation recognizes revenues when they are earned, specifically when all the following conditions are met:

- products are delivered to customers
- there is clear evidence that an arrangement exists
- amounts are fixed or can be determined
- the ability to collect is reasonably assured.

**4. INVENTORY**

	2011	2010
Raw materials	\$ 3,640,677	\$ 4,864,834
Work in process	1,272,134	1,391,988
Finished goods	399,294	307,583
	<b>\$ 5,312,105</b>	<b>\$ 6,564,405</b>

**5. PROPERTY, PLANT AND EQUIPMENT**

	Cost	Accumulated amortization	2011 Net book value	2010 Net book value
Automotive equipment	\$ 1,394,224	\$ 1,088,718	\$ 305,506	\$ 359,419
Computer hardware	584,539	452,742	131,797	95,660
Computer software	541,477	451,675	89,802	96,678
Equipment under capital lease	2,312,750	1,483,943	828,807	920,896
Furniture and fixtures	311,582	280,713	30,869	38,586
Machinery and equipment	12,280,066	9,281,549	2,998,517	3,159,035
Leasehold improvements	130,337	16,249	114,088	10,814
	<b>\$ 17,554,975</b>	<b>\$ 13,055,589</b>	<b>\$ 4,499,386</b>	<b>\$ 4,681,088</b>

**6. INVESTMENTS IN WHOLLY OWNED SUBSIDIARIES**

	2011	2010
A-Z Sponge & Foam Products Ltd.	\$ 2	\$ 2
Valle Foam Industries (1995) Inc.	4,804,730	4,804,730
	<b>\$ 4,804,732</b>	<b>\$ 4,804,732</b>

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

**7. GOODWILL IMPAIRMENT LOSS**

	2011	2010
Goodwill	\$ 4,626,400	\$ 4,626,400
Accumulated amortization	(1,021,651)	(1,021,651)
Subtotal	3,604,749	3,604,749
Impairment to goodwill	(3,604,749)	-
	\$ -	\$ 3,604,749

The Goodwill was tested for impairment in the current year as the corporation was charged in a criminal investigation by the Competition Bureau of Canada. The results of this adverse legal situation combined with the consecutive years of reporting an accounting loss has decreased the corporations current operating cash flow and operating profit. The impact of the future penalty liability from the criminal investigation is expected to be significantly greater than the value of the goodwill.

**8. BANK INDEBTEDNESS**

The company has an available line of credit in the amount of \$4,500,000 on a consolidated basis. The borrowing is secured by 75% of the good accounts receivable, and up to 50% of the net realizable value of the inventory.

The Royal Bank of Canada, the corporation's financial institution, consider's the balance of the line of credit on a consolidated basis with the corporation's subsidiaries. As at April 30, 2011, the corporation has not drawn on the line of credit as the corporation has not drawn more more cash than is held in it's subsidiaries.

**9. DUE TO RELATED PARTY**

	2011	2010
Valle Foam Industries (1995) Inc.	\$ 1,207,076	\$ -

The loan payable is unsecured, non-interest bearing and has no specific terms for repayment.

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

**10. SHARE CAPITAL**

Authorized:

- Unlimited Class "A" shares, participating and voting
- Unlimited Class "B" shares, participating and voting
- Unlimited Class "C" shares, non-participating and non-voting, redeemable at \$1 per share

	2011	2010
Issued:		
10,348,102 Class "A" shares	\$ 5,969,339	\$ 5,969,339
3,301,940 Class "B" shares	1,446,504	1,446,504
	<b>\$ 7,415,843</b>	<b>\$ 7,415,843</b>

**11. INCOME TAXES**

The income tax provision recorded differs from the income tax obtained by applying the statutory income tax rate of 27.72% (2010 - 29.90%) to the income for the year and is reconciled as follows:

	2011	2010
Income (loss) before income taxes	<b>\$ (6,450,428)</b>	<b>\$ (409,571)</b>
Income tax expense at the combined basic federal and provincial tax rate:	<b>\$ (1,788,059)</b>	<b>\$ (122,462)</b>
Increase (decrease) resulting from:		
Amortization claimed in excess of CCA	68,207	50,433
CEC claimed in excess of amortization	(36,664)	(42,525)
Non-deductible expenses	981,402	13,107
SR&ED deducted in excess of claimed	6,254	28,844
ITC's earned for accounting purposes	-	(6,745)
Recapture of SR&ED deducted in prior years	-	78,999
Adjustment due to prior year reassessments	141,979	90,550
Non-capital loss carried back	-	349
Effective tax expense	<b>\$ (626,881)</b>	<b>\$ 90,550</b>

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

**12. RELATED PARTY TRANSACTIONS**

The following is a summary of the company's related party transactions:

	2011	2010
<b>Valle Foam Industries (1995) Inc.</b>		
Subsidiary		
Sales	\$ 5,786,585	\$ 6,393,378
Purchases	725,465	1,028,214
Accounts receivable	394,561	59,634
Accounts payable	62,164	449,529
Loan payable	1,207,076	-
<b>A-Z Sponge &amp; Foam Products Ltd.</b>		
Subsidiary		
Sales	\$ 364,451	\$ 281,296
Purchases	-	10,554
Accounts receivable	85,586	74,945

These transactions are in the normal course of operations and are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

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**13. FINANCIAL INSTRUMENTS**

**Credit risk**

Credit risk arises from the potential that a counter party will fail to perform its obligations. The company is exposed to credit risk from customers. The company is exposed to credit risk from customers. In order to reduce its credit risk, the company reviews a new customer's credit history before extending credit, conducts regular reviews of its existing customers' credit performance and insures its receivables on a per customer basis. An allowance for doubtful accounts is established based upon factors surrounding the credit risk of specific uninsured accounts, historical trends and other information. The company has a significant number of customers which minimizes concentration of credit risk.

**Fair value**

The company's carrying value of cash and cash equivalents, accounts receivable, accounts payable and the amount due to the related party approximates its fair value due to the immediate or short term maturity of these instruments.

**Currency risk**

Currency risk is the risk to the company's earnings that arise from fluctuations of foreign exchange rates and the degree of volatility of these rates. The company is exposed to foreign currency exchange risk on cash, accounts receivable, and accounts payable held in U.S. dollars. The company enters into forward exchange contracts to limit its exposure to foreign exchange fluctuations on existing assets and liabilities and on future revenue and expenditure streams. At April 30, 2010 the company had outstanding foreign exchange contracts representing a commitment to purchase \$2,000,000 USD at an average exchange rate of 1.0109. These contracts mature within two months from the year end. The company uses contracts to manage foreign exchange risk and does not enter into foreign exchange contracts for speculative purposes.

**Interest rate**

Interest rate risk is the risk that the value of a financial instrument might be adversely affected by a change in the interest rates. In seeking to minimize the risks from interest rate fluctuations, the company manages exposure through its normal operating and financing activities. The company is exposed to interest rate risk primarily through its floating interest rate bank indebtedness and credit facilities.

**Commodity risk**

The company is exposed to fluctuations in commodity prices for natural gas, crude oil and natural gas liquids. Commodity prices are affected by many factors including supply, demand and the Canadian to U.S. dollar exchange rate. The company had no financial hedges or price commodity contracts in place at year end.

**DOMFOAM INTERNATIONAL INC.**  
**Notes to Non-Consolidated Financial Statements**  
**Year Ended April 30, 2011**

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**14. CONTINGENT LIABILITY**

On July 27, 2010 the US Department of Justice and the Canadian Competition Bureau commenced criminal investigations against the company.

The company has been named as a defendant in over 40 civil class action and direct action complaints in the United States federal district courts.

The company has been named as a defendant in 3 proposed class action proceedings in the provinces of Ontario and British Columbia that propose to represent a national class of purchasers across Canada.

As of the date of this report it is the opinion of the company's solicitors that the amount of the potential liability from the Competition Bureau of Canada is between the range of \$ 1 million and \$12 million.

**15. CONTRACTUAL OBLIGATIONS**

The company is contractually obligated for minimum annual premise and lease payments, exclusive of certain operating costs.

Contractual obligation repayment schedule:

2012	\$ 1,605,734
2013	1,588,197
2014	1,437,649
2015	1,368,977
2016	1,184,488
Thereafter	<u>750,000</u>
	<u>\$ 7,935,045</u>

**16. COMPARATIVE FIGURES**

Certain figures in the 2010 financial statements have been restated to conform with the basis of presentation used in 2011.

**DOMFOAM INTERNATIONAL INC.****Non-Consolidated Schedule of Administrative and General Expenses****(Schedule 1)****Year Ended April 30, 2011**

	2011	2010
<b>ADMINISTRATIVE AND GENERAL</b>		
Bad debts	\$ 157,945	\$ 185,399
Bank charges and interest	44,759	57,274
Computer	20,024	7,084
Foreign exchange losses	172,640	680,037
Insurance	72,636	106,098
Office and general	206,423	191,052
Office salaries	651,585	648,858
Professional fees	1,481,999	120,642
Telephone	81,327	96,052
	<b>\$ 2,889,338</b>	<b>\$ 2,092,496</b>

**DOMFOAM INTERNATIONAL INC.****Non-Consolidated Schedule of Selling and Delivery Expenses****(Schedule 2)****Year Ended April 30, 2011**

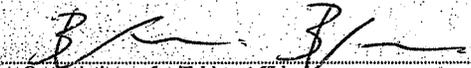
	2011	2010
<b>SELLING AND DELIVERY</b>		
Advertising and promotion	\$ 33,978	\$ 40,693
Amortization	53,913	63,427
Automotive and travel	1,411,454	1,294,645
Commissions and sales salaries	573,524	585,950
Delivery, freight and express	1,657,640	1,624,752
Insurance	90,796	94,343
	<b>\$ 3,821,305</b>	<b>\$ 3,703,810</b>

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This is Exhibit "C" referred to  
in the Affidavit of Tony Vallecoccia

Sworn this 11th

day of January, 2012.

  
A Commissioner for Taking Affidavits

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**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Financial Statements**

**Year Ended April 30, 2011**

*(Unaudited)*

**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Index to Financial Statements**

**Year Ended April 30, 2011**

*(Unaudited)*

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NEWMAN & SVERSKY LLP  
CHARTERED ACCOUNTANTS

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## REVIEW ENGAGEMENT REPORT

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To the Shareholder of A-Z Sponge & Foam Products Ltd.

We have reviewed the balance sheet of A-Z Sponge & Foam Products Ltd. as at April 30, 2011 and the statements of retained earnings, loss and cash flows for the year then ended. Our review was made in accordance with Canadian generally accepted standards for review engagements and, accordingly, consisted primarily of inquiry, analytical procedures and discussion related to information supplied to us by the company.

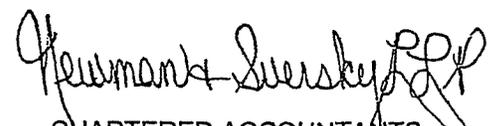
A review does not constitute an audit and, consequently, we do not express an audit opinion on these financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these financial statements are not, in all material respects, in accordance with Canadian accounting standards for private enterprises.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. We draw attention to Note 1 to the financial statements which describes the uncertainty related to the outcome of the criminal investigation from the Competition Bureau of Canada filed against the company's parent corporation.

We draw attention to Note 4 to the financial statements which describes that A-Z Sponge & Foam Products Ltd. adopted Canadian accounting standards for private enterprises on May 1, 2010 with a transition date of May 1, 2009. These standards were applied retrospectively by management to the comparative information in these financial statements, including the balance sheets as at April 30, 2010 and May 1, 2009 and the statements of retained earnings, loss and cash flows for the year ended April 30, 2010 and related disclosures. We were not engaged to report on the restated comparative information, and as such, it is neither audited nor reviewed.

Toronto, Ontario  
September 27, 2011

  
CHARTERED ACCOUNTANTS  
Licensed Public Accountants

**A-Z SPONGE & FOAM PRODUCTS LTD.****Balance Sheet****As at April 30, 2011***(Unaudited)*

	April 30 2011	April 30 2010	May 1 2009
<b>ASSETS</b>			
<b>CURRENT</b>			
Cash	\$ 922,583	\$ 1,065,284	\$ 722,921
Accounts receivable (Note 5)	1,077,336	693,511	944,265
Income taxes recoverable	37,295	83,324	165,805
Inventory (Note 6)	926,273	1,071,061	941,141
Sundry	41,391	44,993	49,319
	<b>3,004,878</b>	<b>2,958,173</b>	<b>2,823,451</b>
<b>PROPERTY, PLANT AND EQUIPMENT (Note 7)</b>	<b>564,756</b>	<b>616,012</b>	<b>689,625</b>
<b>PROVINCIAL TAX CREDIT (Note 8)</b>	<b>10,526</b>	<b>-</b>	<b>-</b>
	<b>\$ 3,580,160</b>	<b>\$ 3,574,185</b>	<b>\$ 3,513,076</b>
<b>LIABILITIES</b>			
<b>CURRENT</b>			
Accounts payable (Note 9)	\$ 394,101	\$ 331,052	\$ 250,407
<b>SHAREHOLDER'S EQUITY</b>			
Share capital (Note 10)	2,052,336	2,052,336	2,052,336
Retained earnings	1,133,723	1,190,797	1,210,333
	<b>3,186,059</b>	<b>3,243,133</b>	<b>3,262,669</b>
	<b>\$ 3,580,160</b>	<b>\$ 3,574,185</b>	<b>\$ 3,513,076</b>

*Going concern (Note 1)***APPROVED BY THE SOLE DIRECTOR**

See notes to financial statements

**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Statement of Retained Earnings**

**Year Ended April 30, 2011**

*(Unaudited)*

	2011	2010
<b>RETAINED EARNINGS - BEGINNING OF YEAR</b>	<b>\$ 1,190,797</b>	<b>\$ 1,210,334</b>
Net loss	<b>(57,074)</b>	<b>(19,537)</b>
<b>RETAINED EARNINGS - END OF YEAR</b>	<b>\$ 1,133,723</b>	<b>\$ 1,190,797</b>

See notes to financial statements

**A-Z SPONGE & FOAM PRODUCTS LTD.****Statement of Loss****Year Ended April 30, 2011***(Unaudited)*

	2011	2010
<b>SALES</b>	\$ 5,285,430	\$ 5,418,519
<b>COST OF SALES</b>		
Materials	2,423,691	2,472,500
Direct labour	1,508,838	1,451,511
Rent	290,664	298,958
Factory	106,274	100,212
Utilities	70,162	81,081
Realty taxes	66,308	57,432
Amortization	57,720	63,272
	4,523,657	4,524,966
<b>GROSS PROFIT</b>	761,773	893,553
<b>EXPENSES</b>		
Administrative and general <i>(Schedule 1)</i>	478,099	555,121
Selling and delivery <i>(Schedule 2)</i>	368,484	360,340
	846,583	915,461
<b>LOSS FROM OPERATIONS</b>	(84,810)	(21,908)
Investment tax credits earned	19,161	22,447
<b>INCOME (LOSS) BEFORE INCOME TAXES</b>	(65,649)	539
Income taxes <i>(recovered) (Note 11)</i>	(8,575)	20,076
<b>NET LOSS</b>	\$ (57,074)	\$ (19,537)

**A-Z SPONGE & FOAM PRODUCTS LTD.**  
**Statement of Cash Flows**  
**Year Ended April 30, 2011**  
*(Unaudited)*

	2011	2010
<b>OPERATING ACTIVITIES</b>		
Net loss	\$ (57,074)	\$ (19,537)
Item not affecting cash:		
Amortization	70,751	78,696
	<b>13,677</b>	<b>59,159</b>
Changes in non-cash working capital:		
Accounts receivable	(383,825)	250,754
Income taxes recoverable	46,029	82,481
Inventory	144,788	(129,920)
Provincial tax credit	(10,526)	-
Sundry	3,602	4,326
Accounts payable	63,049	80,646
	<b>(136,883)</b>	<b>288,287</b>
<b>Cash flow from (used by) operating activities</b>	<b>(123,206)</b>	<b>347,446</b>
<b>INVESTING ACTIVITY</b>		
Purchase of property, plant and equipment	(19,495)	(5,083)
<b>INCREASE (DECREASE) IN CASH FLOW</b>	<b>(142,701)</b>	<b>342,363</b>
<b>CASH - BEGINNING OF YEAR</b>	<b>1,065,284</b>	<b>722,921</b>
<b>CASH - END OF YEAR</b>	<b>\$ 922,583</b>	<b>\$ 1,065,284</b>

# A-Z SPONGE & FOAM PRODUCTS LTD.

## Notes to Financial Statements

Year Ended April 30, 2011

(Unaudited)

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### 1. GOING CONCERN

The accompanying financial statements have been prepared using Canadian accounting standards for private enterprises on the going concern assumption that the corporation will be able to realize its assets and discharge its liabilities in the normal course of business. Over the past five years sales have decreased due to loss of customers and competitive pricing. In the current year the parent corporation of the company has incurred significant legal expenses to defend itself in a criminal investigation from the Competition Bureau of Canada. The pending verdict of the criminal investigation and the legal expenses incurred will result with a significant liability that may cast significant doubt on the ability of the parent corporation to pay the liability without increased financing. These material uncertainties may cast significant doubt about the appropriateness of the going concern assumption. Management is currently evaluating options to mitigate the risk of the going concern. These options include a restructuring of the parent corporation's operations through downsizing and additional financing from an external source. There can be no assurance that the options evaluated by management will be successful.

These financial statements do not reflect adjustments in the carrying values of the assets and liabilities, the reported revenues and expenses, and the balance sheet classifications used, that would be necessary if the company were unable to realize its assets and settle its liabilities as a going concern in the normal course of operations, such adjustments could be material.

### 2. DESCRIPTION OF BUSINESS

A-Z Sponge & Foam Products Ltd. (the "company") was incorporated under the Business Corporations Act of British Columbia. The company's principal business activity is the manufacture and wholesale of sponge and polyurethane foam.

### 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

These financial statements have been prepared in accordance with Canadian accounting standards for private enterprises and include the following significant accounting policies:

#### Going concern

These financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. Should the corporation be unable to continue as a going concern, it may be unable to realize the carrying value of its assets and to meet its liabilities as they become due.

The corporation's ability to continue as a going concern is dependent upon its ability to attain profitable operations and generate funds therefrom, and to continue to obtain borrowings from third parties sufficient to meet current and future obligations and/or restructure the existing debt and payables. These financial statements do not reflect the adjustments or reclassification of assets and liabilities, which would be necessary if the corporation were unable to continue its operations.

(continues)

# A-Z SPONGE & FOAM PRODUCTS LTD.

## Notes to Financial Statements

Year Ended April 30, 2011

(Unaudited)

### 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

#### Inventory

Inventory, consisting of raw material, work in progress and finished goods, are valued at the lower of cost and net realizable value. Net realizable value is defined as the estimated selling price in the ordinary course of business, less any applicable variable selling costs.

Cost is determined by the first-in first-out method. The value of obsolete or unmarketable inventory is based on the company's assessment of market conditions for its product determined by historical usage, estimated future demand and in some cases, the specific risk of loss on specifically identified inventory.

#### Property, plant and equipment

Property, plant and equipment are stated at cost less accumulated amortization. Routine repairs and maintenance are expensed as incurred. Improvements, that are betterments, are capitalized at cost and are amortized over the remaining useful life of the related assets.

Property, plant and equipment are amortized over their estimated useful lives at the following rates and methods:

Automotive equipment	30%	declining balance method
Computer hardware	20%	declining balance method
Computer software	20%	declining balance method
Furniture and fixtures	20%	declining balance method
Machinery and equipment	10%	declining balance method
Leasehold improvements	5 years	straight-line method

Property, plant and equipment acquired during the year but not placed into use are not amortized until they are placed into use.

#### Impairment of long-lived assets

Long-lived assets are reviewed for impairment when changes in circumstances indicate that the carrying value of an asset may not be recoverable. If such assets are considered impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds its net recoverable value. Any impairment results in a write-down of the asset and a charge to income during the year.

The previously recognized impairment loss may be reversed to the extent of the improvement, directly or by adjusting the allowance account, provided it is no greater than the amount that would have been reported at the date of the reversal had the impairment not been recognized previously. The amount of reversal is recognized in net income.

(continues)

**A-Z SPONGE & FOAM PRODUCTS LTD.**  
**Notes to Financial Statements**  
**Year Ended April 30, 2011**  
*(Unaudited)*

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**3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(continued)***

**Revenue recognition**

The company recognizes revenues when they are earned, specifically when all the following conditions are met:

- products are delivered and ownership of the goods have been transferred to the customers
- there is clear evidence that an arrangement exists
- amounts are fixed or can be determined
- the ability to collect is reasonably assured.

**Foreign currency translation**

Accounts in foreign currencies have been translated into Canadian dollars using the temporal method. Under this method, monetary assets and liabilities have been translated at the year end exchange rate. Non-monetary assets have been translated at the rate of exchange prevailing at the date of transaction. Revenues and expenses have been translated at the average rates of exchange during the year.

**Investment tax credit**

The company claims investment tax credits as a result of research and development. Investment tax credits are recognized when the related expenditures are incurred and there is reasonable assurance of their realization. Management has made a number of estimates and assumptions in determining the expenditures eligible for the investment tax credit claim. The allowed amount of the investment tax credit claim could be significantly different from the recorded amount upon assessment by Canada Revenue Agency.

**Income taxes**

The company accounts for income taxes using the taxes payable method under which the company reports an expense of the year only the cost of current taxes for the year determined in accordance with the rules established by the taxation authorities.

*(continues)*

# A-Z SPONGE & FOAM PRODUCTS LTD.

## Notes to Financial Statements

Year Ended April 30, 2011

(Unaudited)

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### 3. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES *(continued)*

#### Financial instruments policy

The company initially measures its financial assets and liabilities at fair value, except for certain non-arm's length transactions.

In subsequent periods, the company measures all its financial assets and financial liabilities at amortized cost, except for investments in equity instruments that are quoted in an active market. These investments are measured at fair value with any unrealized gains and losses reported in net income.

The entity has not designated any financial asset or financial liability to be measured at fair value.

Financial assets measured at cost are tested for impairment when there are indicators of impairment. The amount to write down is recognized in net income. The previously recognized impairment loss may be reversed to the extent of the improvement, directly or by adjusting the allowance account, provided it is no greater than the amount that would have been reported at the date of reversal had the impairment not been recognized previously. The amount of the reversal is recognized in net income.

#### Measurement uncertainty

The preparation of financial statements in conformity with Canadian accounting standard for private enterprises requires management to make estimates and assumptions that affect the reported amount of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the period. Such estimates, including amortization of property, plant and equipment, allowance for doubtful accounts, valuation of inventory and determination of net realizable value, are periodically reviewed and any adjustments necessary are reported in earnings in the period in which they become known. Actual results could differ from these estimates.

### 4. IMPACT OF THE CHANGES IN THE BASIS OF ACCOUNTING

The company has elected to apply the standards in Part II of the CICA Accounting Handbook for private enterprises in accordance with the Canadian generally accepted accounting principles. These financial statements are the first financial statements for which the entity has applied the Canadian generally accepted accounting principles for private enterprise, hereafter referred to as Accounting Standards for Private Enterprises (ASPE).

The financial statements for the year ended April 30, 2011 were prepared in accordance with the Canadian accounting standards for private enterprises and provisions set out in First-Time Adoption, Section 1500, for the first-time adopters of this basis of accounting.

The application of adopting this new financial reporting framework had no impact on the previously reported financial position as at April 30, 2010 and May 1, 2009. Consequently a reconciliation of previously reported income to net income as reported using the accounting standards for private enterprises has not been prepared.

**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

*(Unaudited)*

**5. ACCOUNTS RECEIVABLE**

	April 30 2011	April 30 2010	May 1 2009
Trade accounts receivable	\$ 1,078,836	\$ 711,511	\$ 969,265
Less: Allowance for doubtful account	(1,500)	(18,000)	(25,000)
	<b>\$ 1,077,336</b>	<b>\$ 693,511</b>	<b>\$ 944,265</b>

Trade accounts receivable include \$59,454 (2010 - \$56,668, 2009 - \$81,650) denominated in U.S. dollars, which have been converted to Canadian dollars at the year-end rate.

**6. INVENTORY**

	April 30 2011	April 30 2010	May 1 2009
Raw materials	\$ 318,216	\$ 423,641	\$ 667,256
Work in progress	589,401	632,068	241,156
Finished goods	18,656	15,352	32,729
	<b>\$ 926,273</b>	<b>\$ 1,071,061</b>	<b>\$ 941,141</b>

**7. PROPERTY, PLANT AND EQUIPMENT**

	Cost	Accumulated amortization	April 30 2011 Net book value	April 30 2010 Net book value	May 1 2009 Net book value
Automotive equipment	\$ 241,123	\$ 225,014	\$ 16,109	\$ 23,013	\$ 26,705
Computer hardware	68,265	56,159	12,106	10,638	13,297
Computer software	24,739	21,721	3,018	3,773	4,715
Furniture and fixtures	124,561	121,317	3,244	4,055	5,068
Machinery and equipment	2,087,438	1,560,210	527,228	569,447	632,719
Leasehold improvements	10,172	7,121	3,051	5,086	7,121
	<b>\$ 2,556,298</b>	<b>\$ 1,991,542</b>	<b>\$ 564,756</b>	<b>\$ 616,012</b>	<b>\$ 689,625</b>

**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

*(Unaudited)*

**8. PROVINCIAL TAX CREDIT**

British Columbia Scientific Research and Experimental Development Tax Credit:

	April 30 2011	April 30 2010	May 1 2009
Balance - beginning of the year	\$ -	\$ -	\$ -
Add: BC SR&ED tax credit in previous year	5,729	-	-
Add: BC SR&ED tax credit in current year	4,797	-	-
<b>Balance - end of the year</b>	<b>\$ 10,526</b>	<b>\$ -</b>	<b>\$ -</b>

The British Columbia ("BC") Tax Credit for Scientific Research and Experimental Development ("SR&ED") is a 10% non-refundable tax credit on eligible SR&ED expenditures incurred by the corporation during the year.

The BC Tax Credit for SR&ED balance at as April 30, 2011 is \$10,526. This provincial credit is available to applied against future provincial corporate taxes payable and will expire as follows:

2030	\$ 5,729
2031	4,797

All claims made by the company in regards to this provincial tax credit, up to 2010 inclusive have been reviewed by CRA and reflected in the accounts of the company. The company's claim for the current year is subject to audit by CRA.

**9. ACCOUNTS PAYABLE**

	April 30 2011	April 30 2010	May 1 2009
Trade accounts payable	\$ 240,007	\$ 212,317	\$ 119,909
Wages and accruals	115,203	97,414	97,877
Government remittances	38,891	21,321	32,621
	<b>\$ 394,101</b>	<b>\$ 331,052</b>	<b>\$ 250,407</b>

Trade accounts payable include \$911 (2010 - \$29,635, 2009 - \$5,056) denominated in U.S. dollars, which have been converted to Canadian dollars at the year-end rate.

**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

*(Unaudited)*

**10. SHARE CAPITAL**

Authorized:

50,000 Class "A" voting common shares  
 50,000 Class "B" non-voting common shares  
 100,000 Class "C" preference shares, non-voting and redeemable at \$10 per share

		April 30 2011	April 30 2010	May 1 2009
Issued:				
50,000	Class "A" voting common shares	\$ 50,000	\$ 50,000	\$ 50,000
1	Class "B" non-voting common share	2,002,336	2,002,336	2,002,336
		<b>\$ 2,052,336</b>	<b>\$ 2,052,336</b>	<b>\$ 2,052,336</b>

**11. INCOME TAXES**

The income tax (recovery) provision recorded differs from the income tax obtained by applying the statutory income tax rate of 29.11% (2010 - 29.51%) to the income (loss) for the year and is reconciled as follows:

	2011	2010
Income (loss) before income taxes	\$ (65,649)	\$ 539
Income tax expense at the combined basic federal and provincial tax rate:	\$ (19,112)	\$ 159
Decrease resulting from:		
Capital cost allowance claimed in excess of amortization	3,953	3,457
Non-deductible expenses	5,192	3,529
SR&ED deducted in excess of claimed	1,392	4,658
Prior period adjustment	-	8,273
Effective tax expense (recovered)	<b>\$ (8,575)</b>	<b>\$ 20,076</b>

**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

*(Unaudited)*

**12. RELATED PARTY TRANSACTIONS**

The following is a summary of the company's related party transactions:

	2011	2010
<b>Domfoam International Inc.</b>		
<i>Parent corporation</i>		
Sales	\$ -	\$ 10,554
Purchases	364,451	281,296
Accounts payable	85,586	74,945
<b>Valle Foam Industries (1995) Inc.</b>		
<i>Corporation under common control</i>		
Sales	\$ -	\$ 2,551
Purchases	92,176	52,426
Accounts payable	15,397	28,198

These transactions are in the normal course of operations and are measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

**13. LEASE COMMITMENTS**

The company has a long term lease with respect to its premises. The lease expires on June 30, 2013. Under the lease agreement, the company is required to pay a base rent of \$288,500 per annum. The lease does not contain any renewal options.

Future minimum lease payments as at April 30, 2011 are as follows:

2012	\$ 288,500
2013	288,500
2014	48,083
	<hr/>
	\$ 625,083

**A-Z SPONGE & FOAM PRODUCTS LTD.**

**Notes to Financial Statements**

**Year Ended April 30, 2011**

*(Unaudited)*

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**14. FINANCIAL INSTRUMENTS**

**Credit Risk**

Credit risk arises from the potential that a counter party will fail to perform its obligations. The company is exposed to credit risk from customers. In order to reduce its credit risk, the company reviews a new customer's credit history before extending credit and conducts regular reviews of its existing customers' credit performance. An allowance for doubtful accounts is established based upon factors surrounding the credit risk of specific accounts, historical trends and other information. The company has a significant number of customers which minimizes concentration of credit risk.

**Fair Value**

The company's carrying value of cash and cash equivalents, accounts receivable, and accounts payable approximates its fair value due to the immediate or short term maturity of these instruments.

**Currency Risk**

Currency risk is the risk to the company's earnings that arise from fluctuations of foreign exchange rates and the degree of volatility of these rates. The company is exposed to foreign currency exchange risk on cash, accounts receivable, and accounts payable held in U.S. dollars. The company does not use derivative instruments to reduce its exposure to foreign currency risk.

**15. COMPARATIVE FIGURES**

Certain figures in the prior year's financial statements have been reclassified for comparative purposes to conform with the basis of presentation used in the current year's financial statements.

**A-Z SPONGE & FOAM PRODUCTS LTD.**  
**Schedule of Administrative and General Expenses**  
**Year Ended April 30, 2011**  
*(Unaudited)*

*(Schedule 1)*

	2011	2010
<b>ADMINISTRATIVE AND GENERAL</b>		
Amortization	\$ 6,127	\$ 6,651
Bad debts (recovery)	(1,691)	3,603
Bank charges and interest	4,033	3,027
Computer	3,979	18,083
Foreign exchange (gain) loss	(3,029)	26,729
Insurance	55,007	57,805
Office and general	24,238	24,320
Office salaries	366,425	387,548
Professional fees	7,549	9,223
Telephone	15,461	18,132
	<b>\$ 478,099</b>	<b>\$ 555,121</b>

**A-Z SPONGE & FOAM PRODUCTS LTD.**  
**Schedule of Selling and Delivery Expenses**  
**Year Ended April 30, 2011**  
*(Unaudited)*

*(Schedule 2)*

	2011	2010
<b>SELLING AND DELIVERY</b>		
Advertising and promotion	\$ 26,085	\$ 25,432
Amortization of trucks	6,904	8,774
Automobile and travel	133,723	121,831
Delivery, freight and express	201,772	204,303
	<b>\$ 368,484</b>	<b>\$ 360,340</b>

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This is Exhibit "D" referred to  
in the Affidavit of Tony Vallecocchia

Sworn this 11th  
day of January, 2012.

  
A Commissioner for Taking Affidavits

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14-Nov-11  
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**Statement of Income**  
**For the six months ended October 31, 2011**

	Current Month			Year to Date			Variance Last Year	% Δ=
	Actual	%	Last Year	Actual	%	Last Year		
<b>Sales</b>								
Poly	\$ 2,761,699	85.6	2,965,440	\$ 16,822,096	86.5	\$ 18,739,154	-\$ 1,917,058	-10.2%
Underlay	440,574	13.7	445,993	2,535,245	13.0	2,715,457	-180,211	-6.6%
Scrap	24,670	0.8	53,422	81,714	0.4	172,921	-91,206	-52.7%
<b>Total Sales</b>	<b>\$ 3,226,942</b>	<b>100.0</b>	<b>\$ 3,464,855</b>	<b>\$ 19,439,056</b>	<b>100.0</b>	<b>\$ 21,627,531</b>	<b>-\$ 2,188,476</b>	<b>-10.1%</b>
<b>Direct Materials</b>	<b>\$ 2,015,955</b>	<b>62.5</b>	<b>\$ 2,084,642</b>	<b>\$ 12,215,575</b>	<b>62.8</b>	<b>\$ 13,114,017</b>	<b>-\$ 898,441</b>	<b>-6.9%</b>
<b>Direct Labour</b>	<b>574,386</b>	<b>17.8</b>	<b>583,292</b>	<b>\$ 3,627,491</b>	<b>18.7</b>	<b>3,533,410</b>	<b>94,082</b>	<b>2.7%</b>
<b>Total Direct Costs</b>	<b>\$ 2,590,341</b>	<b>80.3</b>	<b>\$ 2,667,933</b>	<b>\$ 15,843,067</b>	<b>81.5</b>	<b>\$ 16,647,426</b>	<b>-\$ 804,360</b>	<b>-4.8%</b>
<b>Gross Margin</b>	<b>\$ 636,601</b>	<b>19.7</b>	<b>\$ 796,922</b>	<b>\$ 3,595,989</b>	<b>18.5</b>	<b>\$ 4,980,105</b>	<b>-\$ 1,384,116</b>	<b>-27.8%</b>
<b>Manufacturing</b>	<b>\$ 460,163</b>	<b>14.3</b>	<b>\$ 456,114</b>	<b>\$ 2,779,603</b>	<b>14.3</b>	<b>\$ 2,752,391</b>	<b>\$ 27,212</b>	<b>1.0%</b>
<b>Selling &amp; Distribution</b>	<b>249,843</b>	<b>7.7</b>	<b>289,543</b>	<b>1,613,588</b>	<b>8.3</b>	<b>1,687,799</b>	<b>-74,211</b>	<b>-4.4%</b>
<b>Administration</b>	<b>121,942</b>	<b>3.8</b>	<b>139,410</b>	<b>771,256</b>	<b>4.0</b>	<b>811,568</b>	<b>-40,312</b>	<b>-5.0%</b>
<b>Non-Recurring</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>-1.7%</b>
<b>Total Expenses</b>	<b>\$ 831,949</b>	<b>25.8</b>	<b>\$ 885,067</b>	<b>\$ 5,164,447</b>	<b>26.6</b>	<b>\$ 5,251,758</b>	<b>-\$ 87,311</b>	<b>-1.7%</b>
<b>EBDAIT</b>	<b>-\$ 195,348</b>	<b>-6.1</b>	<b>-\$ 88,146</b>	<b>-\$ 1,568,458</b>	<b>-8.1</b>	<b>-\$ 271,653</b>	<b>-\$ 1,296,805</b>	<b>477.4%</b>
<b>Extraordinary Item</b>	<b>\$ 16,509</b>	<b>0.5</b>	<b>\$ 90,000</b>	<b>\$ 375,009</b>	<b>1.9</b>	<b>\$ 210,000</b>	<b>\$ 165,009</b>	<b>7.2%</b>
<b>Interest &amp; Charges</b>	<b>2,864</b>	<b>0.1</b>	<b>2,647</b>	<b>18,477</b>	<b>0.1</b>	<b>17,242</b>	<b>1,235</b>	<b>-35.8%</b>
<b>Derpn &amp; Amortization</b>	<b>56,980</b>	<b>1.8</b>	<b>88,810</b>	<b>341,880</b>	<b>1.8</b>	<b>532,860</b>	<b>-190,980</b>	<b>-3.3%</b>
<b>Goodwill Amortization</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>123.3%</b>
<b>Net Income Before Taxes</b>	<b>-\$ 271,701</b>	<b>-8.4</b>	<b>-\$ 269,603</b>	<b>-\$ 2,303,824</b>	<b>-11.9</b>	<b>-\$ 1,031,754</b>	<b>-\$ 1,272,069</b>	<b>-100.0%</b>
<b>Income Taxes -Current</b>	<b>\$ -</b>	<b>0.0</b>	<b>\$ 82,000</b>	<b>\$ -</b>	<b>0.0</b>	<b>\$ 323,000</b>	<b>\$ 323,000</b>	<b>-100.0%</b>
<b>Income Taxes -Deferred</b>	<b>\$ 0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>-100.0%</b>
<b>Net Income</b>	<b>-\$ 271,701</b>	<b>-8.4</b>	<b>-\$ 187,603</b>	<b>-\$ 2,303,824</b>	<b>-11.9</b>	<b>-\$ 708,754</b>	<b>-\$ 1,595,057</b>	<b>225.1%</b>

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This is Exhibit "B" referred to

in the Affidavit of Tony Vallecoccia

Sworn this 11th

day of January, 2012.



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A Commissioner for Taking Affidavits

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**Statement of Income**  
**For the Period ended October 31 2011**

	Current Month			Year to Date			Variance Month	Variance Last Year	% Δ=
	This Yr Actual	Last Yr Actual	%	This Yr Actual	Last Yr Actual	%			
<b>Sales</b>									
Poly	\$2,361,159	\$2,872,779	87.7	\$16,120,466	\$17,758,177	88.0	(\$1,637,712)	-9.2%	
Underlay	353,850	402,566	13.0	\$2,085,943	2,425,241	12.0	(339,298)	-14.0%	
Total Sales	\$2,715,009	\$3,275,345	100.0	\$18,206,409	\$20,183,418	100.0	(\$1,977,009)	-9.8%	
<b>Direct Materials</b>	\$1,566,757	\$1,893,765	57.7	\$10,993,203	\$11,869,991	58.8	(\$876,789)	-7.4%	
Direct Labour	405,162	425,416	14.9	\$2,522,540	2,597,063	12.9	(74,523)	-2.9%	
Total Direct Costs	\$1,971,919	\$2,319,182	72.6	\$13,515,743	\$14,467,054	71.7	(\$951,311)	-6.6%	
<b>Gross Margin</b>	\$743,090	\$956,163	27.4	\$4,690,666	\$5,716,364	28.3	-\$1,025,698	-17.9%	
<b>Manufacturing</b>	\$461,846	\$467,410	17.0	\$2,771,141	\$2,773,446	13.7	(\$2,305)	-0.1%	
Selling & Distribution	329,854	408,866	12.1	\$2,235,513	2,235,309	11.1	204	0.0%	
Administration	110,728	\$122,331	4.1	\$718,492	708,938	3.5	9,555	1.3%	
Non-Recurring	-	-	0.0	-	-	0.0	-	-	
Total Expenses	\$902,428	\$998,608	33.2	\$5,725,146	\$5,717,693	28.3	\$7,453	0.1%	
<b>EBDAIT</b>	(\$159,338)	(\$42,444)	(5.9)	(\$1,034,480)	(\$1,329)	(0.0)	(\$1,033,152)	77757.8%	
<b>Extraordinary Item</b>	\$49,770	\$90,000	1.8	\$408,270	\$210,000	1.0	\$198,270	121.8%	
Interest & Charges	2,704	(809)	0.1	\$14,512	6,543	0.0	7,969	-3.0%	
Deprn & Amortization	39,244	40,917	1.4	\$234,678	241,874	1.2	(7,196)	43.4%	
<b>Net Income Before Taxes</b>	91,718	130,108	3.4	657,460	458,417	2.3	199,042	268.0%	
	(\$251,055)	(\$172,552)	(9.2)	(\$1,691,940)	(\$459,746)	(2.3)	(\$1,232,194)	-18.7%	
<b>Income Taxes -Current</b>	\$0	(\$51,765)	0.0	(\$112,131)	(\$137,923)	(0.7)	\$25,792	-18.7%	
<b>Income Taxes -Deferred</b>	\$0	(\$51,765)	0.0	(\$112,131)	(\$137,923)	(0.7)	\$25,792	-18.7%	
<b>Net Income</b>	(\$251,055)	(\$120,787)	(9.2)	(\$1,579,809)	(\$321,823)	(1.6)	(\$1,257,986)	390.9%	

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This is Exhibit "F" referred to  
in the Affidavit of Tony Vallecoccia

Sworn this 11th

day of January, 2012.

  
A Commissioner for Taking Affidavits

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**AZ FOAM PRODUCTS LTD**

**Statement of Income**

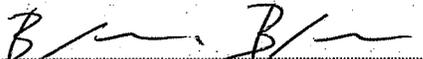
**For the 6 months ended October 31, 2011**

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	Current Month			Year to Date			Variance Last Year	% Δ=
	Actual	%	Last Year	Actual	%	Last Year		
<b>Sales</b>								
Poly	\$ 328,648	98.5	\$ 453,910	\$ 2,600,466	98.7	\$ 2,412,256	\$ 188,210	7.8%
Scrap	4,942	1.5	-	33,570	1.3	11,473	22,096	192.6%
<b>Total Sales</b>	<b>\$ 333,590</b>	<b>100.0</b>	<b>\$ 453,910</b>	<b>\$ 2,634,036</b>	<b>100.0</b>	<b>\$ 2,423,729</b>	<b>\$ 210,307</b>	<b>8.7%</b>
<b>Direct Materials</b>	<b>\$ 112,611</b>	<b>33.8</b>	<b>\$ 199,830</b>	<b>\$ 1,094,567</b>	<b>41.6</b>	<b>\$ 1,121,820</b>	<b>\$ 27,252</b>	<b>-2.4%</b>
Direct Labour	89,973	27.0	98,796	616,794	23.4	511,503	105,291	20.6%
<b>Total Direct Costs</b>	<b>\$ 202,584</b>	<b>60.7</b>	<b>\$ 298,626</b>	<b>\$ 1,711,361</b>	<b>65.0</b>	<b>\$ 1,633,323</b>	<b>\$ 78,038</b>	<b>4.8%</b>
<b>Gross Margin</b>	<b>\$ 131,006</b>	<b>39.3</b>	<b>\$ 155,284</b>	<b>\$ 922,674</b>	<b>35.0</b>	<b>\$ 790,406</b>	<b>\$ 132,268</b>	<b>16.7%</b>
<b>Manufacturing</b>	<b>\$ 65,730</b>	<b>19.7</b>	<b>\$ 68,074</b>	<b>\$ 402,543</b>	<b>15.3</b>	<b>\$ 356,732</b>	<b>\$ 45,811</b>	<b>12.8%</b>
Selling & Distribution	55,394	16.6	50,997	323,206	12.3	260,411	62,794	24.1%
Administration	30,147	9.0	26,235	155,285	5.9	144,089	11,195	7.8%
Non-Recurring	0	0.0	0	0	0.0	0	0	
<b>Total Expenses</b>	<b>\$ 151,271</b>	<b>45.3</b>	<b>\$ 145,306</b>	<b>\$ 881,034</b>	<b>33.4</b>	<b>\$ 761,233</b>	<b>\$ 119,801</b>	<b>15.7%</b>
<b>EBDAIT</b>	<b>-\$ 20,265</b>	<b>-6.1</b>	<b>\$ 9,978</b>	<b>\$ 41,641</b>	<b>1.6</b>	<b>\$ 29,173</b>	<b>\$ 12,468</b>	<b>42.7%</b>
Extraordinary item	\$ -	0.0	\$ -	\$ -	0.0	\$ -	\$ -	
Interest & Charges	355	0.1	361	2,115	0.1	1,685	429	25.5%
Derpn & Amortization	6,000	1.8	7,000	38,000	1.4	37,000	1,000	2.7%
Goodwill Amortization	0	0.0	0	0	0.0	0	0	
	\$ 6,355	1.9	\$ 7,361	\$ 40,115	1.5	\$ 38,685	\$ 1,429	3.7%
<b>Net Income Before Taxes</b>	<b>-\$ 26,620</b>	<b>-8.0</b>	<b>\$ 2,617</b>	<b>\$ 1,526</b>	<b>0.1</b>	<b>-\$ 9,512</b>	<b>\$ 11,039</b>	<b>-116.0%</b>
Investment Tax Credit	\$ -	0.0	\$ -	\$ -		\$ -	\$ -	#DIV/0!
Income Taxes -Current	0	0.0	4,000	0	0.0	0	0	#DIV/0!
Income Taxes -Deferred	0	0.0	-	0	0.0	0	0	#DIV/0!
	\$ -	0.0	\$ 4,000	\$ -	0.0	\$ -	\$ -	#DIV/0!
<b>Net Income</b>	<b>-\$ 26,620</b>	<b>-8.0</b>	<b>-\$ 1,383</b>	<b>\$ 1,526</b>	<b>0.1</b>	<b>-\$ 9,512</b>	<b>\$ 11,039</b>	<b>-116.0%</b>

---

This is Exhibit "G" referred to  
in the Affidavit of Tony Vallecoccia  
Sworn this 11th  
day of January, 2012.

  
A Commissioner for Taking Affidavits

---

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(OTTAWA REGION)**

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**-and-**

**DOMFOAM INTERNATIONAL INC. AND  
VALLE FOAM INDUSTRIES (1995) INC.**

**Accused**

---

**STATEMENT OF ADMISSIONS**

---

**THE ACCUSED**

1. Domfoam International Inc. and Valle Foam Industries (1995) Inc. ("Domfoam/Valle") are corporations organized and existing under the laws of Canada. Valle Foam Industries (1995) Inc. is a wholly owned subsidiary of Domfoam International Inc.

**THE PRODUCT**

2. Foam is manufactured by the reaction resulting from the combination of two main chemicals: an isocyanate, such as Diphenylmethane Diisocyanate ("MDI") or Toluene Diisocyanate ("TDI") and a polyurethane polymer called Polyol. The resultant foam can be made into a variety of densities and hardness, from flexible foam to rigid foam, depending on the mixing ratio of the chemicals:
3. Due to the versatility of foam, it is used in a variety of industries and applications, including, but not limited to:
  - Furniture Manufacturing: used in cushions, upholstered furniture, office chairs, stadium seating and auditorium seating;

- Carpet Cushion (or underlay): used to improve the comfort and lifespan of carpets;
  - Transportation (or automotive): used in seating, headrests, arm rests, interior panels and skins, car and truck fenders, truck beds, support rings for run-flat tires, headliners and other interior systems for the automobile industry;
  - Bedding: used as the primary material for adding support and comfort to padded bedding products;
  - Packaging: provides protection and cushioning to packaged products. Polyurethane foams are often used to package highly sensitive equipment such as electronics, printed circuit boards, jewellery and delicate foods; and
  - Textiles and Fibres: used as insulation for fabric products including clothing. It provides thermal insulation, tear resistance, fire resistance and light weight to a variety of textiles and fibres including leather products, shoe uppers, tents, life rafts, labels, hand bags and insulation liners.
4. Most foam manufacturers specialize in certain applications and thus do not have a presence in all segments of the foam industry.
  5. Domfoam/Valle produces two types of foam products: (1) slab foam for furniture, bedding, packaging, textiles and fibres ("slab"); and (2) carpet cushion foam for carpet underlay ("carpet cushion").

#### **THE MARKETPLACE**

6. A number of companies engage in the sale and supply of foam products in, into, or from Canada. Domfoam/Valle's major competitors in the foam market for slab in Canada include: Vitafoam Canada Inc. (Vita), Carpenter Canada Co. (Carpenter) and Foamex Canada Inc. (Foamex). Domfoam/Valle's major competitors in the foam market for carpet cushion in Canada include: Vita and Carpenter.
7. Between January 1, 1999 and July 27, 2010 ("Relevant Period") Domfoam/Valle produced and supplied foam and foam products to customers in Canada.
8. Based on the information provided to the Commissioner of Competition, the markets for both slab and carpet cushion are relatively concentrated. For the slab market in Canada, Carpenter, Foamex, Vita and Domfoam/Valle control approximately 80% of the market. For the carpet cushion market in Canada, Carpenter, Vita and Domfoam/Valle control approximately 90% of the market.
9. Certain types of foams are difficult to ship. With the exception of memory foam and other high-quality foams, foam does not easily compress. This makes it difficult to sell slab to customers located far from manufacturing facilities. Due to

this transportation issue, slab is generally sold within close proximity to pouring plants.

10. Barriers to entry in the foam manufacturing business are high. Zoning permits, financing to purchase land and the construction of a building to manufacture foam are very costly. The manufacturing of foam is regulated owing to the fact that petro-chemicals are used during the foaming process (i.e., safety and environmental regulations).

11. During the Relevant Period, the total volume of commerce sold to customers in Canada by Domfoam/Valle was approximately \$975,000,000 (CDN). This includes sales of both carpet cushion and slab foam for furniture and bedding.

12. The Relevant Period of the offences spans amendments to the criminal conspiracy provisions of the *Competition Act* ("Act"), with the new provisions having come into force on March 12, 2010. The evidence obtained during the investigation supports charges under both the former and current conspiracy provisions under the Act.

#### **THE OFFENCE – SLAB**

13. From January 1, 1999 to March 11, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1)(c) of the *Competition Act*, RSC 1985, c C-34 by conspiring, combining, agreeing or arranging to prevent or lessen competition, unduly, with respect to the sale and supply of slab products within Canada.

14. From March 12, 2010 to July 27, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1) (a) of the *Competition Act*, 2009, c. 2, s. 410 by conspiring, agreeing or arranging, with one or more competitors, to fix, maintain, increase or control the price for the supply of slab products within Canada.

15. For the purpose of forming and carrying out the alleged conspiracy, Domfoam/Valle, Carpenter, Vita and Foamex established a practice whereby the members of the alleged cartel would communicate about the amount and effective date of price increases in the sale and supply of slab and slab products in Canada. They would agree to use the same or similar effective dates and the same or similar price increase ranges, which had the overall effect of unduly lessening competition in Canada. The information regarding the price increase percentages and effective dates would be included in the price increase letters sent to customers and would constitute a price baseline, which would be used as a starting point for customer negotiations.

16. The conduct would occur approximately one to three times per year and typically followed raw material price increase announcements made by chemical suppliers. Raw material price increase notifications from chemical suppliers triggered communications among the members of the alleged slab cartel, which included

telephone calls, blackberry messages, e-mails, meetings and the exchange of price increase letters via email and facsimile.

17. The exchanges of information among Domfoam/Valle, Carpenter, Vita, and

Foamex were for the purpose of coordinating the amount and effective date of price increases to be announced to their customers. Information in the possession of the Commissioner of Competition indicates that this coordination was viewed as necessary by the alleged slab cartel members and gave them assurance that all parties to the alleged cartel would follow suit. Such assurance was needed because, if a party to the alleged cartel "went to market" alone, Domfoam/Valle, Carpenter, Vita and Foamex would be concerned that the price increase would not succeed, as customers, in some cases, might switch to that foam manufacturer who did not increase its price.

18. The conduct enabled the slab manufacturers to coordinate and implement price increases to their respective customers. To this end, customers received price increase letters on or near the same day, with similar or identical percentage increases and effective implementation dates. Information in the possession of the Commissioner of Competition indicates that the price increase letters to customers were viewed by the members of the alleged slab cartel as an assurance that all slab producers were proceeding with the same or similar price increases with the same or similar effective dates of implementation. Once the letters were out in the marketplace, the alleged slab cartel members were in a stronger position to negotiate with their large customers, given that all slab producers were at similar price levels. After the price increase letters were out, Domfoam/Valle would typically negotiate with customers over specific price increase amounts. Sometimes the price increases were fully implemented as written in the letters. At other times, the price increases were successful only in part or not at all. Even if successful, in whole or in part, there were times when the agreed upon price increases did not hold. That is to say, the price increases would abate.

**EXAMPLES OF COMMUNICATIONS BETWEEN COMPETITORS -- SLAB**

19. A high level employee from Domfoam had contacts with employees from Foamex. The Domfoam employee would exchange price increase letters and telephone calls about pricing with Michael Calderoni, Senior Sales Manager for Foamex.
20. In June 2006, two Domfoam employees had lunch at DiMenna's, a restaurant in St. Leonard, Quebec, with Mr. Calderoni. A chemical increase had been announced and Domfoam/Valle needed to increase prices. At this lunch, there was a discussion about whether Foamex would increase prices, as a price increase letter had not yet been released. Mr. Calderoni said that Foamex would increase prices and that he would fax Domfoam the price increase letter.

21. Domfoam employees also had contact with Dale Nelson, a Bedding and Furniture Sales Representative for Carpenter. A high level Domfoam employee and Mr. Nelson would communicate about pricing through telephone calls, and would exchange price increase letters.

22. In July of 2010, a high level Domfoam employee was contacted by Mr. Nelson. Mr. Nelson told this employee that Carpenter was going to increase prices in Montreal and had been going to customers announcing the increase. At the time of this phone call, Domfoam had not yet decided if they were going to increase prices. Mr. Nelson asked what Domfoam's intentions were in Montreal and passed on a message reportedly from his boss, that if Domfoam did not raise prices in Montreal, Carpenter would target Domfoam's customers. The Domfoam employee called Mr. Calderoni from Foamex the next day and passed on the message from Mr. Nelson. Mr. Calderoni stated it was not good news and he would need to discuss it with the people to whom he reports.

#### **THE OFFENCE – CARPET CUSHION**

23. From January 1, 1999 to March 11, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1)(c) of the *Competition Act*, RSC 1985, c C-34 by conspiring, combining, agreeing or arranging to lessen competition, unduly, with respect to the sale and supply of carpet cushion products within Canada.

24. From March 12, 2010 to July 27, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1) (a) of the *Competition Act*, 2009, c. 2, s. 410 by conspiring, agreeing or arranging, with one or more competitors, to fix, maintain, increase or control the price for the supply of carpet cushion products within Canada.

25. For the purpose of forming and carrying out the alleged conspiracy, Domfoam/Valle, Carpenter and Vita established a practice whereby the members of the alleged cartel would communicate about the amount and effective date of price increases in the sale and supply of carpet cushion in Canada. They would agree to use the same or similar effective dates and the same or similar price increase ranges, which had the overall effect of unduly lessening competition in Canada. The information regarding the price increase percentages and effective dates would be included in the price increase letters sent to customers and would constitute a price baseline, which would be used as a starting point for customer negotiations.

26. This conduct would occur approximately one to four times per year and typically followed an increase in the price of scrap foam, which consequently resulted in carpet cushion price increase notifications being sent to customers by United States-based carpet cushion manufacturers. These United States-based notifications would, in turn, have the effect of triggering communications among the members of the alleged carpet cushion cartel in Canada. Such communications included telephone calls, blackberry messages, emails, meetings and the exchange of price increase letters via email and facsimile.

27. The exchanges of information among Domfoam/Valle, Carpenter and Vita, were for the purpose of coordinating the amount and effective date of price increases to be announced to their customers. Information in the possession of the

Commissioner of Competition indicates that this coordination was viewed as necessary by the alleged carpet cushion cartel members and gave them assurance that all parties to the alleged cartel would follow suit. Such assurance was needed because, if a party to the alleged cartel "went to market" alone, Domfoam/Valle, Carpenter and Vita would be concerned that the price increase would not succeed, as customers, in some cases, might switch to that foam manufacturer who did not increase its price.

28. The conspiracy enabled the carpet cushion manufacturers to coordinate and implement price increases to their respective customers. To this end, customers received price increase letters on or near the same day, with similar or identical percentage increases and effective implementation dates. Information in the possession of the Commissioner of Competition indicates that the price increase letters to customers were viewed by the members of the alleged carpet cushion cartel as an assurance that all carpet cushion producers were proceeding with the same or similar price increases with the same or similar effective implementation dates. Once the letters were out in the marketplace, the alleged carpet cushion cartel members were in a stronger position to negotiate with their large customers, given that all carpet cushion producers were at similar price levels. After the price increase letters were out, Domfoam/Valle would typically negotiate with customers over specific increase amounts. Sometimes the price increases were fully implemented as written in the letters. At other times, the price increases were successful only in part or not at all. Even if successful, in whole or in part, there were times when the agreed upon price increases did not hold. That is to say, the price increases would abate.

#### **EXAMPLES OF COMMUNICATIONS BETWEEN COMPETITORS – CARPET CUSHION**

29. A Domfoam employee had competitor contacts with Dan Temple, Regional Manager, Western Region, for Carpenter. The Domfoam employee and Mr. Temple had pricing discussions, and would exchange price increase information by fax.
30. The Domfoam employee and Mr. Temple used the term "popcorn" as a code name for chipped foam. Carpenter had a "no discussion with competition" policy, so he and Mr. Temple disguised the name with "popcorn." The Domfoam employee believes they used this term as they knew it was not right to be discussing pricing with competitors. The Domfoam employee would not use this term in any other instances other than in relation to the price of that product, and always with Mr. Temple.

31. The Domfoam employee would exchange pricing notifications and intentions with Mr. Temple. The Domfoam employee would tell Mr. Temple that Domfoam/Valle was intending to go up in price and that he had not seen any notifications from Mr. Temple's employer, Carpenter. Mr. Temple would also make these types of phone calls to the Domfoam employee. A day or two later, the Domfoam employee would receive notification of Carpenter's price increases from an outside fax machine located, for example, at UPS or Staples. Such notifications were never from a Carpenter fax machine. The Domfoam employee only ever received Carpenter price increase letters in this way, and if the Domfoam employee received a Carpenter price increase letter faxed from a UPS store, he was 99.9% sure it was from Mr. Temple.

**DOMFOAM/VALLE ACKNOWLEDGES THAT THE BUREAU HAS IN ITS POSSESSION A WIRETAP RECORDING RELATING TO THE FOLLOWING:**

32. An employee with a competitor of Domfoam/Valle, who is also cooperating with the investigation, would exchange pricing information with Michael Lajambe, District Manager, Eastern Canada, for Carpenter. The competitor's employee received a telephone call from Mr. Lajambe in June of 2010 where Mr. Lajambe told the competitor's employee that Carpenter was sending out their price increase letter the next day with an effective date of July 19<sup>th</sup> and a 12% percentage price increase. Mr. Lajambe offered to fax the price increase letter to Domfoam/Valle's competitor.
33. During this conversation, Mr. Lajambe commented that he heard Domfoam/Valle's competitor had a new boss who did not want his employees communicating with competitors. The competitor's employee confirmed this was true. Mr. Lajambe stated his bosses were the same way. Mr. Lajambe and the competitor's employee then discussed the possibility of a third price increase with Mr. Lajambe, stating that he felt the prices were too low. Mr. Lajambe then confirmed the fax number to send him the respective price increase letter.

**OTHER CONSIDERATIONS**

34. Domfoam/Valle has agreed to cooperate and to plead guilty to offences under section 45(1) (c) of the *Competition Act*, RSC 1985, c C-34, for the period from January 1, 1999 to March 11, 2010, and section 45(1) (a) of the *Competition Act*, 2009, c. 2, s. 410, for the period from March 12, 2010 to July 27, 2010. Such cooperation and willingness to plead guilty is saving the costs of further investigation and trial, which would otherwise have been incurred by the Government of Canada.
35. The cooperation of Domfoam/Valle will assist the Government of Canada in its investigation and subsequent prosecution of other individuals and corporations for violations of the *Competition Act* in relation to the sale and supply of slab and carpet cushion in Canada.

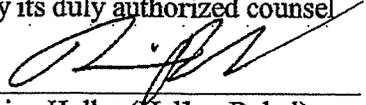
**CONCLUSION**

36. Domfoam/Valle admits the foregoing pursuant to section 655 of the *Criminal Code* solely for the purpose of dispensing with proof of such facts at trial in this proceeding.

37. Domfoam/Valle acknowledges, on the basis of the facts set out herein, with respect to the agreement alleged in the indictment, that all constituent elements of indictable offences under both sections 45(1)(c) of the *Competition Act*, RSC 1985, c C-34 and 45(1)(a) of the *Competition Act*, 2009, c. 2, s. 410 have been established.

38. This document may be executed in counterparts.

Domfoam/Valle  
By its duly authorized counsel

  
\_\_\_\_\_  
Brian Heller (Heller, Rubel)

This 5<sup>th</sup> day of ~~December~~, 2011  
JANUARY 2012

Her Majesty the Queen  
By its duly authorized officer

  
\_\_\_\_\_  
Robert Merrin

This 5<sup>th</sup> day of ~~December~~, 2011  
January



**IN THE SUPERIOR COURT OF ONTARIO**  
**COUR SUPÉRIEURE DE L'ONTARIO**

JUDICIAL DISTRICT OF OTTAWA (East Region)  
DISTRICT JUDICIAIRE D'OTTAWA (région de l'est)

**BETWEEN:**  
**ENTRE:**

**HER MAJESTY THE QUEEN**  
**SA MAJESTE LA REINE**

-and-  
-et-

**DOMFOAM INTERNATIONAL INC. AND VALLE FOAM INDUSTRIES (1995) INC.**

**INDICTMENT**  
**ACTE D'ACCUSATION**

**DOMFOAM INTERNATIONAL INC. AND VALLE FOAM INDUSTRIES (1995) INC.**

**STAND CHARGED THAT THEY/ SONT ACCUSÉS**

(1) Between the 1<sup>st</sup> day of January, 1999 and the 11<sup>th</sup> day of March, 2010, at the City of Toronto, in the said region of Toronto, at the City of Montreal, district of Montreal, Province of Quebec and elsewhere in Canada, did unlawfully conspire, combine, agree or arrange with Carpenter Canada Co., Vitafoam Canada Inc. and other companies and individuals known and unknown to prevent or lessen, unduly, competition in the sale or supply of carpet cushion foam in Canada, thereby committing an indictable offence contrary to s. 45(1)(c) of the *Competition Act*;

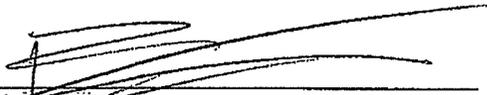
(2) Between the 1<sup>st</sup> day of January, 1999 and the 11<sup>th</sup> day of March, 2010, at the City of Toronto, in the said region of Toronto, at the City of Montreal, district of Montreal, Province of Quebec and elsewhere in Canada, did unlawfully conspire, combine, agree or arrange with Foamex Canada Inc., Carpenter Canada Co., Vitafoam Canada Inc. and other companies and individuals known and unknown to prevent or lessen, unduly, competition in the sale or supply of slab foam in Canada, thereby committing an indictable offence contrary to s. 45(1)(c) of the *Competition Act*;

(3) Between the 12<sup>th</sup> day of March, 2010 and the 27<sup>th</sup> day of July, 2010, at the City of Toronto, in the said region of Toronto, at the City of Montreal, district of Montreal, Province of Quebec and elsewhere in Canada, did unlawfully conspire, agree or arrange with Carpenter Canada Co., Vitafoam Canada Inc. and other companies and individuals

known and unknown to fix, maintain, increase, or control the price for the supply of carpet cushion foam in Canada contrary to s. 45(1)(a) of the *Competition Act* and did thereby commit an indictable offence pursuant to s. 45(2) of the *Competition Act*;

(4) Between the 12<sup>th</sup> day of March, 2010 and the 27<sup>th</sup> day of July, 2010, at the City of Toronto, in the said region of Toronto, at the City of Montreal, district of Montreal, Province of Quebec and elsewhere in Canada, did unlawfully conspire, agree or arrange with Foamex Canada Inc., Carpenter Canada Co., Vitafoam Canada Inc. and other companies and individuals known and unknown to fix, maintain, increase, or control the price for the supply of slab foam in Canada contrary to s. 45(1)(a) of the *Competition Act* and did thereby commit an indictable offence pursuant to s. 45(2) of the *Competition Act*.

DATED THIS 5<sup>th</sup> DAY OF JANUARY, 2012,  
FAIT LE 5<sup>ième</sup> JOUR DE JANVIER 2012,  
AT/À OTTAWA, ONTARIO

  
Robert J. Morin  
Counsel for the Director of Public Prosecutions  
of Canada / Procureur pour le Directeur des  
poursuites pénales du Canada

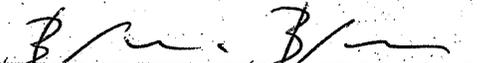
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This is Exhibit "H" referred to

in the Affidavit of Tony Vallecoccia

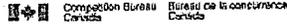
Sworn this 11th

day of January, 2012.

  
A Commissioner for Taking Affidavits

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News Room

[Email](#)[Print Friendly](#)[Share](#)**Competition Bureau Canada**

January 06, 2012 08:30 ET

**Competition Bureau Sends Signal to Price-Fixers With \$12.5 Million Fine****First Conviction Under New Criminal Price-Fixing Law**

**OTTAWA, ONTARIO--(Marketwire - Jan. 6, 2012)** - The Competition Bureau announced today that Domfoam International Inc. and Valle Foam Industries (1995) Inc. pleaded guilty yesterday to conspiracy under the *Competition Act* and were fined a total of \$12.5 million for participating in a price-fixing cartel for polyurethane foam.

Domfoam and its affiliate, Valle Foam, admitted before the Ontario Superior Court in Ottawa that they had agreed with competitors to fix the price of polyurethane foam products manufactured at their plants in Brampton, Ontario, Delta, British Columbia, and Montreal, Quebec, over a period of 11 years. The companies' products are used mainly in carpet underlay, furniture and bedding.

"Yesterday's guilty plea is the first conviction under Canada's amended conspiracy law," said Melanie Aitken, Commissioner of Competition. "This investigation highlights the Bureau's reinvigorated mandate to stop consumer harm caused by price-fixing, and to secure significant fines for these serious criminal offences."

The charges are the first to arise from the Bureau's investigation into price-fixing cartel in the polyurethane foam industry. Anyone with information relating to this investigation is encouraged to contact the Competition Bureau.

The Bureau's investigation benefitted from cooperation under the Bureau's Immunity and Leniency Programs, which create incentives for parties to address their criminal liability by cooperating with the Bureau in its ongoing investigation and prosecution of other alleged cartel participants.

Under the *Competition Act*, an agreement between competitors to fix prices, allocate markets or restrict output in Canada is a criminal offence. In March 2010, amendments to the conspiracy provision of the Act came into force. For further information regarding the polyurethane foam cartel and the conspiracy provision of the Act, please consult our backgrounder.

The Competition Bureau, as an independent law enforcement agency, ensures that Canadian businesses and consumers prosper in a competitive and innovative marketplace.

[Enquiry / Complaint Form](#)

**Contact Information**

For media enquiries:  
Alexa Keating  
Senior Communications Advisor  
Public Affairs Branch  
819-953-9760

For general enquiries:  
Information Centre  
Competition Bureau  
819-997-4282 or Toll free: 1-800-348-5358  
TTY (hearing impaired): 1-800-642-3844  
[www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca)

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News Room

**View Related News**

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This is Exhibit "I" referred to

in the Affidavit of Tony Vallecoccia

Sworn this 11th

day of January, 2012.

  
A Commissioner for Taking Affidavits

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

\_\_\_\_\_)  
In re POLYURETHANE FOAM ANTITRUST )  
LITIGATION )  
\_\_\_\_\_)

MDL Docket No. 2196  
Index No. 10-MD-2196 (JZ)

This document relates to: )  
\_\_\_\_\_)  
DIRECT PURCHASER CLASS ACTION )  
\_\_\_\_\_)

**VOLUNTARY DISMISSAL AND SETTLEMENT AGREEMENT**

This Settlement and Voluntary Dismissal Agreement (hereinafter, "Agreement") is made and entered into this 3<sup>rd</sup> day of January 2012, by and between Bruce Bradley, Dean Brayianis, Michael Cappuccino, Peter Foti, Duke Greenstein, John Howard, Dale McNeill, James William Sproule, Robert Rochietti-Valle, Tony Vallecoccia, and Fred Zickmantel (collectively, the "Individual Settling Parties"), together with Domfoam International Inc. ("Domfoam"), Valle Foam Industries (1995) Inc. ("Valle Foam"), and A-Z Sponge & Foam Products Ltd. ("A-Z", and together with Domfoam and Valle Foam, the "Voluntary Dismissal Defendants") and Class Plaintiffs, individually and on behalf of a putative class of purchasers of polyurethane foam or polyurethane foam products (together, "polyurethane foam") directly from any Defendants named in the above-captioned action (the "Class Action" or the "Action").

#### RECITALS

WHEREAS, there is pending in the United States District Court for the Northern District of Ohio, the Class Action, *In re Polyurethane Foam Antitrust Litigation*, MDL Docket No. 2196, Index No. 10-MD-02196 (JZ), brought on behalf of direct purchasers of polyurethane foam, in which Class Plaintiffs have alleged violations of law, including the existence of an unlawful conspiracy to fix, raise, maintain, or stabilize the prices of polyurethane foam and allocate customers for polyurethane foam in the United States in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15;

WHEREAS, the Voluntary Dismissal Defendants named as defendants in that action deny: (1) each and all of the claims and allegations of wrongdoing made by the Class Plaintiffs and the Class in the Action and maintain furthermore that they have meritorious defenses; (2) all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action; and (3) the allegations

that the Class Plaintiffs or any Person in the Class were harmed by any conduct alleged in the Action or otherwise;

WHEREAS, the Voluntary Dismissal Defendants have demonstrated to Class Plaintiffs' Interim Co-Lead Counsel their extremely precarious and unprofitable financial positions;

WHEREAS, the Voluntary Dismissal Defendants intend to file a form of bankruptcy, restructuring or creditor protection under Canadian law, including but not limited to the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act and Chapter 15 of the United States Bankruptcy Code and this Agreement is conditioned on such filing not later than January 31, 2012 as provided in ¶ 14 below;

WHEREAS, Class Plaintiffs' Interim Co-Lead Counsel, in light of the planned bankruptcy, restructuring or creditor protection filing, desire to efficiently litigate this action and therefore to dismiss the Voluntary Dismissal Defendants without prejudice while preserving access to discovery available from the Voluntary Dismissal Defendants and the rights of any Plaintiffs or Class Members to make any appropriate future claims in bankruptcy or as otherwise permitted by law;

WHEREAS, Class Plaintiffs' Interim Co-Lead Counsel also has concluded that there would be benefits from cooperation by the Individual Settling Parties who are officers and employees or former officers and employees of the Voluntary Dismissal Defendants and that it is in the best interests of Plaintiffs and the Class to settle and resolve potential claims with the Individual Settling Parties;

WHEREAS, the parties to this Agreement agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or

evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, the Voluntary Dismissal Defendants and Individual Settling Parties agree, as more fully described herein, to cooperate with Class Plaintiffs' Interim Co-Lead Counsel (as defined below) and Class Members by providing truthful information (to the extent such information is in the possession, custody, or control of the parties to this Agreement and/or is accessible by them) related to the polyurethane foam industry and/or claims asserted by Class Plaintiffs in the Action against the defendants named in such Action and parties not currently named as defendants;

WHEREAS, arm's-length negotiations have taken place between the parties to this Agreement, which embodies all of the terms and conditions of the agreements among the parties including Class Plaintiffs, both individually and on behalf of the Class Members, and has been reached subject to the approval of the Court as provided herein and is intended to supersede any prior agreements between the parties;

WHEREAS, Class Plaintiffs' Interim Co-Lead Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action and claims asserted in any Class Action complaint brought on behalf of a putative class of purchasers of polyurethane foam directly from any Defendants, including those subsequently dismissed voluntarily, originally filed in the Western District of North Carolina, the Northern District of Ohio, the Central District of California, the Northern District of California, and the Western District of Oklahoma (all of which have since been consolidated for pre-trial proceedings by order of the United States Judicial Panel on Multidistrict Litigation as MDL Docket No. 2196), the legal and factual defenses thereto and the

applicable law, that it would be in the best interests of Class Plaintiffs and the Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for Class Plaintiffs and the Class and, further, that Class Plaintiffs' Interim Co-Lead Counsel consider the Agreement set forth herein to be fair, reasonable and adequate and in the best interests of Class Plaintiffs and the Class; and

WHEREAS, the Voluntary Dismissal Defendants, despite the belief that they are not liable for the claims asserted against them in the Action and that they have good defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to Plaintiffs and avoid the risks inherent in complex litigation.

#### **A G R E E M E N T**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Class Plaintiffs (on behalf of themselves and each Person in the Class), the Individual Settling Parties and the Voluntary Dismissal Defendants, by and through their counsel and attorneys of record, that, subject to the approval of the Court, and provided that Class Plaintiffs' Interim Co-Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, the Action shall, upon entry of the Final Approval Order and Judgment, be dismissed without prejudice as against the Voluntary Dismissal Defendants and the Released Claims as against any other Releasees shall be finally and fully settled, compromised and dismissed on the merits and with prejudice upon and subject to the terms and conditions of this Agreement, as follows.

**A. Definitions**

1. As used in this Agreement the following terms have the meanings specified below.

In the event of any inconsistency between any definition set forth below and any definition set forth in any other document related to this Agreement, the definition set forth below shall control.

- (a) “Action” means *In re Polyurethane Foam Antitrust Litigation* and each of the cases brought on behalf of a putative class of purchasers of polyurethane foam directly from any Defendants, previously or later consolidated and/or included as part of MDL Docket No. 2196, Index No. 10-MD-02196 (JZ), including any such cases voluntarily dismissed.
- (b) “Alleged Co-Conspirators” means The Carpenter Company, E.R. Carpenter, L.P., Carpenter Holdings, Inc., Carpenter Canada, Co., Flexible Foam Products, Inc., Ohio Decorative Products, Inc., Future Foam, Inc., FXI – Foamex Innovations, Inc., Hickory Springs Manufacturing Company, Inoac International Co., Ltd., Inoac USA Inc., Inoac Corporation, Crest Foam Industries Inc., Leggett & Platt Inc., Mohawk Industries, Inc., Otto Bock Polyurethane Technologies, Inc., Plastomer Corporation, Scottdel, Inc., Louis Carson, David Carson, Vitafoam Products Canada Limited, Vitafoam, Inc., Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., Woodbridge Foam Fabricating, Inc. and all employees, direct and indirect parents, subsidiaries, affiliates, predecessors and successors of each of the foregoing as well as any other subsequently-named defendant(s) in the Action, and its employees, direct and indirect parents, subsidiaries, affiliates, predecessors and successors.

- (c) "Claim(s)" means any and all actions, suits, claims, demands, assertions, or causes of action, which are directly related to the subject matter of the Action. A Claim expressly includes a demand to compromise or settle an alleged cause of action related to the subject matter of the Action that is made outside the context of litigation or this Action.
- (d) "Class" (or "Settlement Class") is defined, subject to the Court's approval and for purposes of this Agreement only, to include all persons who purchased polyurethane foam in the United States directly from the Defendants in the Action and/or an Alleged Co-Conspirator (as defined above) at any time from January 1, 1999 through the present (defined as the "Class Period"). As will be reflected in the class notices approved by the Court, excluded from the Class are the Voluntary Dismissal Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees, and the Non-Settling Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees. Also excluded from the Class are all federal, state, and local governmental entities, any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.
- (e) "Class Member" means a Person who falls within the definition of the Class and has not timely and validly excluded himself, herself or itself from the Class in accordance with the procedure to be established by the Court.

- (f) “Class Plaintiffs” means Ace Foam, Inc., Adams Foam Rubber Co., a/k/a Adams Foam Rubber Company, Inc., Cambridge of California, Inc., GCW Carpet Wholesalers, Inc. t/a Floors USA, Foam Factory, Inc., J&S Packaging, Inc., and VFP Acquisitions d/b/a Vanguard Foam and Packaging Company.
- (g) “Class Plaintiffs’ Interim Co-Lead Counsel” means William Isaacson of Boies, Schiller & Flexner LLP, and Stephen Neuwirth of Quinn Emanuel Urquhart & Sullivan, LLP.
- (h) “Court” means the United States District Court for the Northern District of Ohio.
- (i) “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
- (j) “Effective Date” means the first date by which all of the events and conditions specified in ¶ 13 of this Agreement have occurred and have been met.
- (k) “Execution Date” means the date this Agreement is executed by all parties.
- (l) “Final” means, with respect to any order of court, including without limitation, the Final Approval Order and Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (a) no appeal has been filed

and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind.

- (m) “Final Approval Order and Judgment” means the order and judgment approving the Agreement and dismissing the Action without prejudice as to the Voluntary Dismissal Defendants in a form to be agreed upon by the parties to this Agreement.
- (n) “Non-Settling Defendant” means any Alleged Co-Conspirator or defendant in this Action other than Domfoam, Valle Foam and A-Z.
- (o) “Notice Administrator” means the Notice Administrator(s) to be approved by the Court.
- (p) “Opt Out” means a person or entity who would have been a member of the Settlement Class except for his, her, or its timely and valid request for exclusion.
- (q) “Person(s)” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision

or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

- (r) "Released Claims" (as granted, the "Releases") means any and all claims, demands, actions, suits, rights, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, debts, liabilities, judgments, and remedies, whether class, individual, or otherwise in nature, that Releasors, or anyone of them, whether directly, representatively, derivatively ever had, now has, or hereafter can, shall, or may have against the Releasees, whether known or unknown (including, but not limited to "Unknown Claims"), suspected or unsuspected, asserted or unasserted, in law or in equity, on account of or arising out of the facts, occurrences, transactions or other matters alleged in the Action or in complaints containing similar allegations of conspiracy with respect to any polyurethane foam or polyurethane foam product, purchased within, to, or from the United States, or purchased and/or delivered in Canada for use in the United States (for purposes of clarity, this definition does not cover those purchases and/or deliveries in Canada for use in Canada) before and during the period from January 1, 1999 through and including the Effective Date, including without limitation any such claims which arise under any United States federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, unjust enrichment, or civil conspiracy law, including,

without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, or the law of any foreign jurisdiction.

- (s) “Releasees” means the Individual Settling Defendants together with the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and legal representatives of the Voluntary Dismissal Defendants, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. Other than these individuals, the term “Releasees” as defined for purposes of this Agreement includes Global Upholstery Co. Limited and Valdomco Inc., both of which are shareholders of Domfoam.
- (t) “Releasers” means the Class Plaintiffs and each and every Class Member (other than an Opt Out) on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and affiliates, their present and former officers, directors, employees, agents, and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. As used in this paragraph, “affiliates” means entities controlling, controlled by or under common control with a Releaser.
- (u) “Voluntary Dismissal Defendants” means Domfoam, Valle Foam and A-Z Sponge & Foam Products Ltd.
- (v) “Unknown Claims” means any Released Claim that any Class Plaintiff and/or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Releasees that if known by him, her

or it, might have affected his, her or its settlement with and release of the Releasees, or might have affected his, her or its decision not to object to this Agreement. With respect to any and all Released Claims, the parties stipulate and agree that, upon the Effective Date, and provided that Class Plaintiffs' Interim Co-Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, each Class Plaintiff shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Final Approval Order and Judgment shall have waived the provisions, rights and benefits equivalent to California Civil Code §1542 (to the extent it applies to the Action), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Provided that Class Plaintiffs' Interim Co-Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, each Class Plaintiff shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Final Approval Order and Judgment shall have waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code § 1542. The Class Plaintiffs and Class Members

may hereafter discover facts in addition to or different from those that any of them now knows or believes to be true with respect to the subject matter of the Released Claims, but subject to the terms and conditions herein, and provided that Class Plaintiffs' Interim Co-Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, each Class Plaintiff (other than an Opt Out) shall expressly have, and upon the Effective Date, each Class Member (other than an Opt Out) shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have fully, finally and forever settled and released (as to the Releasees and not the Voluntary Dismissal Defendants) any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Plaintiffs acknowledge, and the Class Members (other than an Opt Out) shall be deemed to have acknowledged, and by operation of the Final Approval Order and Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of this Agreement of which this release is a part.

**B. Preliminary Approval Order, Notice Order, and Approval Hearing**

**2. Reasonable Best Efforts to Effectuate this Agreement.** The parties to this Agreement: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement, including but not limited to: (i) cooperating in promptly seeking both preliminary and final approval of this Agreement (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e), securing certification of the Settlement Class and the prompt dismissal without prejudice of the Action as to the Voluntary Dismissal Defendants only); and (ii) fulfilling in a timely and good faith manner the cooperation and other obligations set forth in ¶ 11 herein. As soon as is practicable but no later than two (2) days after the deadline for Class Plaintiffs' Interim Co-Lead Counsel to elect whether to terminate this Agreement pursuant to ¶ 11(b), and provided that Class Plaintiffs' Interim Co-Lead Counsel does not elect to terminate this Agreement pursuant to ¶ 11(b), Class Plaintiffs' Interim Co-Lead Counsel and the parties to this Agreement shall jointly file with the Court a stipulation for the immediate suspension of the Action against the Voluntary Dismissal Defendants. In the interim, however, Class Plaintiffs' Interim Co-Lead Counsel agrees to suspend the Action against Voluntary Dismissal Defendants until the time provided in ¶ 11(b). The obligations of Voluntary Dismissal Defendants pursuant to this Agreement are subject to any orders entered under the bankruptcy, restructuring or other creditor protection laws of the United States or Canada. For purposes of clarity, in the event that this Action is stayed by the filing by the Voluntary Dismissal Defendants for protection under the bankruptcy, restructuring or other creditor protection laws of the United States or Canada, then the obligation to seek preliminary approval of this Agreement

will be the responsibility of Class Plaintiffs' Interim Co-Lead Counsel. The aforementioned application for a stay of all proceedings as against Voluntary Dismissal Defendants shall be subject to any other stay of such proceedings (automatic or otherwise) entered by another court, including but not limited to a United States Bankruptcy Court, as a direct or indirect result of filings made by one or more Voluntary Dismissal Defendants under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act. Additionally, to the extent permissible by law or reasonably practicable in light of the anticipated bankruptcy, restructuring or creditor protection proceedings, if any proceeding under the bankruptcy, restructuring, or other creditor protection laws of Canada or the United States in any way impacts or impairs the Voluntary Dismissal Defendants' ability to fully comply with any of the obligations set forth in this Agreement, the Voluntary Dismissal Defendants shall use commercially reasonable efforts (to the extent of their ability to do so) to assist Class Plaintiffs' Interim Co-Lead Counsel in seeking relief in that bankruptcy proceeding in order to allow the Voluntary Dismissal Defendants to fully comply with the obligations set forth in this Agreement. Such commercially reasonable efforts shall include, but are not limited to, the Voluntary Dismissal Defendants joining (to the extent of their ability to do so) Class Plaintiffs' Interim Co-Lead Counsel in any motions or petitions seeking such relief from the bankruptcy, insolvency, or other restructuring court(s).

**3. Motion for Preliminary Approval.** Within thirty (30) business days after the Execution Date of this Agreement, Class Plaintiffs' Interim Co-Lead Counsel shall submit to the Court a motion, to be joined in by the Voluntary Dismissal Defendants, for preliminary approval of this Agreement, authorization to disseminate notice to the proposed Settlement Class within thirty (30) days of preliminary court approval of the Agreement, including a statement that,

subject to the approval of the Court, notice shall be by first class mail and by publication, and for a continued stay of all proceedings in the Action against the Voluntary Dismissal Defendants (the "Preliminary Approval Motion," and if entered, the "Preliminary Approval Order"). The Preliminary Approval Motion shall include: (a) the definition of the Settlement Class to be certified by the Court pursuant to this Agreement; (b) the proposed form of, method for, and date of dissemination of notice to the Settlement Class, as agreed upon by Class Plaintiffs' Interim Co-Lead Counsel and the parties to this Agreement prior to submission of the Preliminary Approval Motion; and (c) a proposed form of the Final Approval Order and Judgment (as defined below) as set forth in Exhibit A hereto.

**4. Notice to Class.** In the event that the Court preliminarily approves the Agreement (i.e., enters the Preliminary Approval Order), Class Plaintiffs' Interim Co-Lead Counsel shall, by and through the Notice Administrator, as soon as practicable and at the same time as such notice is given with respect to any other defendant settling this matter including Vitafoam, Inc. and Vitafoam Products Canada Limited, but no later than thirty (30) days after the Court enters the Preliminary Approval Order, and in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order, provide those members of the Settlement Class who have been identified by reasonable means as within the Class with notice by first class mail, in a form to be approved by the Court, of the Agreement and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed Agreement (the "Approval Hearing," which Approval Hearing shall take place no more than ten (10) days following the filing of all objections to the Agreement and responses to such objections). This notice shall also include the general terms of the Agreement and a description of the rights of those Persons in the Class to object to the Agreement, opt out of the Class, and/or

appear at the Approval Hearing. Class Plaintiffs' Interim Co-Lead Counsel shall take all necessary and appropriate steps to ensure that notice of the Approval Hearing is provided in accordance with the order of the Court.

**5. Publication.** Class Plaintiffs' Interim Co-Lead Counsel shall cause to be published a summary of the notice ("Summary Notice"). Publication will be carried out as soon as is reasonably practicable and at the same time as the same such notice is published for Defendants Vitafoam, Inc. and Vitafoam Products Canada Limited (as provided for in Section 9 of the Settlement Agreement between Direct Purchaser Class Plaintiffs and Defendants Vitafoam, Inc. and Vitafoam Products Canada Limited dated October 19, 2011). Voluntary Dismissal Defendants shall not have any responsibility for providing notice of this Agreement to the Class. The parties shall mutually agree on any content relating to parties that will be used by the Class Plaintiffs' Interim Co-Lead Counsel in any Agreement related press release or other media, including on websites, of Class Plaintiffs' Interim Co-Lead Counsel, and/or the Notice Administrator.

**6. Motion for Final Approval and Entry of Final Judgment.** Provided that the Voluntary Dismissal Defendants and Individual Settling Parties have fulfilled all of their then-due obligations under this Agreement, and further provided that Class Plaintiffs' Interim Co-Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, at the same time and at the first opportunity as the motion for Final Approval Order and Judgment is given with respect to any other defendant settling this matter including Vitafoam, Inc. and Vitafoam Products Canada Limited, but not less than ninety (90) calendar days following the entry of the Preliminary Approval Order and at least thirty-five (35) calendar days before the Approval Hearing, Class Plaintiffs' Interim Co-Lead

Counsel shall submit a motion for final approval of the Agreement by the Court (the “Final Approval Order and Judgment”) after notice to the Class of the Approval Hearing pursuant to ¶¶ 4-5 above, and the parties hereto shall jointly seek entry of the Final Approval Order and Judgment:

- (a) fully and finally approving the Agreement and its terms as being fair, reasonable and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms and conditions;
- (b) finding that the notice given to the Class as contemplated in ¶¶ 4-5 above constitutes the best notice practicable under the circumstances and complies in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;
- (c) directing that the Action be dismissed without prejudice as to the Voluntary Dismissal Defendants and without costs;
- (d) discharging and releasing the Releasees from all Released Claims;
- (e) permanently barring and enjoining the institution and prosecution, by Class Plaintiffs and the Class Members, of any other action against the Releasees in any court asserting any Released Claims;
- (f) reserving continuing and exclusive jurisdiction over the Agreement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;

- (g) determining, pursuant to Fed. R. Civ. P. 54(b), that there is no just reason for delay and directing entry of a final judgment of voluntary dismissal without prejudice as to the Voluntary Dismissal Defendants;
- (h) containing such other and further provisions consistent with the terms of this Agreement to which the parties expressly consent in writing; and
- (i) requiring Class Plaintiffs' Interim Co-Lead Counsel to file with the Clerk of the Court a record of potential Class Members who timely and validly excluded themselves from the Settlement Class, and to provide a copy of the record to counsel for the parties to this Agreement.

7. **Effect of Bankruptcy, Restructuring or other Creditor Protection Filing.** In the event that Voluntary Dismissal Defendants file for any form of bankruptcy, restructuring or other creditor protection under Canadian law, including but not limited to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, and an order under Chapter 15 of the United States Bankruptcy Code is entered in a United States Bankruptcy Court, this Agreement shall remain in effect. Notwithstanding any automatic stay of proceedings entered or otherwise triggered by the filing of any form of bankruptcy, restructuring or other creditor protection under Canadian law, the parties to this Agreement shall fully and completely perform the terms of this Agreement, except as noted in ¶¶ 11(j) and 11(k) herein, and all discovery proceedings, motion practice and other proceedings in this Action will be indefinitely stayed as to the Voluntary Dismissal Defendants. Notwithstanding anything in this Agreement to the contrary, including but not limited to this Agreement's provisions regarding the release of claims as to all Releasees and the dismissal without prejudice of claims against the Voluntary Dismissal Defendants and to the extent permitted by law, nothing in this Agreement shall preclude the

Class Plaintiffs, or any member of the Class, individually or collectively, from filing against the Voluntary Dismissal Defendants a claim in any Canadian or U.S. bankruptcy, restructuring or other credit protection proceeding which claim is based upon, arising out of or relating to facts, occurrences, transactions or other matters alleged in the Action. To the extent permitted by law, the Voluntary Dismissal Defendants will not object to the filing by Class Plaintiffs, or any member of the Class, of any such claim against the Voluntary Dismissal Defendants in any such Canadian or U.S. bankruptcy, restructuring or other creditor protection proceeding, and further agree that nothing in this Agreement shall in any way impair or limit such claim against Voluntary Dismissal Defendants or the ability of such claimant(s) to seek recovery in any such bankruptcy, restructuring or other creditor protection proceeding for any such claim(s) against the Voluntary Dismissal Defendants. Under no circumstances, however, shall Class Plaintiffs or any member of the Class, individually or collectively, be permitted to file a claim or otherwise challenge the validity, legality, or continuing effect of the Releases granted pursuant to this Agreement or the dismissal without prejudice of the Action as against the Voluntary Dismissal Defendants; provided, however, that such Releases and/or voluntary dismissals are not asserted as a defense to or limitation on any claim filed on behalf of Class Plaintiffs or any member of the Class in a Canadian or U.S. bankruptcy, restructuring or other creditor protection proceeding as against the Voluntary Dismissal Defendants, and the parties to this Agreement covenant and agree that no such defense or limitation will be asserted against such a claim against the Voluntary Dismissal Defendants. For purposes of clarity, the Releases granted shall remain in effect as against the Releasees in connection with a Canadian or U.S. bankruptcy, restructuring or other creditor protection proceeding, and those Releasees are free to assert them as a defense to or limitation on any claim in any proceeding.

**8. No Payments by Defendant.** Under no circumstances will the Voluntary Dismissal Defendants or Individual Settling Parties be required to pay any amount of money pursuant to this Agreement.

**9. No Liability for Provision of Notice.** Neither the Voluntary Dismissal Defendants, Individual Settling Parties, the Releasees nor their counsel shall have any responsibility for or liability whatsoever with respect to the provision of notice to the Class by the Notice Administrator pursuant to ¶¶ 4-5. Effective immediately upon the execution of this Agreement, the Releasers hereby fully, finally, and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Class Plaintiffs' Interim Co-Lead Counsel or the Notice Administrator based on notice given substantially in accordance with the Agreement, or further orders of the Court.

**10. Releases.** Upon the Effective Date, and provided that Class Plaintiffs' Interim Co-Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b) and 11(k), the Releasers and any other Person claiming (now or in the future) through or on behalf of them, and regardless of whether any such Releaser ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim and Release, any payment from Releasees, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees (and not the Voluntary Dismissal Defendants) and shall have covenanted not to sue the Releasees (but not the Voluntary Dismissal Defendants) with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim against the Releasees (but not the Voluntary Dismissal Defendants).

- (a) With respect to, and only with respect to, the Voluntary Dismissal Defendants, pursuant to this Agreement and within three (3) business days of the entry of the Preliminary Approval Order, the Class Plaintiffs (on behalf of the Class) shall direct that the Action be dismissed without prejudice as to the Voluntary Dismissal Defendants. In no event will such dismissal without prejudice as to the Voluntary Dismissal Defendants apply, alter, negate, or have any effect whatsoever on the full and final release of Claims contemplated by this Agreement as to any Releasees.
- (b) Following the dismissal without prejudice as to Voluntary Dismissal Defendants provided for in ¶ 10(a), all applicable limitations for the filing of the Claims, defenses, counterclaims, and/or third party claims shall be tolled as to the Voluntary Dismissal Defendants.
- (c) In the event that this Agreement receives Preliminary Approval by the Court and Voluntary Dismissal Defendants and Individual Settling Parties provide all of the cooperation as described in ¶ 11 (to the extent such cooperation has been requested of them and consistent with ¶ 11(d)) prior to the Final Approval Hearing, but that, for any reason whatsoever, the Court fails to enter the Final Approval Order and Judgment, Class Plaintiffs (individually in their capacity as named Plaintiffs) shall still be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees, shall covenant not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or

prosecuting any such Released Claim against the Releasees. With respect to an Individual Settling Party, the Releases as granted by Class Plaintiffs (individually in their capacity as named Plaintiffs) shall remain in full force and effect only to the extent that (and only for so long as) such Party continues to provide cooperation as described in ¶ 11. However, in the event that any Individual Settling Party does not provide such cooperation, the Releases as granted to all other Releasees providing full cooperation described in ¶ 11 (to the extent such cooperation has been requested of that Releasee and consistent with ¶ 11(d)) shall remain in full force and effect.

C. Cooperation

**11. The Voluntary Dismissal Defendants and Individual Settling Parties shall provide cooperation pursuant to this Agreement.** All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Cooperation obligations shall only apply to the parties hereto who shall act with, by or through Class Plaintiffs' Interim Co-Lead Counsel pursuant to this Agreement in the Action. Class Plaintiffs' Interim Co-Lead Counsel agree that, unless compelled to do so by an Order of the Court or as otherwise required by law or the Federal Rules of Civil Procedure, they will not disclose any information obtained or learned from cooperation of Voluntary Dismissal Defendants and Individual Settling Parties (as defined in this Section) to any party with whom the Voluntary Dismissal Defendants and Releasees (including Individual Settling Parties) have not entered into an agreement of settlement or dismissal. (The immediately preceding sentence does not apply to Class Plaintiffs' experts and consultants in the Action – who will likewise agree to the limitations in this

paragraph – and is not intended to prevent Class Plaintiffs from using cooperation from Voluntary Dismissal Defendants or Individual Settling Parties to prosecute Class Plaintiffs’ Action subject to the Stipulated Protective Order entered by the Court.) Notwithstanding any other provision in this Agreement, the parties to this Agreement may assert, where applicable, the work-product doctrine, the attorney-client privilege, the common interest, the joint defense privilege and/or any other applicable privilege or protection with respect to any documents, interviews, declarations and/or affidavits, depositions, testimony, material, and/or information requested under this Agreement. Any documents, declarations, affidavits, deposition testimony and information provided to Class Plaintiffs’ Interim Co-Lead Counsel pursuant to this provision shall be covered by the Stipulated Protective Order in place in this case. None of the cooperation provisions are intended to, nor do they, waive any such privilege or protection. Voluntary Dismissal Defendants and Individual Settling Parties agree that their counsel will meet with Class Plaintiffs’ Interim Co-Lead Counsel as is reasonably necessary to discuss any applicable privilege or protection.

(a) **Preliminary Approval:** The parties agree to cooperate to the extent reasonably necessary in connection with Class Plaintiffs’ Interim Co-Lead Counsel’s preparation of the Preliminary Approval Motion and any related documents necessary to effectuate and implement the terms and conditions of this Agreement.

(b) **Proffers:** Beginning within five (5) business days of the Execution Date of this Agreement, and, to the extent practicable, at the same time as such a Lawyers’ Proffer is made to Indirect Purchaser Class Plaintiffs’ Interim Lead Counsel and counsel for one or more “Direct Action” Plaintiffs, or at a time mutually agreed upon by the parties, Voluntary Dismissal Defendants and Individual Settling Parties agree that their counsel will meet with Class Plaintiffs’ Interim Co-Lead Counsel to provide a general description of the polyurethane foam industry, including participation in transactions that are the subject matter of the Action (“Lawyers’ Proffer”).<sup>1</sup> Within five (5) calendar days of such Proffer,

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<sup>1</sup> During the course of the Lawyers’ Proffer, counsel for the Voluntary Dismissal Defendants and Individual Settling Parties may use or refer to certain documents. Class Plaintiffs’ Interim Co-Lead Counsel shall be entitled to view these documents during the Lawyers’ Proffer, but are not permitted to make or retain a copy of such

Class Plaintiffs' Interim Co-Lead Counsel may, at their option, elect to terminate this Agreement with no further obligation to proceed under any terms of this Agreement whatsoever, except as described in this ¶ 11(b) regarding the treatment of any information or documents provided to Class Plaintiffs' Interim Co-Lead Counsel in connection with the Lawyers' Proffer. Class Plaintiffs' Interim Co-Lead Counsel will, in any event, provide written notice to counsel for Voluntary Dismissal Defendants and Individual Settling Parties of their decision. In the period from the making of the Lawyers' Proffer through the election (in either case) by Class Plaintiffs' Interim Co-Lead Counsel described above, any information or document provided to Class Plaintiffs' Interim Co-Lead Counsel during the Lawyers' Proffer shall be covered and protected from disclosure pursuant to Rule 408 of the Federal Rules of Evidence. In the event that Class Plaintiffs' Interim Co-Lead Counsel elect to terminate this Agreement following the Lawyers' Proffer, upon notice of termination of this Agreement, any and all information provided to Class Plaintiffs' Interim Co-Lead Counsel prior to or during the Lawyers' Proffer, and any notes taken by Class Plaintiffs' Interim Co-Lead Counsel during the Lawyers' Proffer, shall be promptly returned to Voluntary Dismissal Defendants or otherwise destroyed and Class Plaintiffs' Interim Co-Lead Counsel shall provide a letter to Voluntary Dismissal Defendants so stating; provided, however, that in the event of such termination, nothing in this paragraph or in this Agreement shall preclude Class Plaintiffs' Interim Co-Lead Counsel or other counsel for the Class from seeking and obtaining in discovery any document, materials, data or other information that is independently discoverable under the Federal Rules of Civil Procedure.

(c) **Production of Documents:** Beginning within fifteen (15) days of the Lawyers' Proffer, provided that Class Plaintiffs' Interim Co-Lead Counsel does not elect to terminate this Agreement pursuant to ¶ 11(b), and subject to the receipt of any necessary consent of certain governmental authorities, the Voluntary Dismissal Defendants and Individual Settling Parties shall promptly produce to Class Plaintiffs' Interim Co-Lead Counsel all documents produced to any governmental authority in connection with that authority's investigation of potential price-fixing relating to the sale of polyurethane foam (the "Initial Production"). Voluntary Dismissal Defendants also agree to provide to Class Plaintiffs' Interim Co-Lead Counsel, within a reasonable time frame and to the extent practicable, any documents requested by Class Plaintiffs' Interim Co-Lead Counsel identified by the Transactional Data Protocol in the Action (Doc. No. 232) or that refer or relate to specific price increases, specific customers or particular events so long as such document(s) are reasonably accessible to the Voluntary Dismissal Defendants and the burden and expense of production of such documents is similarly reasonable. Any documents produced pursuant to this Agreement shall be subject to the terms set forth in the Stipulated Protective Order in the Action. In the event of a disagreement between the parties to this

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documents at that time. In the event that Class Plaintiffs' Interim Co-Lead Counsel elect not to terminate this Agreement under ¶ 11(b), any documents used or referred to during the Lawyers' Proffer will be provided to Class Plaintiffs' Interim Co-Lead Counsel pursuant to ¶ 11(c).

Agreement regarding the scope, burden, relevance or permissibility of any such requests, the parties will seek resolution of such disputes from the Court. For purposes of, and only for purposes of, resolving disputes under this Agreement, Class Plaintiffs, Voluntary Dismissal Defendants and the Individual Settling Parties agree that the Court would have personal jurisdiction over them to rule on the dispute. Consent to the exercise of personal jurisdiction by the Court with regard to the disputes described herein is not intended to, and in no way does, represent or concede that the Class Plaintiffs, Voluntary Dismissal Defendants and the Individual Settling Parties are properly subject to the exercise of personal jurisdiction by this Court on any other matter whatsoever.

(d) **Availability of Current or Former Officers and Employees of Voluntary Dismissal Defendants or Individual Settling Parties:** In light of the pendency of related governmental matters, no current or former officer or employee or Individual Settling Party may be, as of the Execution Date of this Agreement, available for any interview, declaration, affidavit, deposition or testimony referenced in ¶ 11(e)-(i) below. The ability and obligation to make such current and former officers or employees available for the interviews, declarations, affidavits, depositions and testimony specified in each of the aforementioned paragraphs is conditioned on the counsel for the Voluntary Dismissal Defendants and/or Individual Settling Party requesting and subsequently receiving the consent of certain governmental authorities to appear and/or provide information or testimony during the pendency of these related matters or an Order of the Court overruling any objection by a governmental authority and stating that (i) a stay of the provision of such information or testimony is not warranted and (ii) the making available of any individual for one or more of the obligations outlined in ¶ 11 does not interfere with or otherwise adversely affect any rights or benefits received by that party or the Voluntary Dismissal Defendants as granted by that governmental authority to them. At such time as any of the above individuals becomes available for any interview, declaration, affidavit, deposition and testimony described in each of the aforementioned paragraphs, the Voluntary Dismissal Defendants shall, within ten (10) days of such individual(s) becoming so available, notify Class Plaintiffs' Interim Co-Lead Counsel that such individual(s) is so available. The parties to this Agreement shall use commercially reasonable efforts, consistent with any applicable legal or ethical obligations, promptly to secure the availability of such individuals.

(e) **Interviews:** Promptly after entry of the Preliminary Approval Order by the Court, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, and in coordination with, and if possible and practicable at the same time as made to, Indirect Purchaser Class Plaintiffs' Interim Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Individual Settling Parties shall make themselves available for truthful interview(s). In addition, after entry of the Preliminary Approval Order by the Court, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals,

and in coordination with, and if possible and practicable at the same time as made to, Indirect Purchaser Class Plaintiffs Interim Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Voluntary Dismissal Defendants shall make available for truthful interview(s) with Class Plaintiffs' Interim Co-Lead Counsel and/or their experts up to three (3) additional current officers, directors or employees of the Voluntary Dismissal Defendants (other than Individual Settling Parties) as may be requested by Class Plaintiffs' Interim Co-Lead Counsel. Each Interview shall take place on a single day and shall not exceed eight hours each except for good cause. (An interview of an Individual Settling Party or any other individual made available by a Voluntary Dismissal Defendant hereinafter is an "Interview"). The Interviews will not be videotaped, recorded or professionally transcribed. The Voluntary Dismissal Defendants will also respond to reasonable follow-up inquiries (both in scope and in number) as may be made by Class Plaintiffs' Interim Co-Lead Counsel. At Class Plaintiffs' Interim Co-Lead Counsel's request, Voluntary Dismissal Defendants will meet and confer regarding any Interviews in addition to those set forth above sought by Class Plaintiffs' Interim Co-Lead Counsel, but failing agreement between the parties, the parties will seek resolution of such disputes from the Court. Notwithstanding any other provision of this Agreement, in the event that Defendant believes that Class Plaintiffs' Interim Co-Lead Counsel has unreasonably designated any current officer or employee for interview, the parties agree to meet and confer regarding such designation and seek resolution from the Court if necessary. The Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Co-Lead Counsel in arranging Interviews with former officers and employees of Domfoam or Valle Foam. Other than its own legal fees, Voluntary Dismissal Defendants and Individual Settling Parties shall not be responsible for any expenses associated with the interviews of current or former directors, officers or employees granted to Class Plaintiffs under this Agreement. Class Plaintiffs' Interim Co-Lead Counsel and the parties to this Agreement will confer regarding the use of telephone interviews where appropriate. In any event, in designating those current officers and employees of Voluntary Dismissal Defendants for Interviews, Class Plaintiffs' Interim Co-Lead Counsel shall communicate with counsel for any other Plaintiff or Plaintiff Class with whom the Voluntary Dismissal Defendants have reached an agreement of dismissal or settlement. In the event that Class Plaintiffs' Interim Co-Lead Counsel and counsel for any other Plaintiff or Plaintiff Class in the Action designate the same individual for interviews, that individual so designated shall only be made available for a single interview.

(f) **Disclosure of Information Provided:** In no event shall any of the information or documents provided to Class Plaintiffs' Interim Co-Lead Counsel pursuant to the Lawyers' Proffer, Production of Documents (pursuant to ¶ 11(c)), or Interviews (pursuant to ¶ 11(e)) be in any way shared, disseminated, exchanged or otherwise revealed, prior to such time as that information or document is produced or otherwise made available in the ordinary course of the Action, to any individual or entity (other than those represented by Class Plaintiffs' Interim Co-Lead Counsel) other than an individual or entity that is a signatory to an

agreement with the Voluntary Dismissal Defendants which provides for the release or dismissal of any and all claims, demands, actions, suits, rights, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, debts, liabilities, judgments, and remedies, whether class, individual, or otherwise in nature, that such individual or entity, whether directly, representatively, derivatively ever had, now has, or hereafter can, shall, or may have against the direct and indirect parents, subsidiaries, and affiliates of the Voluntary Dismissal Defendants, and the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and legal representatives of the Voluntary Dismissal Defendants, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, whether known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, on account of or arising out of the facts, occurrences, transactions or other matters alleged in the Action or in complaints containing similar allegations of conspiracy with respect to any polyurethane foam or polyurethane foam product, purchased within, to, or from the United States or Canada.

(g) **Declarations and Affidavits:** Promptly after entry of the Preliminary Approval Order by the Court, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, and in coordination with, if possible and practicable at the same time as made to, Indirect Purchaser Class Plaintiffs' Interim Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Individual Settling Parties shall make themselves available to Class Plaintiffs' Interim Co-Lead Counsel and the Voluntary Dismissal Defendants shall make available up to three (3) additional current officers, directors or employees of the Voluntary Dismissal Defendants (other than Individual Settling Parties) as may be requested by Class Plaintiffs' Interim Co-Lead Counsel for the preparation of truthful declarations and/or affidavits in connection with motions to dismiss, class certification, and summary judgment motions, subject to the availability of such officers or employees. At Class Plaintiffs' Interim Co-Lead Counsel's request, Voluntary Dismissal Defendants will meet and confer regarding any individuals in addition to those set forth above, but failing agreement the parties shall seek resolution by the Court. Voluntary Dismissal Defendants will also make current officers and employees available to provide declarations or affidavits regarding the authentication of documents (such declarations and/or affidavits shall not count towards the three (3) permitted pursuant to this paragraph). Notwithstanding any other provision of this Agreement, in the event that Voluntary Dismissal Defendants believe that Class Plaintiffs' Interim Co-Lead Counsel has unreasonably designated any current officer or employee for the preparation of truthful declarations and/or affidavits, the parties agree to meet and confer regarding such designation and seek resolution from the Court if necessary. The Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Co-Lead Counsel in arranging for such declarations and/or affidavits from former officers and employees of Voluntary Dismissal Defendants for such purposes.

Other than its own legal fees, Voluntary Dismissal Defendants and Individual Settling Parties shall not be responsible for any expenses associated with the preparation of declarations and/or affidavits of current or former directors, officers or employees. In any event, in designating those current officers and employees of Voluntary Dismissal Defendants for the preparation of truthful declarations and/or affidavits, Class Plaintiffs' Interim Co-Lead Counsel shall communicate with counsel for any other Plaintiff or Plaintiff Class with whom the Voluntary Dismissal Defendants have reached an agreement of dismissal or settlement. In the event that Class Plaintiffs' Interim Co-Lead Counsel and counsel for any other Plaintiff or Plaintiff Class in the Action designate the same individual for the preparation of truthful declarations and/or affidavits, that individual so designated shall prepare only a single declaration and/or affidavit.

(h) **Depositions:** Promptly after entry of the Preliminary Approval Order by the Court, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, and in coordination with, and if possible and practicable at the same time as made to, Indirect Purchaser Class Plaintiffs' Interim Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Individual Settling Parties shall make themselves available and Voluntary Dismissal Defendants shall make available for truthful deposition(s) in the Action up to three (3) additional current officers, directors or employees of each of the Voluntary Dismissal Defendants (other than Individual Settling Parties) as may be requested by Class Plaintiffs' Interim Lead Counsel. At Class Plaintiffs' Interim Co-Lead Counsel's request, Voluntary Dismissal Defendants will meet and confer regarding any individuals in addition to those set forth above, but failing agreement the parties will seek resolution by the Court. Written notice by Class Plaintiffs' Interim Co-Lead Counsel upon Voluntary Dismissal Defendants' counsel shall constitute sufficient service for such depositions. Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Co-Lead Counsel in arranging the deposition of former officers and employees of Voluntary Dismissal Defendants. Notwithstanding any other provision of this Agreement, in the event that Voluntary Dismissal Defendants believe that Class Plaintiffs' Interim Co-Lead Counsel has unreasonably designated any current officer or employee for deposition, the parties agree to meet and confer regarding such designation and seek resolution from the Court if necessary. Other than its own legal fees, Voluntary Dismissal Defendants and Individual Settling Parties shall not be responsible for any expenses associated with depositions of current or former directors, officers or employees. In any event, in designating those current officers and employees of Voluntary Dismissal Defendants for depositions, Class Plaintiffs' Interim Co-Lead Counsel shall communicate with counsel for any other Plaintiff or Plaintiff Class with whom the Voluntary Dismissal Defendants have reached an agreement of dismissal or settlement. In the event that Class Plaintiffs' Interim Co-Lead Counsel and counsel for any other Plaintiff or Plaintiff Class in the Action designate the same individual for deposition, that individual so designated shall only be made available for a single deposition.

(i) **Testimony at Trial:** Upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, the Individual Settling Parties shall make themselves available and Voluntary Dismissal Defendants shall make available for truthful testimony at trial, up to three (3) additional current officers and employees of Voluntary Dismissal Defendants designated by Class Plaintiffs' Interim Co-Lead Counsel, who possess information, based on Class Plaintiffs' Interim Co-Lead Counsel's good faith belief, that would assist Plaintiffs in trial of the Plaintiffs' claims as alleged in the Action, subject to the availability of such officers or employees. Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Co-Lead Counsel in arranging for the appearance of former officers and employees at trial, but neither Voluntary Dismissal Defendants nor Individual Settling Parties shall be obligated to bear the expenses, including but not limited to legal fees, of testimony of such current or former directors, officers and employees. Notwithstanding any other provision of this Agreement, in the event that the Voluntary Dismissal Defendants believe that Class Plaintiffs' Interim Co-Lead Counsel has unreasonably designated any current officer or employee for testimony at trial, the parties agree to meet and confer regarding such designation and seek resolution from the Court if necessary.

(j) **Obligations in light of Bankruptcy, Restructuring or other Creditor Protection Proceedings:** The obligations of or requests made to Voluntary Dismissal Defendants (in their corporate capacities) under ¶ 11 (other than the Lawyers' Proffer and the Initial Production), including, but not limited to, any subsequent requests for the production of or access to documents by Class Plaintiffs' Interim Co-Lead Counsel, shall be contingent upon the Voluntary Dismissal Defendants' abilities (in their corporate capacities) to meet such obligations or requests subsequent to the filing of a form of bankruptcy, restructuring or other creditor protection under Canadian law. For example, after the filing of any such form of bankruptcy, Voluntary Dismissal Defendants may no longer have access to certain facilities or records. In this regard, none of the obligations described in ¶ 11 shall obligate the Voluntary Dismissal Defendants or their counsel to provide access to, produce or otherwise make available information or documents the Voluntary Dismissal Defendants (in their corporate capacities) are no longer able or permitted to access. For purposes of clarity, to the extent the Voluntary Dismissal Defendants continue to have access to such information or documents following a bankruptcy, restructuring or other creditor protection filing, the obligations outlined above shall, subject to any of the conditions otherwise specified, continue in full force and effect. Nothing in this paragraph, except a material breach of this Agreement by Class Plaintiffs, shall affect or limit the Voluntary Dismissal Defendants' obligations under the last two sentences of ¶ 2 of this Agreement, and the obligations imposed under those two sentences are incorporated by reference as if fully stated herein.

(k) **Termination:** Individual Settling Parties and Voluntary Dismissal Defendants' obligations to cooperate under the Agreement terminate when final judgment has been rendered, with no remaining rights of appeal, in the Action

against all defendants. In the event of an alleged material breach by either Party, the non-breaching Party shall have the right to apply to the Court for specific performance. Class Plaintiffs, Voluntary Dismissal Defendants and the Individual Settling Parties specifically agree that the Court would have personal jurisdiction over them for purposes of determining whether an alleged breach of this Agreement has occurred.<sup>2</sup> If the Court finds a Party, including an Individual Settling Party, to have materially breached this Agreement and orders specific performance as to that Party, and that Party nonetheless fails to comply with such an order, the Agreement shall be terminated as to that, and only that, Party. For purposes of clarity, if the Court finds that an Individual Settling Party has materially breached this Agreement but does not order specific performance as to that Individual Settling Party, and such Individual Settling Party is capable of performing, but nonetheless does not specifically cure his, her or its material breach, the Agreement shall be terminated as to that, and only that, Individual Settling Party. In the event that the Court finds an Individual Settling Party not to have materially breached this Agreement, then this Agreement shall remain in effect as to that Individual Settling Party. In no event (except as explicitly provided for in ¶ 11(b)) shall any Party be permitted to unilaterally terminate this Agreement. Further, in no event shall any Individual Settling Party's actual or alleged breach of any of the obligations described in ¶ 11 in any way apply, alter, negate, or have any effect whatsoever on (i) the dismissal without prejudice of the Action as to the Voluntary Dismissal Defendants or (ii) the full and final release of Claims contemplated by this Agreement as to any other Releasees, including the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and legal representatives of the Voluntary Dismissal Defendants, and the predecessors, successors, heirs, executors, administrators and assigns of each of the Voluntary Dismissal Defendants.

**D. Attorneys' Fees and Reimbursement of Expenses**

**12. No Liability for Fees and Expenses of Class Plaintiffs' Interim Co-Lead Counsel or Any Other Counsel for Plaintiffs in this Action.** The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any award to Class Plaintiffs' Interim Co-Lead Counsel or any other counsel for Plaintiffs in this Action for attorneys' fees or reimbursement of expenses from any future settlement, and/or to any other Person who may

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<sup>2</sup> Consent to the exercise of personal jurisdiction by the Court with regard to the disputes described herein is not intended to, and in no way does, represent or concede that the Plaintiffs, Voluntary Dismissal Defendants or any Individual Settling Party are properly subject to the exercise of personal jurisdiction by this Court on any other matter whatsoever.

assert some claim thereto, or any award of such attorneys' fees, reimbursement of expenses or other claim that the Court may make in the Action.

**E. Conditions of Agreement, Effect of Disapproval, Cancellation or Termination**

**13. Effective Date.** This Agreement shall become final on the date (the "Effective Date") that: (a) the Court has entered a final order and judgment approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action as against Voluntary Dismissal Defendants without prejudice as to all Settlement Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Agreement and the final order and judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times. On the Execution Date of this Agreement, the parties hereto shall be bound by its terms, and this Agreement shall not be rescinded unless in accordance with terms provided herein.

**14. Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 13 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶ 15 below and except as otherwise provided for in ¶ 10(c), unless the parties mutually agree in writing to proceed with this Agreement. To the extent that Voluntary Dismissal Defendants do not file a form of bankruptcy, restructuring or creditor protection under Canadian law, including but not limited to the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act and Chapter 15 of the United States Bankruptcy Code, on or before January 31,

2012, or if after such a filing is made, Voluntary Dismissal Defendants fail to qualify for bankruptcy, restructuring or creditor protection (as appropriate), this Agreement shall be null and void and the respective parties' rights and positions shall be as set forth in ¶ 16 below.

**15. Failure to Enter Preliminary Approval Order or Final Approval Order and Judgment.** If the Court does not enter the Preliminary Approval Order or the Final Approval Order and Judgment, or if this Court enters the Final Approval Order and Judgment and appellate review is sought and, on such review, the Final Approval Order and Judgment is finally vacated, modified, or reversed, then this Agreement shall be cancelled and terminated (except as otherwise provided for in ¶ 10(c)), unless all parties who are adversely affected thereby, in their sole discretion within thirty (30) days from the date of the notice by the Court of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the Agreement under the terms of the Preliminary Approval Order and the Final Approval Order and Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of Class Plaintiffs and the Class by Class Plaintiffs' Interim Co-Lead Counsel. No party to the Agreement shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any the award of attorneys' fees (or denial of such award) or proper distribution of a future settlement amount, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any party. Without limiting the foregoing, a Voluntary Dismissal Defendant, Individual Settling Party and/or Releasee shall have, in its sole and absolute discretion, the option to terminate the Agreement in its entirety in the event that the Final Approval Order and Judgment, upon

becoming Final, does not provide for the dismissal without prejudice of the Action against Voluntary Dismissal Defendants and the full discharge of the Released Claims.

**16. Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that Plaintiffs elect to exercise their rights pursuant to ¶ 11(b) of this Agreement, the Agreement as described herein is not finally approved by the Court or the Final Approval Order and Judgment is reversed or vacated following any appeal taken therefrom, then:

- (a) the parties shall be restored to their respective positions in the Action as of the Execution Date (except as otherwise provided for in ¶ 10(c)), with all of their respective claims and defenses, preserved as they existed on that date;
- (b) the terms and provisions of this Agreement shall be null and void and shall have no further force or effect with respect to the parties (except as otherwise provided for in ¶ 10(c)), and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and
- (c) any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, nunc pro tunc.

**F. Opt Outs and Opt-Out Protection**

17. **Notice of Opt-Outs.** Class Plaintiffs' Interim Co-Lead Counsel or their designee shall direct the Notice Administrator to send copies of any requests for exclusion from the Settlement Class to the parties to this Agreement as they are received.

18. **Communication with Opt Outs.** The Voluntary Dismissal Defendants or their counsel shall be entitled to communicate with any potential Settlement Class Member regarding its decision to opt out of the Settlement Class only if, prior to communicating with a potential Settlement Class Member, the Voluntary Dismissal Defendants first receive permission from Class Plaintiffs' Interim Co-Lead Counsel authorizing the communication, which permission shall not be unreasonably withheld.

19. **Benefits of Agreement.** The parties to this Agreement agree that persons or entities that exercise their opportunity to opt out of the Settlement Class and do not elect to be bound by the terms of this Agreement are not entitled to the benefits and relief of this Agreement.

**G. No Admission of Liability**

20. **Final and Complete Resolution.** Plaintiffs and the Releasees intend the Agreement as described herein to be a final and complete resolution of all disputes or possible disputes between them with respect to the Action and to compromise claims that would be contested, and it shall not be deemed an admission by any party to this Agreement as to the merits of any claim or defense or any allegation made in the Action.

21. **Use of Agreement as Evidence.** Neither this Agreement nor any of its provisions, nor any act performed or document executed pursuant to or in furtherance of this Agreement (including, but not limited to, the Lawyers' Proffer whether or not Plaintiffs subsequently exercise their right to terminate this Agreement): (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, of any allegation made in

the Action, or of any wrongdoing or liability of any party to this Agreement; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that the Releasees may file this Agreement and/or the Final Approval Order and Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order and Judgment.

#### **H. Miscellaneous Provisions**

**22. Right to Communicate.** Class Plaintiffs' Interim Co-Lead Counsel acknowledges and agrees that Voluntary Dismissal Defendants shall have the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members, only as provided in ¶ 18 above, except that Voluntary Dismissal Defendants, as well as Individual Settling Parties, may communicate with Class Members about matters that: (i) are unrelated to this Agreement, the Action or the facts, allegations, circumstances, occurrences or claims that form the basis for the Action, provided that such communications constitute: (1) Communications between Settlement Class Members and those whose responsibilities include customer relations to the extent such communications are initiated by Settlement Class Members; (2) Communications between Settlement Class Members who are ongoing customers of, or who

seek to become customers of, the Parties to this Agreement; and (3) Communications that might be necessary to conduct the businesses of the parties to this Agreement in the ordinary course. To the extent that Voluntary Dismissal Defendants or anyone acting on their behalf have any communications with members of the Settlement Class regarding matters other than those in the ordinary course of business, Voluntary Dismissal Defendants shall promptly notify Interim Class Counsel, in writing, of the identity of the Class Member, the participants in the communication, the date of the communication, whether the communication was oral or in writing and the subject matter of the communication.

**23. Voluntary Agreement.** The parties agree that the terms of the Agreement as described herein were negotiated in good faith by the parties, and reflect an agreement that was reached voluntarily after consultation with competent legal counsel.

**24. Consent to Jurisdiction.** The parties to this Agreement hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

**25. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or among and/or between the parties to this Agreement and any Class Member or Members (or their counsel) concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

**26. Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the

foregoing, each and every covenant and agreement herein by Class Plaintiffs and Class Plaintiffs' Interim Co-Lead Counsel shall be binding upon all Class Members.

**27. Authorization to Enter Agreement.** The undersigned representatives of Voluntary Dismissal Defendants represent that they are fully authorized to enter into and to execute this Agreement on behalf of Voluntary Dismissal Defendants. Class Plaintiffs' Interim Co-Lead Counsel, on behalf of the Class Plaintiffs, represent that they are, subject to Court approval, expressly authorized to take all action required or permitted to be taken by or on behalf of this Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

**28. Notices.** All notices under this Agreement shall be in writing. Each such notice shall be given either by (a) e-mail, (b) hand delivery, (c) registered or certified mail, return receipt requested, postage pre-paid, (d) Federal Express or similar overnight courier, or (e) facsimile and first class mail, postage pre-paid, and, if directed to any Class Member, shall be addressed to Class Plaintiffs' Interim Co-Lead Counsel at their addresses set forth on the signature page hereof, and if directed to Voluntary Dismissal Defendants, shall be addressed to their attorneys at the address set forth on the signature pages hereof or such other addresses as Class Plaintiffs' Interim Co-Lead Counsel or Voluntary Dismissal Defendants may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

**29. No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

**30. No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

**31. Choice of Law.** This Agreement and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Ohio, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Ohio without giving effect to that State's choice of law principles.

**32. Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

**33. Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

**34. Integrated Agreement.** This Agreement constitutes the entire agreement between the parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

**35. Non-Disclosure.** Until such time as (i) the five-day period specified in ¶ 11(b) has expired and (ii) Class Plaintiffs' Interim Co-Lead Counsel have elected, on behalf of Class Plaintiffs and all Class Members, either to continue in or terminate this Agreement, Class Plaintiffs' Interim Co-Lead Counsel may not disclose to any individual or entity other than Class Plaintiffs, Class Members or any attorney representing one or more individuals or entities within those groups the terms and conditions of this Agreement or the fact of its negotiation. Disclosure to parties other than those specified in this paragraph is permitted only after (i) the expiration of the five-day period specified in ¶ 11(b) and (ii) Class Plaintiffs' Interim Co-Lead Counsel's election to continue in or terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date first herein above written.

PLAINTIFFS' INTERIM CO-LEAD COUNSEL,  
on behalf of Class Plaintiffs individually and on behalf of  
the Class

By: William A. Isaacson  
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By: \_\_\_\_\_  
Bruce Bradley  
Valle Foam Industries (1995) Inc.

By: \_\_\_\_\_  
Dean Brayannis  
Valle Foam Industries (1995) Inc.

By: \_\_\_\_\_  
Michael Cappuccino  
Domfoam International, Inc.

By: \_\_\_\_\_  
Pietro (Peter) Foti  
Domfoam International, Inc.

PLAINTIFFS' INTERIM CO-LEAD COUNSEL,  
on behalf of Class Plaintiffs individually and on behalf of  
the Class

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

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wisaacson@bsflp.com  
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5301 Wisconsin Avenue, N.W., Suite 800  
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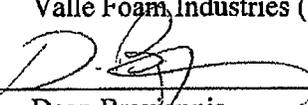
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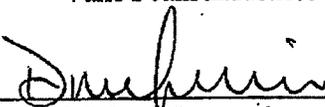
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Michael Cappuccino  
Domfoam International, Inc.

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

Pietro (Peter) Foti  
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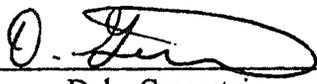
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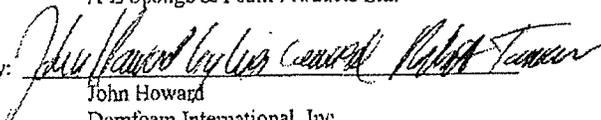
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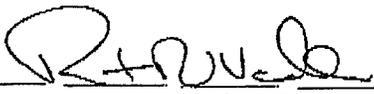
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Fred Zickmantel  
Valle Foam Industries (1995) Inc.

"Direct Class Agreement"

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By: \_\_\_\_\_  
Duke Greenstein  
A-Z Sponge & Foam Products Ltd.

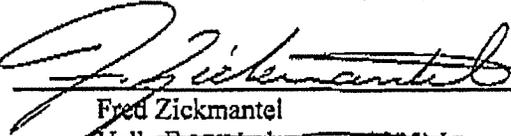
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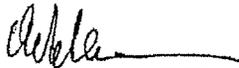
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By:   
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*DOMFOAM F.Z. Jan 2, 2012*

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

By:   
\_\_\_\_\_  
Tony Vallecoccia  
President, Valle Foam Industries (1995) Inc.

APPROVED AS TO FORM BY OUTSIDE COUNSEL TO  
DEFENDANTS DOMFOAM INTERNATIONAL INC.,  
VALLE FOAM INDUSTRIES (1995) INC. AND A-Z  
SPONGE & FOAM PRODUCTS LTD.

By: \_\_\_\_\_  
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Shepard.Goldfein@skadden.com  
SKADDEN ARPS SLATE MEAGHER &  
FLOM LLP  
Four Times Square  
New York, NY 10036  
Tel: (212) 735-3000  
Fax: (212) 735-2000

DEFENDANTS DOMFOAM INTERNATIONAL INC.  
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Z SPONGE & FOAM PRODUCTS LTD.

By: \_\_\_\_\_  
Tony Vallecoccia  
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New York, NY 10036  
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Fax: (212) 735-2000





This Settlement and Voluntary Dismissal Agreement (hereinafter, "Agreement") is made and entered into this 3<sup>rd</sup> day of January 2012, by and between Bruce Bradley, Dean Brayiannis, Michael Cappuccino, Peter Foti, Duke Greenstein, John Howard, Dale McNeill, James William Sproule, Robert Rochietti-Valle, Tony Vallecoccia, and Fred Zickmantel (collectively, the "Individual Settling Parties"), together with Domfoam International Inc. ("Domfoam"), Valle Foam Industries (1995) Inc. ("Valle Foam") and A-Z Sponge & Foam Products Ltd. ("A-Z", together with Domfoam and Valle Foam, the "Voluntary Dismissal Defendants") and Class Plaintiffs, individually and on behalf of a putative class of indirect purchasers of any product containing flexible polyurethane foam ("polyurethane foam") manufactured, produced or supplied by Defendants named in the above-captioned action (the "Class Action" or the "Action").

## RECITALS

WHEREAS, there is pending in the United States District Court for the Northern District of Ohio, the Class Action, *In re Polyurethane Foam Antitrust Litigation*, MDL Docket No. 2196, Index No. 10-MD-02196 (JZ), brought on behalf of purchasers of any product containing polyurethane foam manufactured, produced or supplied by Defendants, in which Class Plaintiffs have alleged violations of law, including the existence of an unlawful conspiracy to fix, raise, maintain, or stabilize the prices of polyurethane foam and allocate customers for polyurethane foam in the United States in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, and various antitrust and/or consumer protection statutes of certain jurisdictions<sup>1</sup> and under common law principles of unjust enrichment recognized in those jurisdictions;

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<sup>1</sup> The relevant jurisdictions are: Alabama, Arizona, California, Colorado, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada,

WHEREAS, the Voluntary Dismissal Defendants named as defendants in that action deny: (1) each and all of the claims and allegations of wrongdoing made by the Class Plaintiffs and the Class in the Action and maintain furthermore that they have meritorious defenses; (2) all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged in the Action; and (3) the allegations that the Class Plaintiffs or any Person in the Class were harmed by any conduct alleged in the Action or otherwise;

WHEREAS, the Voluntary Dismissal Defendants have demonstrated to Class Plaintiffs' Interim Lead Counsel their extremely precarious and unprofitable financial positions;

WHEREAS, the Voluntary Dismissal Defendants intend to file a form of bankruptcy, restructuring or creditor protection under Canadian law, including but not limited to the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act and Chapter 15 of the United States Bankruptcy Code and this Agreement is conditioned on such filing not later than January 31, 2012 as provided in ¶ 14 below;

WHEREAS, Class Plaintiffs' Interim Lead Counsel, in light of the planned bankruptcy, restructuring or creditor protection filing, desires to efficiently litigate this action and therefore to dismiss the Voluntary Dismissal Defendants without prejudice while preserving access to discovery available from the Voluntary Dismissal Defendants and the rights of any Plaintiffs or class members to make any appropriate future claims in bankruptcy as permitted by law;

WHEREAS, Class Plaintiffs' Interim Lead Counsel also has concluded that there would be benefits from cooperation by the Individual Settling Parties who are officers and employees or former officers and employees of the Voluntary Dismissal Defendants and that it is in the best

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New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, West Virginia and Wisconsin.

interests of Plaintiffs and the Class to settle and resolve potential claims with the Individual Settling Parties;

WHEREAS, the parties to this Agreement agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, the Voluntary Dismissal Defendants and Individual Settling Parties agree, as more fully described herein, to cooperate with Class Plaintiffs' Interim Lead Counsel (as defined below) and Class Members by providing truthful information (to the extent such information is in the possession, custody, or control of the parties to this Agreement and/or is accessible by them) related to the polyurethane foam industry and/or claims asserted by Class Plaintiffs in the Action against the defendants named in such Action and parties not currently named as defendants;

WHEREAS, arm's-length negotiations have taken place between the parties to this Agreement, which embodies all of the terms and conditions of the agreements among the parties, including Class Plaintiffs, both individually and on behalf of the Class Members, has been reached subject to the approval of the Court as provided herein and is intended to supersede any prior agreements between the parties;

WHEREAS, Class Plaintiffs' Interim Lead Counsel has concluded, after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action and claims asserted in any Class Action complaint brought on behalf of a putative class of indirect purchasers of products containing polyurethane foam manufactured, produced or supplied by the Voluntary Dismissal Defendants, including those subsequently dismissed

voluntarily and consolidated for pre-trial proceedings by order of the United States Judicial Panel on Multidistrict Litigation as MDL Docket No. 2196, the legal and factual defenses thereto and the applicable law, that it would be in the best interests of Indirect Purchaser Class Plaintiffs and the Indirect Purchaser Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for Indirect Purchaser Class Plaintiffs and the Class, further, that Class Plaintiffs' Interim Lead Counsel consider the Agreement set forth herein to be fair, reasonable and adequate and in the best interests of Class Plaintiffs and the Class; and

WHEREAS, the Voluntary Dismissal Defendants, despite the belief that they are not liable for the claims asserted against them in the Action and that they have good defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to Plaintiffs and avoid the risks inherent in complex litigation.

#### **A G R E E M E N T**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Class Plaintiffs (on behalf of themselves and each Person in the Class), the Individual Settling Parties and the Voluntary Dismissal Defendants, by and through their counsel and attorneys of record, that, subject to the approval of the Court, and provided that Class Plaintiffs' Interim Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, the Action shall, upon entry of the Final Approval Order and Judgment, be dismissed without prejudice as against the Voluntary Dismissal Defendants and the Released Claims as against any other Releasees shall be finally and fully settled, compromised

and dismissed on the merits and with prejudice upon and subject to the terms and conditions of this Agreement, as follows:

**A. Definitions**

1. As used in this Agreement the following terms have the meanings specified below. In the event of any inconsistency between any definition set forth below and any definition set forth in any other document related to this Agreement, the definition set forth below shall control.

- (a) "Action" means *In re Polyurethane Foam Antitrust Litigation* and each of the cases brought on behalf of a putative class of indirect purchasers of products containing polyurethane foam manufactured, produced or supplied by Defendants, previously or later consolidated and/or included as part of MDL Docket No. 2196, Index No. 10-MD-02196 (JZ), including any such cases voluntarily dismissed.
- (b) "Alleged Co-Conspirators" means The Carpenter Company, E.R. Carpenter, L.P., Carpenter Holdings, Inc., Carpenter Canada, Co., Flexible Foam Products, Inc., Ohio Decorative Products, Inc., Future Foam, Inc., FXI – Foamex Innovations, Inc., Hickory Springs Manufacturing Company, Inoac International Co., Ltd., Inoac USA Inc., Inoac Corporation, Crest Foam Industries Inc., Leggett & Platt Inc., Mohawk Industries, Inc., Otto Bock Polyurethane Technologies, Inc., Plastomer Corporation, Scottdel, Inc., Louis Carson, David Carson, Vitafoam Products Canada Limited, Vitafoam, Inc., Woodbridge Foam Corporation, Woodbridge Sales & Engineering, Inc., Woodbridge Foam Fabricating, Inc. and all employees, direct and indirect parents, subsidiaries, affiliates,

predecessors and successors of each of the foregoing as well as any other subsequently-named defendant(s) in the Action, and its employees, direct and indirect parents, subsidiaries, affiliates, predecessors and successors.

- (c) "Claim(s)" means any and all actions, suits, claims, demands, assertions, or causes of action, which are directly related to the subject matter of the Action. A Claim expressly includes a demand to compromise or settle an alleged cause of action related to the subject matter of the Action that is made outside the context of litigation or this Action.
- (d) "Class" (or "Settlement Class") is defined, subject to the Court's approval and for purposes of this Agreement only, to include all persons who indirectly purchased products containing polyurethane foam manufactured, produced or supplied by the Voluntary Dismissal Defendants and/or an Alleged Co-Conspirator (as defined above) at any time from January 1, 1999 through the present (defined as the "Class Period"). As will be reflected in the class notice approved by the Court, excluded from the Class are the Voluntary Dismissal Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees, and the Non-Settling Defendants and their representatives, parents, subsidiaries and affiliates, and any of their officers, directors, or employees. Also excluded from the Class are persons or entities who or which indirectly purchased products which contain polyurethane foam as described herein but who or which are resellers of such products.

- (e) "Class Member" means a Person who falls within the definition of the Class and has not timely and validly excluded himself, herself or itself from the Class in accordance with the procedure to be established by the Court.
- (f) "Class Plaintiffs" means Greg Beastrom, Marjean Coddon, Susan Gomez, Joseph Jasinski, Henry Johs, Joseph Lord, Kirsten Luenz, Gerald Nolan, Kathleen Nolan, Kory Pentland, Jonathan Rizzo, Catherine Wilkinson, Jeffery S. Williams, and The Parker Company as authorized agent for Met 2 Hotel, LLC.
- (g) "Class Plaintiffs' Interim Lead Counsel" means Marvin A. Miller of Miller Law LLC.
- (h) "Court" means the United States District Court for the Northern District of Ohio.
- (i) "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
- (j) "Effective Date" means the first date by which all of the events and conditions specified in ¶ 13 of this Agreement have occurred and have been met.
- (k) "Execution Date" means the date this Agreement is executed by all parties.
- (l) "Final" means, with respect to any order of court, including without limitation, the Final Approval Order and Judgment, that such order

represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes "Final" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an "appeal" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind.

- (m) "Final Approval Order and Judgment" means the order and judgment approving the Agreement and dismissing the Action without prejudice as to the Voluntary Dismissal Defendants in a form to be agreed upon by the parties to this Agreement.
- (n) "Non-Settling Defendant" means any Alleged Co-Conspirator or defendant in this Action other than Domfoam, Valle Foam, and A-Z.
- (o) "Notice Administrator" means the Notice Administrator(s) to be approved by the Court.
- (p) "Opt Out" means a person or entity who would have been a member of the Settlement Class except for his, her, or its timely and valid request for exclusion.

- (q) "Person(s)" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.
- (r) "Released Claims" (as granted, the "Releases") means any and all claims, demands, actions, suits, rights, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, debts, liabilities, judgments, and remedies, whether class, individual, or otherwise in nature on account of or arising out of the facts, occurrences, transactions or other matters alleged in the Action or in complaints containing similar allegations of conspiracy with respect to any product containing flexible polyurethane foam purchased within, to, or from the United States or Canada before and during the period from January 1, 1999 through and including the Effective Date, including without limitation any such claims which arise under any United States federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, unjust enrichment, or civil conspiracy law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, or the law of any state jurisdiction, that Releasers, or anyone of them, whether directly, representatively, derivatively ever had,

now has, or hereafter can, shall, or may have against the Releasees, whether known or unknown (including, but not limited to "Unknown Claims"), suspected or unsuspected, asserted or unasserted, in law or in equity.

- (s) "Releasees" means Individual Settling Defendants together with the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and legal representatives of the Voluntary Dismissal Defendants, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. Other than these individuals, the term "Releasees" as defined for purposes of this Agreement includes Global Upholstery Co. Limited and Valdomco Inc., both of which are shareholders of Domfoam.
- (t) "Releasers" means the Class Plaintiffs and each and every Class Member who or which is not an Opt Out, on their own behalf and on behalf of their respective direct and indirect parents, subsidiaries and affiliates, their present and former officers, directors, employees, agents, and legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. As used in this paragraph, "affiliates" means entities controlling, controlled by or under common control with a Releaser.
- (u) "Voluntary Dismissal Defendants" means Domfoam, Valle Foam and A-Z Sponge & Foam Products Ltd.

- (v) "Unknown Claims" means any Released Claim that any Class Plaintiff and/or Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Releasees that if known by him, her or it, might have affected his, her or its settlement with and release of the Releasees, or might have affected his, her or its decision not to object to this Agreement. With respect to any and all Released Claims, the parties stipulate and agree that, upon the Effective Date, and provided that Class Plaintiffs' Interim Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, each Class Plaintiff shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Final Approval Order and Judgment shall have waived the provisions, rights and benefits equivalent to California Civil Code §1542 (to the extent it applies to the Action), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Provided that Class Plaintiffs' Interim Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in paragraphs 11(b), 11(k) or elsewhere herein, each Class Plaintiff shall expressly waive, and each of the Class Members shall be deemed to have waived, and by operation of the Final Approval Order and Judgment shall have waived any and all provisions, rights and benefits conferred by any

law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable or equivalent in effect to California Civil Code § 1542. The Class Plaintiffs and Class Members may hereafter discover facts in addition to or different from those that any of them now knows or believes to be true with respect to the subject matter of the Released Claims, but subject to the terms and conditions herein, and provided that Class Plaintiffs' Interim Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, each Class Plaintiff (other than an Opt Out) shall expressly have, and upon the Effective Date, each Class Member, who or which is not an Opt Out, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have fully, finally and forever settled and released (as to the Releasees and not the Voluntary Dismissal Defendants) any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Plaintiffs acknowledge, and the Class Members, who or which is not an Opt Out, shall be deemed to have acknowledged, and by operation of the Final Approval Order and

Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of this Agreement of which this release is a part.

**B. Preliminary Approval Order, Notice Order, and Hearing**

**2. Reasonable Best Efforts to Effectuate this Agreement.** The parties to this Agreement: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement, including but not limited to: (i) cooperating in promptly seeking both preliminary and final approval of this Agreement (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e), securing certification of the Settlement Class and the prompt dismissal without prejudice of the Action as to the Voluntary Dismissal Defendants only); and (ii) fulfilling in a timely and good faith manner the cooperation and other obligations set forth in ¶ 11 herein. As soon as is practicable but no later than two (2) days after the deadline for Class Plaintiffs' Interim Lead Counsel to elect whether to terminate this Agreement pursuant to ¶ 11(b), and provided that Class Plaintiffs' Interim Lead Counsel does not elect to terminate this Agreement pursuant to ¶ 11(b), Class Plaintiffs' Interim Lead Counsel and the Parties to this Agreement shall jointly file with the Court a stipulation for the immediate suspension of the Action against the Voluntary Dismissal Defendants. In the interim, however, Class Plaintiffs' Interim Counsel agrees to suspend the Action against Voluntary Dismissal Defendants until the time provided in ¶ 11(b). The obligations of Voluntary Dismissal Defendants pursuant to this Agreement are subject to any orders entered under the bankruptcy, restructuring or other creditor protection laws of the United States or Canada. For purposes of clarity, in the event that this

Action is stayed by the filing by the Voluntary Dismissal Defendants for protection under the bankruptcy, restructuring or other creditor protection laws of the United States or Canada, then the obligation to seek preliminary approval of this Agreement will be the responsibility of Class Plaintiffs' Interim Lead Counsel. The aforementioned application for a stay of all proceedings as against Voluntary Dismissal Defendants shall be subject to any other stay of such proceedings (automatic or otherwise) entered by another court, including but not limited to a United States Bankruptcy Court, as a direct or indirect result of filings made by one or more Voluntary Dismissal Defendants under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act. Additionally, to the extent permissible by law or reasonably practicable in light of the anticipated bankruptcy, restructuring or creditor protection proceedings, if any proceeding under the bankruptcy, restructuring, or other creditor protection laws of Canada or the United States in any way impacts or impairs the Voluntary Dismissal Defendants' ability to fully comply with any of the obligations set forth in this Agreement, the Voluntary Dismissal Defendants shall use commercially reasonable efforts (to the extent of their ability to do so) to assist Class Plaintiffs' Interim Lead Counsel in seeking relief in that bankruptcy proceeding in order to allow the Voluntary Dismissal Defendants to fully comply with the obligations set forth in this Agreement. Such commercially reasonable efforts shall include, but are not limited to, the Voluntary Dismissal Defendants joining (to the extent of their ability to do so) Class Plaintiffs' Interim Lead Counsel in any motions or petitions seeking such relief from the bankruptcy, insolvency, or other restructuring court(s).

**3. Motion for Preliminary Approval.** Within thirty (30) business days after the Execution Date of this Agreement, Class Plaintiffs' Interim Lead Counsel shall submit to the Court a motion, to be joined in by the Voluntary Dismissal Defendants, for preliminary approval

of this Agreement, authorization to disseminate notice to the proposed Settlement Class no sooner than the first notice to the Settlement Class which may be directed by the Court in connection with any other settlement or proceedings by which settlement there is created a settlement fund to pay for the costs of notice, subject to the approval of the Court, notice shall be by publication, and for a stay of all proceedings in the Action against the Voluntary Dismissal Defendants (the "Preliminary Approval Motion," and if entered, the "Preliminary Approval Order"). The Preliminary Approval Motion shall include: (a) the definition of the Settlement Class to be certified by the Court pursuant to this Agreement; (b) the proposed form of, method for, and date of dissemination of notice to the Settlement Class, as agreed upon by Class Plaintiffs' Interim Lead Counsel and the Voluntary Dismissal Defendants prior to submission of the Preliminary Approval Motion; and (c) a proposed form of the Final Approval Order and Judgment (as defined below) as set forth in Exhibit A hereto.

**4. Notice to Class.** In the event that the Court preliminarily approves the Agreement (*i.e.*, enters the Preliminary Approval Order), Class Plaintiffs' Interim Lead Counsel shall, by and through the Notice Administrator, as soon as practicable, but no sooner than such notice may be required to be given with respect to any other settlement whereby a settlement fund has been created for the benefit of a settlement class, provide those members of the Settlement Class in a form to be approved by the Court, of the Agreement and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed Agreement (the "Settlement Hearing,") which Settlement Hearing shall take place no more than ten (10) days following the filing of all objections to the Agreement and responses to such objections). This notice shall also include the general terms of the Agreement and a description of the rights of those Persons in the Class to object to the Settlement, opt out of the

Class, and/or appear at the Settlement Hearing. Class Plaintiffs' Interim Lead Counsel shall take all necessary and appropriate steps to ensure that notice of the Settlement Hearing is provided in accordance with the order of the Court.

**5. Publication.** Class Plaintiffs' Interim Lead Counsel shall cause to be published a summary of the notice ("Summary Notice"). Publication will be carried out as soon as is reasonably practicable, but only in connection with and included in any notice provided to the Class as a result of any other settlement with a defendant(s) in the Action pursuant to which a settlement fund is created that may be used to pay for the costs of notice. The Voluntary Dismissal Defendants shall not have any responsibility for providing notice of this Agreement to the Class. The Parties shall mutually agree on any content relating solely to the Voluntary Dismissal Defendants that will be used by the Class Plaintiffs' Interim Lead Counsel in any Agreement related press release or other media, including on websites, of Class Plaintiffs' Interim Lead Counsel, and/or the Notice Administrator.

**6. Motion for Final Approval and Entry of Final Judgment.** Provided that the Voluntary Dismissal Defendants and the Individual Settling Parties have fulfilled all of their then-due obligations under this Agreement, and further provided that Class Plaintiffs' Interim Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b), 11(k) or elsewhere herein, at the first opportunity as the motion for Final Approval Order and Judgment is given with respect to any other defendant settling this matter, but not less than ninety (90) calendar days following the entry of the Preliminary Approval Order and at least thirty-five (35) calendar days before the Approval Hearing, Class Plaintiffs' Interim Lead Counsel shall submit a motion for final approval of this Agreement by the Court (the "Final Approval Order and Judgment") after notice to the Class of the Approval Hearing pursuant to ¶¶

4-5 above, and the parties hereto shall jointly seek entry of the Final Approval Order and Judgment:

- (a) fully and finally approving the Agreement and its terms as being fair, reasonable and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms and conditions;
- (b) finding that the notice given to the Class as contemplated in ¶¶ 4-5 above constitutes the best notice practicable under the circumstances and complies in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;
- (c) directing that the Action be dismissed without prejudice as to the Voluntary Dismissal Defendants and without costs;
- (d) discharging and releasing the Releasees (other than the Voluntary Dismissal Defendants) from all Released Claims;
- (e) permanently barring and enjoining the institution and prosecution, by Class Plaintiffs and the Class Members, of any other action against the Releasees in any court asserting any Released Claims;
- (f) reserving continuing and exclusive jurisdiction over the Agreement, including all future proceedings concerning the administration, consummation and enforcement of this Agreement;
- (g) determining, pursuant to Fed. R. Civ. P. 54(b), that there is no just reason for delay and directing entry of a final judgment of voluntary dismissal without prejudice as to the Voluntary Dismissal Defendants;

- (h) containing such other and further provisions consistent with the terms of this Agreement to which the parties expressly consent in writing; and
- (i) requiring Class Plaintiffs' Interim Lead Counsel to file with the Clerk of the Court a record of potential Class Members who timely and validly excluded themselves from the Settlement Class, and to provide a copy of the record to counsel for the parties to this Agreement.

7. **Effect of Bankruptcy, Restructuring or other Creditor Protection Filing.** In the event that the Voluntary Dismissal Defendants file for any form of bankruptcy, restructuring or other credit protection under Canadian law, including but not limited to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, and an order under Chapter 15 of the United States Bankruptcy Code is entered in a United States Bankruptcy Court, this Agreement shall remain in effect. Notwithstanding any automatic stay of proceedings entered or otherwise triggered by the filing of any form of bankruptcy, restructuring or other creditor protection under Canadian law, the parties to this Agreement shall fully and completely perform the terms of this Agreement except as noted in ¶¶ 11(j) and 11(k) herein, and all discovery proceedings, motion practice and other proceedings in this Action will be indefinitely stayed as to the Voluntary Dismissal Defendants. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall preclude the Class Plaintiffs, or any member of the Class, individually or collectively, from filing a claim in any Canadian or U.S. bankruptcy, restructuring or other creditor protection proceeding which claim is based upon, arising out of or relating to facts, occurrences, transactions or other matters alleged in the Action. To the extent permitted by law, the Voluntary Dismissal Defendants will not object to the filing by Class Plaintiffs, or any member of the Class, of such a claim against the Voluntary Dismissal

Defendants in any such Canadian or U.S. bankruptcy, restructuring or creditor protection proceeding, and further agree that nothing in this Agreement shall in any way impair or limit such claim against the Voluntary Dismissal Defendants or the ability of such claimant(s) to seek recovery in any such bankruptcy, restructuring or creditor protection proceeding for any such claim(s) against the Voluntary Dismissal Defendants. Under no circumstances, however, shall Class Plaintiffs or any member of the Class, individually or collectively, be permitted to file a claim or otherwise challenge the validity, legality, or continuing effect of the Releases granted pursuant to this Agreement or the dismissal without prejudice of the Action as against Voluntary Dismissal Defendants; provided, however, that such Releases and/or voluntary dismissals are not asserted as a defense to or limitation on any claim filed on behalf of Class Plaintiffs or any member of the Class in a Canadian or U.S. bankruptcy, restructuring or other creditor protection proceeding as against the Voluntary Dismissal Defendants, and the parties to this Agreement covenant and agree that no such defense or limitation will be asserted against such a claim against the Voluntary Dismissal Defendants. For purposes of clarity, the Releases granted shall remain in effect as against the Releasees in connection with a Canadian or U.S. bankruptcy, restructuring or other creditor protection proceeding, and those Releasees are free to assert them as a defense to or limitation on any claim in any proceeding.

**8. No Payments by Defendant.** Under no circumstances will the Voluntary Dismissal Defendants or Individual Settling Parties be required to pay any amount of money pursuant to this Agreement.

**9. No Liability for Provision of Notice.** Neither the Voluntary Dismissal Defendants, Individual Settling Parties, the Releasees nor their counsel shall have any responsibility for or liability whatsoever with respect to the provision of notice to the Class by

the Notice Administrator pursuant to ¶¶ 4-5. No Person shall have any claim against Class Plaintiffs' Interim Lead Counsel or the Notice Administrator based on notice given substantially in accordance with the Agreement, or further orders of the Court.

**10. Releases.** Upon the Effective Date, and provided that Class Plaintiffs' Interim Lead Counsel does not terminate this Agreement in accordance with the termination rights provided in ¶¶ 11(b) and 11(k), the Releasers, and any other Person claiming (now or in the future) through or on behalf of them, and regardless of whether any such Releaser ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim and Release, any payment from Releasees, shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees (and not the Voluntary Dismissal Defendants) and shall have covenanted not to sue the Releasees (but not the Voluntary Dismissal Defendants) with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim against the Releasees (other than the Voluntary Dismissal Defendants).

- (a) With respect to, and only with respect to, the Voluntary Dismissal Defendants pursuant to this Agreement and within three (3) business days of the entry of the Preliminary Approval Order, the Class Plaintiffs (on behalf of the Class) shall direct that the Action be dismissed without prejudice as to the Voluntary Dismissal Defendants. In no event will such dismissal without prejudice as to the Voluntary Dismissal Defendants apply, alter, negate, or have any effect whatsoever on the full and final release of Claims contemplated by this Agreement as to any Releasees.

- (b) Following the dismissal without prejudice as to Voluntary Dismissal Defendants provided for in ¶ 10(a), all applicable limitations for the filing of the Claims, defenses, counterclaims, and/or third party claims shall be tolled as to the Voluntary Dismissal Defendants.
- (c) In the event that this Agreement receives Preliminary Approval by the Court and Voluntary Dismissal Defendants and Individual Settling Parties provide all of the cooperation as described in ¶ 11 (to the extent such cooperation has been requested of them and consistent with ¶ 11(d)) prior to the Final Approval Hearing, but that, for any reason whatsoever, the Court fails to enter the Final Approval Order and Judgment, Class Plaintiffs (individually in their capacity as named Plaintiffs) shall still be deemed to have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees, shall covenant not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claim against the Releasees. With respect to an Individual Settling Party, the Releases as granted by Class Plaintiffs (individually in their capacity as named Plaintiffs) shall remain in full force and effect only to the extent that (and only for so long as) such Party continues to provide cooperation as described in ¶ 11. However, in the event that any Individual Settling Party does not provide such cooperation, the Releases as granted to all other Releasees shall remain in full force and effect.

**C. Cooperation**

**11. The Voluntary Dismissal Defendants and Individual Settling Parties shall provide cooperation pursuant to this Agreement.** All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. Cooperation obligations shall apply to the parties hereto who shall act with, by or through Class Plaintiffs' Interim Lead Counsel pursuant to this Agreement in the Action. Class Plaintiffs' Interim Lead Counsel agrees that, unless compelled to do so by an Order of the Court or as otherwise required by law or the Federal Rules of Civil Procedure, he will not disclose any information obtained or learned from the cooperation of Voluntary Dismissal Defendants and Individual Settling Parties (as defined in this Section) to any party with whom the Voluntary Dismissal Defendants and Releasees (including Individual Settling Parties) have not entered into an agreement of settlement or dismissal. (The immediately preceding sentence does not apply to Class Plaintiffs' experts and consultants in the Action – who will likewise agree to the limitations in this paragraph – and is not intended to prevent Class Plaintiffs from using cooperation from Voluntary Dismissal Defendants or Individual Settling Parties to prosecute Class Plaintiffs' Action subject to the Stipulated Protective Order entered by the Court.) Notwithstanding any other provision in this Agreement, the parties to this Agreement may assert, where applicable, the work-product doctrine, the attorney-client privilege, the common interest, the joint defense privilege and/or any other applicable privilege or protection with respect to any documents, interviews, declarations and/or affidavits, depositions, testimony, material, and/or information requested under this Agreement. Any documents, declarations, affidavits, deposition testimony and information provided to Class Plaintiffs' Interim Lead Counsel pursuant to this provision shall be covered by the Stipulated Protective Order in place in this case. None of the cooperation provisions are intended to, nor do they waive any such privilege or protection. Voluntary Dismissal Defendants

and Individual Settling Parties agree that their counsels will meet with Class Plaintiffs' Interim Lead Counsel as is reasonably necessary to discuss any applicable privilege or protection.

(a) **Preliminary Approval:** The parties agree to cooperate to the extent reasonably necessary in connection with Class Plaintiffs' Interim Lead Counsel's preparation of the Preliminary Approval Motion and any related documents necessary to effectuate and implement the terms and conditions of this Agreement.

(b) **Proffers:** Beginning within five (5) business days of the Execution Date of this Agreement, and, to the extent practicable, at the same time as such a Lawyers' Proffer is made to Direct Purchaser Class Plaintiffs' Interim Co-Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, or at a time mutually agreed upon by the parties, Voluntary Dismissal Defendants and Individual Settling Parties agree that their counsel will meet with Class Plaintiffs' Interim Lead Counsel to provide a general description of the polyurethane foam industry, including ' participation in transactions that are the subject matter of the Action ("Lawyers' Proffer").<sup>2</sup> Within five (5) calendar days of such Proffer, Class Plaintiffs' Interim Lead Counsel may, at his option, elect to terminate this Agreement with no further obligation to proceed under any terms of this Agreement whatsoever, except as described in this ¶ 11(b) regarding the treatment of any information or documents provided to Class Plaintiffs' Interim Lead Counsel in connection with the Lawyers' Proffer. Class Plaintiffs' Interim Lead Counsel will, in any event, provide written notice to counsel for Voluntary Dismissal Defendants and Individual Settling Parties of their decision. In the period from the making of the Lawyers' Proffer through the election (in either case) by Class Plaintiffs' Interim Lead Counsel described above, any information or document provided to Class Plaintiffs' Interim Lead Counsel during the Lawyers' Proffer shall be covered and protected from disclosure pursuant to Rule 408 of the Federal Rules of Evidence. In the event that Class Plaintiffs' Interim Lead Counsel elects to terminate this Agreement following the Lawyers' Proffer, upon notice of termination of this Agreement, any and all information provided to Class Plaintiffs' Interim Lead Counsel prior to or during the Lawyers' Proffer, and any notes taken by Class Plaintiffs' Interim Lead Counsel during the Lawyers' Proffer, shall be promptly returned to Voluntary Dismissal Defendants or otherwise destroyed and Class Plaintiffs' Interim Lead Counsel shall provide a letter to Voluntary Dismissal Defendants so stating; provided, however, that in the event of such termination nothing in this paragraph or in this Agreement shall preclude Class Plaintiffs' Interim Lead Counsel or other counsel for the Class

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<sup>2</sup> During the course of the Lawyers' Proffer, counsel for the Voluntary Dismissal Defendants and Individual Settling Parties may use or refer to certain documents. Class Plaintiffs' Interim Co-Lead Counsel shall be entitled to view these documents during the Lawyers' Proffer, but are not permitted to make or retain a copy of such documents at that time. In the event that Class Plaintiffs' Interim Co-Lead Counsel elects not to terminate this Agreement under ¶ 11 (b), any documents used or referred to during the Lawyers' Proffer will be provided to Class Plaintiffs' Interim Co-Lead Counsel pursuant to ¶ 11(c).

from seeking and obtaining in discovery any document, materials, data or other information that is independently discoverable under the Federal Rules of Civil Procedure.

(c) **Production of Documents:** Beginning within fifteen (15) days of the Lawyers' Proffer, provided that Class Plaintiffs' Interim Lead Counsel does not elect to terminate this Agreement pursuant to ¶ 11(b), and subject to the receipt of any necessary consent of certain governmental authorities, the Voluntary Dismissal Defendants and Individual Settling Parties shall promptly produce to Class Plaintiffs' Interim Lead Counsel all documents produced to all governmental authorities in connection with that authority's investigation of potential price-fixing relating to the sale of polyurethane foam (the "Initial Production"). Voluntary Dismissal Defendants also agree to provide to Class Plaintiffs' Interim Lead Counsel, within a reasonable time frame and to the extent practicable, any documents requested by Class Plaintiffs' Interim Lead Counsel pursuant to the Transactional Data Protocol Order (Doc No. 242) or that refer or relate to specific price increases, specific customers or particular events so long as such document(s) are reasonably accessible to the Voluntary Dismissal Defendants and the burden and expense of production of such documents is similarly reasonable. Any documents produced by Voluntary Dismissal Defendants pursuant to this Agreement shall be subject to the terms set forth in the Stipulated Protective Order in the Action. In the event of a disagreement between the parties to this Agreement regarding the scope, burden, relevance or permissibility of any such requests, the parties will seek resolution of such disputes from the Court. For purposes of, and only for purposes of, resolving disputes under this Agreement, Class Plaintiffs, Voluntary Dismissal Defendants and the Individual Settling Parties agree that the Court would have personal jurisdiction over them to rule on the dispute. Consent to the exercise of personal jurisdiction by the Court with regard to the disputes described herein is not intended to, and in no way does, represent or concede that the Class Plaintiffs, Voluntary Dismissal Defendants and the Individual Settling Parties are properly subject to the exercise of personal jurisdiction by this Court on any other matter whatsoever.

(d) **Availability of Current or Former Officers and Employees of Voluntary Dismissal Defendants or Individual Settling Parties:** In light of the pendency of related governmental matters, no current or former officer or employee or Individual Settling Party may be, as of the Execution Date of this Agreement, available for any interview, declaration, affidavit, deposition or testimony referenced in ¶ 11(e)-(i) below. The ability and obligation to make such current or former officers or employees available for the interviews, declarations, affidavits, depositions and testimony specified in each of the aforementioned paragraphs is conditioned on the counsel for the Voluntary Dismissal Defendants and/or Individual Settling Party requesting and subsequently receiving the consent of certain governmental authorities to appear and/or provide information or testimony during the pendency of these related matters or an Order of the Court overruling any objection by a governmental

authority and stating that (i) a stay of the provision of such information or testimony is not warranted and (ii) the making available of any individual for one or more of the obligations outlined in ¶ 11 does not interfere with or otherwise adversely affect any rights or benefits received by that party or the Voluntary Dismissal Defendants as granted by that governmental authority to them. At such time as any of the above individuals becomes available for any interview, declaration, affidavit, deposition and testimony described in each of the aforementioned paragraphs, the Voluntary Dismissal Defendants shall, within ten (10) days of such individual(s) becoming so available, notify Class Plaintiffs' Interim Lead Counsel that such individual(s) is so available. The parties to this Agreement shall use commercially reasonable efforts, consistent with any applicable legal or ethical obligations, promptly to secure the availability of such individuals.

(e) **Interviews:** Promptly after entry of the Preliminary Approval Order, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, and in coordination with, and if possible and practicable at the same time as made to, Direct Purchaser Class Plaintiffs Interim Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Individual Settling Parties shall make themselves available for truthful interview(s). In addition, after the entry of the Preliminary Approval Order, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, and in coordination with, and if possible and practicable at the same time as made to, Direct Purchaser Class Plaintiffs' Interim Co-Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Voluntary Dismissal Defendants shall make available for truthful interview(s) with Class Plaintiffs' Interim Lead Counsel and/or their experts up to three (3) additional current officers, directors or employees of the Voluntary Dismissal Defendants (other than Individual Settling Parties) as may be requested by Class Plaintiffs' Interim Lead Counsel. Each Interview shall take place on a single day and shall not exceed eight hours each except for good cause. (An interview of an Individual Settling Party or any other individual made available by a Voluntary Dismissal Defendant hereinafter is an "Interview"). The Interviews will not be videotaped, recorded or professionally transcribed. The Voluntary Dismissal Defendants will also respond to reasonable follow-up inquiries (both in scope and in number) as may be made by Class Plaintiffs' Interim Lead Counsel. At Class Plaintiffs' Interim Lead Counsel's request, the Voluntary Dismissal Defendants will meet and confer regarding any Interviews in addition to those set forth above sought by Class Plaintiffs' Interim Lead Counsel, but failing agreement between the parties, the parties will seek resolution of such disputes from the Court. Notwithstanding any other provision of this Agreement, in the event that Defendant believes that Class Plaintiffs' Interim Lead Counsel has unreasonably designated any current officer or employee for interview, the parties agree to meet and confer regarding such designation and seek resolution from the Court if necessary. The Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Lead Counsel in arranging Interviews with former officers and employees of Domfoam or Valle

Foam. Other than its own legal fees, Voluntary Dismissal Defendants and Individual Settling Parties shall not be responsible for any expenses associated with the interviews of current or former directors, officers or employees granted to Class Plaintiffs under this Agreement. Class Plaintiffs' Interim Lead Counsel and the parties to this Agreement will confer regarding the use of telephone interviews where appropriate. In any event, in designating those current officers and employees of Voluntary Dismissal Defendants for Interviews, Class Plaintiffs' Interim Lead Counsel shall communicate with counsel for any other Plaintiff or Plaintiff Class with whom the Voluntary Dismissal Defendants have reached an agreement of dismissal or settlement. In the event that Class Plaintiffs' Interim Lead Counsel and counsel for any other Plaintiff or Plaintiff Class designate the same individual for interviews, that individual so designated shall only be made available for a single interview.

(f) **Disclosure of Information Provided:** In no event shall any of the information or documents provided to Class Plaintiffs' Interim Lead Counsel pursuant to the Lawyers' Proffer, Production of Documents (pursuant to ¶ 11(c)), or Interviews (pursuant to ¶ 11(e)) be in any way shared, disseminated, exchanged or otherwise revealed, prior to such time as that information or document is produced or otherwise made available in the ordinary course of the Action, to any individual or entity (other than those represented by Class Plaintiffs' Interim Lead Counsel) other than an individual or entity that is a signatory to an agreement with the Voluntary Dismissal Defendants which provides for the release or dismissal of any and all claims, demands, actions, suits, rights, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, debts, liabilities, judgments, and remedies, whether class, individual, or otherwise in nature, that such individual or entity, whether directly, representatively, derivatively ever had, now has, or hereafter can, shall, or may have against the direct and indirect parents, subsidiaries, and affiliates of the Voluntary Dismissal Defendants, and the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and legal representatives of the Voluntary Dismissal Defendants, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, whether known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, on account of or arising out of the facts, occurrences, transactions or other matters alleged in the Action or in complaints containing similar allegations of conspiracy with respect to any polyurethane foam or polyurethane foam product, purchased within, to, or from the United States or Canada.

(g) **Declarations and Affidavits:** Promptly after entry of the Preliminary Approval Order, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, and in coordination with, and if possible and practicable at the same time as made to, Direct Purchaser Class Plaintiffs Interim Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Individual Settling Parties shall make themselves available to Class Plaintiffs' Interim Lead Counsel and the Voluntary

Dismissal Defendants shall make available up to three (3) additional current officers, directors or employees of the Voluntary Dismissal Defendants (other than Individual Settling Parties) as may be requested by Class Plaintiffs' Interim Lead Counsel for the preparation of truthful declarations and/or affidavits in connection with motions to dismiss, class certification, and summary judgment motions, subject to the availability of such officers or employees. At Class Plaintiffs' Interim Lead Counsel's request, Voluntary Dismissal Defendants will meet and confer regarding any individuals in addition to those set forth above, but failing agreement the parties shall seek resolution by the Court. Voluntary Dismissal Defendants will also make current officers and employees available to provide declarations or affidavits regarding the authentication of documents (such declarations and/or affidavits shall not count towards the three (3) permitted pursuant to this paragraph). Notwithstanding any other provision of this Agreement, in the event that Voluntary Dismissal Defendants believe that Class Plaintiffs' Interim Lead Counsel has unreasonably designated any current officer or employee for the preparation of truthful declarations and/or affidavits, the parties agree to meet and confer regarding such designation and seek resolution from the Court if necessary. The Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Lead Counsel in arranging for such declarations and/or affidavits from former officers and employees of Voluntary Dismissal Defendants for such purposes. Other than its own legal fees, Voluntary Dismissal Defendants and Individual Settling Parties shall not be responsible for any expenses associated with the preparation of declarations and/or affidavits of current or former directors, officers or employees. In any event, in designating those current officers and employees of Voluntary Dismissal Defendants for the preparation of truthful declarations and/or affidavits, Class Plaintiffs' Interim Lead Counsel shall communicate with counsel for any other Plaintiff or Plaintiff Class with whom the Voluntary Dismissal Defendants have reached an agreement of dismissal or settlement. In the event that Class Plaintiffs' Interim Lead Counsel and counsel for any other Plaintiff or Plaintiff Class designate the same individual for the preparation of truthful declarations and/or affidavits, that individual so designated shall prepare only a single declaration and/or affidavit.

(h) **Depositions:** Promptly after entry of the Preliminary Approval Order, upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, and in coordination with, and if possible and practicable at the same time as made to, Direct Purchaser Class Plaintiffs' Interim Lead Counsel and counsel for one or more "Direct Action" Plaintiffs, the Individual Settling Parties shall make themselves available and Voluntary Dismissal Defendants shall make available for truthful deposition(s) in the Action up to three (3) additional current officers, directors or employees of each of the Voluntary Dismissal Defendants (other than Individual Settling Parties) as may be requested by Class Plaintiffs' Interim Lead Counsel. At Class Plaintiffs' Interim Lead Counsel's request, Voluntary Dismissal Defendants will meet and confer regarding any individuals in addition to those set forth above, but failing agreement the parties will seek resolution by the Court. Written notice by

Class Plaintiffs' Interim Lead Counsel upon Voluntary Dismissal Defendants' counsel shall constitute sufficient service for such depositions. Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Lead Counsel in arranging the deposition of former officers and employees of Voluntary Dismissal Defendants. Notwithstanding any other provision of this Agreement, in the event that Voluntary Dismissal Defendants believe that Class Plaintiffs' Interim Lead Counsel has unreasonably designated any current officer or employee for deposition, the parties agree to meet and confer regarding such designation and seek resolution from the Court if necessary. Other than its own legal fees, Voluntary Dismissal Defendants and Individual Settling Parties shall not be responsible for any expenses associated with depositions of current or former directors, officers or employees. In any event, in designating those current officers and employees of Voluntary Dismissal Defendants for depositions, Class Plaintiffs' Interim Lead Counsel shall communicate with counsel for any other Plaintiff or Plaintiff Class with whom the Voluntary Dismissal Defendants have reached an agreement of dismissal or settlement. In the event that Class Plaintiffs' Interim Lead Counsel and counsel for any other Plaintiff or Plaintiff Class in the Action designate the same individual for deposition, that individual so designated shall only be made available for a single deposition.

(i) **Testimony at Trial:** Upon reasonable notice and upon satisfaction of the provisions of ¶ 11(d) as to the availability of certain individuals, the Individual Settling Parties shall make themselves available and Voluntary Dismissal Defendants shall make available for truthful testimony at trial, up to three (3) additional current officers and employees of Voluntary Dismissal Defendants designated by Class Plaintiffs' Interim Lead Counsel, who possess information, based on Class Plaintiffs' Interim Lead Counsel's good faith belief, that would assist Plaintiffs in trial of the Plaintiffs' claims as alleged in the Action, subject to the availability of such officers or employees. Voluntary Dismissal Defendants shall use commercially reasonable efforts to assist Class Plaintiffs' Interim Lead Counsel in arranging for the appearance of former officers and employees at trial, but neither Voluntary Dismissal Defendants nor Individual Settling Parties shall be obligated to bear the expenses, including but not limited to legal fees, of testimony of such current or former directors, officers and employees. Notwithstanding any other provision of this Agreement, in the event that the Voluntary Dismissal Defendants believe that Class Plaintiffs' Interim Lead Counsel has unreasonably designated any current officer or employee for testimony at trial, the parties agree to meet and confer regarding such designation and seek resolution from the Court, if necessary.

(j) **Obligations in light of Bankruptcy, Restructuring or other Creditor Protection Proceedings:** The obligations of or requests made to Voluntary Dismissal Defendants (in their corporate capacities) under ¶ 11 (other than the Lawyers' Proffer and the Initial Production), including, but not limited to, any subsequent requests for the production of or access to documents by Class Plaintiffs' Interim Lead Counsel, shall be contingent upon the Voluntary

Dismissal Defendants' abilities (in their corporate capacities) to meet such obligations or requests subsequent to the filing of a form of bankruptcy, restructuring or other creditor protection under Canadian law. For example, after the filing of any such form of bankruptcy, Voluntary Dismissal Defendants may no longer have access to certain facilities or records. In this regard, none of the obligations described in ¶ 11 shall obligate the Voluntary Dismissal Defendants or their counsel to provide access to, produce or otherwise make available information or documents the Voluntary Dismissal Defendants (in their corporate capacities) are no longer able or permitted to access. For purposes of clarity, to the extent the Voluntary Dismissal Defendants continue to have access to such information or documents following a bankruptcy, restructuring or other creditor protection filing, the obligations outlined above shall, subject to any of the conditions otherwise specified, continue in full force and effect. Nothing in this paragraph, except a material breach of this Agreement by Class Plaintiffs, shall affect or limit the Voluntary Dismissal Defendants' obligations under the last two sentences of ¶ 2 of this Agreement, and the obligations imposed under those two sentences are incorporated by reference as if fully stated herein.

(k) **Termination:** Individual Settling Parties and Voluntary Dismissal Defendants' obligations to cooperate under the Agreement terminate when final judgment has been rendered, with no remaining rights of appeal, in the Action against all defendants. In the event of an alleged material breach by either Party, the non-breaching Party shall have the right to apply to the Court for specific performance. Class Plaintiffs, Voluntary Dismissal Defendants and the Individual Settling Parties specifically agree that the Court would have personal jurisdiction over them for purposes of determining whether an alleged breach of this Agreement has occurred.<sup>3</sup> If the Court finds a Party, including an Individual Settling Party, to have materially breached this Agreement and orders specific performance as to that Party, and that Party nonetheless fails to comply with such an order, the Agreement shall be terminated as to that, and only that, Party. For purposes of clarity, if the Court finds that an Individual Settling Party has materially breached this Agreement but does not order specific performance as to that Individual Settling Party, and such Individual Settling Party is capable of performing, but nonetheless does not specifically cure his, her or its material breach, the Agreement shall be terminated as to that, and only that, Individual Settling Party. In the event that the Court finds an Individual Settling Party not to have materially breached this Agreement, then this Agreement shall remain in effect as to that Individual Settling Party. In no event (except as explicitly provided for in ¶ 11(b)) shall any Party be permitted to unilaterally terminate this Agreement. Further, in no event shall any Individual Settling Party's actual or alleged breach of any of the obligations described in ¶ 11 in any way apply, alter, negate, or have any effect whatsoever on (i) the dismissal without prejudice of the

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<sup>3</sup> Consent to the exercise of personal jurisdiction by the Court with regard to the disputes described herein is not intended to, and in no way does, represent or concede that the Plaintiffs, Voluntary Dismissal Defendants or any Individual Settling Party are properly subject to the exercise of personal jurisdiction by this Court on any other matter whatsoever.

Action as to the Voluntary Dismissal Defendants or (ii) the full and final release of Claims contemplated by this Agreement as to any other Releasees, including the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders), attorneys, and legal representatives of the Voluntary Dismissal Defendants, and the predecessors, successors, heirs, executors, administrators and assigns of each of the Voluntary Dismissal Defendants.

**D. Attorneys' Fees and Reimbursement of Expenses**

**12. No Liability for Fees and Expenses of Class Plaintiffs' Interim Lead Counsel or Any Other Counsel for Plaintiffs in this Action.** The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any award to Class Plaintiffs' Interim Lead Counsel or any other counsel for Plaintiffs in this Action for attorneys' fees or reimbursement of expenses from any future settlement, and/or to any other Person who may assert some claim thereto, or any award of such attorneys' fees, reimbursement of expenses or other claim that the Court may make in the Action.

**E. Conditions of Agreement, Effect of Disapproval, Cancellation or Termination**

**13. Effective Date.** This Agreement shall become final on the date (the "Effective Date") that: (a) the Court has entered a final order and judgment approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action as against Voluntary Dismissal Defendants without prejudice as to all Settlement Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Agreement and the final order and judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §

1651, shall be taken into account in determining the above-stated times. On the Execution Date of this Agreement, the parties hereto shall be bound by its terms, and this Agreement shall not be rescinded unless in accordance with terms provided herein.

**14. Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 13 are not met, then this Agreement shall be cancelled and terminated, subject to and in accordance with ¶ 15 below and except as otherwise provided in ¶ 10(c), unless the parties mutually agree in writing to proceed with this Agreement. To the extent that Voluntary Dismissal Defendants do not file a form of bankruptcy, restructuring or creditor protection under Canadian law, including but not limited to the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act and Chapter 15 of the United States Bankruptcy Code, on or before January 31, 2012, or if after such a filing is made, Voluntary Dismissal Defendants fail to qualify for bankruptcy, restructuring or creditor protection (as appropriate), this Agreement shall be null and void and the respective parties' rights and positions shall be as set forth in ¶ 16 below.

**15. Failure to Enter Preliminary Approval Order or Final Approval Order and Judgment.** If the Court does not enter the Preliminary Approval Order or the Final Approval Order and Judgment, or if this Court enters the Final Approval Order and Judgment and appellate review is sought and, on such review, the Final Approval Order and Judgment is finally vacated, modified, or reversed, then this Agreement shall be cancelled and terminated (except as otherwise provided in ¶ 10(c)), unless all parties who are adversely affected thereby, in their sole discretion within thirty (30) days from the date of the notice by the Court of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the Agreement under the terms of the Preliminary Approval Order and the Final Approval Order and Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of

Class Plaintiffs and the Class by Class Plaintiffs' Interim Lead Counsel. No party to the Agreement shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any the award of attorneys' fees (or denial of such award) or proper distribution of a future settlement amount, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Agreement by any party. Without limiting the foregoing, a Voluntary Dismissal Defendant, Individual Settling Party and/or Releasee shall have, in its, his or her sole and absolute discretion, the option to terminate the Agreement in its entirety in the event that the Final Approval Order and Judgment, upon becoming Final, does not provide for the dismissal without prejudice of the Action against Voluntary Dismissal Defendant and the full discharge of the Released Claims.

**16. Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that Plaintiffs elect to exercise their rights pursuant to ¶ 11(b) of this Agreement, the Agreement as described herein is not finally approved by the Court or the Final Approval Order and Judgment is reversed or vacated following any appeal taken therefrom, then:

- (a) the parties shall be restored to their respective positions in the Action as of the Execution Date (except as otherwise provided in ¶ 10(c)), with all of their respective claims and defenses, preserved as they existed on that date;
- (b) the terms and provisions of this Agreement shall be null and void and shall have no further force or effect with respect to the parties (except as otherwise provided in ¶ 10(c)), and neither the existence nor the terms of

this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect); and

- (c) any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

**F. Opt Outs and Opt-Out Protection**

17. Notice of Opt-Outs. Class Plaintiffs' Interim Lead Counsel or their designee shall direct the Notice Administrator to send copies of any requests for exclusion from the Settlement Class to the parties to this Agreement as they are received.

18. Communication with Opt Outs. The Voluntary Dismissal Defendants or their counsel shall be entitled to communicate with any potential Settlement Class Member regarding its decision to opt out of the Settlement Class only if, prior to communicating with a potential Settlement Class Member, the Voluntary Dismissal Defendants first receive permission from Class Plaintiffs' Interim Lead Counsel authorizing the communication, which permission shall not be unreasonably withheld.

19. Benefits of Agreement. The parties to this Agreement agree that persons or entities that exercise their opportunity to opt out of the Settlement Class and do not elect to be bound by the terms of this Agreement are not entitled to the benefits and relief of this Agreement.

**G. No Admission of Liability**

20. Final and Complete Resolution. Plaintiffs and the Releasees intend the Agreement as described herein to be a final and complete resolution of all disputes or possible disputes between them with respect to the Action and to compromise claims that would be

contested, and it shall not be deemed an admission by any party to this Agreement as to the merits of any claim or defense or any allegation made in the Action.

**21. Use of Agreement as Evidence.** Neither this Agreement nor any of its provisions, nor any act performed or document executed pursuant to or in furtherance of this Agreement (including, but not limited to, the Lawyers' Proffer whether or not Plaintiffs subsequently exercise their right to terminate this Agreement): (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, of any allegation made in the Action, or of any wrongdoing or liability of any party to this Agreement; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Agreement, and except that the Releasees may file this Agreement and/or the Final Approval Order and Judgment in any action for any purpose, including, but not limited to, in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this paragraph apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order and Judgment.

**H. Miscellaneous Provisions**

**22. Right to Communicate.** Class Plaintiffs' Interim Lead Counsel acknowledges and agrees that Voluntary Dismissal Defendants shall have the right to communicate orally and in writing with, and to respond to inquiries from, Settlement Class Members, only as provided in

¶ 18 above, except that Voluntary Dismissal Defendants, as well as Individual Settling Parties, may communicate with Class Members about matters that: (i) are unrelated to this Agreement, the Action or the facts, allegations, circumstances, occurrences or claims that form the basis for the Action, provided that such communications constitute: (1) Communications between Settlement Class Members and those whose responsibilities include customer relations to the extent such communications are initiated by Settlement Class Members; (2) Communications between Settlement Class Members who are ongoing customers of, or who seek to become customers of, the Parties to this Agreement; and (3) Communications that might be necessary to conduct the businesses of the parties to this Agreement in the ordinary course. To the extent that Voluntary Dismissal Defendants or anyone acting on their behalf have any communications with members of the Settlement Class regarding matters other than those in the ordinary course of business, Voluntary Dismissal Defendants shall promptly notify Interim Class Counsel, in writing, of the identity of the Class Member, the participants in the communication, the date of the communication, whether the communication was oral or in writing and the subject matter of the communication.

**23. Voluntary Agreement.** The parties agree that the terms of the Agreement as described herein were negotiated in good faith by the parties, and reflect an agreement that was reached voluntarily after consultation with competent legal counsel.

**24. Consent to Jurisdiction.** The parties to this Agreement hereby irrevocably submit to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

**25. Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or among and/or between the parties to this Agreement and any Class Member or Members (or their counsel) concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

**26. Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Class Plaintiffs and Class Plaintiffs' Interim Lead Counsel shall be binding upon all Class Members.

**27. Authorization to Enter Agreement.** The undersigned representatives of Voluntary Dismissal Defendants represent that they are fully authorized to enter into and to execute this Agreement on behalf of Voluntary Dismissal Defendants. Class Plaintiffs' Interim Lead Counsel, on behalf of the Class Plaintiffs, pursuant to the Initial Case Management Order and subject to Court approval, is expressly authorized to take all action required or permitted to be taken by or on behalf of this Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

**28. Notices.** All notices under this Agreement shall be in writing. Each such notice shall be given either by (a) e-mail, (b) hand delivery, (c) registered or certified mail, return receipt requested, postage pre-paid, (d) Federal Express or similar overnight courier, or (e) facsimile and first class mail, postage pre-paid, and, if directed to any Class Member, shall be addressed to Class Plaintiffs' Interim Lead Counsel at their addresses set forth on the signature page hereof, and if directed to Voluntary Dismissal Defendants, shall be addressed to their

attorneys at the address set forth on the signature pages hereof or such other addresses as Class Plaintiffs' Interim Lead Counsel or Voluntary Dismissal Defendants may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

**29. No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

**30. No Party Deemed to Be the Drafter.** None of the parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

**31. Choice of Law.** This Agreement and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of Ohio, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Ohio without giving effect to that State's choice of law principles.

**32. Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

**33. Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves

original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

**34. Integrated Agreement.** This Agreement constitutes the entire agreement between the parties and no representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

**35. Non-Disclosure.** Until such time as (i) the five-day period specified in ¶ 11(b) has expired and (ii) Class Plaintiffs' Interim Lead Counsel have elected, on behalf of Class Plaintiffs and all Class Members, either to continue in or terminate this Agreement, Class Plaintiffs' Interim Lead Counsel may not disclose to any individual or entity other than Class Plaintiffs, Class Members or any attorney representing one or more individuals or entities within those groups the terms and conditions of this Agreement or the fact of its negotiation. Disclosure to parties other than those specified in this paragraph is permitted only after (i) the expiration of the five-day period specified in ¶ 11(b) and (ii) Class Plaintiffs' Interim Lead Counsel's election to continue in or terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date first herein above written.

PLAINTIFFS' INTERIM LEAD COUNSEL,  
on behalf of Class Plaintiffs individually and on behalf of  
the Class

By: s/ Marvin A. Miller

Marvin A. Miller  
MILLER LAW LLC  
115 LaSalle Street, Suite 2910  
Chicago, IL 60603  
Tel: (312) 332-3400  
Fax: (312) 676-2676  
mmiller@millerlawllc.com

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

Bruce Bradley  
Valle Foam Industries (1995) Inc.

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

Dean Brayiannis  
Valle Foam Industries (1995) Inc.

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

Michael Cappuccino  
Domfoam International, Inc.

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Pietro (Peter) Foti  
Domfoam International, Inc.

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A-Z Sponge & Foam Products Ltd.

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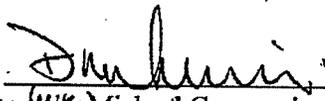
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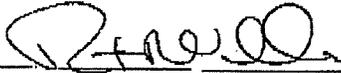
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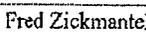
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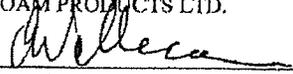
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Tony Vallecoccia  
Valle Foam Industries (1995) Inc.

By: \_\_\_\_\_  
Fred Zickmante]   
Valle Foam Industries (1995) Inc.

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

By:   
Tony Vallecoccia  
President, Valle Foam Industries (1995) Inc.

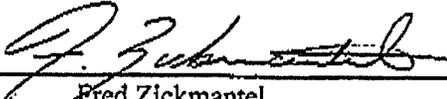
APPROVED AS TO FORM BY OUTSIDE COUNSEL TO  
DEFENDANTS DOMFOAM INTERNATIONAL INC.,  
VALLE FOAM INDUSTRIES (1995) INC. AND A-Z  
SPONGE & FOAM PRODUCTS LTD.

By: \_\_\_\_\_  
Shepard Goldfein  
Shepard.Goldfein@skadden.com  
SKADDEN ARPS SLATE MEAGHER &  
FLOM LLP  
Four Times Square  
New York, NY 10036  
Tel: (212) 735-3000  
Fax: (212) 735-2000

"Indirect Class Agreement"

P. 3

By: \_\_\_\_\_  
Tony Vallecoccia  
Valle Foam Industries (1995) Inc.

By:   
Fred Zickmantel  
~~Valle Foam Industries (1995) Inc.~~ Jan 2, 2012  
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DEFENDANTS DOMFOAM INTERNATIONAL INC.  
AND VALLE FOAM INDUSTRIES (1995) INC. AND A-Z  
SPONGE & FOAM PRODUCTS LTD.

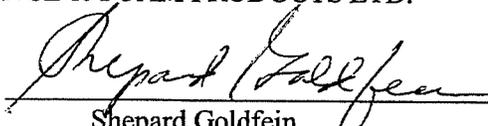
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Tony Vallecoccia  
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By: \_\_\_\_\_  
Shepard Goldfein  
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SKADDEN ARPS SLATE MEAGHER &  
FLOM LLP  
Four Times Square  
New York, NY 10036  
Tel: (212) 735-3000  
Fax: (212) 735-2000

APPROVED AS TO FORM BY OUTSIDE COUNSEL TO  
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SPONGE & FOAM PRODUCTS LTD.

By:

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

Court File No.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**APPLICATION RECORD  
(returnable January 12, 2012)**

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