

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

(the "Applicants")

MOTION RECORD OF THE APPLICANTS

(returnable February 25, 2016)

(re. Extension of Stay Period)

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TAB 1

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

(the "Applicants")

NOTICE OF MOTION
(returnable February 25, 2016)
(re. Extension of Stay Period)

THE APPLICANTS will make a motion to a judge presiding over the Commercial List on Thursday, February 25, 2016, at 9:30 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THIS MOTION IS FOR:

1. An Order substantially in the form attached hereto as Schedule "A":
 - (a) if necessary, abridging the time for service of this Notice of Motion and the Motion Record, declaring that the motion is properly returnable today, and validating service of this Notice of Motion and Motion Record;

- (b) extending the stay of proceedings from the Initial Order of Justice Newbould dated January 12, 2012 (the “**Initial Order**”), and subsequently extended by, *inter alia*, the Order of Justice Newbould dated December 17, 2013, to and including August 30, 2016;
 - (c) approving the Thirteenth Report of the Monitor (the “**Thirteenth Report**”), the actions, decisions and conduct of the Monitor and the fees of it and its counsel as set out therein;
2. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On January 12, 2012, the Applicants sought and were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order.
2. The stay period under the Initial Order has been extended from time to time, most recently by Order of the Honourable Mr. Justice Newbould through and including February 29, 2016.
3. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (the “**Monitor**”) was appointed as monitor of the Applicants.

4. The Monitor, in conjunction with the Applicants, has solicited claims from the creditors, issued Notices of Disallowance where appropriate, and received Notices of Dispute from certain creditors.

5. The Applicants and the Monitor have engaged in extensive without prejudice discussions in respect of the claim filed by the class action claimants in the amount of \$97.5 million, which has resulted in a settlement which will accept the claim at a value of \$40 million for valuation and distribution purposes, subject to court approval.

6. The applicant, 3113736 Canada Ltd., is engaged in pursuing several parties in respect of outstanding accounts receivables. Litigation has been commenced in connection with many of these claims, some of which have already settled.

7. The Applicants have engaged in extensive discussions and negotiations with Revenu Quebec in respect of certain claims that it has filed, which has resulted in a significant portion of the claim being withdrawn, but the balance of the claims still outstanding. A settlement conference is currently scheduled before the Tax Court of Canada on March 3, 2016. Settlement offers have been exchanged and negotiations continue.

8. The Applicants through the Monitor have made a distribution to the creditors.

9. A further extension of the Stay Period is necessary and appropriate to allow the Applicants and the Monitor to, among other things, secure clearance certificates, or other arrangements with Canada Revenue Agency and the appropriate provincial tax authorities, allow for a resolution of the disputed claims with Revenu Quebec, collect outstanding amounts owed to 3113736 Canada Ltd. and to attend to the possible recovery of amounts payable by Dow Chemical in U.S. class action proceedings.
10. The Monitor is supportive of the relief sought herein.
11. The Applicants are operating in good faith and with due diligence.
12. Section 11 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.
13. Rules 1.04, 1.05, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
14. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

	DATE	DESCRIPTION
1.	February 19, 2016	Affidavit of Tony Vallecoccia together with exhibits attached thereto
2.	February, 2016	Thirteenth Report of the Monitor together with exhibits attached thereto, filed separately
3.	January 12, 2012	Initial Order of Justice Newbould
4.	September 29, 2015	Order of Justice Newbould
5.	Such other material as counsel may advise and this Honourable Court may permit.	

February 19, 2016

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TO: THE SERVICE LIST ATTACHED

SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE M) THURSDAY, THE 25th DAY
)
JUSTICE) OF FEBRUARY, 2016

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

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

(the "Applicants")

**ORDER
(Extension of Stay Period)**

THIS MOTION made by the Applicants for an Order extending the stay of proceedings was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Tony Vallecoccia sworn February 19, 2016, and the exhibits thereto, the Thirteenth Report of Deloitte Restructuring Inc. (formerly known as Deloitte & Touche Inc.), in its capacity as Court-appointed monitor of the Applicants (the "**Monitor**") and the appendices attached thereto

(the “**Thirteenth Report**”), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor,

no one appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Victoria Stewart sworn February _____, 2016,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Stay Period of the Initial Order of Justice Newbould dated January 12, 2012 and as subsequently extended by, *inter alia*, the Order of Justice Brown dated July 17, 2013, is hereby extended from February 29, 2016 to and including August 30, 2016.
3. **THIS COURT ORDERS** that the Thirteenth Report and the actions, decisions and conduct of the Monitor as set out in the Thirteenth Report are hereby authorized and approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Thirteenth Report and the Affidavit of Catherine Hristow sworn February _____, 2016, and Affidavit of Grant Moffat

sworn February _____, 2016, and the exhibits attached thereto, are hereby authorized and approved.

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

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**ORDER
(Extension Order)**

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TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

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

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

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

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

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

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

VALLE FOAM COLLECTION EFFORTS

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

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

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

CLASS ACTIONS

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

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

URETHANE ANTITRUST LITIGATION

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

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

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

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

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

15. As I have stated in previous affidavits in these proceedings, the recovery to the applicants, before attorney fees, payable in respect of the Applicants' claim in the Polyol proceedings, in the event of a one billion dollar judgment, could be several million dollars.

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

CLAIMS PROCESS and DISTRIBUTIONS

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

18. There are no disputed Claims other than the Claim filed by Revenu Quebec against Domfoam, described in more detail therein.

19. Given that most claims were settled, the Applicants sought and received an order allowing for an interim distribution of funds to the creditors of the various Applicants. I am advised that the Monitor had a comprehensive registry of

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

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

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

UNRESOLVED CLAIMS

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

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

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

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

Pre-Filing Credits

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

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

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

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

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

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

PROPOSED EXTENSION

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

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

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

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

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

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

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

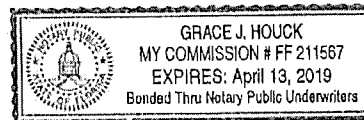
FURTHER AFFIANT SAITH NOT.

T. Vallecoccia
TONY VALLECOCCIA

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

Grace Houck
Notary Name: GRACE HOUCK
Notary Public, State of Florida

Notary Commission Number:
My Commission Expires: 4-13-19



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

TAB A

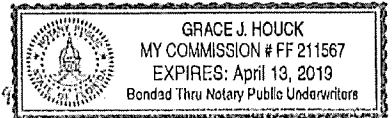
T. Vallecoccia

This is Exhibit "A" referred to
in the Affidavit of TONY VALLECOCCIA

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

Grace Houck
Notary Name: GRACE HOUCK
Notary Public, State of Florida

Notary Commission Number:
My Commission Expires: 4-13-19



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

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

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(the "Applicants")

AFFIDAVIT OF TONY VALLECOCCIA
(sworn September 25, 2015)

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

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

2. This affidavit is sworn in support of a motion by the Applicants to seek the admission of certain late filed Claims as Prefiling or Postfiling Claims in these

proceedings, a direction that the Monitor make an interim distribution of the Proceeds of Valle Foam and A-Z and other ancillary relief including amending the Directors' Charge granted in the Initial Order in these proceedings, and for an extension of the stay granted pursuant to the Initial Order of Justice Newbould in these *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceedings dated January 12, 2012, from September 30, 2015 to and including February 29, 2016.

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

4. Capitalized Terms not defined herein shall have the meaning ascribed to those words in the Claims Solicitation Procedure Order granted on June 15, 2012.

5. Attached hereto as **Exhibit "A"** is my affidavit of April 16, 2015, without exhibits (the "**April Affidavit**"), which sets out the history of this matter and the material events which the Applicants were dealing with leading up to the last extension requested by the Applicants. The balance of this affidavit, other than

the section dealing with the proposed distribution, provides an update on those matters described in the April Affidavit.

VALLE FOAM COLLECTION EFFORTS

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

7. Since the April Affidavit, four actions have settled.

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

CLASS ACTIONS

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

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

URETHANE ANTITRUST LITIGATION

11. As stated in my April Affidavit, the Applicants are each claimants in a U.S. class action proceeding that relates to price fixing for a product known as "Polyether Polyol" ("Polyol").

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

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

14. Our counsel has been in communication with RRS and has been advised that a Writ of Certiorari has been filed with the United States Supreme Court and that the Supreme Court has not decided whether it will hear the case.

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

16. As stated in my Affidavit in these proceedings sworn October 22, 2014, on a rough calculation, the gross amount, before attorney fees, payable in respect of the Applicants' claim in the Polyol proceedings, in the event of a one billion dollar judgment, could be as high as: Valle Foam \$6,000,000.00. Domfoam \$4,900,000.00 and A-Z Foam \$690,000.00.

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

CLAIMS PROCESS

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

19. The Monitor has provided the following summary of the Prefiling and Postfiling Proofs of Claim received prior to the Claims Bar Date which have been admitted by the Monitor

Company	Prefiling (Admitted)	Postfiling (Admitted)	Pending Resolution	Total
Valle Foam	\$ 27,468,546.57	\$ 129,015.90	\$ nil	\$ 27,597,562.47
Domfoam	\$26,588,931.85	\$ nil	\$709,310.94	\$ 27,298,242.79
A-Z Foam	\$ 4,082,398.29	\$ 125,399.48	\$ nil	\$ 4,207,797.77

20. I am advised by the Monitor that all admitted Postfiling Claims against Valle Foam and A-Z Foam have been paid pursuant to the Initial Order, except as noted in the Monitor's 12th Report.

21. The most significant Proven Claims against the Companies were filed in respect of the Canadian Class Actions in the total amount of CAD \$40,000,000 (allocated to each of Valle Foam and Domfoam in the amount of \$18,000,000 and to A-Z Foam in the amount of \$4,000,000) and by the Competition Bureau against both Valle Foam and Domfoam in the amount of \$6,000,000 respectively.

22. There are no disputed Claims other than the Claim filed by Revenu Quebec against Domfoam, described in more detail below.

23. I am advised that the Monitor has a comprehensive registry of these claims, including contact information so as to enable payments to be made to these creditors once such payments are authorized by the Court.

24. I am advised by the Monitor that there were several smaller claims filed after the Claims Bar Date. These Claims are detailed in the Monitor's Twelfth Report, to be filed in these proceedings.

25. The Monitor summarizes these claims as follows:

Company	Prefiling	Postfiling	Total
Valle Foam	\$ 117,738.58	\$ 270,958.16	\$388,696.74
Domfoam	\$ 74,382.38	\$ nil	\$ 74,382.38
A-Z Foam	\$ 6,504.21	\$ 9,973.11	\$ 16,477.32

26. I support the Monitor's recommendation that these late filed Claims be included as Prefiling or Postfiling Claims, along with other Proven Claims, notwithstanding they were filed after the Claims Bar Date.

UNRESOLVED CLAIMS

27. The sole remaining disputed Claim in the Claims Solicitation Procedure is proceeding before both the Tax Court of Canada and in the Quebec Superior Court. The dispute is with respect to an amount of approximately \$400,000 (before interest and penalties) in relations to GST paid to seven different Temporary Employment Agencies (the "Temp Agencies") hired by Domfoam to provide additional labour to Domfoam's operations prior to the CCAA filing.

28. Revenu Quebec has advised that six of the seven Temp Agencies are known to Revenu Quebec as “suppliers of false invoices” and that Revenu Quebec is of the view that the Temp Agencies could not have delivered the services in respect of which GST is asserted to have been paid by Domfoam.

29. Domfoam disputes this position, and, as outlined in the April Affidavit, has provided documentary evidence to support its position.

30. Counsel for Domfoam and counsel for Revenu Quebec attended a status hearing before the Tax Court on May 7, 2015. At that time, the parties set down a litigation schedule which required the exchange of settlement offers (in May for the Domfoam and July for the Canada Revenue Agency) and the scheduling of a settlement conference by September 15, 2015. Attached hereto and marked as **Exhibit “B”** is the Order of Justice Boccock of the Tax Court of Canada dated May 26, 2015.

31. The parties have exchanged the settlement offers as required by the schedule. Neither offer was accepted by the other side. Therefore a settlement conference was required. However, the parties were not able to schedule a settlement conference due to a lack of availability of resources at the Tax Court within the time required in the Order of Justice Boccock.

32. The parties therefore held a further status hearing with the Chief Justice of the Tax Court on August 19, 2015 in an attempt to schedule a settlement conference by September 15, 2015. However, even with the intervention of Court, no time was found to be available prior to the expiry of the current stay of proceedings.

33. The parties held an informal without prejudice meeting by teleconference on September 21, 2015 without the assistance of the Court to canvass the possibility of settlement. However, in the event there is no resolution, it is currently unlikely a formal settlement conference will be held before November, 2015.

34. The balance of the litigation schedule from the Order of Justice Boccock was adjourned at the August 19th, 2015 status hearing pending the completion of the settlement conference.

35. Given the without prejudice offers which have been exchanged, the Applicants are cautiously optimistic that a settlement is possible.

36. As reported in the April Affidavit, it continues to be anticipated that the Tax Court proceeding will complete itself substantially in advance of the Quebec Court matter and that the Quebec Court matter will likely settle in accordance with the findings of the Tax Court.

Pre-Filing Credits

37. As reported in the April Affidavit, there also remains an issue with Revenu Quebec with respect to approximately \$525,000.00 (before penalties and interest) in respect of GST credits which Revenu Quebec requires be refunded. This amount arises in respect of GST credits which Domfoam may have applied for in respect of goods or services it ordered and took delivery of prior to the CCAA filing, and in respect of which, due to the prohibition in the Court order to pay those pre-filing debts after the CCAA proceeding commenced, the GST was likely ultimately never paid to Revenu Quebec.

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

39. There is also a similar claim outstanding in the estate of Valle Foam. In that estate the amount owing is approximately \$186,000. As I reported in my Affidavit sworn October 22, 2014, the question as to whether or not this amount is properly a post-filing or pre-filing amount has not been determined.

40. A conference call was held among counsel for the directors and officers of Domfoam, counsel for the Company and counsel for the Monitor to discuss this issue. No resolution was reached on that call.

41. Counsel for the directors and officers and counsel for the Monitor continue to discuss the treatment of this claim. It is my understanding that the fact that this matter remains unresolved requires that an amount^{of} equal to the amount in dispute be held back from any proposed distribution.

42. The Applicants' directors' and officers' insurer is on notice as to these claims and the status of this dispute. The insurer has advised that given that no claim has as yet been made against the Directors or Officers other than in the Claims Process, that the insurer need not yet respond. The insurer advised on Sept 18th, 2015 by email to counsel for the Directors and Officers:

We ... would assess coverage in the event that a claim against an Insured Person is made in relation with the circumstances mentioned in our letters of Nov 12, 2012 and of May 21, 2014. If a D&O Claim arising of such circumstances is made, the D&O Claim will be considered haven been made during the policy period in which the circumstances were first reported to the company (policy of Oct 31,2011 to Oct 31, 2012 extended to Oct 31,2015).

INTERIM DISTRIBUTION FOR VALLE AND A-Z ONLY

43. The Monitor has advised that, having finally received comfort letters from the tax authorities who might possibly object to the distribution of funds from the estates of AZ and Valle Foam, that the Monitor is now prepared to recommend the distribution of funds in those estates.

44. At this time it is my understanding that no such clearance certificate or comfort letter is available in Domfoam given the pending dispute with Revenu

Quebec. As such, it is my understanding that the Monitor is not yet ready to recommend a distribution in that estate.

45. Subject to recommended holdbacks, the Monitor is recommending a distribution of funds on an interim basis on a pro rata basis in Valle Foam and A-Z to those with proven claims in the Claims Process.

46. The proposed distribution is an interim Distribution, rather than a final Distribution, as there remains the possibility of significant further funds for all the Applicants from the Polyols settlement, and the possibility of further funds being collected from the Valle Foam estate.

47. The proposed Distribution is to be made to the unsecured creditors of Valle Foam and A-Z as neither the Applicants, nor the Monitor, is aware of any outstanding secured or preferred claims which would rank in priority to the claims of the unsecured creditors (other than amounts owing under any Court ordered charges in these proceedings).

48. I support the Monitor's recommendation for a pro rata distribution of funds to the creditors of A-Z and Valle Foam, subject to the following holdbacks.

49. With respect to Valle Foam, the Monitor is recommending a holdback in the amount of \$200,000 to address the possible post-filing tax liability discussed above. There will also be a holdback in the amount of \$225,000 to fund the

ongoing administration of the estate, including the ongoing pursuit of the litigation claims referred to above. I agree with these proposed holdbacks.

50. With respect to A-Z Foam, the Monitor is recommending a holdback in the amount of \$50,000 to fund the ongoing administration of that estate. I agree with this proposed holdback.

51. I believe distributing to the creditors on an pro rata basis, as recommended by the Monitor, is a fair method. I also believe the creditors have waited a long time to receive these proceeds, and I would like to see the proceeds distributed as soon as possible. But for the delay in receiving clearance certificates from the various tax authorities (as described above) the Applicants would have sought this Distribution sooner.

52. The amount of the Valle Foam proceeds to be distributed, after taking into account the holdback described above amounts to \$\$5,583,435.92.

53. The amount of the A-Z proceeds to be distributed, after taking into account the holdback described above, amounts to \$623,820.39.

54. It is my understanding, based on calculations done by the Monitor, that it is expected that the creditors of Valle Foam with proven claims will receive, in the proposed interim distribution, amounts equal to approximately \$0.20 on the dollar of their proven claims.

55. It is my understanding, based on calculations done by the Monitor, that it is expected that the creditors of AZ with proven claims will receive, in the proposed interim distribution, amounts equal to approximately \$0.15 on the dollar of their proven claims.

DIRECTORS CHARGE AMENDMENT

56. The Monitor is recommending that the Directors' Charge be amended as a result of the proposed interim Distribution. Given that there are no outstanding claims which were filed in the Claims Process against the Directors and Officers of A-Z, I agree that the Director's Charge can be discharged against the Property of A-Z.

57. In the case of Valle Foam, the Monitor is recommending that Valle Foam only indemnify its own directors and officers for any post-filing liability and that the Directors' Charge on the Valle Foam Property only be for the benefit of the Valle Foam directors and officers. I agree with this recommendation and believe the Directors Charge should remain in the amount of \$200,000 to fund the possible tax liability discussed above, and to fund the director's and officer's counsel in respect of same.

58. In addition, I am of the view that Directors and Officer's counsel's fees, to the extent that they relate, or have related, to the review of this issue and the

applicability of the charge to this issue should be paid in the ordinary course from that charge amount.

59. In the case of Domfoam, the Monitor is recommending that Domfoam only indemnify its own directors and officers for any post-filing liability and that the Directors' Charge on the Domfoam Property only be for the benefit of the Domfoam directors and officers. I agree with that recommendation. Given that there is no distribution being recommend^{ed} at this time, and given that the issues with respect to the treatment of the Postfiling Claims from Revenu Quebec have not been resolved, I do not recommend any change to the quantum of that charge at this time.

PROPOSED EXTENSION

60. The Applicants propose that the stay of the proceeding be extended from September 30, 2015 to and including February 29, 2016.

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

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

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

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

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

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

SWORN before me at the Town)
of Milton, in the Province of)
Ontario, this 25th day of)
September, 2015.)
Commissioner for Taking Affidavits)



TONY VALLECOCCIA

TAB 3

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



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 12 th
)	
JUSTICE NEWBOULD)	DAY OF JANUARY, 2012

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

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

(the "Applicants")

INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

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

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

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

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

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

GENERAL

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

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

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

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

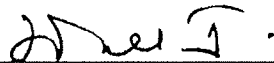
45. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this

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

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

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

INITIAL ORDER

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Lawyers for the Applicants

TAB 4

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



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 29th DAY
JUSTICE NEWBOULD) OF SEPTEMBER, 2015.

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

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

(the "Applicants")

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

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

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

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

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

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

Stay Extension

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

Late Claims

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

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

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

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

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

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

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

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

Directors' Indemnity and Charge

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

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

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

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

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

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

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

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

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

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

Valle Foam Interim Distribution

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

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

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

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

A-Z Foam Interim Distribution

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

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

Approval of the Monitor's Actions, Fees and Expenses

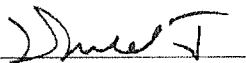
16. **THIS COURT ORDERS** that the Twelfth Report and the actions, decisions and conduct of the Monitor as set out in the Twelfth Report are hereby authorized and approved.

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

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

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

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



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SEP 30 2015



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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

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

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 3113736 CANADA LTD., 4362063
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Court File No. CV-12-9545-00CL

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

MOTION RECORD OF THE APPLICANTS
(returnable February 25, 2016)
(re. Extension of Stay Period)

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