

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

THE HONOURABLE) TUESDAY, THE 25th DAY
)
JUSTICE CAVANAGH) OF JANUARY, 2022
)

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**”)

CCAA TERMINATION ORDER

THIS MOTION made by 3113736 Canada Ltd., 4362063 Canada Ltd., and A-Z Sponge & Foam Products Ltd. (collectively, the “**Applicants**”), for an order, among other things: (i) authorizing and directing Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) (“**Deloitte**”) in its capacity as the Court-appointed Monitor (in such capacity, the “**Monitor**”) of the Applicants to carry out a final distribution to the creditors of the Applicants; (ii) discharging and releasing Mr. Linc Rogers (“**Rogers**”), a partner with the law firm of Blake, Cassels & Graydon LLP, in his capacity as the Chief Restructuring Officer of the Applicants (in such capacity, the “**CRO**”); (iii) discharging and releasing the Monitor; (iv) terminating this proceeding (the “**CCAA Proceeding**”) upon filing of the CCAA Termination Certificate (as defined herein); (v) approving the Twenty-Seventh Report of the Monitor (the “**Twenty-Seventh Report**”) and the activities of the Monitor described therein; and (vi) approving the fees and disbursements of the CRO, the Monitor and its legal counsel, was heard on Tuesday, January 18,

2022 by The Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) through videoconference due to the COVID-19 crisis.

ON READING the Motion Record, the Twenty-Seventh Report, and on hearing submissions of counsel to the Applicants, the Monitor and the other parties listed on the counsel slip, no one else appearing, although properly served as appears from the Affidavit of Service of Ariyana Botejue sworn on January 11, 2022,

DEFINITIONS

1. **THIS COURT ORDERS** that any capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Twenty-Seventh Report.

SERVICE

2. **THIS COURT ORDERS** that the time for service and manner of service of the Applicants' Motion Record is hereby abridged and validated, and any further service thereof is hereby dispensed with so that this motion was properly returnable on January 18, 2022 in all proceedings set out in the style of cause hereof.

APPROVAL OF MONITOR'S REPORT, ACTIVITIES AND FEES

3. **THIS COURT ORDERS** that the Twenty-Seventh Report and the actions, decisions and conduct of the Monitor as set out in the Twenty-Seventh Report are hereby authorized and approved.

4. **THIS COURT ORDERS** that the Final Fee Allocation is hereby authorized and approved and the Monitor is authorized and directed to transfer funds as necessary between the estates of the Applicants to implement the Final Fee Allocation.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel as set out in the Twenty-Seventh Report (including the amount of the Remaining Matters Fees and Disbursements), the Affidavit of Catherine A. Hristow sworn on January 11, 2022, the Affidavit of Grant Moffat sworn on January 10, 2022, the Affidavit of Mary K. Whitmer sworn on January 28, 2020 and the Affidavit of James W. Ehrman sworn on January 10, 2022, are hereby authorized and approved.

6. **THIS COURT ORDERS** that the Monitor is authorized and directed to pay the Outstanding Fees and the Remaining Matters Fees and Disbursements from the account maintained by the Monitor for each of the Applicants in accordance with the Final Fee Allocation.

7. **THIS COURT ORDERS** that, subject only to completion of the Final Distributions (as defined below) and the other Remaining Matters, the Monitor has duly and properly satisfied, completed and performed all of its duties, obligations and liabilities under the Plan, the Orders of this Court in the CCAA Proceeding and otherwise with respect to the Applicants in compliance and in accordance with the CCAA.

RELEASE OF MONITOR

8. **THIS COURT ORDERS** that, without in any way limiting the releases set out in the Plan, the provisions of the Plan Sanction Order or any other Order in the CCAA Proceeding,

Deloitte (in its capacity as Monitor and in its personal and corporate capacity), the Monitor's legal counsel and each of their respective directors, officers, partners, employees, agents and advisors, as applicable (each, a "**Monitor Released Party**" and collectively, the "**Monitor Released Parties**"), are hereby forever irrevocably released and discharged from any and all present and future claims, liabilities, damages, actions and causes of action, whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, matured or unmatured, in law or equity and whether based in statute or otherwise (collectively, "**Claims**") based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of, or in respect of, the Applicants, the Property, the Proceeds, the Plan, the respective conduct of the Monitor Released Parties in the CCAA Proceeding, or otherwise in respect of the CCAA Proceeding (collectively, the "**Monitor Released Claims**"), which Monitor Released Claims are hereby fully, finally, irrevocably and forever released, stayed, extinguished and barred as against the Monitor Released Parties, provided that the Monitor Released Claims shall not include any Claim arising out of the gross negligence or wilful misconduct of the applicable Monitor Released Party (each, a "**Monitor Released Party Unaffected Claim**").

APPROVAL OF CRO FEES AND DISCHARGE AND RELEASE OF CRO

9. **THIS COURT ORDERS** that the fees and disbursements of the CRO as set out in the Affidavit of Rogers sworn on January 10, 2022 are hereby authorized and approved.

10. **THIS COURT ORDERS** that effective on the date of this Order, Rogers shall be discharged and relieved from any further obligations, responsibilities or duties in his capacity as CRO pursuant to the CRO Appointment Order and any other Orders of this Court in the CCAA

Proceeding, provided that, notwithstanding the discharge of Rogers as CRO, Rogers in his capacity as CRO shall have the authority to complete or address any matters that may be ancillary or incidental to the CCAA Proceeding and Rogers in his capacity as CRO shall continue to have the benefit of the provisions of all Orders made in the CCAA Proceeding, including all approvals, protections and stays of proceedings in favour of Rogers in his capacity as CRO.

11. **THIS COURT ORDERS AND DECLARES** that, without in any way limiting the provisions of the CRO Appointment Order or any other order in the CCAA Proceeding, Rogers (in his personal capacity and his capacity as CRO), Blakes, and the Applicants' lawyers (subject to paragraph 13 hereof and provided that nothing in this order releases APA Claims as defined below), and each of their respective officers, partners, employees and agents, as applicable (each, a "**CRO Released Party**" and collectively, the "**CRO Released Parties**") are hereby forever irrevocably released and discharged from any and all Claims based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the date of this Order in any way relating to, arising out of, or in respect of the Applicants, the Property, the Proceeds, the Plan, the respective conduct of the CRO Released Parties in the CCAA Proceeding, or otherwise in respect of the CCAA Proceeding (collectively, the "**CRO Released Claims**"), which CRO Released Claims are hereby fully, finally, irrevocably and forever released, stayed, extinguished and barred as against the CRO Released Parties, provided that the CRO Released Claims shall not include any Claim arising out of the gross negligence or wilful misconduct of the applicable CRO Released Party (each, a "**CRO Released Party Unaffected Claim**").

12. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any CRO Released Party with respect to a CRO Released Party Unaffected Claim that in any way arises from or relates to the Applicants, the CCAA Proceeding, the Plan, the appointment of Rogers as CRO or the conduct of the CRO Released Party except with prior leave of this Court and on at least seven (7) days' written notice to the applicable CRO Released Party.

13. **THIS COURT ORDERS** that nothing in this Order:

- (a) releases APA Claims;
- (b) authorizes or prevents the Attorney General of Canada representing the Competition Bureau and the plaintiffs (including the class they represent) in the class action proceedings commenced against some or all of the Applicants in British Columbia, Ontario and Quebec in respect of an alleged price-fixing of polyurethane foam in Canada (together, the “**APA Claimants**”) from commencing separate proceedings against Minden Gross LLP or Blaney McMurtry LLP, or any partner or employee thereof, in their capacity as counsel to the Applicants, in respect of loss or damage suffered as a consequence of any alleged negligence, misconduct or breach of duty in drafting the Domfoam APA and the A-Z Foam APA (the “**APA Claims**”); or
- (c) affects any release contained in the Plan or affects the right of the APA Claimants to assert that such releases do not release or otherwise apply to the APA Claims. Further, nothing in this Order constitutes a finding that any such claim, loss or duty exists, nor does it in any way limit or prevent any defence, cross, counter or third-party claim (which third-party claim would be subject to the releases provided for herein), which any or all of Minden Gross LLP or Blaney McMurtry LLP, or any partner or employee thereof, might have in or to any proceeding which may be brought by said APA Claimants.

DISCHARGE OF CHARGES

14. **THIS COURT ORDERS** that each of the Administration Charge and the Valle Foam Directors' Charge is hereby terminated, released and discharged and each of the Valle Foam Administration Charge Holdback, the Valle Foam Directors' Charge Holdback and the A-Z Foam Holdback is hereby terminated.

FINAL DISTRIBUTION TO CREDITORS HOLDING PROVEN CLAIMS

15. **THIS COURT ORDERS** that the Monitor, as agent for and on behalf of Valle Foam, is authorized and directed to make a final distribution of the Valle Foam Proceeds in the amount of \$2,437,031.41 to the Valle Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the "**Valle Foam Final Distribution**").

16. **THIS COURT ORDERS** that the Monitor, as agent for and on behalf of Domfoam, is authorized and directed to make a final distribution of the Domfoam Proceeds in the amount of \$887,489.50 to the Domfoam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the "**Domfoam Final Distribution**").

17. **THIS COURT ORDERS** that the Monitor, as agent for and on behalf of A-Z Foam, is authorized and directed to make a final distribution of the A-Z Foam Proceeds in the amount of \$158,542.70 to the A-Z Foam Creditors holding Proven Claims on a *pro rata, pari passu* basis (the "**A-Z Foam Final Distribution**").

18. **THIS COURT ORDERS** that, if a cheque or other instrument (a "**Cheque**") issued pursuant to the Final Distributions to a Creditor holding a Proven Claim is not presented for payment to the applicable account maintained by the Monitor within 60 days of mailing of the

Cheque by the Monitor (each, an “**Uncashed Cheque**”), the Monitor is authorized and directed to (i) send written notice to the applicable Creditor at the address for the Creditor in the Monitor’s records that if the Uncashed Cheque is not deposited by the Creditor and presented for payment to the applicable account maintained by the Monitor within 20 days of the date of mailing of such notice, the Monitor will stop payment on the Uncashed Cheque and the Creditor will not be entitled to receive any funds pursuant to the Final Distribution to which the Uncashed Cheque relates; (ii) if the Uncashed Cheque has not been presented for payment to the applicable account maintained by the Monitor within such 20 day period, then such Creditor shall not be entitled to receive any funds pursuant to the applicable Final Distribution and the Monitor is authorized and directed to stop payment on the Uncashed Cheque (each, a “**Terminated Cheque**”). The Monitor, as agent for and on behalf of the applicable Applicant, is authorized and directed to pay the amount of each Terminated Cheque, less any applicable bank charges, on a *pro rata, pari passu* basis to the Creditors holding the three largest Proven Claims against the applicable Applicant that have deposited the Cheque delivered to each such Creditor pursuant to the applicable Final Distribution.

19. **THIS COURT ORDERS** that if a Cheque issued pursuant to the Final Distributions to a Creditor holding a Proven Claim is returned to the Monitor (each, a “**Returned Cheque**”), then such Creditor shall not be entitled to receive any funds pursuant to the applicable Final Distribution and the Monitor, as agent for and on behalf of the applicable Applicant, is authorized and directed to pay the amount of each such Returned Cheque, less any applicable bank charges, on a *pro rata, pari passu* basis to the Creditors holding the three largest Proven Claims against the applicable Applicant that have deposited the Cheque delivered to each such Creditor pursuant to the applicable Final Distribution.

TERMINATION OF CCAA PROCEEDING AND RELATED PROVISIONS

20. **THIS COURT ORDERS** that the Stay Period shall terminate as of the date of this Order provided that, in order to permit the Monitor to carry out the Valle Foam Final Distribution, the Domfoam Final Distribution and the A-Z Foam Final Distribution (collectively, the “**Final Distributions**”) and the other Remaining Matters, no step, action, proceeding or enforcement process shall be commenced or continued in any court, tribunal or otherwise, and no Person shall exercise any right or remedy, against or with respect to the Proceeds or that may delay or interfere with the Final Distributions, the Remaining Matters or the remaining duties of the Monitor pursuant to this Order and any other Orders in the CCAA Proceeding.

21. **THIS COURT ORDERS** that following completion of the Final Distributions and the other Remaining Matters to the satisfaction of the Monitor, the Monitor is authorized and directed to file the certificate substantially in the form of the certificate attached hereto as Schedule “A” (the “**CCAA Termination Certificate**”) on seven (7) days’ notice to the Service List in the CCAA Proceeding.

22. **THIS COURT ORDERS** that, without in any way limiting the release set out in paragraph 8 hereof, but subject to paragraph 24 hereof, effective upon the CCAA Termination Time, the Monitor Released Parties shall be forever irrevocably released and discharged from any and all Claims based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place after the date of this Order to and including the CCAA Termination Time in any way relating to, arising out of, or in respect of, the Applicants, the Property, the Proceeds, the Plan, the respective conduct of the Monitor Released Parties in the CCAA Proceeding, or otherwise in respect of the CCAA Proceeding (the “**Subsequent Monitor**

Released Claims”), which Subsequent Monitor Released Claims shall be fully, finally, irrevocably and forever released, stayed, extinguished and barred as against the Monitor Released Parties, provided that the Subsequent Monitor Released Claims shall not include any Claim arising out of the gross negligence or wilful misconduct of the applicable Monitor Released Party.

23. **THIS COURT ORDERS** that if any Creditor holding a Proven Claim objects to the release and discharge of the Subsequent Monitor Released Claims (an “**Objecting Creditor**”), the Objecting Creditor must send to the Monitor by email (at **christow@deloitte.ca**) a written notice of objection describing the basis for such objection (an “**Objection Notice**”) such that the Objection Notice is received by the Monitor prior to the proposed CCAA Termination Date. If an Objection Notice is not received by the Monitor prior to the proposed CCAA Termination Date, the release and discharge of the Subsequent Monitor Released Claims shall be automatically effective as of the CCAA Termination Time, without further Order of the Court.

24. **THIS COURT ORDERS** that if an Objection Notice is received by the Monitor prior to the CCAA Termination Date, the Monitor shall not file the CCAA Termination Certificate and the release and discharge of the Subsequent Monitor Released Claims shall not become effective pending further order of the Court or resolution of the objection contained in the Objection Notice to the satisfaction of the Monitor and the Objecting Creditor. For greater certainty, the delivery of an Objection Notice to the Monitor in accordance with this Order shall not affect the release and discharge of the Monitor Released Claims in accordance with paragraph 8 hereof, which release and discharge shall be effective as of the date of this Order.

25. **THIS COURT ORDERS** that the CCAA Termination Certificate shall constitute the Monitor's Plan Completion Certificate (as defined in the Plan Sanction Order) and the foregoing authorization and direction to the Monitor to file the CCAA Termination Certificate shall replace and supersede the authorization and direction to the Monitor contained in paragraph 29 of the Plan Sanction Order or otherwise contained in the Plan to file the Monitor's Plan Completion Certificate and to bring a motion for the relief contained in paragraph 29 of the Plan Sanction Order. For certainty, the Plan Completion Date shall be the date the Monitor files the CCAA Termination Certificate.

26. **THIS COURT ORDERS** that, in accordance with paragraphs 6 and 29 of the Plan Sanction Order, effective upon the date and time that the Monitor files the CCAA Termination Certificate (the "**CCAA Termination Time**"), Domfoam, the Monitor and any Directors and Officers (as defined in the Plan) holding such office following the Plan Implementation Date are hereby released from all Claims related to implementation of the Plan, other than Claims arising out of or in connection with the gross negligence or wilful misconduct of such parties.

27. **THIS COURT ORDERS** that, effective upon the CCAA Termination Time, the Monitor shall have duly and properly satisfied, completed and performed all of its duties, obligations and liabilities under the Plan, the Orders of this Court in the CCAA Proceeding and otherwise with respect to the Applicants in compliance and in accordance with the CCAA from the date of this Order to and including the CCAA Termination Time.

28. **THIS COURT ORDERS AND DECLARES** that, effective upon the CCAA Termination Time, Deloitte shall immediately be deemed discharged as Monitor and shall have

no further duties, obligations, or responsibilities as Monitor, save and except as set out in paragraph 33 hereof.

29. **THIS COURT ORDERS** that, effective upon the CCAA Termination Time, the CCAA Proceeding shall be terminated without further Order or action by any person.

30. **THIS COURT ORDERS** that, effective upon the CCAA Termination Time, the Monitor is authorized and directed to destroy all records of the Applicants in the possession of the Monitor.

31. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against any Monitor Released Party with respect to a Monitor Released Party Unaffected Claim that in any way arises from or relates to the Applicants, the CCAA Proceeding, the Plan, the appointment of Deloitte as Monitor or the conduct of the Monitor Released Party except with prior leave of this Court and on at least seven (7) days' written notice to the applicable Monitor Released Party.

32. **THIS COURT ORDERS** that, notwithstanding any provision of this Order, the termination of the CCAA Proceeding or the discharge of the Monitor, nothing herein shall affect, vary, derogate from, limit or amend, and Deloitte in its capacity as Monitor and its counsel shall continue to have the benefit of, the approvals and protections in favour of the Monitor and its counsel at common law or pursuant to the CCAA, the Initial Order, and any other Order of this Court in the CCAA Proceeding, all of which are expressly continued and confirmed, including in connection with any actions taken by the Monitor pursuant to this Order following the CCAA Termination Date.

33. **THIS COURT ORDERS** that notwithstanding the discharge of Deloitte as Monitor and the termination of the CCAA Proceeding, Deloitte shall remain Monitor and have the authority to complete or address any matters that may be ancillary or incidental to the CCAA Proceeding following the CCAA Termination Date, and in connection therewith the Monitor Released Parties shall continue to have the benefit of all approvals and protections in favour of the Monitor at common law or pursuant to the CCAA, the Initial Order and all other Orders made in the CCAA Proceeding.

34. **THIS COURT ORDERS** that the Monitor is authorized and directed to allocate to each of the Applicants in accordance with the Final Fee Allocation the amount, if any, of the Remaining Matters Fee Amount in excess of the actual Remaining Matters Fees and Disbursements and, as agent for and on behalf of the Applicants, to distribute such amount, if any, to the Creditors holding the three largest Proven Claims against each Applicant that have deposited the Cheque delivered to each such Creditor pursuant to the applicable Final Distribution.

CHAPTER 15 PROCEEDINGS

35. **THIS COURT ORDERS** that the Monitor, in its capacity as foreign representative of the Applicants, is hereby authorized and empowered to take all steps necessary to conclude or otherwise terminate any proceedings recognizing the CCAA Proceeding in a jurisdiction outside of Canada, including the proceeding bearing Case Nos. 12-30214 commenced in the United States Bankruptcy Court, Northern District of Ohio (Western Division) pursuant to Chapter 15 of Title 11 of the United States Code.

GENERAL

36. **THIS COURT ORDERS** that notwithstanding the discharge of the CRO and the Monitor and the termination of the CCAA Proceeding, this Court shall remain seized of any matter arising from the CCAA Proceeding, and each of the Applicants, the Monitor, the CRO and any other interested party shall have the authority from and after the date of this Order to apply to this Court to address matters ancillary or incidental to the CCAA Proceeding notwithstanding the termination thereof. The Monitor and CRO are duly authorized to take such steps and actions as the Monitor and/or CRO determine are necessary to give effect to this Order following the date of this Order.

37. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect of this Order to assist the Monitor and its 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 Monitor and its agents as may be necessary or desirable to give effect to this Order, or to assist the Monitor and its agents in carrying out the terms of this Order.

38. **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 of the Applicants in respect of the CCAA Proceeding for the purpose of having this Order recognized in a jurisdiction outside Canada.

EFFECTIVENESS OF THIS ORDER

39. **THIS COURT ORDERS** that, due to the COVID-19 pandemic, this Order is immediately effective and enforceable without the need for entry and filing until further direction from the Court.

Schedule “A”

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

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

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

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

(the “**Applicants**”)

CCAA TERMINATION CERTIFICATE

RECITALS

- A. The Applicants obtained protection under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 12, 2012, wherein Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) was appointed as the Monitor of the Applicants in the within CCAA Proceeding.
- B. Pursuant to the order of the Court dated January 18, 2022 (the “**CCAA Termination Order**”), the Court approved, among other things, the termination of the CCAA Proceeding effective as at the date on which the Monitor files the Monitor’s Termination Certificate with the Court.
- C. Unless otherwise indicated herein, capitalized terms not otherwise defined shall have the same meanings as set out in the CCAA Termination Order.

THE MONITOR CERTIFIES that:

1. The Final Distributions and the other Remaining Matters have been completed to the satisfaction of the Monitor.
2. Accordingly, the CCAA Termination Date has occurred at the date and time set forth below.

DATED at Toronto, Ontario this _____ day of _____, 2022 at _____
a.m./p.m.

**Deloitte Restructuring Inc. (formerly
Deloitte & Touche Inc.), solely in its
capacity as Monitor of the Applicants
and not in its personal capacity**

Per:

Name:

Title:

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

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

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

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

Proceedings commenced at Toronto

**CCAA TERMINATION ORDER
(JANUARY 18, 2022)**

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