

**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**  
**(Settlement Motion)**

September 15, 2021

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**ONTARIO**  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
RSC 1985, c C-36, AS AMENDED

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

(the “**Applicants**”)

**NOTICE OF MOTION**

(Approval of Settlement Agreement, returnable September 17, 2021)

The Applicants will make a motion to a judge presiding over the Commercial List on September 17, 2021 at 10:00 a.m., or as soon after that time as the motion can be heard, by videoconference.

1. **THE MOTION IS FOR:**

- (a) An Order substantially in the form attached hereto as Schedule “**A**”, for relief including, *inter alia*:
  - (i) if necessary, abridging the time for service of this notice of motion and the motion record and dispensing with service on any person other than those served;
  - (ii) approving the settlement agreement between the Applicants and Domfoam Inc. (the “**Purchaser**”) dated September 14, 2021 (the “**Settlement**”)

**Agreement**”), including the Mutual Release appended to the Settlement Agreement;

- (iii) confirming that the payment of the settlement funds under the Settlement Agreement is fair and reasonable in the circumstances, is made in good faith, and does not violate the interest of any person who may claim against the Vendor (as described below); and
- (iv) sealing an unredacted copy of the Settlement Agreement pending the conclusion of these CCAA proceedings; and

(b) Such further and other relief as to this Honourable Court may seem just.

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

- (a) The Applicants were in the business of manufacturing and distributing flexible polyurethane foam product from facilities located in Ontario, Quebec and British Columbia;
- (b) Pursuant to an Initial Order of the Ontario Superior Court of Justice dated January 12, 2012, 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.), 4362063 Canada Ltd. (formerly known as Domfoam International Inc.) (the “**Vendor**”), and A-Z Sponge & Foam Products Ltd. (“**A-Z Foam**”; collectively, the “**Applicants**”) were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) and Deloitte Restructuring Inc. (as it is now called) was appointed monitor (in such capacity, the “**Monitor**”);

- (c) The Vendor was a claimant in a US class action lawsuit relating to the polyether polyols industry styled as *In Re: Urethane Anti-Trust Litigation* which matter was brought before the United States District Court of Kansas (the “**US Class Action**”);
- (d) The Vendor was also a claimant in a parallel class action in Canada, styled as *Crosslink Technology Inc. v. BASF Canada et al*, before the Ontario Superior Court of Justice (the “**Canadian Class Action**” and together with the US Class Action, the “**Class Actions**”);
- (e) In March 2012, the Vendor entered into an Asset Purchase Agreement (“**APA**”) with the Purchaser, which APA was approved by the Court;
- (f) The Monitor is in possession of certain proceeds of settlement of the US Class Action in the amount of CAD\$4,411,147.76, plus interest accruing (the “**US Class Action Proceeds**”);
- (g) The Purchaser’s counsel is in possession of certain proceeds of settlement of the Canadian Class Action in the amount of CAD\$1,400,260.80, plus interest accruing (the “**Canadian Class Action Proceeds**” and, together with the US Class Action Proceeds, the “**Class Action Proceeds**”);
- (h) Lex Acquisition Group, LLC (“**Lex Group**”) acted as the Vendor’s claims agent in the Class Actions and is still owed a fee for its services in connection with the Canadian Class Action Proceeds;

- (i) On September 14, 2018, the Purchaser brought a motion within the CCAA proceeding to assert that, among other things, pursuant to the APA, it had acquired the Class Action Proceeds, which the Vendor contested;
- (j) The Monitor agreed not to distribute the US Class Action Proceeds pending disposition of the Purchaser's motion;
- (k) The dispute between the Vendor and the Purchaser relating to the Class Action Proceeds was scheduled to be adjudicated at a 3.5-day hearing, which would include both *viva voce* evidence and written and oral submissions, commencing on September 13, 2021;
- (l) In September 2021, the Vendor and Purchaser settled the motion pending Court approval. The terms of settlement are set out in the Settlement Agreement;
- (m) The Applicants seek to file an unredacted copy of the Settlement Agreement under seal pending completion of this CCAA proceeding;
- (n) The Settlement Agreement is fair and reasonable in the circumstances and is consistent with the purposes of the CCAA, given:
  - (i) The litigation risk associated with proceeding to adjudication;
  - (ii) The professional costs associated with proceeding to adjudication, which includes the costs of the Monitor, the Monitor's counsel, the Chief Restructuring Officer, and the Applicants' counsel; and
  - (iii) The time value of money.

- (o) The two largest creditors of the vendor, being (i) the Department of Justice and (ii) certain class action plaintiffs in Canada in which the Applicants were defendants, via their counsel, support the Settlement Agreement;
- (p) These two creditors represent approximately 89 per cent of the total claims against the Vendor;
- (q) The Monitor and the Chief Restructuring Officer support the Settlement Agreement;
- (r) The Settlement Agreement is made in good faith and does not violate the interest of any person who may claim against the Vendor;
- (s) The Mutual Release attached to the Settlement Agreement provides a comprehensive mutual release to the parties in respect of the APA, the Class Action Proceeds, this CCAA proceeding and the motion, including all allegations and assertions made by the parties therein;
- (t) The Settlement Agreement and Mutual Release will become effective only once Court approval is obtained;
- (u) The provisions of the CCAA, including section 11, and the inherent and equitable jurisdiction of this Court;
- (v) Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended;
- (w) Such further and other grounds as the lawyers may advise.

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

- (a) The affidavit of Linc Rogers, sworn September 14, 2021;
- (b) The Twenty-Fifth Report of the Monitor; and,
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 15, 2021

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SCHEDULE "A"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
JUSTICE CAVANAGH

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)  
)

FRIDAY, THE 17TH  
DAY OF SEPTEMBER, 2021

B E T W E E N:

*(Court Seal)*

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  
(Settlement Approval Order)**

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

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

1. **THIS COURT ORDERS** that the time for service and manner of service of the Applicants' Motion Record and Factum are hereby abridged and validated, and any further service thereof is hereby dispensed with so that this motion was properly returnable September 17, 2021 in all proceedings set out in the styles of cause hereof.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings attributed to those terms in the minutes of settlement and mutual release between the Applicants and the Purchaser (together, the "**Settling Parties**"), dated as of September 14, 2021 (the "**Settlement Agreement**").
3. **THIS COURT ORDERS** that the Settlement Agreement is fair and reasonable and is hereby approved, and the parties thereto are hereby bound by this Order and by those terms of the Settlement Agreement that are conditional upon the granting of this Order, and the Settling Parties are authorized and directed to comply with their obligations thereunder.
4. **THIS COURT ORDERS** that the Monitor is directed and authorized to take any steps and perform any actions that are required to be taken or performed by the Monitor pursuant to the Settlement Agreement, including, without limiting the generality of the foregoing, to pay from funds held in the Domfoam Account (i) the Settlement Amount to the Purchaser; and (ii) the Domfoam Canadian Polyols Agent Fee (as defined in the Twenty-Fifth Report) to Lex Acquisition Group, LLC.
5. **THIS COURT ORDERS** that the Costs Reserve established pursuant to the endorsement of Justice Koehnen dated October 8, 2020 is hereby terminated and the Monitor is hereby directed and authorized to release the funds subject to the Cost Reserve to the estate of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.).

6. **THIS COURT ORDERS** that in accordance with the terms and conditions of the Settlement Agreement, as of the Settlement Date, the Settled Matters as defined in the Release appended to the Settlement Agreement are irrevocably, absolutely, and unconditionally fully, finally, and forever released, remised and discharged in accordance with the terms of said Release.

7. **THIS COURT ORDERS** that Confidential Exhibit “B” to the affidavit of Linc Rogers, sworn September 14, 2021, shall be and is hereby sealed, kept confidential and shall not form part of the public record pending the termination of this CCAA proceeding or further order of the Court.

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

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

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*Justice Peter Cavanagh*

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

Applicants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

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**ONTARIO  
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.

**AFFIDAVIT OF LINC ROGERS  
CHIEF RESTRUCTURING OFFICER**

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

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

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

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

4. I swear this affidavit in support of the Applicants' motion for an order approving the minutes of settlement dated September 14, 2021 (the "**Settlement**") and the appended related mutual release (the "**Release**") between the Applicants and the entity now known as Domfoam Inc. (the "**Purchaser**") in connection with a dispute (the "**Dispute**") arising from an Asset Purchase Agreement (the "**APA**") between the Vendor and the Purchaser dated March 8, 2012, which APA was approved by this Court.

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

#### **A. Background**

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

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

8. The stay of proceedings provided for in the Initial Order has been extended many times by this Court, most recently on April 20, 2021 by order of Justice Cavanaugh. It is currently set to expire on October 29, 2021.

(a) CRO Appointment

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

(b) The Dispute

10. The Dispute arises because the Purchaser served a motion on September 14, 2018, for an order setting aside an Order (the “**Distribution Order**”) of Justice Wilton-Siegel dated May 19, 2018, providing for the distribution to proven creditors of the Applicants of certain proceeds (the “**US Class Action Proceeds**”) which were paid to the Vendor as a result of a litigation settlement in a class action law suit in the United States in which the Vendor was a claimant (the “**US Class Action**”). In the same motion, the Purchaser also sought to have the US Class Action Proceeds paid to it. The Distribution Order was ultimately set aside on consent and the US Class Action Proceeds continue to be held by the Monitor pending the adjudication of the Purchaser’s claim to the US Class Action Proceeds.

11. In addition to the US Class Action Proceeds, the Purchaser's counsel is holding approximately \$1.4 million of litigation settlement proceeds (the "**Canadian Class Action Proceeds**") and, together with the US Class Action Proceeds, the "**Class Action Proceeds**") from a Canadian class action proceeding involving substantially the same facts as the US Class Action.<sup>1</sup> The Vendor was also a claimant in the Canadian class action.

12. In short, the Purchaser took the position that the Class Action Proceeds were purchased by the Purchaser pursuant to the terms of the APA. The Vendor took the position that the Class Action Proceeds were not purchased by the Purchaser and in any event the Purchaser is estopped from asserting a claim to the Class Action Proceeds at this time.

(c) The Mediation

13. On June 28, 2020, I along with counsel to the Applicants, the Monitor, Monitor's counsel, the principal of the Purchaser and counsel to the Purchaser attended a confidential mediation mediated by The Honourable Mr. Peter Cumming (the "**Mediation**"). The Mediation did not result in a resolution of the Dispute and given its confidential nature, I am not in a position to provide further comment.

14. Given the results of the Mediation, it appeared as though the Dispute would need to be adjudicated.

---

<sup>1</sup> The Canadian Class Action Proceeds were initially paid to the Purchaser directly in or about November, 2019. Pursuant to Justice Koehnen's Reasons for Decision dated October 8, 2020, the Court ordered that the Purchaser pay the Canadian Class Action Proceeds to the trust account of its counsel. On October 19, 2020, the Purchaser's counsel confirmed receipt of the Class Action Proceeds and I understand such amounts continue to be held by the Purchaser's counsel.

(d) Special Litigation Counsel

15. When it became evident in October 2020 that it would be necessary for David Ullmann, a partner at Blaneys, who had carriage of this matter, to be a witness in any proceeding, at my direction, the Applicants retained Lax O’Sullivan Lisus Gottlieb LLP as special litigation counsel (“LOLG”). LOLG has had carriage of this matter since their retention.

(e) Interim Matters and Hearing

16. The Dispute (following an initial adjournment) was scheduled to be adjudicated at a hearing before by Justice Cavanagh commencing on September 13, 2021 for up to 3.5 days. The hearing was to include both *viva voce* evidence and written and oral submissions. Since LOLG’s retention, a number of interim motions, case conferences and a cross-examinations have occurred. Counsel to the Purchaser and LOLG have also been in contact during this time to discuss various logistical and substantive matters regarding the Dispute and its adjudication.

**B. Settlement**

17. In September 2021 the Applicants and the Purchaser reached a settlement in respect of the Dispute. I was the principal negotiator of the Settlement on behalf of the Applicants, however, I consulted with the Monitor and the major creditors in all material respects. In essence, the Settlement involves a single aggregate payment by the Monitor, for and on behalf of the Vendor, to the Purchaser in full and final settlement of any and all claims the Purchaser may have against the Applicants arising out of these CCAA proceedings, the APA, or any of the materials filed in connection with the Dispute. A redacted copy of the executed Minutes of Settlement, redacting the settlement amount, and the accompanying mutual release is attached as Exhibit “A” hereto. An

unredacted copy of the executed Minutes of Settlement is attached as Confidential Exhibit “B” hereto. The Settlement remains subject to court approval.

18. The Applicants request that the unredacted copy of the Minutes of Settlement be sealed, pending the conclusion of these CCAA proceedings. Although the Dispute is, by far, the largest outstanding contested matter facing the Applicants from a monetary standpoint, there are still outstanding issues between the Applicants and the purchaser of the operating assets of A-Z Foam. The contested amount in that dispute is approximately \$325,000. At the time of the swearing of this affidavit, the negotiations with the purchaser are ongoing. The Applicants are of the view that the unredacted version of the Settlement Agreement contains commercially sensitive information which if publicly disclosed, could potentially impact the negotiations with the purchaser of A-Z Foam assets.

19. Following consultation with LOLG, in recommending the approval of the settlement I have taken into account, among other things the following factors:

- a) The litigation risk associated with proceeding to adjudication;
- b) The professional costs associated with proceeding to adjudication which includes the cost of the Monitor, the Monitor’s counsel, the CRO, LOLG and Blaneys (as Mr. Ullmann would be a witness at the hearing);
- c) The time value of money;
- d) The two largest creditors of the Vendor, being (i) the Department of Justice and (ii) certain class action plaintiffs in Canada in which the Applicants were defendants, via their counsel,

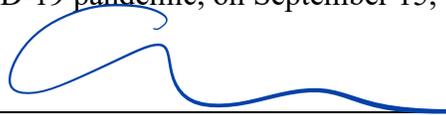
support the Settlement. These two creditors represent approximately 89 per cent of the total claims against the Vendor; and

e) The Monitor supports the Settlement.

**C. Conclusion**

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

**SWORN BEFORE ME** at  
the City of Toronto in the Province of  
Ontario by Zoom video conference due to the  
COVID-19 pandemic, on September 15,  
2021



Commissioner for Taking Affidavits

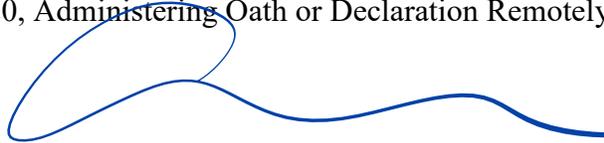
**Andrew Winton**

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**LINC ROGERS**

This is Exhibit "A" referred to in the Affidavit of Linc Rogers sworn by Linc Rogers at the City of Toronto, in the Province of Ontario, before me on September 15, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**Andrew Winton**

**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.

**MINUTES OF SETTLEMENT**

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

**WHEREAS** in March 2012 the Vendor entered into an Asset Purchase Agreement (the "**APA**") with the entity now known as Domfoam Inc. (the "**Purchaser**"), which APA was approved by the Court;

**WHEREAS** the Monitor controls disbursements from the bank account in which are held proceeds of settlement derived from a class action, in which the Vendor was a claimant, relating to the polyether polyols industry and with the style of cause, *In Re: Urethane Anti-Trust Litigation*, which matter was brought before the United States District Court of Kansas bearing court file number 04-md-1616-JWL-JPO in (the "**US Class Action**");

**WHEREAS** the Vendor has represented that the aforementioned proceeds of the US Class Action held by the Monitor in the Domfoam estate account (the "**Domfoam Account**") are in the amount of CAD\$4,411,147.76 as of the date hereof (together with interest that accrues thereon from and after the date hereof, the "**U.S. Class Action Proceeds**");

**WHEREAS** the Purchaser's counsel is in possession of certain proceeds of settlement derived from a parallel class action in Canada, in which the Vendor was also a claimant, with the style of cause *Crosslink*

*Technology Inc. v. BASF Canada et al*, before the Ontario Superior Court of Justice bearing court file number 50305 CP (the “**Canadian Class Action**” and together with the U.S. Class Action, the “**Class Actions**”);

**WHEREAS** the aforementioned proceeds of the Canadian Class Action held by the Purchaser’s counsel are in the amount of CAD \$1,400,260.80, as at the date hereof (as evidenced by the Guaranteed Investment Certificate attached hereto as Schedule “A”), (the “**Canadian Class Action Proceeds**”, and together with the U.S. Class Action Proceeds, the “**Class Action Proceeds**”).

**WHEREAS** the Purchaser asserted that pursuant to the APA the Purchaser acquired the rights to the Class Action Proceeds and to the underlying choses-in-action in the US Class Action and the Canadian Class Action pursuant to which the Class Action Proceeds were paid (the “**Choses-in-Action**”);

**WHEREAS** the Vendor disputed that the Purchaser had acquired rights to the Class Action Proceeds and the Choses-in-Action under the APA and, to the extent the Purchaser had acquired such rights, it should be estopped from pursuing such rights;

**WHEREAS** pursuant to its notice of motion dated September 14, 2018, and subsequent court filings in these CCAA proceedings (the “**Purchaser’s Pleadings**”), the Purchaser asserted a legal claim to the Class Action Proceeds and the Choses-in-Action;

**WHEREAS** pursuant to various court filings in these CCAA proceedings (the “**Vendor’s Pleadings**”) the Vendor disputed the Purchaser’s entitlement to the Class Action Proceeds and the Choses-in-Action and asserted its entitlement to the Class Action Proceeds and the Choses-in-Action;

**WHEREAS** the Monitor agreed that it would not distribute the U.S. Class Action Proceeds pending disposition of the Purchaser’s claim set out in the Purchaser’s Pleadings;

**WHEREAS** in accordance with the endorsement of Justice Koehnen dated October 8, 2020, the Monitor has set aside \$215,000 from the estate of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.) to stand as security for the Purchaser’s costs in this proceeding (the “**Costs Reserve**”);

**WHEREAS** the dispute between the Vendor and the Purchaser relating to the Class Action Proceeds and the Choses-in-Action (the “**Dispute**”) was scheduled to be adjudicated at a hearing before the Court commencing September 13, 2021, said hearing to include *viva voce* evidence and written and oral submissions;

**NOW THEREFORE** the Applicants, including the Vendor, and the Purchaser (collectively, the “**Parties**”) agree to settle the Dispute, all matters related to the APA and all allegations and assertions made by each of the Parties against the other in the Vendor’s Pleadings and the Purchaser’s Pleadings, on the following terms:

1. **No Contra Proferentum.** The Parties acknowledge and agree that they have participated in the drafting or review of these Minutes of Settlement by legal counsel, and any rule of law providing that ambiguities shall be construed against the drafting party shall be of no force and effect.
  
2. **Settlement Amount.** The Parties agree that, on the Settlement Date (as that term is defined below):
  - (a) the Monitor, pursuant to an Order of the Court approving this settlement (the “**Court Approval Order**”) shall pay from the Domfoam Account to the Purchaser, for and on behalf of the Vendor, a sum equal to **Redacted** (the “**Settlement Amount**”), by wire transfer or bank draft;
  
  - (b) the Monitor shall pay, pursuant to the Court Approval Order, for and on behalf of the Vendor, the outstanding amount of the agreed upon fee due to Lex Acquisition Group, LLC in its capacity as the Vendor’s claims agent in connection with the Canadian Class Action Proceeds;
  
  - (c) the Applicants, including the Vendor, shall release any claim that they have to the Canadian Class Action Proceeds, which release shall become effective immediately upon payment of the Settlement Amount, without any further action required by the Applicants; and
  
  - (d) the Purchaser shall release any claim that it has to the balance of the U.S. Class Action Proceeds left after payment of the Settlement Amount, and the Costs Reserve, which release shall become effective immediately upon payment of the Settlement Amount, without any further action required by the Purchaser.

3. **No Expectation of Future Proceeds.** The Vendor and the Purchaser represent to each other that, to the best of their knowledge and belief, there is no current expectation by either Party of any additional proceeds due to the Vendor on account of the Class Actions. Should the Vendor, for any reason, come into possession of any additional amounts in connection with the Class Actions, it will promptly remit such amounts to the Monitor.

4. **Mutual Release.** The Parties agree that they will execute and exchange a mutual release in the form attached to these Minutes of Settlement as Schedule “B” (the “**Mutual Release**”).

5. **Motion Dismissed on Consent, Without Costs.** The Parties agree that they will consent to a dismissal of the Vendor’s Motion without costs.

6. **Court Approval.** The Parties acknowledge that these Minutes of Settlement are subject to and conditional on Court approval, such approval to be sought by the Vendor with the consent of the Purchaser, and the “Settlement Date” for the purposes of implementation of these Minutes of Settlement, including payment to the Purchaser of the Settlement Amount, shall be two business days after the Court approves these Minutes of Settlement or such earlier or later date as the parties may agree, with the consent of the Monitor. For greater certainty, although executed by the Parties, these Minutes of Settlement and the Mutual Release will be of no force or effect, unless and until Court approval is obtained.

7. **General.** The Parties agree that:

- (a) neither Party admits any liability to the other or others, and such liability is specifically and expressly denied;
- (b) these Minutes of Settlement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein;
- (c) any and all disputes concerning the implementation or interpretation of these Minutes of Settlement shall be subject to the exclusive jurisdiction of a judge of the Ontario Superior Court of Justice, Commercial List;
- (d) these Minutes of Settlement shall inure to the benefit of and be binding upon the Parties, and their respective administrators, legal personal representatives, successors and assigns; and

- (e) these Minutes of Settlement can be signed in counterparts and scanned copies of the signatures sent by email are deemed to be and count as originals in all respects.

DATED AT \_\_\_\_\_, this 15 day of September, 2021

**DOMFOAM INC.**

Per: \_\_\_\_\_

  
*Director, Secretary*  
*(I have authority to bind the corporation)*

DATED AT \_\_\_\_\_, this ..... day of September, 2021

**4362063 CANADA LTD.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

DATED AT \_\_\_\_\_, this ..... day of September, 2021

**3113736 CANADA LTD.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

- (e) these Minutes of Settlement can be signed in counterparts and scanned copies of the signatures sent by email are deemed to be and count as originals in all respects.

DATED AT \_\_\_\_\_, this ..... day of September, 2021

**DOMFOAM INC.**

Per: \_\_\_\_\_

*(I have authority to bind the corporation)*

DATED AT \_\_\_\_\_, this ..... day of September, 2021

**4362063 CANADA LTD.**

Per: *Lin Lopez*  
CRO

*(I have authority to bind the corporation)*

DATED AT \_\_\_\_\_, this ..... day of September, 2021

**3113736 CANADA LTD.**

Per: *Lin Lopez*  
CRO

*(I have authority to bind the corporation)*

DATED AT

, this ..... day of September, 2021

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

Per: *Liz Lopez*  
CRO  
(I have authority to bind the  
corporation)



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00443



FRED TAYAR AND ASSOCIATES IN TRUST  
PROFESSIONAL CORPORATION  
65 QUEEN ST W SUITE 1200  
TORONTO ON  
M5H 2M5

Account: 1043-8031156-03

TD Canada Trust Branch:  
PB KING & BAY 1  
66 WELLINGTON ST W 2ND FLR TDB  
TORONTO ON  
M5K 1A2

**Investment Details**

**GUARANTEED INVESTMENT CERTIFICATE**

**Principal:**  
\$1,400,260.80

**Total Interest Earned to Maturity:**  
\$57.55

**Interest Rate:**  
0.0500%

**Interest Type:**  
Simple

**Interest Payment Frequency:**  
At Maturity

**Maturity Date:**  
September 24, 2021

**Issue Date:**  
August 25, 2021

**Issued by:**  
THE TORONTO-DOMINION BANK

**Term:**  
Years: 0 Days: 30

**Maturity Instructions:**  
Renew Principal and Interest

*See page 2 for Additional Terms and Conditions*

**If you have questions about your GIC/Term Deposit, we're here to help you.**

You can speak to your Business Banking Specialist or, visit any TD Canada Trust branch or, call 1-866-222-3456 and speak to a customer service specialist or, visit [www.tdcanadatrust.com/GICs](http://www.tdcanadatrust.com/GICs)

**Product Features**

- Enjoy peace of mind of 100% principal protection, while earning a competitive interest rate - stay satisfied and watch your money grow
- This GIC is not redeemable before maturity

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Schedule "B"

**MUTUAL RELEASE**

The undersigned,

**4362063 CANADA LTD.** (the "Vendor")

and

**3113736 CANADA LTD.**

and

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

and

**DOMFOAM INC.** (the "Purchaser")

(collectively, the "Parties")

(which terms include their associated and related companies, and their respective officers, directors, employees, shareholders, affiliates, partners, administrators, agents, assigns, executors, successors and subcontractors), for and in consideration of the execution of this Mutual Release, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby remise, release and forever discharge each other from claims, actions, demands, manner of actions, causes of actions, suits, debts, duties, accounts, bonds, warranties, claims over, indemnities, contracts, losses, injuries, undertakings, covenants and liabilities of whatever nature and kind whether past, present and future, known or unknown, and whether in equity or at law, jointly or severally, one against the other, for or by reason or cause of any matter or thing existing up to the present time, arising out of, connected with or in any way related to (i) the Dispute; (ii) the APA; (iii) the CCAA proceeding of the Applicants; and (iv) the allegations and assertions made against the other Party in the Vendor's Pleadings and the Purchaser's Pleadings<sup>1</sup> (collectively, the "**Settled Matters**").

**AND IT IS HEREBY DECLARED, CONFIRMED AND ACKNOWLEDGED** that the Parties have not been induced to execute this Mutual Release by reason of any representation or warranty of any nature or kind whatsoever, and that there is no condition, express or implied or collateral agreement affecting the said Mutual Release, except as set out in the Minutes of Settlement or provided for herein.

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<sup>1</sup> Capitalized terms used herein but not otherwise defined shall have the meaning attributed to them in the Minutes of Settlement between the Parties dated as of the date hereof (the "**Minutes of Settlement**").

**AND IT IS HEREBY DECLARED, CONFIRMED AND ACKNOWLEDGED** that notwithstanding anything contained in this Mutual Release, the Parties remain bound by the terms of the Minutes of Settlement attached hereto.

**AND IT IS UNDERSTOOD** that the Parties represent and warrant that they have not assigned to any person, firm, or corporation any of the actions, causes of action, claims, debts, suits or demands of any nature or kind which have been released by this Mutual Release.

**AND IT IS UNDERSTOOD** that the Parties intend that this Mutual Release conclude all issues arising from the Settled Matters.

**AND FOR THE SAID CONSIDERATION**, subject to approval by the Court and effective upon payment of the Settlement Amount on the Settlement Date, the Parties covenant and agree not to continue, to make claim, to commence or to take proceedings against any other person, firm, partnership, business or corporation who or which might claim contribution from, or be indemnified by, the Parties, under the provisions of any statute or otherwise in respect of the Settled Matters. This Mutual Release shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which has been or might be brought in the future by any of the Parties with respect to the matters covered by this Mutual Release. This Mutual Release may be pleaded in the event any such claim, action complaint, or proceeding is brought or continued, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by any Party in any subsequent action that the other Parties in the subsequent action were not privy to formation of this Mutual Release.

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

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

**THIS MUTUAL RELEASE** shall inure to the benefit of and be binding upon the Parties and their respective administrators, legal personal representatives, successors and assigns.

**AND IT IS AGREED** that this Mutual Release can be signed in counterparts and scanned copies of the signatures sent by email are deemed to be and count as originals in all respects.

**4362063 CANADA LTD., 3113736 CANADA LTD., A-Z SPONGE & FOAM PRODUCTS LTD., and DOMFOAM INC.** have executed this Mutual Release, this \_\_\_\_\_ day of September, 2021.

**4362063 CANADA LTD.**

Per: \_\_\_\_\_

*(I have authority to bind the  
corporation)*

**3113736 CANADA LTD.**

Per: \_\_\_\_\_

*(I have authority to bind the  
corporation)*

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

Per: \_\_\_\_\_

*(I have authority to bind the  
corporation)*

**DOMFOAM INC.**

Per: \_\_\_\_\_

*(I have authority to bind the  
corporation)*

This is Confidential Exhibit "B" referred to in the Affidavit of Linc Rogers sworn by Linc Rogers at the City of Toronto, in the Province of Ontario, before me on September 15, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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*Commissioner for Taking Affidavits (or as may be)*

**Andrew Winton**

Intentionally Omitted

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 )  
JUSTICE CAVANAGH ) FRIDAY, THE 17TH  
 DAY OF SEPTEMBER, 2021

B E T W E E N:

*(Court Seal)*

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  
(Settlement Approval Order)**

THIS MOTION by the Applicants for an order approving a settlement agreement between the Applicants and Domfoam Inc. (the “**Purchaser**”), was heard this day by videoconference.

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

1. **THIS COURT ORDERS** that the time for service and manner of service of the Applicants' Motion Record and Factum are hereby abridged and validated, and any further service thereof is hereby dispensed with so that this motion was properly returnable September 17, 2021 in all proceedings set out in the styles of cause hereof.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings attributed to those terms in the minutes of settlement and mutual release between the Applicants and the Purchaser (together, the "**Settling Parties**"), dated as of September 14, 2021 (the "**Settlement Agreement**").
3. **THIS COURT ORDERS** that the Settlement Agreement is fair and reasonable and is hereby approved, and the parties thereto are hereby bound by this Order and by those terms of the Settlement Agreement that are conditional upon the granting of this Order, and the Applicants are authorized and directed to comply with their obligations thereunder.
4. **THIS COURT ORDERS** that the Monitor is directed and authorized to take any steps and perform any actions that are required to be taken or performed by the Monitor pursuant to the Settlement Agreement, including, without limiting the generality of the foregoing, to pay from funds held in the Domfoam Account (i) the Settlement Amount to the Purchaser; and (ii) the Domfoam Canadian Polyols Agent Fee (as defined in the Twenty-Fifth Report) to Lex Acquisition Group, LLC.
5. **THIS COURT ORDERS** that the Costs Reserve established pursuant to the endorsement of Justice Koehnen dated October 8, 2020 is hereby terminated and the Monitor is hereby directed and authorized to release the funds subject to the Cost Reserve to the estate of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.).

6. **THIS COURT ORDERS** that in accordance with the terms and conditions of the Settlement Agreement, as of the Settlement Date, the Settled Matters as defined in the Release appended to the Settlement Agreement are irrevocably, absolutely, and unconditionally fully, finally, and forever released, remised and discharged in accordance with the terms of said Release.

7. **THIS COURT ORDERS** that Confidential Exhibit “B” to the affidavit of Linc Rogers, sworn September 14, 2021, shall be and is hereby sealed, kept confidential and shall not form part of the public record pending the termination of this CCAA proceeding or further order of the Court.

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

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

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*Justice Peter Cavanagh*

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

Applicants

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

Counsel

Suite 2750, 145 King Street West

Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSO#: 32268B

[mgottlieb@lolg.ca](mailto:mgottlieb@lolg.ca)

Tel: 416 644 5353

**Jasmine K. Landau** LSO#: 74316K

[jlandau@lolg.ca](mailto:jlandau@lolg.ca)

Tel: 416 956 0110

Lawyers for the Applicant, 4362063 Canada Ltd.

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**MOTION RECORD  
(Settlement Motion)**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
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Toronto ON M5H 1J8

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Lawyers for the Applicants