

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

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In re:	:	Case No. 12-30218
	:	
A-Z SPONGE & FOAM PRODUCTS	:	Chapter 15
LTD.	:	
	:	Judge Mary Ann Whipple
Foreign Applicant in Foreign	:	
Proceedings	:	
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VERIFIED PETITION FOR RECOGNITION OF
FOREIGN PROCEEDINGS AND CHAPTER 15 RELIEF

Deloitte & Touche Inc. is the court-appointed monitor (the “**Monitor**”) and foreign representative of Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc. (“**Domfoam**”), and A-Z Sponge & Foam Products Ltd. (“**A-Z**” and, together with Valle Foam and Domfoam, the “**Valle Foam Group**”) in proceedings (the “**Canadian Proceedings**”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pending before the Ontario Superior Court of Justice (Commercial List) (the “**Ontario Court**”).

The Monitor respectfully submits this verified petition and the verified petitions for the other members of the Valle Foam Group (together, the “**Chapter 15 Petitions**”) ancillary to the Canadian Proceedings (i) for recognition by this Court of the Monitor as the “foreign representative” (the “**Foreign Representative**”) as defined in section 101(24) of title 11 of the United States

Code¹ of each member of the Valle Foam Group, (ii) for recognition of the Canadian Proceedings as a “foreign main proceeding” pursuant to sections 1515, 1517 and 1520 of the Bankruptcy Code, and (iii) for enforcement of the Initial Order of the Ontario Court dated Thursday, the 12th day of January 2012 (the “**Canadian Order for Relief**”). A Certified Copy of the Canadian Order for Relief is attached hereto as Exhibit A in fulfillment of the requirement of section 1515(b) of the Bankruptcy Code.

Contemporaneous with the filing of the Chapter 15 Petitions the Monitor is filing (I) a motion for joint administration of the Chapter 15 cases of the Valle Foam Group; (II) an *Ex Parte* Motion for Provisional Relief seeking to apply section 362 of the Bankruptcy Code in these cases pursuant to sections 1519(a)(3), 1521(a)(7), and 105(a) of the Bankruptcy Code until this Court rules on the Chapter 15 Petitions; and (III) an Memorandum of Law in support of the Chapter 15 Petitions and the *Ex Parte* Motion for Provisional Relief.

In support of the Chapter 15 Petitions, the Monitor says as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over these Chapter 15 proceedings pursuant to 28 U.S.C. §§ 1334 and 157(a) and General Order No. 84 entered on July

¹ Unless otherwise indicated, all section references are to title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), all rule references are to the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and all references to “Chapter XX” are to chapter xx of the Bankruptcy Code.

16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

2. This case has been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of a petition for recognition of the Canadian Proceedings under section 1515 of the Bankruptcy Code.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1410(2).

4. The statutory basis for the relief requested in this motion is sections 1504, 1507, 1515, 1517, 1520, 1521 and 105(a) of the Bankruptcy Code.

Background Facts

The Role of the Monitor

5. The Monitor is an officer of the Ontario Court appointed pursuant to the CCAA to monitor the business and financial affairs of the Valle Foam Group. Canadian Order for Relief ¶ 22.

6. In addition to its prescribed rights and obligations under the CCAA, the Ontario Court ordered, directed and empowered the Monitor to, *inter alia*, monitor the Valle Foam Group's receipts and disbursements; assist and advise the Valle Foam Group in their restructuring activities including the development of their plan of compromise or arrangement (the "**Plan**") or winding down; assist the Valle Foam Group with their negotiations with suppliers, creditors and other stakeholders; engage legal counsel; and prepare reports. Canadian Order for Relief ¶¶ 3, 23.

7. The Canadian Order for Relief also provides, “[t]he 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.” Canadian Order for Relief ¶ 45.

8. The Canadian Order for Relief further provides, “the Monitor is hereby authorized, as the foreign representative of the [Valle Foam Group], 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*.” Canadian Order for Relief ¶ 44.

The Valle Foam Group

9. Valle Foam, Domfoam and A-Z collectively operate as one of Canada’s largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec, and British Columbia, respectively.

Collectively, they employ between 525 and 550 people. *See* Affidavit of Tony Vallecoccia sworn in support of the Canadian Proceedings (the “**Vallecoccia Affidavit**”), attached without exhibits as Exhibit B, ¶¶ 3, 10.²

10. The head office of Valle Foam is 4 West Dr., Brampton, Ontario, L6T 2H7.

²The Chapter 15 Petitions and any supporting papers, including the Vallecoccia Affidavit and its exhibits are available from the Monitor through its website at <http://deloitte.com> or upon request at the offices of Kohrman Jackson & Krantz P.L.L., One Cleveland Center, 20th Floor, 1375 East 9th St., Cleveland, Ohio, 44114, to the attention of Mary K. Whitmer or James W. Ehrman, (216) 686-8700, mkw@kjk.com or jwe@kjk.com.

11. The head office of Domfoam is 8785 Langelier Blvd., Montreal, Quebec, H1P 2C9.

12. The head office for A-Z is 811 Cundy Avenue, Annacis Island, Delta, British Columbia V3M 5P6.

13. All of the Valle Foam Group's major decisions were made by the board of directors for all three companies, all of whom are located in Toronto or Brampton, and who met most often at the Valle Foam location. That board of directors authorized the filing of the Canadian Proceedings. See Vallecoccia Affidavit, ¶ 6.

14. From 1986 to 1994, Tony Vallecoccia was CEO, shareholder, and director of Valle Foam and controlled its business and affairs. In 1994, the major shareholders of Domfoam voted to have Domfoam purchase Valle Foam. In 1999, Domfoam acquired A-Z. See Vallecoccia Affidavit ¶ 5.

The Business and Affairs of the Valle Foam Group

15. Foam is manufactured by the reaction resulting from the combination of two main chemicals. The resultant foam can be made into a variety of densities and hardness. Due to the versatility of foam, it is used in a variety of industries and applications, including but not limited to

- Furniture manufacturing: used in cushions, upholstered furniture office chairs, stadium seating and auditorium seating;
- Carpet Padding (or underlay): used to improve the comfort and lifespan of carpets;
- Packaging: provides protection and cushioning to highly sensitive packaged products such as electronics, printed circuit boards, jewelry and delicate foods;

- Textiles and Fibers: used as thermal insulation for fabric products and provides tear resistance, fire resistance and light weight to leather products, shoe uppers, tents, life rafts, labels, handbags and insulation liners.

See Vallecoccia Affidavit, ¶ 9.

16. The Valle Foam Group is involved in an industry in transition. Certain products which were formerly the backbone of their sales are no longer widely consumed. The industry is also experiencing significant pressures from overseas production sources. These systematic failures have led to a decline in the Valle Foam Group's financial performance over the past three years. Valle Foam and Domfoam each suffered a loss in excess of \$5 million (Canadian) in fiscal 2011. A-Z also suffered a loss of \$50,000 (Canadian). See Vallecoccia Affidavit ¶ 36.

Competition Bureau Fines

17. Valle Foam and Domfoam were recently charged with, and on January 5, 2012, pled guilty to, certain offenses under the Canadian *Competition Act*, RSC 1985, c. C-34 in connection with a price fixing conspiracy conducted with other members of the industry. Although not charged, A-Z also participated to some extent on a lesser basis in the prohibited acts. See Vallecoccia Affidavit ¶ 48.

18. Valle Foam was fined \$6.5 million (Canadian), and Domfoam was fined \$6 million (Canadian). No fine was assessed against A-Z as no charges were brought against it. In accordance with the terms of the plea, Valle Foam paid \$500,000 (Canadian) to the Canadian government on January 5, 2012. The balance of the fines remain outstanding. See Vallecoccia Affidavit ¶¶ 51–55.

The Class Action and Direct Action Lawsuits

19. In connection with the alleged price fixing, Valle Foam, Domfoam and A-Z have been named as defendants in Canada in five class action lawsuits (the “**Canadian Class Actions**”), and in the United States in both class action lawsuits (the “**U.S. Class Actions**,” and together the Canadian Class Actions, the “**Class Actions**”) and direct actions brought by various “opt out” plaintiffs (the “**U.S. Direct Actions**” and, together with the U.S. Class Actions, the “**U.S. Actions**”).³

³ The U.S. Actions were transferred and are being transferred by the United States Judicial Panel on Multidistrict Litigation (the “**MDL Panel**”) to the United States District Court for the Northern District of Ohio (the “**U.S. Court**”) and are assigned to the Honorable Jack Zouhary, where they are proceeding as Case No. 1:10-md-02196 (JZ), *In re: Polyurethane Foam Antitrust Litigation*.

The actions so transferred in which one or more of the Valle Foam Group is a defendant are—

Direct Purchaser Class Action Case, Case No. 1:10-md-02196-JZ.

Indirect Purchaser Class Action Case, Case No. 1:10-md-02196-JZ.

Sealy Corp., et al. v. Carpenter Co., et al., Case No. 1:11-pf-10007-JZ.

Factory Direct, Inc. v. The Carpenter Co., et al., Case No. 1:11-pf-10011-JZ.

Henson Sleep Relief, Inc. v. Hickory Springs Manufacturing Company, et al.,
Case No. 1:11-pf-10009-JZ.

H.M. Richards, Inc. v. Hickory Springs Manufacturing Company, et al., Case
No. 1:11-pf-10008-JZ.

*Spring Air International LLC, et al. v. Hickory Springs Manufacturing
Company, et al.*, Case No. 1:11-pf-10001-JZ.

*Dykes Industries of Mississippi, Incl. v. Hickory Springs Manufacturing
Company, et al.*, Case No. 1:11-pf-10018-JZ.

*The Rose Hill Company, Inc. v. Hickory Springs Manufacturing Company, et
al.*, Case No. 1:11-pf-10014-JZ.

20. In the Class Actions, the proposed class plaintiffs allege that Valle Foam and Domfoam are jointly and severally liable for damages in excess of \$100 million to class members. A potential civil judgment in any of these Class Actions would vastly exceed the Valle Foam Group's current cash resources. See Vallecoccia Affidavit ¶¶ 64, 79.

21. In the U.S. Actions, the attorneys for the Valle Foam Group have successfully negotiated a settlement with (a) the Direct Purchaser Class, (b) the Indirect Purchaser Class, and (c) five of the opt-out plaintiffs (collectively, the "Settlements"). The Settlements envision a voluntary dismissal and release of claims in the U.S. Actions in return for cooperation (in the form of interviews, depositions, and testimony), and the Valle Foam Group's production of certain available documents. The settlements do not require the members of the Valle Foam Group to pay any sum of money, but the settling plaintiffs have preserved their right to file as creditors in the Canadian Proceedings. All of the Settlements

Tupelo Foam Sales, Inc. v. Hickory Springs Manufacturing Company, et al.,
Case No. 1:11-pf-10017-JZ.

*Life Style Furniture Company, Inc. v. Hickory Springs Manufacturing
Company, et al.*, Case No. 1:11-pf-10015-JZ.

Corinthian, Inc. v. Hickory Springs Manufacturing Company, et al., Case No.
1:11-pf-10016-JZ.

Corsicana Bedding, Inc. v. Hickory Springs Manufacturing Company, et al.,
Case No. 1:12-pf-10000-JZ.

*L&J Products & Sales, Inc., et al. v. Hickory Springs Manufacturing
Company, et al.*, Case No. 1:12-pf-10001-JZ.

Ultra Comfort Foam Company, Inc., et al. v. The Carpenter Company, et al.,
Case No. 1:12-pf-10002-JZ.

are subject to approval by the U.S. Court and are contingent upon Domfoam, Valle Foam, and A-Z filing for some form of bankruptcy, restructuring or creditor protection by January 31, 2012. *See* Vallecoccia Affidavit ¶¶ 62, 63, 65–68.

22. These proceedings have been initiated to obtain an order staying present and new claims against Valle Foam, Domfoam, and A-Z so that they can complete their restructuring in Canada. Without a stay, new claims will continue to be filed. Indeed, new cases were filed on December 19 and 30, 2011, in the United States District Court for the Northern District of Mississippi. Valle Foam is a defendant in both cases; Domfoam in one. Valle Foam and Domfoam have not yet been served. *See* Vallecoccia Affidavit ¶ 69. The MDL Panel has transferred both cases (the last two in the list in fn. 3) to the U.S. Court.

U.S. Assets

23. The Valle Foam Group has no assets in the United States. The purpose of this filing is to stay litigation and thereby protect the other parties to the Settlements, protect any other “opt out” plaintiffs that might also settle with the Valle Foam Group, provide a procedure for claims against the Valle Foam Group and further the ability of the Valle Foam Group to effect their Plan. *See* Vallecoccia Affidavit ¶ 64, 78.

Liabilities of the Valle Foam Group

24. Information regarding the potential litigation liabilities is set out in par. nos. 19 – 22, *supra*.

25. The Valle Foam Group has no secured creditors, except to the extent that Domfoam is a secured creditor of A-Z and there are various companies that

lease equipment used in the Valle Foam Group's operations. *See* Vallecoccia Affidavit ¶¶ 81–85.

26. Other than the fines owing to the Canadian Government, the Valle Foam Group has approximately \$9 million (Canadian) of unsecured debt, mostly trade debt (\$5.97 million Canadian), accrued payroll (\$1.268 million Canadian), accrued sales tax (\$218,000), and other liabilities of (\$1.562 million Canadian). *See* Vallecoccia Affidavit ¶ 88.

Restructuring Plan

27. The Valle Foam Group plans to restructure its business operations and has sought the protection of the Canadian Court to give it time to put together and execute its Plan. The Valle Foam Group's goals are to protect as many of the temporary and full time Canadian jobs as possible and to secure the greatest possible value for its assets. The goals of the restructuring Plan may require a sale of at least one of the Valle Foam Group. *See* Vallecoccia Affidavit ¶¶ 93, 99.

Administrative Expenses of this Proceeding

28. The undersigned counsel have been retained by the Monitor to file these proceedings. The Canadian Order for Relief provides that the Monitor “is 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.” Canadian Order for Relief ¶ 23(g). The fees of the Monitor and his counsel will be paid out of the Canadian Proceedings subject to the terms of an Administrative Charge, which is explained, *infra* at par. no. 32.

29. Undersigned counsel received \$15,000 plus filing fees as a retainer for each of the Chapter 15 Petitions to be filed. The Monitor's legal counsel are required to obtain approval of their fees from the Ontario Court: "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." Canadian Order for Relief ¶ 29.

The Canadian Proceedings

30. On January 11, 2012, the Valle Foam Group filed an Application with the Ontario Court seeking, among other things,

- the appointment of a Monitor, to assist in the restructuring of the Valle Foam Group;
- a stay of all proceedings against them, their directors and officers and the Monitor;
- granting priority "charges" against the assets of the Valle Foam Group (which in the U.S. would amount to administrative and priority claim status) for—
 - first, a "charge" in favor of counsel for the Valley Foam Group, the Monitor, and the Monitor's counsel for fees and disbursements incurred in connection with the insolvency proceedings in the maximum amount of \$500,000 (Canadian) (the "**Administrative Charge**"); and
 - second, a "charge" to protect the officers and directors of the Valle Foam Group from certain potential liabilities in the maximum amount of \$1 million (Canadian) (the "**Directors' Charge**"); and
- Authorization to file a plan of compromise or arrangement.

All of these requests were granted by the Ontario Court. *See* Canadian Order for Relief ¶¶ 22; 13–16; 20, 30, and 32; and 3, respectively.

31. The Canadian Order for Relief was entered on January 12, 2012, and provides for a “Stay Period” until and including February 10, 2012, or such later date as the Ontario Court may order. In addition, the Canadian Order for Relief allowed each member of the Valle Foam Group the right to carry on its business operations. Canadian Order for Relief, ¶¶ 4–14.

Relief Requested

32. By these Chapter 15 Petitions, the Monitor seeks the following relief:

A. Recognition pursuant to section 1517 of the Bankruptcy Code of the Canadian Proceedings as a “foreign main proceeding” as defined in section 1502(4) of the Bankruptcy Code;

B. All relief afforded foreign main proceedings automatically upon recognition, pursuant to section 1520 of the Bankruptcy Code, including, but not limited to, imposition of the stay imposed by section 362 of the Bankruptcy Code; or, alternatively if not as of right under section 1520 of the Bankruptcy Code, then pursuant to sections 1521, 1507, and 105(a) of the Bankruptcy Code;

C. Enforcement of the Canadian Order for Relief pursuant to Sections 1520, 1521 and 1507 of the Bankruptcy Code;

D. Recognition of the Monitor as the “foreign representative” in these bankruptcy proceedings; and

E. Such other and further orders and such other and further assistance to the Valle Foam Group as may be necessary or desirable under the circumstances to give effect to the Canadian Order for Relief.

A proposed order granting the relief requested in this motion is attached hereto as Exhibit C.

Bases for Relief

33. The Canadian Proceedings are foreign proceedings within the meaning of section 101(23) of the Bankruptcy Code. The Canadian Order for Relief accepted jurisdiction over all three companies and specifically provided, “[the Valle Foam Group] are companies to which the CCAA applies.” Canadian Order for Relief ¶ 2).

34. The Monitor is the duly appointed and acting foreign representative within the meaning of section 101(24) of the Bankruptcy Code. He is named as such in the Canadian Order for Relief which further provides, “the Monitor is hereby authorized, as the foreign representative of the [Valle Foam Group], 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*.”

35. This Chapter 15 Verified Petition meets the requirements of section 1515 of the Bankruptcy Code.

36. The Canadian Order for Relief specifically requests assistance from this Court to give effect to the relief the Ontario Court granted in the Canadian Proceedings. It states,

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 [the Valle Foam Group], 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 Valle Foam Group] 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 Valle Foam Group] and the Monitor and their respective agents in carrying out the terms of this Order.

Canadian Order for Relief, ¶ 43.

37. Recognizing these Canadian Proceedings is not manifestly contrary to public policy in the United States. Indeed, recognizing the Canadian Proceedings will promote the U.S. policy of respecting foreign proceedings as articulated in sections 1501(a) and 1508 of the Bankruptcy Code. Cooperation between the Ontario Court and this Court, as contemplated by section 1517 of the Bankruptcy Code, will promote fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and in this case, the 525 – 550 Canadian employees. *See* 11 U.S.C. § 1501(a)(3).

38. Section 1525(a) of the Bankruptcy Code provides, “[c]onsistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative . . .” Thus, this Court should enter the Proposed Order under well-established principles of international comity.

39. The Monitor believes that recognition of the Canadian Proceedings and enforcement of the Canadian Order for Relief is necessary to give the Valle Foam

Group the respite it needs to restructure and formulate its Plan consistent with the Canadian Order for Relief. Further, enforcing the provisions of the stay granted by the Ontario Court ensures fair and equitable treatment for all creditors, whether claiming in Canada or in the United States.

40. A Memorandum of Law filed contemporaneously with this Chapter 15 Petition more fully describes the grounds for the relief requested.

WHEREFORE, the Monitor respectfully requests that this Court grant this Chapter 15 Petition and the Chapter 15 Petitions of the other members of the Valle Foam Group, enter an order (i) recognizing the Monitor as the “foreign representative” of the Valle Foam Group; (ii) recognizing the Canadian Proceedings as “foreign main proceedings” as defined in sections 1502(4) and 1517 of the Bankruptcy Code; (iii) providing for all relief afforded foreign main proceedings automatically upon recognition, pursuant to section 1520 of the Bankruptcy Code, including but not limited to imposition of the stay imposed by section 362, if not as of right under section 1520, then pursuant to sections 1521, 1507, and 105(a) of the Bankruptcy Code; (iv) providing for enforcement of the Canadian Order for Relief pursuant to sections 1520, 1521 and 1507 of the Bankruptcy Code; and (iv) granting such other and further relief as the Court may deem proper.

Dated: January 23, 2012

Respectfully submitted,

/s/ James W. Ehrman

Mary K. Whitmer (0018213)

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*Counsel for Deloitte & Touche Inc.,
Foreign Representative of the Valle Foam
Group*

VERIFICATION

Pursuant to 28 U.S.C. § 1746, Robert J. Bougie declares as follows:

I am a Senior Vice President and duly authorized agent of Deloitte and Touche Inc. which was appointed as the Monitor and foreign representative of Valle Foam Industries (1995) Inc., Domfoam International Inc., and A-Z Sponge & Foam Products Ltd. by the Ontario Superior Court of Justice (Commercial List). I have full authority to verify the foregoing Verified Petition For Recognition of Foreign Proceedings and Chapter 15 Relief (the "Petition For Recognition"). I have read the foregoing Petition For Recognition, and am informed and do believe that the allegations contained therein are true and accurate to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 20th day of January, 2012.

DELOITTE & TOUCHE INC. solely in its capacity as Court-appointed monitor of Valle Foam Industries (1995) Inc., Domfoam International Inc., and A-Z Sponge & Foam Products Ltd.

Per: 

Name: Robert J. Bougie

Title: Senior Vice-President