

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

(the "Applicants")

MOTION RECORD OF THE APPLICANTS
(returnable September 29, 2015)
(re Extension of Stay Period)

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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

(the "Applicants")

**NOTICE OF MOTION
(returnable September 29, 2015)
(Re Extension of the Stay Period, Admission of Late Claims
and Interim Distributions)**

THE APPLICANTS will make a motion to a judge presiding over the
Commercial List on Thursday, September 29, 2015 at 10:00 a.m. or as soon after
that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THIS MOTION IS FOR:

1. An Order:
 - (a) if necessary, abridging the time for service of this Notice of Motion
and the Motion Record, declaring that the motion is properly
returnable today, and validating service of this Notice of Motion and
Motion Record;

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- (b) extending the stay of proceedings from the Initial Order of Justice Newbould dated January 12, 2012 (the “**Initial Order**”), and subsequently extended by, *inter alia*, the Order of Justice Pattillo dated April 22, 2015, to and including February 29, 2016;
 - (c) amending the indemnity and Directors’ Charge set out in the Initial Order as set out in the Twelfth Report of the Monitor (the “**Twelfth Report**”);
 - (d) subject to recommended holdbacks, authorizing and directing the Monitor to make interim Distributions of Proceeds of Valle Foam and A-Z Foam in the amounts set out in the Twelfth Report;
 - (e) approving the Twelfth Report, the conduct of the Monitor and the fees of it and its counsel as set out therein; and
2. Such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On January 12, 2012, the Applicants sought and were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Order.

2. The Order of Justice Pattillo dated April 22, 2015 extended the stay period under the Initial Order to September 30, 2015 (the **“Stay Period”**).
3. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc. (the **“Monitor”**), was appointed as monitor of the Applicants.
4. The applicant, 3113736 Canada Ltd., is engaged in pursuing several parties in respect of outstanding accounts. Litigation has been commenced in connection with many of these claims, some of which have already settled. 3113736 Canada Ltd. is vigorously pursuing the remaining unsettled actions.
5. There remains a dispute before the Tax Court of Canada and in the Quebec Superior Court in respect of GST paid by the Applicant to Temporary Employment Agencies and GST credits which Revenue Quebec requires to be refunded. The parties are engaged in settlement discussions in respect of the Temporary Employment Agencies issue. The parties continue to be in talks with respect to the GST credits issue.
6. The Applicants have funds available for distributions to creditors.
7. The Monitor has now obtained the necessary comfort letters from the relevant taxing authorities to enable the Monitor to recommend interim Distributions of funds in the estates of Valle Foam and A-Z.
8. The Monitor has not received a comfort letter with respect to Domfoam and therefore is not recommending any Distribution from that estate at this time.

9. The Monitor has also reviewed and resolved certain Claims (the “**Late Claims**”) which were filed after the Claims Bar Date set out in the Claims Solicitation Order dated June 15, 2012. The Monitor is recommending the admission of the Late Claims in the CCAA proceeding such that they can participate as Proven Claims in the proposed interim Distributions.

10. The Applicants support the Monitors recommendation with respect to the Late Claims.

11. In order to allow for the proposed interim Distributions, the Directors’ Charge must be amended as set out in the Monitor’s Twelfth Report.

12. The proposed interim Distributions are an efficient way to allow the Proceeds of Valle Foam and A-Z Foam to flow to their respective creditors, who have been waiting several years for funds.

13. The proposed interim Distributions will not result in the compromise of any creditor Claims as the Distributions are not being made in accordance with a Plan of Arrangement under the CCAA.

14. The Monitor and the Applicant recommend the proposed *pro rata* distribution method.

15. The Distributions are interim Distributions as there may be future funds collected in the estates.

16. A further extension of the Stay Period is necessary and appropriate to allow the Applicants and the Monitor to, among other things, deal with the

disputed claims with Revenu Quebec, collect outstanding amounts owed to 3113736 Canada Ltd. and to attend to the Distributions of the Proceeds.

17. The Monitor is supportive of the relief sought herein.

18. The Applicants are operating in good faith and with due diligence.

19. Section 11 of the CCAA and the inherent and equitable jurisdiction of this Honourable Court.

20. Rules 1.04, 1.05, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.

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

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

	DATE	DESCRIPTION
1.	September 25, 2015	Affidavit of Tony Vallecoccia together with exhibits attached thereto
2.	September 24, 2015	Twelfth Report of the Monitor together with exhibits attached thereto, filed separately
3.	January 12, 2012	Initial Order of Justice Newbould
4.	April 22, 2015	Extension Order of Justice Pattillo

DATE	DESCRIPTION
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- | | |
|----|---|
| 5. | Such other material as counsel may advise and this Honourable Court may permit. |
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September 25, 2015

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

NOTICE OF MOTION
(returnable September 29, 2015)
(Re Extension of Stay Period)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

**AFFIDAVIT OF TONY VALLECOCCIA
(sworn September 25, 2015)**

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

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

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

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

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

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

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

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

VALLE FOAM COLLECTION EFFORTS

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

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

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

CLASS ACTIONS

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

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

URETHANE ANTITRUST LITIGATION

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

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

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

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

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

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

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

CLAIMS PROCESS

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

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

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

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

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

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

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

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

25. The Monitor summarizes these claims as follows:

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

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

UNRESOLVED CLAIMS

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

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

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

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

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

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

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

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

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

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

Pre-Filing Credits

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

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

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

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

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

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

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

INTERIM DISTRIBUTION FOR VALLE AND A-Z ONLY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIRECTORS CHARGE AMENDMENT

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

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

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

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

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

PROPOSED EXTENSION

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

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

40

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

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

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

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

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

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



TONY VALLECOCCIA

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

AFFIDAVIT OF TONY VALLECOCCHIA
(sworn September 25, 2015)

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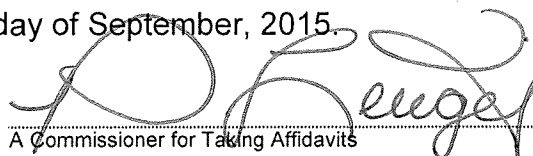
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Lawyers for the Applicants

42

This is Exhibit "A" referred to
in the Affidavit of TONY VALLECOCCIA
Sworn this 25th
day of September, 2015.


A Commissioner for Taking Affidavits

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors.
Expires July 4, 2018.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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

(the "Applicants")

**AFFIDAVIT OF TONY VALLECOCCIA
(sworn April 16, 2015)**

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

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

2. This affidavit is sworn in support of a motion by Applicants to seek an extension of the stay granted pursuant to the Initial Order of Justice Newbould in

these *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") proceedings dated January 12, 2012, from April 24, 2015 to and including September 30, 2015.

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

4. Attached hereto as **Exhibit "A"** is my affidavit of October 22, 2014 (the "October Affidavit"), which sets out the history of this matter and the material events which the Applicants were dealing with leading up to the last extension requested by the Applicants. The balance of this affidavit provides update on those matters described in the October Affidavit.

VALLE FOAM COLLECTION EFFORTS

5. Valle Foam continues to pursue collection efforts of its outstanding receivables. Since the October Affidavit, there have been no further settlements of any of the actions commenced by Valle Foam.

6. Valle Foam continues to vigorously pursue these matters.

CLASS ACTIONS

7. Prior to the commencement of these CCAA proceedings, class counsel in the U.S. and Canada initiated a number of proposed class proceedings against the Applicants on behalf of purchasers of polyurethane foam and products containing polyurethane foam products. Some or all of the Applicants have been named as a defendant in at least six class action lawsuits in Canada, and over two dozen class action lawsuits in the United States (collectively, the "Class Actions").

STATUS OF U.S. LITIGATION

8. The U.S. Class Actions settled and were approved by the U.S. court. The class action plaintiffs have voluntarily dismissed Domfoam and Valle Foam from the lawsuits.

9. As part of the implementation of the settlement agreements, various officers and employees of the Applicants have been examined by the class action plaintiffs' counsel. Among those examined were myself, John Howard, Dean Brayannis, Robert Vale and Fred Zickmantel. The examinations involved over a dozen counsel for the class action plaintiffs.

STATUS OF CANADIAN LITIGATION

10. The claims against the Applicants were settled. The Applicants were obliged to cooperate with counsel for the class actions by providing testimony and documentation. The Canadian class action claims were accepted for valuation and distribution purposes in an amount of \$40 million and approved by the court.

Urethane Antitrust Litigation

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

12. There has been a trial in respect of one of the defendants in the Polyol matter, The Dow Chemical Company ("Dow"), in which a judgment has been rendered against Dow in the amount of \$1.06 billion. The judgment was upheld on appeal. Dow has filed an application for leave to appeal to the U.S. Supreme Court.

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

14. Our counsel continues to be in communication with RRS with respect to the progress of the Dow matter.

15. It is my understanding that in the event the Dow judgment is upheld and payment is made by Dow in the full amount of the claim, the recovery to the Applicants could be significant.

CLAIMS PROCESS

16. The Order in these proceedings of Justice Brown dated June 15, 2012 (the "Claims Process Order"), established a process to identify pre and post-filing claims against the Applicants and/or their officers and directors. The claims have all been resolved for valuation and distribution purposes, except for Revenu Quebec and Canada Revenue Agency.

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

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

19. Domfoam disputes this position, and, as outlined in the October Affidavit, has provided documentary evidence to support its position.
20. Domfoam filed an Answer in reply to the Reply of Revenue Quebec. A copy of that pleading is attached as **Exhibit "B"**. The pleadings in the Tax Court proceedings have closed.
21. There is now a Tax Court mandated status hearing set for May 7, 2015 in Toronto, at which time the parties will set a litigation schedule for the Tax Court action.
22. There have been further attempts to convene a without prejudice settlement meeting with Revenue Quebec without success.
23. Since the October Affidavit, pleadings have also closed in the Quebec Superior Court proceedings. A hearing is scheduled for June 19, 2015 to set a schedule with respect to the Quebec Court matter.
24. It is anticipated that the Tax Court proceeding will complete itself substantially in advance of the Quebec Court matter and that the Quebec Court matter will likely settle in accordance with the findings of the Tax Court.

Pre-Filing Credits

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

26. At this time, I understand it is undetermined whether or not these amounts will be payable as a post-filing obligation.

27. There may yet be a dispute with respect to whether or not these are amounts in respect of which the company or the directors and officers have any liability. In the event there is any liability to the directors or officers, I understand there is also a charge in favour of the directors and officers, granted in the Initial Order, which may apply to these outstanding amounts.

28. The Applicant's director and officer insurer is on notice as to this claim and the status of this dispute.

29. The settlement of how this \$525,000.00 amount is to be paid may be coupled with a settlement of the matter before the Tax Court.

PROPOSED EXTENSION AND FUNDS ON HAND

30. The Applicants propose that the stay of the proceeding be extended from April 24, 2015 to and including September 30, 2015.

31. The extension sought herein will provide the Applicants and the Monitor further opportunity to secure clearance certificate, or other arrangements with Canada Revenue Agency and the appropriate provincial tax authorities, to allow for a resolution of the disputed claim with Revenu Quebec, to collect outstanding amounts owed to Valle Foam, and otherwise to attend to the possible development of a plan for the distribution of the sale proceeds.

32. The Applicants have significant funds available for distribution to the creditors.

33. It is my understanding that the distribution of these funds is suspended pending the Monitor receiving a clearance certificate from the appropriate tax agencies.

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34. I am advised by the Monitor that they believe they are making progress towards receiving the necessary clearance certificates to allow for a distribution of the proceeds under the CCAA process.

35. I am not aware of any creditor who is objecting to the proposed continuation of the CCAA process.

36. I believe continuing the CCAA process to enable the Monitor to approve the Applicants making such a distribution, remains the preferred manner in which to proceed.

37. I am not aware of any other party who objects to the proposed extension.

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

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

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

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

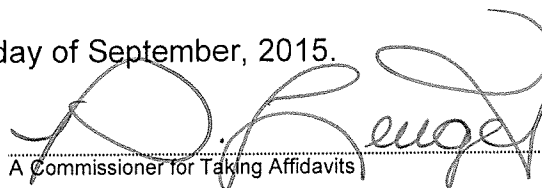
SWORN before me at the Town)
of Milton, in the Province of)
Ontario, this 16th day of)
April, 2015.)
Commissioner for Taking Affidavits)


TONY VALLECOCCIA

#2343851 | 4079509

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors.
Expires July 4, 2015.

This is Exhibit "B" referred to
in the Affidavit of TONY VALLECOCCIA
Sworn this 25th
day of September, 2015.


A Commissioner for Taking Affidavits

Pauline Erna Leitgeb, a Commissioner, etc.,
Province of Ontario, for Minden Gross LLP,
Barristers and Solicitors.
Expires July 4, 2018.



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Docket: 2014-2105(GST)G

BETWEEN:

4362063 CANADA LTD. formerly known as
DOMFOAM INTERNATIONAL INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Status hearing held by telephone conference call on May 7, 2015, at
Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

Counsel for the Appellant:

David T. Ullmann

Counsel for the Respondent:

Jean Duval

ORDER

UPON HEARING submissions from the parties;

NOW THEREFORE THIS COURT ORDERS THAT:

1. the Appellant is required to provide the Respondent with their offer to settle on or before May 20, 2015;
2. the Respondent shall provide its offer to settle or its acceptance of the Appellant's offer to settle on or before July 15, 2015;
3. the Court shall schedule a settlement conference for a duration of one day at any time upon the agreement of the parties and, in any event, prior to September 15, 2015, to be held at Ottawa, Ontario;

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4. Examinations for discovery shall be completed by September 30, 2015;
5. Undertakings given at the examinations for discovery shall be completed by November 30, 2015; and
6. the parties shall communicate with the Hearings Coordinator in writing on or before January 11, 2016 to advise the Court whether the case will settle or whether a hearing date should be set. In the latter event, the parties shall file a joint application to fix a time and place for the hearing in accordance with section 123 of the *Tax Court of Canada Rules (General Procedure)* by said date.

Signed at Ottawa, Canada, this 26th day of May 2015.

“R.S. Bocock”

Bocock J.

I HEREBY CERTIFY that the above document is a true copy of the original filed of record in the registry of the Tax Court of Canada.
Je CERTIFIE que le document ci-dessus est une copie conforme à l'original déposé au greffe de la Cour canadienne de l'impôt.

Dated
Fait le

MAY 26 2015

Julien Côté

For the Registrar / Pour le Greffier

Appeals Processing Clerk/Commis, Traitement des appels



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

THURSDAY, THE 12th

JUSTICE NEWBOULD

)

DAY OF JANUARY, 2012

)

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

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

(the "Applicants")

INITIAL ORDER

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

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

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

SERVICE

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

APPLICATION

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

PLAN OF ARRANGEMENT

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. **THIS COURT ORDERS** that the Applicants shall jointly indemnify their directors and officers from and against all claims, costs, charges, expenses, obligations and liabilities that they may incur as directors or officers of the Applicants, after the date hereof except to the extent that, with respect to any officer or director, such claim, cost, charge, expense, obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.
20. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$1 million as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraph 32 herein.
21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

APPOINTMENT OF MONITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

Second – Directors' Charge (to the maximum amount of \$~~1,000,000~~). 1,000,000 ✓

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

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

GENERAL

41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.
43. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
44. **THIS COURT ORDERS** that the Monitor is hereby authorized, as the foreign representative of the Applicants, to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.
45. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this

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

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

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

INITIAL ORDER

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



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 22nd DAY
JUSTICE *Pattillo*)
OF APRIL, 2015.

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

(the "Applicants")

**ORDER
(Extension of Stay Period)**

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

ON READING the affidavit of Tony Vallecoccia sworn April 16, 2015, and the exhibits thereto, the Eleventh Report of Deloitte Restructuring Inc. (formerly known as Deloitte & Touche Inc.), in its capacity as Court-appointed monitor of the Applicants (the "Monitor") and the appendices attached thereto (the "Eleventh

Report”), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor,

no one appearing for anyone else on the Service List, although properly served as appears from the affidavit of service of Victoria Stewart sworn April 16, 2015,

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

2. **THIS COURT ORDERS** that the Stay Period of the Initial Order of Justice Newbould dated January 12, 2012 and as subsequently extended by, *inter alia*, the Order of Justice Newbould dated October 28, 2014, is hereby extended from April 24, 2015 to and including September 30, 2015.

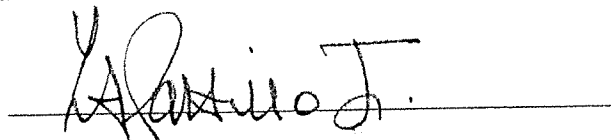
3. **THIS COURT ORDERS** that the Eleventh Report and the actions, decisions and conduct of the Monitor as set out in the Eleventh Report are hereby authorized and approved.

4. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, as set out in the Eleventh Report and the Affidavit of Paul M. Casey sworn April 17, 2015, the Affidavit of Grant Moffat sworn April 16, 2015,

and the Affidavit of Mary Whitmer sworn April 13, 2015, and the exhibits attached thereto, are hereby authorized and approved.

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

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



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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER
(Extension of Stay Period)

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

MOTION RECORD OF THE APPLICANTS
(returnable September 29, 2015)
(re Extension of Stay Period)

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