

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.**

**APPLICANTS**

**NINTH REPORT OF THE MONITOR  
DATED APRIL 24, 2014**

**TABLE OF CONTENTS**

<b>INTRODUCTION.....</b>	<b>1</b>
<b>TERMS OF REFERENCE.....</b>	<b>3</b>
<b>BACKGROUND.....</b>	<b>3</b>
<b>CLASS ACTIONS.....</b>	<b>4</b>
<b>COURT APPROVAL OF THE SETTLEMENT AGREEMENT.....</b>	<b>5</b>
<b>CANADIAN CLASS ACTION PROOFS OF CLAIM.....</b>	<b>6</b>
<b>STATUS OF CLAIM BY REVENU QUEBEC AGAINST DOMFOAM.....</b>	<b>8</b>
<b>STATUS OF CLAIM BY CRA AGAINST VALLE FOAM.....</b>	<b>10</b>
<b>DOMFOAM LOAN REPAYMENT TO VALLE FOAM.....</b>	<b>11</b>
<b>CRA CLAIM AGAINST A-Z FOAM.....</b>	<b>11</b>
<b>URETHANE SETTLEMENT FUNDS.....</b>	<b>11</b>
<b>TIMING OF DISTRIBUTION TO CREDITORS.....</b>	<b>12</b>
<b>ACTIVITIES OF THE MONITOR.....</b>	<b>13</b>
<b>STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS.....</b>	<b>13</b>
<b>PROFESSIONAL FEES.....</b>	<b>14</b>
<b>ALLOCATION OF PROFESSIONAL FEES.....</b>	<b>14</b>
<b>EXTENSION OF THE STAY PERIOD.....</b>	<b>15</b>
<b>MONITOR'S RECOMMENDATIONS.....</b>	<b>15</b>

## **EXHIBITS**

- EXHIBIT A: Initial Order dated January 12, 2012
- EXHIBIT B: U.S. Recognition Order dated February 24, 2012
- EXHIBIT C: Claims Solicitation Procedure Order dated June 15, 2012
- EXHIBIT D: Statement of Admissions of Domfoam and Valle Foam
- EXHIBIT E: Order of the Quebec Superior Court dated October 28, 2013
- EXHIBIT F: Order of the Ontario Superior Court of Justice dated February 11, 2014
- EXHIBIT G: Order of the Ontario Superior Court of Justice dated February 11, 2014 (without Settlement Agreement attached)
- EXHIBIT H: Order of the Supreme Court of British Columbia dated March 19, 2014 (without Settlement Agreement attached)
- EXHIBIT I: Order of the Supreme Court of British Columbia dated March 19, 2014 (without Settlement Agreement attached)
- EXHIBIT J: Copy of the extract from the Eighth Report summarizing the respective positions of the Class Plaintiffs and the Companies
- EXHIBIT K: Statement of Receipts and Disbursements for Valle Foam for the period March 29, 2012 to April 21, 2014
- EXHIBIT L: Statement of Receipts and Disbursements for Domfoam for the period March 29, 2012 to April 21, 2014
- EXHIBIT M: Statement of Receipts and Disbursements for A-Z Foam for the period March 29, 2012 to April 21, 2014
- EXHIBIT N: Affidavit of Catherine Hristow of Deloitte Restructuring Inc., sworn April 22, 2014
- EXHIBIT O: Affidavit of Grant Moffat of Thornton Grout Finnigan LLP, sworn April 22, 2014

## INTRODUCTION

1. By Order of the Court dated January 12, 2012 (the “**Initial Order**”), Valle Foam Industries (1995) Inc. (“**Valle Foam**”), Domfoam International Inc. (“**Domfoam**”) and A-Z Sponge & Foam Products Ltd. (“**A-Z Foam**”) (collectively, the “**Applicants**” or the “**Companies**”), obtained protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The CCAA proceeding with respect to the Applicants is referred to herein as the “**CCAA Proceeding**”.
2. Pursuant to the Initial Order, Deloitte & Touche Inc. was appointed monitor of the Applicants as part of the CCAA Proceeding (the “**Monitor**”). Pursuant to the Initial Order, all proceedings against the Applicants were stayed until February 10, 2012, or until such later date as this Court would order (the “**Stay Period**”). A copy of the Initial Order is attached hereto as Exhibit “A”.
3. On July 1, 2013, Deloitte & Touche Inc. changed its name to Deloitte Restructuring Inc. (hereafter, “**Deloitte**”).
4. As noted in the Monitor’s Fourth Report to the Court dated June 12, 2012 (the “**Fourth Report**”), Valle Foam changed its name to 3113736 Canada Ltd. and Domfoam changed its name to 4362063 Canada Ltd. Throughout this Report, references to Valle Foam mean 3113736 Canada Ltd. and references to Domfoam mean 4362063 Canada Ltd.
5. On January 23, 2012, the Monitor in its capacity as foreign representative of the Companies in the CCAA Proceeding filed with the United States Bankruptcy Court, Northern District of Ohio (Western Division) (the “**U.S. Bankruptcy Court**”) a petition for recognition of the CCAA Proceeding as a foreign main proceeding pursuant to Chapter 15 of the *U.S. Bankruptcy Code*.
6. By Order of the U.S. Bankruptcy Court dated January 27, 2012 (the “**Provisional U.S. Recognition Order**”), all litigation in the United States against the Companies was stayed on a provisional basis (the “**U.S. Litigation Stay**”) until February 10, 2012, and provided that the U.S. Litigation Stay would be automatically extended to correspond to any extension of the Stay Period in the CCAA Proceeding. By Order of the U.S. Bankruptcy Court dated February 24, 2012 (the “**U.S. Recognition Order**”), the CCAA Proceeding was recognized as a foreign main proceeding. A copy of the U.S. Recognition Order is attached hereto as Exhibit “B”.

7. By Orders of the Court dated February 8, March 16, June 15, October 25, 2012, February 28, July 17, 2013, and December 17, 2013 (collectively, the "**Extension Orders**"), the Court has periodically extended the Stay Period, with the most recent extension expiring on April 30, 2014.
8. By Order of the Court dated June 15, 2012 (the "**Claims Solicitation Procedure Order**"), the Court authorized and approved the procedure (the "**Claims Solicitation Procedure**") to:
  - (i) identify and determine the validity of creditor claims against the Companies as at the date of the Initial Order, as well as any claims which arose subsequent to the date of the Initial Order (collectively, the "**Claims**"); and
  - (ii) identify claims against any of the current or former directors or officers (collectively, the "**Directors and Officers**") of the Companies (the "**D&O Claims**").

The deadline for submission for proofs of claim under the Claims Solicitation Procedure was August 31, 2012 (the "**Claims Bar Date**"). A copy of the Claims Solicitation Procedure Order is attached hereto as Exhibit "**C**".

9. The Initial Order together with related Court documents, the Notice to Creditors dated January 19, 2012, the Monitor's First Report to the Court dated January 25, 2012 ("**First Report**"), the Monitor's Second Report to the Court dated February 7, 2012 ("**Second Report**"), the Monitor's Third Report to the Court dated March 13, 2012 (the "**Third Report**"), the Monitor's Fourth Report to the Court dated June 12, 2012 ("**Fourth Report**"), the Monitor's Fifth Report to the Court ("**Fifth Report**") dated October 22, 2012, the Monitor's Sixth Report to the Court ("**Sixth Report**") dated February 25, 2013, the Monitor's Seventh Report to the Court dated July 12, 2013 ("**Seventh Report**") and the Monitor's Eighth Report to the Court dated December 13, 2013 ("**Eighth Report**") (collectively, the "**Prior Reports**"), have been posted on the Monitor's website at [www.deloitte.com/ca/vallefoam](http://www.deloitte.com/ca/vallefoam) (the "**Monitor's Website**"). The Monitor has also established a toll free number at 1-855-601-6415 and a dedicated e-mail address at [vallefoam@deloitte.ca](mailto:vallefoam@deloitte.ca) for creditors and other interested parties to contact the Monitor with questions or concerns regarding the CCAA Proceeding.
10. The purpose of this report (the "**Ninth Report**") is to update the Court with respect to the status of the Claims Solicitation Procedure and to provide the Court with the Monitor's recommendation with respect to the Companies' motion for an extension of the Stay Period to October 30, 2014.

## TERMS OF REFERENCE

11. In preparing the Ninth Report, the Monitor has relied upon unaudited financial information, the Companies' books and records, the financial information prepared by the Companies, and discussions with management ("**Management**") and legal counsel for the Companies.
12. Unless otherwise stated, all dollar amounts contained in this Ninth Report are expressed in Canadian dollars.
13. Capitalized terms not otherwise defined in this Ninth Report are as defined in the Initial Order or the Claims Solicitation Procedure Order.

## BACKGROUND

14. The Companies operated together as one of Canada's leading and largest manufacturers and distributors of flexible polyurethane foam products from facilities located in Ontario, Quebec and British Columbia. The operations of Valle Foam and Domfoam historically comprised substantially all of the Companies' operations. A-Z Foam and Valle Foam are wholly owned subsidiaries of Domfoam.
15. Mr. Anthony Vallecoccia is the President and Chief Executive Officer of Domfoam, President of Valle Foam, and the sole officer and director of A-Z Foam.
16. Other than security interests which may be claimed by certain equipment lessors, the Monitor is not aware of any secured creditors of the Companies. As at January 11, 2012, the total liabilities of Valle Foam, Domfoam and A-Z Foam, not including any claims pursuant to the Class Actions (as defined below), amounted to approximately \$11,218,000, \$11,339,000 and \$368,000 respectively.

### *The Competition Bureau (Canada) Fines and Related Litigation*

17. As set out in the First Report, both Domfoam and Valle Foam were charged with, and on January 5, 2012, pled guilty to, certain offences under the *Competition Act*, R.S.C. 1985, c C-34 (the "*Competition Act*") arising from collusion with other manufacturers of slab foam and carpet underlay foam within Canada to lessen competition in the sale or supply of these products and by

conspiring with other manufacturers to fix or control the price for these products. A copy of the statement of admissions (the "**Statement of Admissions**") by Domfoam and Valle Foam in the *Competition Act* proceeding is attached as Exhibit "D".

18. Domfoam was fined a total of \$6.0 million and Valle Foam was fined a total of \$6.5 million. No fine was assessed against A-Z Foam as no charges were laid against A-Z Foam. In accordance with the terms of the sentence imposed, Valle Foam paid \$500,000 in partial payment of the fines imposed against it on the same day the guilty pleas were entered.
19. As a result of the foregoing, each of Valle Foam and Domfoam has an outstanding liability of \$6.0 million in fines payable to the Crown.
20. As set out in the Affidavit of Tony Vallecoccia sworn January 11, 2012, (the "**Vallecoccia Affidavit**"), the Applicants disclosed their financial difficulties to the Crown prior to the entry of their guilty pleas and advised of the Applicants' intention to file for protection under the provisions of a Canadian insolvency regime.
21. The Monitor has been advised by the Companies that, as part of the plea arrangement with the Crown, certain officers and directors of the Companies are required to provide sworn testimony to the Competition Bureau.

#### **CLASS ACTIONS**

22. The Monitor has been advised by the Applicants that some or all of the Applicants have been named as defendants in six class action lawsuits in Canada, and over two dozen class action lawsuits in the United States (together, the "**Class Actions**"), based upon allegations of price fixing by certain of the Applicants and other manufacturers in the slab foam industry.
23. The Canadian Class Actions consist of two proceedings commenced in each of British Columbia (the "**BC Proceedings**") and Ontario (the "**Ontario Proceedings**") and two proceedings commenced in Quebec (the "**Quebec Proceeding**"). The Canadian Class Actions advance joint and several claims against the Companies and certain other defendants or respondents on behalf of proposed classes comprised of all persons or entities who purchased polyurethane foam and polyurethane foam products in Canada from and after January 1, 1999 (collectively, the "**Class**").

24. The Monitor understands that settlements have been reached with all of the Plaintiffs in both the Canadian and U.S. Class Actions and that all such proceedings have been or will be discontinued. The terms of the settlement in the Canadian Class Actions are set out in the Canadian Polyurethane Foam Class Actions National Settlement Agreement dated as of January 10, 2012 (the "**Settlement Agreement**"). Although the Canadian and U.S. Settlements permitted the Plaintiffs in the Class Actions to file claims in the CCAA Proceedings against the Companies, only the Plaintiffs in the BC Proceedings, the Ontario Proceedings and the Quebec Proceeding filed a claim pursuant to the Claims Solicitation Procedure, described in more detail below.
25. The Settlement Agreement and the settlements reached in the U.S. Class Actions require the Companies to make available for examination certain current and former officers, directors and employees of the Companies. Certain current and former officers, directors and employees of the Companies have been examined over the course of 2013. The Monitor has permitted the Companies to fund the legal fees and expenses of the Companies' former officers, directors and employees in connection with such examinations to ensure that the settlements in the Canadian and U.S. Class Actions are not jeopardized.

#### **COURT APPROVAL OF THE SETTLEMENT AGREEMENT**

26. The Settlement Agreement was approved within the Quebec Proceeding by Order of the Quebec Superior Court dated October 28, 2013, a true copy of which is attached as Exhibit "**E**".
27. By Orders of the Ontario Superior Court of Justice dated February 11, 2014, the Settlement Agreement was approved within the Ontario Proceedings. True copies of the foregoing Orders are attached as Exhibits "**F**" (with Settlement Agreement attached) and "**G**" (without Settlement Agreement attached).
28. By Orders of the Supreme Court of British Columbia dated March 19, 2014, the Settlement Agreement was approved within the BC Proceedings. True copies of the foregoing Orders are attached as Exhibits "**H**" and "**I**" (both without Settlement Agreement attached).
29. The appeal periods under the foregoing Orders have expired and, accordingly, the Settlement Agreement is now effective.



## CANADIAN CLASS ACTION PROOFS OF CLAIM

30. The most significant Proofs of Claim submitted to the Monitor pursuant to the Claims Solicitation Procedure were filed in respect of the Canadian Class Actions. The Monitor received three separate Proofs of Claim from the Plaintiffs in each of the BC Proceedings, the Ontario Proceedings and one of the Quebec Proceedings (collectively, the “Class Proofs of Claim”).
31. The Monitor initially disallowed the Class Proofs of Claim since none of the Proofs of Claim specified the amount claimed but instead indicated such amount was “to be ascertained” and because none of the parties filing the Class Proofs of Claim appeared to have any authority to act on behalf of the subject class in each of the BC, Ontario and Quebec Proceedings. This latter issue was resolved as a result of the appointment of representative plaintiffs within each of the Ontario, BC and Quebec Proceedings.
32. In response to the disallowance issued by the Monitor in respect of the Class Proofs of Claim, the Class Plaintiffs delivered to the Monitor Notices of Dispute which address quantification of the Claims in the Canadian Class Actions. The Notices of Dispute provide that the amount claimed under each of the Class Proofs of Claim is \$97,500,000 (\$292,500,000 in total) on behalf of the Class referenced in the subject Proof of Claim.
33. In August, 2013, the Companies delivered to Class Counsel a formal response to the \$97,500,000 Claim valuation in the Notices of Dispute. Given that many of the facts referenced in the response from the Companies remain subject to confidentiality restrictions pursuant to the Settlement Agreement and arrangement with regulators, all parties have agreed that the contents thereof shall remain privileged and confidential and shall be used solely for the purpose of attempting to resolve the value of the Class Proofs of Claim.
34. Further exchanges of correspondence regarding the appropriate valuation of the Class Proofs of Claim between counsel for the Companies and Class Counsel continued subsequent to August 2013. A detailed summary of the position advocated by each of the Class Plaintiffs and the Companies regarding the appropriate valuation to be given to the Class Proofs of Claim is contained in the Eighth Report. For ease of reference, attached as Exhibit “J” is an extract from the Eighth Report summarizing the respective positions of the Class Plaintiffs and the Companies.

Following extensive negotiations between counsel to the Companies and counsel to the Class Plaintiffs, the parties have agreed to resolve the valuation of the Class Proofs of Claim on the following basis:

- (a) The Class Proofs of Claim will be valued at the total amount of CDN \$40 million, which includes any and all Claims that have or may be asserted on behalf of Class members as against the Companies in the BC, Ontario and Quebec Proceedings;
- (b) There will be no set-off against the foregoing amount in respect of any funds received by the class from the Individual Settling Parties under the Settlement Agreement;
- (c) Pursuant to Section 4.2 of the Settlement Agreement, the Companies agreed to assign to the Class Plaintiffs the Companies' right to receive any proceeds from the class action proceedings pending before the United States District Court for the District of Kansas under the *In Re Urethane Antitrust Litigation* (the "US Urethane Proceedings"), provided that such assignment is limited to the maximum amount of the first \$200,000 the Companies may receive thereunder. Other than the claims to which the Class is entitled in the CCAA Proceeding based on the agreed valuation of the Class Claim at CDN \$40 million, on behalf of the Class, Class Counsel will, notwithstanding the prior settlement noted above, waive any claim to the proceeds from the US Urethane Proceedings currently held by the Monitor or that may be received in the future, and will waive any claims relating to the purported assignment under the Settlement Agreement;
- (d) Without prejudice to any party's position in relation to the question of joint and several liability and/or contribution and indemnity, the \$40 million valuation is based on an assessment of the several liability of the Companies in relation to the liability of other Defendants in the Canadian Class Actions and is also based on an assessment of the several liability of the Companies as opposed to joint and several liability. More specifically, the valuation is allocated on a several basis in accordance with a 45/45/10 split as between the respective estates of Valle Foam, Domfoam and A-Z Foam;
- (e) The valuation is not based upon the value of any other Proven Claims in each estate;
- (f) The valuation is without any admission of liability by the Companies or the Individual Settling Parties in connection with the Canadian Class Actions or any other proceedings;
- (g) The valuation is subject to final approval by the Monitor as well as the Court. If the valuation is not approved by the Monitor or the Court, then the Companies or Class

Counsel may elect to unilaterally terminate the settlement whereupon it shall be of no further effect; and

(h) The valuation is without prejudice to the existing rights of the parties under the Settlement Agreement, but will finally determine the value of the Proofs of Claim.

35. As noted in the Eighth Report, the Monitor supports the resolution of the value of the Class Proofs of Claim as described above. The appropriate value to be attributed to the Class Proofs of Claim is dependent upon the damages suffered by the Class, that is, the price which the Class would have paid for the products purchased from the Companies "but for" the overcharges alleged by the Class. Given that the cartel lasted for more than 10 years, the process of determining the "but for" pricing would be time-consuming and significant, if it is even possible to ascertain. Determining the prices charged by the Companies during the conspiracy period would be difficult given that all of the Companies' assets have been sold and the Companies' books and records are now in the possession of the various purchasers. In addition, the evidence required by the Companies to support their position that price increases were largely a result of input cost increases during the period in which the alleged conspiracy was active would also be expensive and time consuming to obtain, if such information is actually available. In the Monitor's view, given the limited funds remaining in the Companies' estates available for distribution to the Companies' creditors, it is preferable to resolve the valuation of the Class Proofs of Claim as described above rather than engage in time consuming and costly litigation with the Class Plaintiffs. In the Monitor's view, the foregoing settlement is a reasonable resolution of the value to be ascribed to the Class Proofs of Claim and the Monitor recommends that the Court approve same.

#### **STATUS OF CLAIM BY REVENU QUEBEC AGAINST DOMFOAM**

36. Revenu Quebec filed a Proof of Claim against Domfoam pursuant to the Claims Solicitation Procedure in the amount of \$2,912,679.00. The Monitor, after consultation with the Applicants, disallowed the claim of Revenu Quebec in full on September 21, 2012. On October 5, 2012, Revenu Quebec issued a Notice of Dispute in the full amount of its original claim which has yet to be resolved. The Monitor has agreed to extend the time for Revenu Quebec to bring its motion before the Court to determine its claim to provide the parties an opportunity to resolve same.

37. Discussions have continued between the parties and the amount of the claim in dispute has been substantially reduced. Revenu Quebec's claim was originally comprised of Quebec sales tax in the amount of \$795,116.64 and goods and services tax in the amount of \$2,156,013.74. It also appears that Revenu Quebec's claim may relate in part to unpaid income tax. Revenu Quebec's claim is attributable to three separate issues:

- (i) Purchases of goods and services by Domfoam from Valle Foam and A-Z Foam;
- (ii) the disallowance of certain input tax credits claimed in respect of payments made to temporary labour agencies; and
- (iii) taxes exigible in respect of sales of pre-filing goods, specifically CTI in the amount of \$185,667.56 and RTI in the amount of \$348,868.20 (together, the "Pre-Filing Amounts").

The status of each of the foregoing aspects of the claim is addressed below.

**(i) Inter-Company Sales**

38. Domfoam has provided satisfactory evidence to Revenu Quebec that Domfoam is a "specified member" of a "qualifying group" for the purposes of making an election pursuant to section 156 of the *Excise Tax Act* (Canada) in respect of its purchases of goods and services from Valle Foam and A-Z Foam. Accordingly, Revenu Quebec has reduced its claim in respect of these inter-company sales from \$1,664,824.52 to zero.

**(ii) Disallowed Input Tax Credits**

39. Domfoam has provided to Revenu Quebec invoices rendered to Domfoam in respect of goods and services supplied to Domfoam by various temporary employment agencies. Domfoam claimed input tax credits in respect of Quebec sales tax and GST exigible in respect of all such invoices. The aggregate amount of such input credits amounts to approximately \$400,000.

40. Revenu Quebec has advised Domfoam that the temporary agencies in respect of which input tax credits were claimed have been audited by Revenu Quebec and identified as "suppliers of false invoices". Revenu Quebec claims that these agencies do not have any activities in accordance with the rules of the industry and do not have the capacity to provide the services billed to Domfoam. Domfoam disputes Revenu Quebec's position. Domfoam claims that it received the services identified in the subject invoices and that it properly paid all taxes exigible in respect of those invoices.

**(iii) Pre-Filing Goods**

41. Domfoam and the Monitor accept Revenu Quebec's claim in respect of the Pre-Filing Amounts. Although Revenu Quebec will not enjoy any priority of payment with respect to this claim, it will be entitled to participate on a *pro rata* basis on the distribution to be made in respect of Domfoam.
42. On April 22, 2014, Revenu Quebec delivered to the Monitor its revised notice of assessment, claiming \$844,941.87 in respect of Quebec sales tax and \$398,904.83 in respect of GST. The Monitor is currently reviewing the notice of assessment to reconcile the amount now claimed with earlier assessments and correspondence from Revenu Quebec.
43. Domfoam has reserved its right to determine the amount of Revenu Quebec's claim before the Ontario Superior Court of Justice in accordance with the Claims Process Order. The Monitor is currently addressing with the Companies the jurisdiction of the Tax Court of Canada and the Quebec Superior Court to hear any appeal of the Revenu Quebec notice of assessment in respect of GST and Quebec sales tax respectively.

**STATUS OF CLAIM BY CRA AGAINST VALLE FOAM**

44. As noted in the Eighth Report, CRA had completed its review of Valle Foam's GST/HST returns for the period February 1, 2010 to September 30, 2012 and assessed Valle Foam in the amount of \$310,857.53 inclusive of interest and penalties. Of this amount, CRA characterizes the sum of \$183,834.95 as pre-filing debt and the sum of \$127,022.58 as post-filing debt. The Monitor did not object to the payment by Valle Foam to CRA of HST in the amount of \$127,022.58 pursuant to paragraph 7(b) of the Initial Order. The post-filing amount of \$127,022.58 was paid to CRA on December 18, 2013.
45. The Monitor will address payment of the pre-filing HST amount claimed by CRA in connection with the Companies' subsequent motion to distribute funds to the Companies' creditors.

#### **DOMFOAM LOAN REPAYMENT TO VALLE FOAM**

46. In accordance with paragraph 31 of the Initial Order, Valle Foam was authorized to advance funds up to, but not exceeding \$1,000,000 to either A-Z Foam or Domfoam to be used for operating purposes (the "**Valle Foam Loan**"). In the Eighth Report, the Monitor recommended that Domfoam repay its indebtedness to Valle Foam under the Valle Foam Loan. On December 18, 2013, Domfoam repaid the Valle Foam Loan in the amount of \$838,261.00, inclusive of accrued interest.

#### **CRA CLAIM AGAINST A-Z FOAM**

47. CRA filed a Proof of Claim against A-Z Foam ("**CRA A-Z Claim**") in the amount of \$104,789.08 on December 8, 2012, after the Claims Bar Date. The CRA Proof of Claim consisted of a post-filing claim for source deductions in the amount of \$3,027.47, including penalties and interest of \$311.67, and post-filing HST in the amount of \$101,761.61, including penalties and interest of \$6,253.61.
48. As set out in the Sixth Report, the Monitor accepted the CRA A-Z Claim as a post-filing claim in accordance with the provisions of the Initial Order. If A-Z Foam had not remitted the proceeds of sale of its assets to the Monitor on June 15, 2012, A-Z Foam would have been in possession of sufficient funds to pay the CRA A-Z Claim. Accordingly, on December 18, 2013, the full amount of the CRA A-Z Claim was paid.

#### **URETHANE SETTLEMENT FUNDS**

49. Pursuant to a 2008 services agreement between the Companies and Refund Recovery Services, LLC (the "**Services Agreement**"), the Companies retained Refund Recovery Services, LLC to assist in asserting and recovering their claim in the US Urethane Proceedings in consideration of a fee equal to 25% of all funds paid to the Companies.
50. Thereafter, Enterprise Law Group was retained by Refund Recovery Services, LLC to assist in recovering the Valle Foam claim only in the US Urethane Proceedings. Subsequently, Lex Group, LLC, the successor to Refund Recovery Services, LLC, assigned to Enterprise Law Group

its rights under the Services Agreement to receive the 25% commission in respect of any funds paid to Valle Foam only pursuant to the US Urethane Proceedings.

51. On January 6, 2014, the Applicants' legal counsel received correspondence from Enterprise Law Group including a cheque in the amount of US\$98,902.92 payable to Valle Foam in respect of the U.S. Urethane Proceedings. The Applicants' legal counsel sent the cheque to the Monitor. In accordance with the Services Agreement, the 25% collection fee was paid to Enterprise Law Group on January 13, 2014. The net amount when converted to Canadian funds is \$79,423.99.
52. In January 2014, the Applicants' legal counsel also received correspondence from Lex Group, LLC, enclosing cheques in the amount of US\$58,640.29 and US\$8,440.11 payable to Domfoam and A-Z Foam respectively, in respect of the US Urethane Proceedings, net of the 25% collection fees payable to Lex Group, LLC. The Applicants' legal counsel sent the cheques to the Monitor which were converted to CAD\$63,026.58 and \$8,961.71 respectively.

#### **TIMING OF DISTRIBUTION TO CREDITORS**

53. The proceeds of the Companies' assets are currently held by the Monitor. In the ordinary course, prior to carrying out a distribution to the Companies' creditors, the Monitor would obtain clearance certificates from CRA as well as the relevant provincial taxing authorities in Ontario, British Columbia and Quebec, confirming that no amounts are owing by any of the Companies to those taxing authorities. However, clearance certificates will not be issued by the relevant taxing authorities unless and until the Companies file their federal and provincial income tax returns. None of the Companies have filed tax returns since the 2011 fiscal year. The Monitor does not have the necessary information to file tax returns on behalf of the Companies and, accordingly, it does not appear that the Companies' outstanding tax returns will be filed.
54. The *Income Tax Act* (Canada), the *Excise Tax Act* (Canada) and certain provincial statutes may impose personal liability upon the Monitor for amounts owing to the federal and provincial taxing authorities if it carries out a distribution to the Companies' creditors without first obtaining the necessary clearance certificates. Since it does not appear that those clearance certificates will be obtained, the Monitor has contacted the Department of Justice to determine if it will be possible to obtain a comfort letter from CRA confirming that the Monitor will not incur any personal liability in connection with any distribution to the Companies' creditors in circumstances in

which the Claims of CRA will not be paid in full. The Monitor will also require similar comfort letters from the provincial taxing authorities.

55. If the Monitor is unable to obtain the foregoing comfort letters, then it may be necessary to bankrupt the Companies in order to carry out a distribution to the Companies' creditors. The taxing statutes referred to above which may impose personal liability upon the Monitor do not impose that liability upon a trustee in bankruptcy.
56. Once this issue has been resolved, the Monitor will be in a position to make a recommendation to the Court regarding the appropriate method to carry out a distribution to the Companies' creditors.

#### **ACTIVITIES OF THE MONITOR**

57. In addition to the activities described above, the Monitor has undertaken the following activities since the date of the Eighth Report:
  - (a) Assisted the Companies in attempting to resolve the outstanding claim by Revenue Quebec, which is the only unresolved claim against the Companies, other than certain late filed claims as described in the Fifth Report;
  - (b) Assisted counsel to Valle Foam in collecting outstanding accounts receivable; and
  - (c) monitored the financial position of the Applicants and prepared this Ninth Report.

#### **STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS**

58. Attached as Exhibit "K" is the Statement of Receipts and Disbursements for Valle Foam for the period March 29, 2012 to April 21, 2014. Total cash receipts from the sale of assets, the collection of accounts receivable, U.S. Urethane settlement funds, reimbursement of legal fees and other receipts are \$7,353,536.56. Total disbursements are \$1,142,439.23. Net cash on hand as of the date hereof is \$6,211,097.33.
59. Attached as Exhibit "L" is the Statement of Receipts and Disbursements for Domfoam for the period March 29, 2012 to April 21, 2014. Total cash receipts from the sale of assets, the collection of accounts receivable, U.S. Urethane settlement funds and other receipts are



\$4,658,634.84. Total disbursements are \$2,380,879.23. Net cash on hand as at April 21, 2014 is \$2,277,755.61.

60. Attached as Exhibit "M" is the Statement of Receipts and Disbursements for A-Z Foam for the period March 29, 2012 to April 21, 2014. Total cash receipts from the sale of assets, the collection of accounts receivable, U.S. Urethane settlement funds and other receipts are \$1,205,553.56. Total disbursements are \$475,404.00. Net cash on hand as at April 21, 2014 is \$730,149.56.

#### **PROFESSIONAL FEES**

61. The Monitor and its independent legal counsel, Thornton Grout Finnigan LLP ("TGF") have maintained detailed records of their professional time and costs since the issuance of the Initial Order. Pursuant to paragraph 29 of the Initial Order, the Monitor and TGF were directed to pass their accounts from time to time before this Court.
62. The total fees of the Monitor during the period from December 7, 2013 to April 11, 2014 amount to \$29,645.00, together with expenses and disbursements in the amount of \$32.00 and harmonized sales tax ("HST") in the amount of \$3,858.01, totalling \$33,535.01 (the "Monitor Fees"). The time spent by the Monitor is more particularly described in the Affidavit of Catherine Hristow of Deloitte Restructuring Inc., sworn April 22, 2014, sworn in support hereof and attached hereto as Exhibit "N".
63. The total legal fees incurred by the Monitor during the period December 1, 2013 to March 31, 2014 for services provided by TGF as the Monitor's independent legal counsel amount to \$59,562.50, together with disbursements in the amount of \$209.51 and HST in the amount of \$7,770.37, totalling \$67,542.38. The time spent by TGF personnel is more particularly described in the Affidavit of Grant Moffat, a partner of TGF, sworn April 22, 2014 in support hereof and attached hereto as Exhibit "O".

#### **ALLOCATION OF PROFESSIONAL FEES**

64. As noted in the Eighth Report, the Applicants, with the concurrence of the Monitor, have determined that the appropriate pro rata allocation of professional fees to Valle Foam, Domfoam

and A-Z Foam should be 45%, 45% and 10% respectively. Ongoing payment of the Monitor's fees, and legal fees incurred by the Monitor and the Applicants are paid on the above-noted prorated basis.

65. Valle Foam also gave retainers to a number of law firms prior to January 12, 2012. As the law firms draw down on their retainers, Domfoam and A-Z Foam repay Valle Foam their respective proportionate share.

#### **EXTENSION OF THE STAY PERIOD**

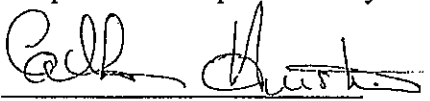
66. The Companies have asked the Court to approve an extension of the Stay Period from April 30, 2014 to October 30, 2014. The basis for this request is to allow time for resolution of the Revenu Quebec claim, to obtain comfort letters from CRA and the provincial taxing authorities as described above, to collect the remaining Valle Foam accounts receivable and to present a distribution methodology for creditors holding Proven Claims.
67. The Monitor believes that the Companies are acting in good faith and with due diligence and the Monitor therefore supports the stay extension to October 30, 2014.

#### **MONITOR'S RECOMMENDATIONS**

68. For the reasons set out above, the Monitor recommends that:
- (a) the Stay Period be extended until October 30, 2014;
  - (b) the Class Proofs of Claim be valued at the total amount of CDN \$40 million on the basis described in this Ninth Report;
  - (c) the Ninth Report and the activities of the Monitor as described in the Ninth Report be approved; and
  - (d) the professional fees and disbursements of the Monitor and TGF be approved and the Companies be authorized to pay all such fees and disbursements.

All of which is respectfully submitted at Toronto, Ontario this 24<sup>th</sup> day of April, 2014.

**DELOITTE RESTRUCTURING INC.,**  
solely in its capacity as the Monitor  
of the Companies (as defined herein),  
and without personal or corporate liability

for Per:   
Paul M. Casey, CPA, CA, CIRP  
Senior Vice-President

# **EXHIBIT A**

# EXHIBIT "A"



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. )

THURSDAY, THE 12<sup>th</sup>

JUSTICE NEWBOULD )

DAY OF JANUARY, 2012

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

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

(the "Applicants")

## INITIAL ORDER

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

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

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

### **SERVICE**

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

### **APPLICATION**

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

### **PLAN OF ARRANGEMENT**

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

### **POSSESSION OF PROPERTY AND OPERATIONS**

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

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

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

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

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

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

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



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

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

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

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

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

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

### **RESTRUCTURING**

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

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

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

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

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

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

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

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

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

#### **NO INTERFERENCE WITH RIGHTS**

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

#### **CONTINUATION OF SERVICES**

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

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

#### **NON-DEROGATION OF RIGHTS**

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

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

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

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

#### **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

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

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



## **APPOINTMENT OF MONITOR**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

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

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

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

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

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

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

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

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

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

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

#### **SERVICE AND NOTICE**

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

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

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

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



**GENERAL**

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

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

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

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

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

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

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

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

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

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

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

Proceeding commenced at TORONTO

**INITIAL ORDER**

**MINDEN GROSS LLP**  
145 King Street West, Suite 2200  
Toronto ON M5H 4G2

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416-369-4149  
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416-864-9223 fax

Lawyers for the Applicants

# **EXHIBIT B**

# EXHIBIT <sup>a B<sup>n</sup></sup>

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: February 24 2012

Mary Ann Whipple  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

_____ )	
In re: )	Case Nos. 12-30214
)	(Jointly Administered)
VALLE FOAM INDUSTRIES (1995) )	
INC., et. al. <sup>1</sup> )	Chapter 15
)	
Foreign Applicants in Foreign )	Judge Mary Ann Whipple
Proceedings. )	
_____ )	

**ORDER GRANTING RECOGNITION OF FOREIGN MAIN  
PROCEEDINGS AND OTHER CHAPTER 15 RELIEF**

Upon the Verified Chapter 15 Petitions (the “Chapter 15 Petitions”) filed by Deloitte & Touche Inc., the court appointed Monitor (the “Monitor”) of Valle Foam Industries (1995) Inc. (“Valle Foam”), Domfoam International Inc. (“Domfoam”), and A-Z Sponge & Foam Products Ltd. (“A-Z” and, together with

<sup>1</sup> The Foreign Applicants include Valle Foam Industries (1995) Inc., Domfoam International, Inc., and A-Z Sponge & Foam Products Ltd.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings given to them in the Declaration

{K0289088.1}

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**”), and upon the statements and affirmations made and contained therein, and the Court having reviewed the Chapter 15 Petitions and the Declarations filed contemporaneously with the Chapter 15 Petitions and the exhibits attached thereto, including a certified copy of the Initial Order entered by the Ontario Court on January 12, 2012 (the “**Canadian Order for Relief**”); and a hearing having been held on the 23rd day of February, 2012 (the “**Recognition Hearing**”); and upon the oral statements of counsel for the Monitor; and the Court having reviewed the Notice of the filing of the Chapter 15 Petitions and of the Recognition Hearing and its certificate of service [Dkt No. 15], which notice is deemed adequate for all purposes such that no other or further notice need be given; and the Court having determined that the legal and factual bases set forth in the Chapter 15 Petitions and all other pleadings and proceedings in this case establish just cause to grant the relief ordered herein, and after due deliberation therefore,

**THE COURT HEREBY FINDS AND DETERMINES THAT:**

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding by Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as

such. To the extent that any conclusions of law constitute finds of fact, they are adopted as such.

B. This Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 1334 and 157(a) of the Bankruptcy Code and General Order 84 entered on July 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). Venue is proper before this Court pursuant to 28 U.S.C. § 1410(2).

C. The Monitor is a “person” within the meaning of section 101(41) of the Bankruptcy Code and is the duly appointed “foreign representative” of the Valle Foam Group within the meaning of section 101(24) of the Bankruptcy Code.

D. The Chapter 15 cases of Valle Foam, Domfoam and A-Z (the “Chapter 15 Cases”) were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

E. The Monitor has satisfied the requirements of section 1515 of the Bankruptcy Code and Rule 2002(q) of the Federal Rules of Bankruptcy Procedure.

F. The Canadian Proceedings are a “foreign proceeding” within the meaning of section 101(23) of the Bankruptcy Code.

G. The Canadian Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

H. The Canadian Proceedings are pending in Canada, which is the location of each member of the Valle Foam Group’s center of main interests, and

accordingly, the Canadian Proceedings are a “foreign main proceeding” pursuant to section 1502(4) of the Bankruptcy Code and are entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code.

I. The Monitor is entitled to all the automatic relief provided by section 1520 of the Bankruptcy Code, without limitation.

J. The relief granted herein is necessary and appropriate, in the interests of the public and international comity, consistent with the public policy of the United States, and warranted pursuant to sections 1517, 1520, and 1521 of the Bankruptcy Code.

**NOW, THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

1. The Canadian Proceedings are hereby recognized as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code.

2. All relief afforded foreign main proceedings pursuant to section 1520 of the Bankruptcy Code is hereby granted to each member of the Valle Foam Group, including, without limitation, the stay under section 362 throughout the duration of these Chapter 15 Cases or until otherwise ordered by this Court.

3. The stay pursuant to section 362(a)(1) of the Bankruptcy Code is hereby modified and limited in the following respects:



- (a) The stay shall not stay any act pertaining to finalizing the Settlements;<sup>2</sup> and
- (b) The stay shall not stay the filing of a new complaint against any member of the Valle Foam Group, but shall stay any act to continue such litigation after the filing of the complaint, including service of process on any member of the Valle Foam Group.

4. The Canadian Order for Relief (and any extensions, amendments or modifications thereof as may be granted from time to time by the Ontario Court) shall be granted comity and is hereby given full force and effect in the United States to the same extent that it is given effect in Canada.

5. The Monitor is hereby recognized as the “foreign representative” in these bankruptcy proceedings, and may exercise the rights and powers of a trustee under and to the extent provided by section 1520 of the Bankruptcy Code.

6. The Monitor, the members of the Valle Foam Group, and each of their successors, agents, representatives, advisors or counsel shall be entitled to the protections contained in sections 306 and 1510 of the Bankruptcy Code.

7. A copy of this Order, conformed to be true and correct, shall be served, within three business days of the entry of this Order, by facsimile, electronic mail or overnight express delivery, upon all persons or bodies authorized to administer foreign proceedings of the Valle Foam Group, all

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings given to them in the Declaration in Support of the Chapter 15 Petitions [Dkt. No. 2].

entities against whom provisional relief was granted under section 1519 of the Bankruptcy Code, all parties to litigation pending in the United States in which any member of the Valle Foam Group was a party at the time of the filing of the Chapter 15 Petitions, the United States Trustee, and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for present purposes.

8. The Chapter 15 Petitions and any supporting papers shall be made available by the Monitor through its website at <http://www.deloitte.com/ca/Vallefoam> or upon request at the offices of Kohrman Jackson & Krantz P.L.L., One Cleveland Center, 20<sup>th</sup> Floor, 1375 East 9<sup>th</sup> St., Cleveland, Ohio, 44114, to the attention of Mary K. Whitmer or James W. Ehrman, (216) 686-8700, [mkw@kjk.com](mailto:mkw@kjk.com) or [jwe@kjk.com](mailto:jwe@kjk.com).

9. This Court shall have continuing jurisdiction to the fullest extent permitted by law with respect to: (i) the enforcement, amendment or modification of this Order; (ii) any requests for further or additional relief or any adversary proceeding filed by the Monitor or any other party in interest; and (iii) any request by a person or entity for relief from the provisions of this Order, for cause shown.

10. This Order shall be immediately effective and enforceable upon its entry, and upon its entry shall become final and appealable, notwithstanding Bankruptcy Rule 7062 made applicable to chapter 15 cases by Bankruptcy Rule 1018.

###

Prepared and Submitted by:

**KOHRMAN JACKSON & KRANTZ P.L.L.**

/s/ Mary K. Whitmer

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the Foreign Representative of Valle  
Foam Industries (1995) Inc.,  
Domfoam International Inc., and  
A-Z Sponge & Foam Products Ltd.*

# **EXHIBIT C**

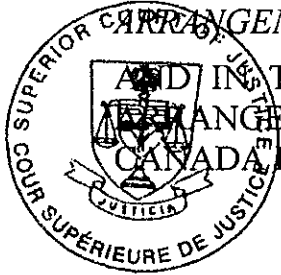
# EXHIBIT <sup>u C u</sup>

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) FRIDAY, THE 15<sup>th</sup> DAY  
JUSTICE BROWN ) OF JUNE, 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 3113736 CANADA LTD., 4362063  
CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**ORDER  
(Claims Solicitation Procedure)**

**THIS MOTION**, made by 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.), 4362063 Canada Ltd. (formerly Domfoam International Inc.) and A-Z Sponge & Foam Products Ltd. (collectively, the "**Applicants**") for an order approving a procedure for the solicitation of claims against any or all of the Applicants, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Tony Vallecoccia sworn June 12, 2012, and the Fourth Report of Deloitte & Touche Inc., the Court-appointed monitor (the "**Monitor**"), and on hearing the submissions of counsel to the Applicants, the Monitor, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service, filed:

## **SERVICE**

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

## **DEFINITIONS**

1. **THIS COURT ORDERS** that for purposes of this Order, in addition to the terms defined elsewhere herein, the following terms shall have the following meanings:

- (a) **“Applicants”** means 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.), 4362063 Canada Ltd. (formerly Domfoam International Inc.) and A-Z Sponge & Foam Products Ltd.;
- (b) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) **“CCAA”** means the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended;
- (d) **“CCAA Proceeding”** means the proceeding commenced by the Applicants in the Court at Toronto under Court File No. CV-12-9545-00CL;
- (e) **“Claim”** means any Prefiling Claim or Postfiling Claim;
- (f) **“Claims Bar Date”** means 5:00 p.m. (Eastern Standard time) on August 31, 2012, or any later date ordered by the Court;

- (g) **“Claims Solicitation Procedure”** means the procedures outlined in this Order, as they may be amended by further order of the Court, including the Schedules hereto;
- (h) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (i) **“Creditor”** means any Person asserting a Claim or a D&O Claim;
- (j) **“D&O Claim”** means any right of any Person against one or more of the Directors and Officers (as defined below) which arose as a result of their position, supervision, management or involvement as Director and Officer, where such right arose on or before June 15, 2012, and whether enforceable in any civil, administrative or criminal proceedings;
- (k) **“DIP Loan”** means the loan by 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.) to either A-Z Sponge & Foam Products Ltd. or 4362063 Canada Ltd. (formerly known as Domfoam International Inc.) in an amount not exceeding \$1,000,000 as authorized by the Court in the CCAA Proceeding;
- (l) **“Directors and Officers”** means
  - (i) the current and former directors of any of the Applicants; and
  - (ii) the current and former officers of any of the Applicants;
- (m) **“Distribution”** means any distribution within the CCAA Proceeding of the proceeds of the Applicants’ assets;

- (n) **“Excluded Claim”** means (i) any claim secured by any of the Charges as defined in the Initial Order (as defined below); (ii) the DIP Loan; and (iii) any Intercompany Claim (as defined below);
- (o) **“Filing Date”** means January 12, 2012;
- (p) **“Initial Order”** means the Initial Order of the Honourable Mr. Justice Newbould dated January 12, 2012 in the CCAA Proceeding;
- (q) **“Intercompany Claim”** means any claim by any of the Applicants against one or more of the Applicants, whether secured or unsecured but not including the DIP Loan;
- (r) **“Known Creditor”** means any Person, based on the financial or other records of an Applicant as of the Filing Date, who had or may be entitled to assert, a Claim, where monies in respect of such Claim remain unpaid in full or in part, without acknowledging in any respect the validity or existence of any such Claim;
- (s) **“Monitor’s Website”** means <http://www.deloitte.com/ca/vallefoam>;
- (t) **“Notice to Creditors of Claims Bar Date”** means the notice for publication substantially in the form attached as Schedule “A”;
- (u) **“Notice of Dispute”** means a form substantially in accordance with the form attached as Schedule “E”;
- (v) **“Notice of Revision or Disallowance”** means a form substantially in accordance with the form attached as Schedule “D”;
- (w) **“Person”** means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, pension



plan administrator, pension plan regulator, governmental authority or agency, employee or other association, or similar entity, howsoever designated or constituted;

- (x) **“Postfiling Claim”** means any right or claim of any Person, or class of Persons or representative Person, against one or more of the Applicants whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Applicants which came into existence after the Filing Date but before the Claims Bar Date, any accrued interest thereon and costs payable in respect thereof, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature;
  
- (y) **“Prefiling Claim”** means any right or claim of any Person, or class of Persons or representative Person, against one or more of the Applicants whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of one or more of the Applicants in existence on the Filing Date, any accrued interest thereon and costs payable in respect thereof to and including the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is

executory or anticipatory in nature, and includes any other claims that would have been claims provable in bankruptcy had the Applicants become bankrupt on the Filing Date;

- (z) **“Proof of Claim”** means the aggregate of the documentation submitted by a Creditor pursuant to the Claims Solicitation Procedure to evidence its Claim which shall include the Proof of Claim form attached hereto as Schedule “B”;
- (aa) **“Proof of D&O Claim”** means the aggregate of the documentation submitted by a Creditor pursuant to the Claims Solicitation Procedure to evidence its D&O Claim which shall include the Proof of D&O Claim form attached hereto as Schedule “C”;
- (bb) **“Proven Claim”** means a Claim filed by the Claims Bar Date in respect of which the Monitor has not sent a Notice of Revision or Disallowance to the Creditor asserting the Claim and which the Monitor accepts or is deemed to accept for distribution purposes pursuant to the Claims Solicitation Procedure;
- (cc) **“Surviving Claim”** means a Claim to which CCAA subsection 19(2) applies; and
- (dd) **“Surviving D&O Claim”** means a D&O Claim to which CCAA subsection 5.1(2) applies.

### **ADMINISTRATION OF THE CLAIMS SOLICITATION PROCEDURE**

2. **THIS COURT ORDERS** that the Claims Solicitation Procedure shall govern the solicitation of Claims against the Applicants and the D&O Claims against the Directors and Officers of the Applicants and shall be conducted and

administered by the Monitor with the assistance of the Applicants except as otherwise provided for in this Order. No Creditor may participate in the Distribution if such Claim has not been reviewed, accepted and valued in accordance with this Claims Solicitation Process, subject to any further Order of this Court.

3. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order, is hereby directed and empowered to administer and implement the Claims Solicitation Procedure on the terms set out in this Order and the Monitor may take any steps and fulfill such other roles as are contemplated by this Order or which it believes are incidental or necessary for the implementation of the Claims Solicitation Procedure. The Monitor may seek advice and directions from the Court in respect of any aspect of the Claims Solicitation Procedure, including any of the Monitor's obligations provided for in this Order.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to use reasonable discretion as to adequacy of compliance with the Claims Solicitation Procedure and the terms of this Order including, without limitation, with respect to the manner in which a Proof of Claim, Proof of D&O Claim, Notice of Dispute or any other notices or documents are completed and executed and may, where it is satisfied that a Claim or D&O Claim has been adequately filed or, in the case of a Claim, proven, waive strict compliance with the requirements of this Order as to completion, execution and delivery of Proofs of Claim, Proofs of D&O Claim, Notices of Dispute or any other notice or document contemplated by the Claims Solicitation Procedure and request any further documentation the Monitor may require in order to enable it to determine the validity of a Claim; provided that nothing in this Order shall confer upon the Monitor or the Applicants the discretion

or authority to amend or to extend the Claims Bar Date without a further Order of this Court.

5. **THIS COURT ORDERS** that the Monitor shall not have any responsibility or liability with respect to any information, confidential or otherwise, including without limitation, a Proof of Claim, a Proof of D&O Claim, a Notice of Dispute or otherwise, distributed, circulated, or released, whether intentionally or unintentionally, by the Monitor relating to the exercise of its powers and discharge of its obligations under this Order. The Monitor shall be entitled to rely upon the Applicants' advice and the Applicants' books and records for all purposes including establishing the names and addresses of Known Creditors. In addition to the rights and protections afforded to the Monitor under the CCAA and the Initial Order or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the fulfillment of its duties in the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

6. **THIS COURT ORDERS** that the Applicants shall advise the Monitor of all Known Creditors, including the amounts owed to all Known Creditors and their last known address pursuant to the Applicants' books and records, and that the Monitor shall be entitled to rely upon the accuracy and completeness of the information provided by the Applicants regarding the Known Creditors. For greater certainty, the Monitor shall have no liability in respect of the information provided to it regarding the Known Creditors and shall not be required to conduct any independent inquiry and/or investigation with respect to such information.

## **SOLICITATION OF CLAIMS**

**7. THIS COURT ORDERS that:**

- (a) the Monitor shall cause the Notice to Creditors of Claims Bar Date to be published in each of The Globe and Mail (national edition) and La Presse as soon as practicable after the date of this Order;
- (b) the Monitor shall cause the Notice to Creditors of Claims Bar Date to be posted on the Monitor's Website as soon as practicable after the date of this Order and cause it to remain posted until its discharge as Monitor of the Applicants;
- (c) the Monitor shall, as soon as practicable after the date of this Order, mail to all Known Creditors at the last known address for such Known Creditor on the Applicants' books and records a Notice to Creditors of Claims Bar Date, a Proof of Claim form, a Proof of D&O Claim form substantially in the form attached as Schedules "B" and "C" to this Order and an instruction letter regarding the completion of the Proof of Claim and Proof of D&O Claim forms by a Creditor; and
- (d) the Monitor shall, as soon as practicable following receipt of a request therefor and provided such request is received prior to the Claims Bar Date, deliver a copy of the Proof of Claim or Proof of D&O Claim form as applicable to any Person claiming to be a Creditor and requesting such material, or in the alternative, notify such Person that it may obtain an electronic copy of the Proof of Claim and Proof of D&O Claim forms on the Monitor's Website.

8. **THIS COURT ORDERS** that service and delivery of the Notice to Creditors of Claims Bar Date, Proof of Claim form, Proof of D&O Claim form, the Dispute Notice and any other correspondence or document from the Monitor to any Creditor or any other Person pursuant to the Claims Solicitation Procedure shall be by ordinary mail, prepaid registered mail, courier, personal delivery, electronic communication or facsimile transmission. Any such service and delivery by the Monitor for all purposes under this Order shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by prepaid registered mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (iii) if by courier, on the next following Business Day for courier deliveries within Canada, and on the third following Business Day for courier deliveries outside of Canada; (iv) if sent by personal delivery, on the same date as delivery; (v) if sent by electronic communication, on the same date as the electronic communication is sent or, if sent on a day that is not a Business Day or after 5:00 p.m. (Eastern Standard Time) on a Business Day, the following Business Day; and (vi) if sent by fax, on the date on which the Monitor receives a successful facsimile transmission report or, if sent on a day that is not a Business Day or after 5:00 p.m. (Eastern Standard Time) on a Business Day, the following Business Day

9. **THIS COURT ORDERS** that service by the Monitor of the Proof of Claim and Proof of D&O Claim forms on Creditors and publication of the Notice to Creditors of Claims Bar Date in the manner set forth in this Order shall constitute good and sufficient service upon the Creditors of notice of this proceeding, this Order, the Claims Bar Date and the related deadlines and procedures set forth

herein and that no other form of service or notice need be made by the Applicants or the Monitor to any Person, and no other document or material need be served on any Person in respect of the Claims Solicitation Procedure.

10. **THIS COURT ORDERS** that the form and substance of each of the Notice to Creditors of Claims Bar Date, Proof of Claim, Proof of D&O Claim, Notice of Revision or Disallowance and Notice of Dispute, substantially in the forms attached as schedules hereto, are hereby approved. Despite the foregoing, the Applicants and the Monitor may, from time to time, make minor changes to such forms as the Monitor considers necessary or desirable.

11. **THIS COURT ORDERS** that any Person asserting a Claim against one or more of the Applicants or a D&O Claim against one or more of the Directors or Officers shall file a Proof of Claim or a Proof of D&O Claim, as applicable (including all supporting documentation), with the Monitor by no later than the Claims Bar Date.

12. **THIS COURT ORDERS** that any Creditor with a Claim or a D&O Claim who does not deliver a completed Proof of Claim or Proof of D&O Claim, as applicable, to the Monitor in accordance with the Claims Solicitation Procedure by the Claims Bar Date, or such later date as this Court may otherwise order:

- (a) shall be forever barred from asserting or enforcing any Claim (other than a Surviving Claim) against any of the Applicants or a D&O Claim (other than a Surviving D&O Claim) against any of the Director or Officers, and the Applicants or any of them, and the Directors and Officers, or any of them, shall not have any liability whatsoever in respect of such Claim (other than a Surviving Claim) or D&O Claim (other than a Surviving D&O Claim), and any such

Claim (other than a Surviving Claim) or D&O Claim (other than a Surviving D&O Claim) shall be forever barred and extinguished;

- (b) shall not be entitled to any further notice of any Orders made or steps taken in the CCAA Proceeding; and
- (c) shall not be entitled to participate as a Creditor in the CCAA Proceeding and shall not be entitled to receive any funds pursuant to the Distribution.

13. **THIS COURT ORDERS** that Creditors with Excluded Claims shall not be required to file a Proof of Claim in this process, unless required to do so by further Order of this Court.

#### **ADJUDICATION OF CLAIMS**

14. **THIS COURT ORDERS** that there shall be no adjudication of the D&O Claims by the Applicants or the Monitor, pursuant to the Claims Solicitation Procedure Order, pending a further Order of this Court.

15. **THIS COURT ORDERS** the Monitor shall, with the assistance of the Applicants, review all Proofs of Claim (but not any Proofs of D&O Claim) delivered to the Monitor by the Claims Bar Date and shall accept, revise or reject each Claim as submitted therein. If the Monitor disputes a Claim in whole or in part, the Monitor shall by no later than 11:59 p.m. (Eastern Standard Time) on September 21, 2012, send to the Creditor who has submitted the disputed Claim a Notice of Revision or Disallowance indicating the reasons for the revision or disallowance.



16. **THIS COURT ORDERS** that the Monitor may attempt to resolve any disputed Claim with the Creditor prior to accepting, revising or disallowing such Claim.

17. **THIS COURT ORDERS** that any Claim received by the Claims Bar Date in respect of which the Monitor does not send a Notice of Revision or Disallowance by the deadline date referenced above shall be deemed a Proven Claim.

**DISPUTE NOTICES**

18. **THIS COURT ORDERS** that any Creditor who receives a Notice of Revision or Disallowance and who objects to the amount of the Claim set out in or any other provision of the Notice of Revision or Disallowance shall deliver to the Monitor on or before 5:00 p.m. (Eastern Standard Time) on October 5, 2012 a Notice of Dispute by registered mail, courier service or facsimile.

19. **THIS COURT ORDERS** that if a Creditor receives a Notice of Revision or Disallowance and does not file a Notice of Dispute by the time set out in paragraph 18 above, then the value of such Creditor's Claim shall be deemed to be as set out in the Notice of Revision or Disallowance.

20. **THIS COURT ORDERS** that any Creditor who delivers a Notice of Dispute to the Monitor by the time set out in paragraph 18 above shall, unless otherwise agreed by the Monitor in writing, thereafter serve on the Monitor and the Applicants a notice of motion in the Court returnable not less 30 days after the service of the Notice of Dispute for determination of the Claim in dispute, failing which the value of such Creditor's Claim shall be deemed to be as set out in the applicable Notice of Revision or Disallowance.

**SET-OFF**

21. **THIS COURT ORDERS** that the Applicants may set-off (whether by way of legal, equitable or contractual set-off) against payments or other distributions to be made to any Creditor in respect of its Proven Claim, any claims of any nature whatsoever that any of the Applicants may have against such Creditor, however, neither the failure to do so nor the allowance of any Claim as a Proven Claim hereunder shall constitute a waiver or release by the Applicants of any such claim that the Applicants may have against such Creditor.

**DISTRIBUTIONS**

22. **THIS COURT ORDERS** that the Monitor and the Applicants shall not distribute any funds to Creditors holding Proven Claims prior to the approval by this Court of a distribution methodology to be proposed by the Monitor and/or the Applicants in a subsequent motion to this Court.

**NOTICE OF TRANSFEREES**

23. **THIS COURT ORDERS** that if, after the Filing Date, the holder of a Claim or D&O Claim transfers or assigns the whole of such Claim or D&O Claim to another Person, neither the Monitor nor the relevant Applicant shall be obligated to give notice or otherwise deal with the transferee or assignee of such Claim or D&O Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the relevant Applicant and the Monitor in writing and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim or D&O Claim. Any such transferee or assignee of a Claim or D&O Claim shall be bound by any notices given or steps taken in respect of such Claim or D&O Claim in accordance with

this Order prior to receipt and acknowledgment by the relevant Applicant and the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim or D&O Claim takes the Claim or D&O Claim subject to any rights of set-off to which the Applicants or the Directors and Officers may be entitled with respect to such Claim or D&O Claim respectively. For greater certainty, a transferee or assignee of a Claim or D&O Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims or D&O Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to any of the Applicants or the Directors and Officers. Reference to transfer in this Order includes a transfer or assignment whether absolute or intended as security.

#### **GENERAL PROVISIONS**

24. **THIS COURT ORDERS** that any Creditor who submits a Proof of Claim or Proof of D&O Claim authorizes the Monitor to post the information contained therein to the Monitor's Website and that the Monitor shall have no liability for the information submitted other than as a result of gross negligence or wilful misconduct.

25. **THIS COURT ORDERS** that for the purposes of the Claims Solicitation Procedure, all Claims or D&O Claims which are denominated in United States dollars shall (i) in the case of Prefiling Claims or D&O Claims, be converted to Canadian dollars at the rate of 1.0198%, being the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on the Filing Date; and (ii) in the case of Postfiling Claims, be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on the date of the applicable Proof of Claim.

26. **THIS COURT ORDERS** that any document, notice or communication required to be filed with the Monitor by a Creditor pursuant to the terms of this Order must be delivered by facsimile, email or electronic transmission, personal delivery, courier or prepaid mail to:

**Deloitte & Touche Inc.**

181 Bay Street West

Suite 1400

Toronto, Ontario

M5J 2V1

**Attention: Catherine Hristow**

Telephone: (416) 775-8831

Facsimile: (416) 601-6690

E-mail: [christow@deloitte.ca](mailto:christow@deloitte.ca)

27. **THIS COURT ORDERS** that in the event that the day on which any notice or communication required to be delivered pursuant to the Claims Solicitation Procedure is not a Business Day then such notice or communication shall be required to be delivered on the next Business Day.

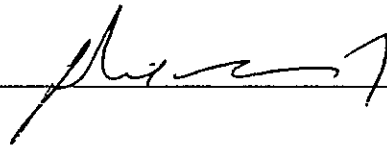
28. **THIS COURT ORDERS** that references to the singular include the plural and to the plural include the singular.

29. **THIS COURT ORDERS** that in the event of any strike, lock-out or other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be delivered by email, facsimile transmission, personal delivery or courier and any notice or other communication given or made by prepaid mail within the seven (7) Business Day period immediately preceding the commencement of such interruption, unless actually received, shall be deemed not to have been delivered. All such notices and communications shall be deemed to have been received, in the case of notice

by email, facsimile transmission, personal delivery or courier prior to 5:00 p.m. (Eastern standard Time) on a Business Day, when received, if received after 5:00 p.m. (Eastern Standard Time) on a Business Day or at any time on a non-Business Day, on the next following Business Day, and in the case of a notice mailed as aforesaid, on the fourth Business Day following the date on which such notice or other communication is mailed.

30. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court or any judicial, regulatory or administrative body of the United States and the States or other subdivisions of the United States and of any nation or state to act in aid of and be complimentary to this Court in carrying out the terms of this Claims Solicitation Procedure Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



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JUN 15 2012

**SCHEDULE "A"**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

(the "Applicants")

**NOTICE OF CLAIMS SOLICITATION PROCEDURE AND  
CLAIMS BAR DATE REGARDING:**

**3113736 CANADA LTD. (FORMERLY VALLE FOAM  
INDUSTRIES (1995) INC.,  
4362063 CANADA LTD. (FORMERLY DOMFOAM  
INTERNATIONAL INC.) AND  
A-Z SPONGE & FOAM PRODUCTS LTD.**

By Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated January 12, 2012 (the "Initial Order"), the Applicants listed above filed for and obtained relief from their creditors under the *Companies Creditors' Arrangement Act* (the "CCAA"). Pursuant to the Initial Order, Deloitte & Touche Inc. was appointed by the Court as monitor in the Applicants' CCAA proceeding (the "Monitor").

By Order of the Court dated June 15, 2012 (the "Claims Solicitation Procedure Order"), a process was established for creditors to prove claims against the Applicants in existence as at the date of the Initial Order or with respect to Postfiling Claims (as defined below) or with respect to claims against the current or former Directors and Officers of the Applicants which arose on or before June 15, 2012. Capitalized terms in this notice are as defined in the Claims Solicitation

Procedure Order, a copy of which can be found on the Monitor's Website: <http://www.deloitte.com/ca/vallefoam>.

In accordance with the Claims Solicitation Procedure Order, the Monitor shall mail to all known creditors ("**Known Creditors**") of the Applicants a Proof of Claim form together with this notice. Any Creditor who does not receive a Proof of Claim form may obtain this form on the Monitor's Website, <http://www.deloitte.com/ca/vallefoam> or by contacting the Monitor directly as follows: (i) by email: [christow@deloitte.ca](mailto:christow@deloitte.ca); (ii) by mail at Deloitte & Touche Inc., 181 Bay Street West, Suite 1400, Toronto, Ontario, M5J 2V1, attention: Catherine Hristow; or (iii) by facsimile at (416) 601-6690.

In accordance with the Claims Solicitation Procedure Order, any Person or representative class of Persons who wishes to assert a claim against one of more of the Applicants (each, a "**Claim**") which arose (i) at any time up to January 12, 2012; (ii) at any time after January 12, 2012 (a "**Postfiling Claim**") must complete and deliver the Proof of Claim form to the Monitor by mail, fax, e-mail, courier or hand delivery by **no later than 5:00 p.m. (Eastern Standard Time) on August 31, 2012** or such other date as ordered by the Court (the "**Claims Bar Date**").

In accordance with the Claims Solicitation Procedure, any Person or representative class of Persons who wishes to assert a claim against one of more of the current or former Directors and Officers of the Applicants which arose on or before June 15, 2012 (each, a "**D&O Claim**") must complete and deliver the Proof of D&O Claim form to the Monitor by mail, fax, e-mail, courier or hand delivery by **no later than the Claims Bar Date**.

**IF YOUR PROOF OF CLAIM OR PROOF OF D&O CLAIM IS NOT RECEIVED BY THE MONITOR BY THE CLAIMS BAR DATE, YOUR CLAIM AGAINST THE APPLICANTS OR THE OFFICERS AND DIRECTORS WILL BE BARRED AND EXTINGUISHED FOREVER.**

A Proof of Claim which is disputed by the Monitor will be addressed in the manner set out in the Claims Solicitation Procedure Order.

**Address of the Monitor:**

**Deloitte & Touche Inc.**  
181 Bay Street West  
Suite 1400  
Toronto, Ontario  
M5J 2V1

**Attention: Catherine Hristow**  
Telephone: (416) 775-8831  
Facsimile: (416) 601-6690  
E-mail: christow@deloitte.ca

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

#1900657



**SCHEDULE "B"**

<b>DELOITTE &amp; TOUCHE INC., solely in its capacity as the Court-appointed Monitor of the Applicants, and without personal or corporate liability</b> ● ● ● Telephone: (416) 775-8831 Telecopier: (416) 601-6690 Email: christow@deloitte.ca		OFFICE USE ONLY
		_____
		_____
		Date Received _____

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")

**PROOF OF CLAIM**

**I. DESCRIPTION OF DEBTOR, CREDITOR AND NATURE OF CLAIM**

Name of entity against which claim is being made: *(Check appropriate box in following list. If claims are being made against more than one entity, use a separate Proof of Claim form for each entity.)*

- 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.)
- 4362063 Canada Ltd. (formerly known as Domfoam International Inc.)
- A-Z Sponge & Foam Products Ltd.

(hereinafter the "**Debtor**")

Name of person asserting a claim against the Debtor: \_\_\_\_\_

(hereinafter the "**Creditor**")

Individual:  Corporation:  Other:  Specify: \_\_\_\_\_

If individual, Creditor's Social Insurance Number: \_\_\_\_\_

If corporation, Business Identification Number: \_\_\_\_\_

Address of Creditor: \_\_\_\_\_

Telephone number of Creditor:

\_\_\_\_\_  
\_\_\_\_\_

E-mail address of Creditor:

\_\_\_\_\_

Fax number of Creditor:

\_\_\_\_\_

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby certify:

\_\_\_\_\_  
*(Name)*

\_\_\_\_\_  
*(City and province)*

1. That I am a Creditor of the Debtor

or that I am

of

\_\_\_\_\_  
*(State position or title)*

\_\_\_\_\_  
*(Name of Creditor)*

a Creditor of the Debtor.

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. *(Check and complete appropriate category:)*

That, as at January 12, 2012, the Creditor had and still has an **unsecured claim** against the Debtor in the sum of CAD\$ \_\_\_\_\_, as shown by the statement (or affidavit or solemn declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. *(Claims in US dollars should be converted to Canadian dollars at the rate of [insert], being the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on January 12, 2012. The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim.) (Give full particulars of the claim with all necessary supporting documentation.)*

That, as at the date hereof, the Creditor has an **unsecured claim** against the Debtor which arose after January 12, 2012 in the sum of CAD\$ \_\_\_\_\_, as shown by the statement (or affidavit or solemn declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. *(Claims in US dollars should be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars as of the date hereof. The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim.) (Give full particulars of the claim with all necessary supporting documentation.)*

-or-

That, as at January 12, 2012, the Creditor had and still has a **secured claim** against the Debtor in the sum of CAD\$ \_\_\_\_\_, as shown by the statement (or affidavit or solemn

declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. *(The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim and the security held in respect of the claim, including copies of all security.) (Give full particulars of the claim and security with all necessary supporting documentation.)*

- 4. That to the best of my knowledge and belief, I am (or the above-named Creditor is) (or am not or is not) related to the Debtor within the meaning of section 4 of the *Bankruptcy and Insolvency Act*.

**II. ATTESTATION**

I hereby attest that, to the best of my knowledge, the information in this document is and any and all annexes hereto are truthful and accurate in all material respects.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
*(Signature of Creditor)*

\_\_\_\_\_  
*(Signature of witness)*

\_\_\_\_\_  
*(Name of Creditor in block letters)*

\_\_\_\_\_  
*(Name of witness in block letters)*

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*(Address of witness in block letters)*

**ANNEX "A"**  
**DETAILS OF CLAIM**

**SCHEDULE "C"**

<b>DELOITTE &amp; TOUCHE INC., solely in its capacity as the Court-appointed Monitor of the Applicants, and without personal or corporate liability</b> • • • Telephone: (416) 775-8831 Telecopier: (416) 601-6690 Email: christow@deloitte.ca		OFFICE USE ONLY
		_____
		_____
		Date Received _____

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")

**PROOF OF D&O CLAIM**

**III. DESCRIPTION OF DEBTOR, CREDITOR AND NATURE OF D&O CLAIM**

Name of entity against which claim is being made: *(Check appropriate box in following list. If claims are being made against more than one entity, use a separate Proof of Claim form for each entity.)*

- Director or Officer of 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995) Inc.)
- Director or Officer of 4362063 Canada Ltd. (formerly known as Domfoam International Inc.)
- Director or Officer of A-Z Sponge & Foam Products Ltd.

(hereinafter the "**Debtor**")

Name of person asserting a claim against the Debtor: \_\_\_\_\_  
(hereinafter the "**Creditor**")

Individual:  Corporation:  Other:  Specify: \_\_\_\_\_

If individual, Creditor's Social Insurance Number: \_\_\_\_\_

If corporation, Business Identification Number: \_\_\_\_\_

Address of Creditor: \_\_\_\_\_

Telephone number of Creditor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E-mail address of Creditor:

\_\_\_\_\_

Fax number of Creditor:

\_\_\_\_\_

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby certify:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(City and province)

1. That I am a Creditor of the Debtor

or that I am

of

\_\_\_\_\_  
(State position or title)

\_\_\_\_\_  
(Name of Creditor)

a Creditor of the Debtor.

2. That I have knowledge of all the circumstances connected with the claim referred to in this form.

3. (Check and complete appropriate category:)

That, as at June 15, 2012, the Creditor had and still has an **unsecured claim** against the Debtor in the sum of CAD\$\_\_\_\_\_, as shown by the statement (or affidavit or solemn declaration) attached hereto and marked **Annex "A"**, after deducting any counterclaims to which the Debtor may be entitled. (Claims in US dollars should be converted to Canadian dollars at the rate of 1.0198%, being the Bank of Canada noon spot rate of exchange for exchanging US dollars to Canadian dollars on January 12, 2012. The attached statement, affidavit or solemn declaration must specify and attach the evidence in support of the claim.) (Give full particulars of the claim with all necessary supporting documentation.)

4. That to the best of my knowledge and belief, I am (or the above-named Creditor is) (or am not or is not) related to the Debtor within the meaning of section 4 of the *Bankruptcy and Insolvency Act*.

**IV. ATTESTATION**

I hereby attest that, to the best of my knowledge, the information in this document is and any and all annexes hereto are truthful and accurate in all material respects.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
*(Signature of Creditor)*

\_\_\_\_\_  
*(Signature of witness)*

\_\_\_\_\_  
*(Name of Creditor in block letters)*

\_\_\_\_\_  
*(Name of witness in block letters)*

\_\_\_\_\_  
*(Address of witness in block letters)*

**ANNEX "A"**  
**DETAILS OF CLAIM**



**SCHEDULE "D"**

**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")**

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**NOTICE OF REVISION OR DISALLOWANCE**

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**TO: [INSERT NAME AND ADDRESS OF CREDITOR]**

The Monitor has disallowed in full or in part your Claim as set out in your Proof of Claim, as set out below:

**Prefiling Claim:**

<b>Claim Against</b>	<b>Claim per Proof of Claim</b>	<b>Allowed Amount</b>	<b>Disallowed Amount</b>
	\$	\$	\$
<b>Total</b>	\$	\$	\$

**Postfiling Claim:**

<b>Claim Against</b>	<b>Claim per Proof of Claim</b>	<b>Allowed Amount</b>	<b>Disallowed Amount</b>
	\$	\$	\$
<b>Total</b>	\$	\$	\$

**REASONS FOR DISALLOWANCE:**

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**IF YOU INTEND TO DISPUTE THIS NOTICE OF REVISION OR DISALLOWANCE:**

You must, no later than **5:00 p.m. (Toronto Time)** on **September 21, 2012**, deliver to the Monitor a Notice of Dispute of Revision or Disallowance (a copy of which can be found on the Monitor's Website at <http://www.deloitte.com/ca/vallefoam>) in accordance with the Claims Solicitation Procedure Order to the following address, email, or facsimile:

**Deloitte & Touche Inc.**

181 Bay Street West

Suite 1400

Toronto, Ontario

M5J 2V1

**Attention: Catherine Hristow**

Telephone: (416) 775-8831

Facsimile: (416) 601-6690

E-mail: [christow@deloitte.ca](mailto:christow@deloitte.ca)

DATE:

#1900657

**SCHEDULE "E"**

**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")**

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**NOTICE OF DISPUTE OF REVISION OR DISALLOWANCE**

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**1. PARTICULARS OF CREDITOR:**

(a) Full Legal Name of Creditor: \_\_\_\_\_

(b) Full Mailing Address of Creditor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) \*Telephone Number of Creditor: \_\_\_\_\_

(d) \*Facsimile Number of Creditor: \_\_\_\_\_

(e) \*E-mail Address of Creditor: \_\_\_\_\_

(f) Attention (Contact Person): \_\_\_\_\_

**\*In order to ensure that all Claims are processed in an expedited manner you must provide one (1) or more of your telephone number, fax number or e-mail address.**

**2. PARTICULARS OF ORIGINAL CREDITOR FROM WHOM YOU ACQUIRED CLAIM, IF APPLICABLE:**

(a) Have you acquired this Claim by Assignment? Yes  No   
(if yes, attach document evidencing assignment)

(b) Full Legal Name of original Creditor(s): \_\_\_\_\_

**3. DISPUTE OF REVISION OR DISALLOWANCE OF CLAIM FOR VOTING AND/OR DISTRIBUTION PURPOSES:**

We hereby disagree with the value of our Claim set out in the Notice of Revision or Disallowance dated \_\_\_\_\_, as set out below:

**Claim:**

<b>Claim Against</b>	<b>Claim per Proof of Claim</b>	<b>Allowed Amount</b>	<b>Disallowed Amount</b>
	\$	\$	\$
<b>Total Claims</b>			

**REASONS FOR DISPUTE:**

*(Provide full particulars of the Claim and supporting documentation, including amount, description of transaction (s) or agreement(s) giving rise to the Claim, name of any guarantor(s) that has guaranteed the Claim, and amount of Claim allocated thereto, date and number of all invoices, particulars of all credits, discounts, etc. claimed.)*

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If you intend to dispute a Notice of Revision or Disallowance, you must, no later than **5:00 p.m. (Toronto Time) on October 5, 2012** deliver to the Monitor a Notice of Dispute of Revision or Disallowance in accordance with the Claims Solicitation Procedure Order to the following address, email or facsimile:

**Deloitte & Touche Inc.**  
181 Bay Street West  
Suite 1400  
Toronto, Ontario  
M5J 2V1

**Attention: Catherine Hristow**  
Telephone: (416) 775-8831  
Facsimile: (416) 601-6690  
E-mail: christow@deloitte.ca

If you do not deliver a Notice of Dispute of Revision or Disallowance by the time and date set out above, as applicable, the value of your Claim shall be deemed to be as set out in the Monitor's Notice of Revision or Disallowance.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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

#1900657

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

<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> <b>COMMERCIAL LIST</b> Proceeding commenced at TORONTO</p>	
<p><b>ORDER</b> (Claims Solicitation Procedure)</p>	
<p><b>MINDEN GROSS LLP</b> 145 King Street West, Suite 2200 Toronto ON M5H 4G2</p>	
<p><b>Raymond M. Slattery</b> (LSUC #20479L) 416-369-4149 <a href="mailto:rslattery@mindengross.com">rslattery@mindengross.com</a></p>	
<p><b>David T. Ullmann</b> (LSUC #423571) 416-369-4148 <a href="mailto:dullmann@mindengross.com">dullmann@mindengross.com</a></p>	
<p><b>Sepideh Nassabi</b> (LSUC #60139B) 416-369-4323 <a href="mailto:snassabi@mindengross.com">snassabi@mindengross.com</a> 416-864-9223 fax</p>	
<p>Lawyers for the Applicants</p>	



# **EXHIBIT D**

# EXHIBIT "D"

Court file no

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(OTTAWA REGION)

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**-and-**

**DOMFOAM INTERNATIONAL INC. AND  
VALLE FOAM INDUSTRIES (1995) INC.**

**Accused**

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**STATEMENT OF ADMISSIONS**

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**THE ACCUSED**

1. Domfoam International Inc. and Valle Foam Industries (1995) Inc. ("Domfoam/Valle") are corporations organized and existing under the laws of Canada. Valle Foam Industries (1995) Inc. is a wholly owned subsidiary of Domfoam International Inc.

**THE PRODUCT**

2. Foam is manufactured by the reaction resulting from the combination of two main chemicals: an isocyanate, such as Diphenylmethane Diisocyanate ("MDI") or Toluene Diisocyanate ("TDI") and a polyurethane polymer called Polyol. The resultant foam can be made into a variety of densities and hardness, from flexible foam to rigid foam, depending on the mixing ratio of the chemicals.
3. 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 Cushion (or underlay): used to improve the comfort and lifespan of carpets;
  - Transportation (or automotive): used in seating, headrests, arm rests, interior panels and skins, car and truck fenders, truck beds, support rings for run-flat tires, headliners and other interior systems for the automobile industry;
  - Bedding: used as the primary material for adding support and comfort to padded bedding products;
  - Packaging: provides protection and cushioning to packaged products. Polyurethane foams are often used to package highly sensitive equipment such as electronics, printed circuit boards, jewellery and delicate foods; and
  - Textiles and Fibres: used as insulation for fabric products including clothing. It provides thermal insulation, tear resistance, fire resistance and light weight to a variety of textiles and fibres including leather products, shoe uppers, tents, life rafts, labels, hand bags and insulation liners.
4. Most foam manufacturers specialize in certain applications and thus do not have a presence in all segments of the foam industry.
  5. Domfoam/Valle produces two types of foam products: (1) slab foam for furniture, bedding, packaging, textiles and fibres ("slab"); and (2) carpet cushion foam for carpet underlay ("carpet cushion"):

#### THE MARKETPLACE

6. A number of companies engage in the sale and supply of foam products in, into, or from Canada. Domfoam/Valle's major competitors in the foam market for slab in Canada include: Vitafoam Canada Inc. (Vita), Carpenter Canada Co. (Carpenter) and Foamex Canada Inc. (Foamex). Domfoam/Valle's major competitors in the foam market for carpet cushion in Canada include: Vita and Carpenter.
7. Between January 1, 1999 and July 27, 2010 ("Relevant Period") Domfoam/Valle produced and supplied foam and foam products to customers in Canada.
8. Based on the information provided to the Commissioner of Competition, the markets for both slab and carpet cushion are relatively concentrated. For the slab market in Canada, Carpenter, Foamex, Vita and Domfoam/Valle control approximately 80% of the market. For the carpet cushion market in Canada, Carpenter, Vita and Domfoam/Valle control approximately 90% of the market.
9. Certain types of foams are difficult to ship. With the exception of memory foam and other high-quality foams, foam does not easily compress. This makes it difficult to sell slab to customers located far from manufacturing facilities. Due to

this transportation issue, slab is generally sold within close proximity to pouring plants.

10. Barriers to entry in the foam manufacturing business are high. Zoning permits, financing to purchase land and the construction of a building to manufacture foam are very costly. The manufacturing of foam is regulated owing to the fact that petro-chemicals are used during the foaming process (i.e., safety and environmental regulations).

11. During the Relevant Period, the total volume of commerce sold to customers in Canada by Domfoam/Valle was approximately \$975,000,000 (CDN). This includes sales of both carpet cushion and slab foam for furniture and bedding.
12. The Relevant Period of the offences spans amendments to the criminal conspiracy provisions of the *Competition Act* ("Act"), with the new provisions having come into force on March 12, 2010. The evidence obtained during the investigation supports charges under both the former and current conspiracy provisions under the Act.

#### THE OFFENCE – SLAB

13. From January 1, 1999 to March 11, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1)(c) of the *Competition Act*, RSC 1985, c C-34 by conspiring, combining, agreeing or arranging to prevent or lessen competition, unduly, with respect to the sale and supply of slab products within Canada.
14. From March 12, 2010 to July 27, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1) (a) of the *Competition Act*, 2009, c. 2, s. 410 by conspiring, agreeing or arranging, with one or more competitors, to fix, maintain, increase or control the price for the supply of slab products within Canada.
15. For the purpose of forming and carrying out the alleged conspiracy, Domfoam/Valle, Carpenter, Vita and Foamex established a practice whereby the members of the alleged cartel would communicate about the amount and effective date of price increases in the sale and supply of slab and slab products in Canada. They would agree to use the same or similar effective dates and the same or similar price increase ranges, which had the overall effect of unduly lessening competition in Canada. The information regarding the price increase percentages and effective dates would be included in the price increase letters sent to customers and would constitute a price baseline, which would be used as a starting point for customer negotiations.
16. The conduct would occur approximately one to three times per year and typically followed raw material price increase announcements made by chemical suppliers. Raw material price increase notifications from chemical suppliers triggered communications among the members of the alleged slab cartel, which included

telephone calls, blackberry messages, e-mails, meetings and the exchange of price increase letters via email and facsimile.

17. The exchanges of information among Domfoam/Valle, Carpenter, Vita, and

Foamex were for the purpose of coordinating the amount and effective date of price increases to be announced to their customers. Information in the possession of the Commissioner of Competition indicates that this coordination was viewed as necessary by the alleged slab cartel members and gave them assurance that all parties to the alleged cartel would follow suit. Such assurance was needed because, if a party to the alleged cartel "went to market" alone, Domfoam/Valle, Carpenter, Vita and Foamex would be concerned that the price increase would not succeed, as customers, in some cases, might switch to that foam manufacturer who did not increase its price.

18. The conduct enabled the slab manufacturers to coordinate and implement price increases to their respective customers. To this end, customers received price increase letters on or near the same day, with similar or identical percentage increases and effective implementation dates. Information in the possession of the Commissioner of Competition indicates that the price increase letters to customers were viewed by the members of the alleged slab cartel as an assurance that all slab producers were proceeding with the same or similar price increases with the same or similar effective dates of implementation. Once the letters were out in the marketplace, the alleged slab cartel members were in a stronger position to negotiate with their large customers, given that all slab producers were at similar price levels. After the price increase letters were out, Domfoam/Valle would typically negotiate with customers over specific price increase amounts. Sometimes the price increases were fully implemented as written in the letters. At other times, the price increases were successful only in part or not at all. Even if successful, in whole or in part, there were times when the agreed upon price increases did not hold. That is to say, the price increases would abate.

**EXAMPLES OF COMMUNICATIONS BETWEEN COMPETITORS – SLAB**

19. A high level employee from Domfoam had contacts with employees from Foamex. The Domfoam employee would exchange price increase letters and telephone calls about pricing with Michael Calderoni, Senior Sales Manager for Foamex.
20. In June 2006, two Domfoam employees had lunch at DiMenna's, a restaurant in St. Leonard, Quebec, with Mr. Calderoni. A chemical increase had been announced and Domfoam/Valle needed to increase prices. At this lunch, there was a discussion about whether Foamex would increase prices, as a price increase letter had not yet been released. Mr. Calderoni said that Foamex would increase prices and that he would fax Domfoam the price increase letter.

21. Domfoam employees also had contact with Dale Nelson, a Bedding and Furniture Sales Representative for Carpenter. A high level Domfoam employee and Mr. Nelson would communicate about pricing through telephone calls, and would exchange price increase letters.

22. In July of 2010, a high level Domfoam employee was contacted by Mr. Nelson. Mr. Nelson told this employee that Carpenter was going to increase prices in Montreal and had been going to customers announcing the increase. At the time of this phone call, Domfoam had not yet decided if they were going to increase prices. Mr. Nelson asked what Domfoam's intentions were in Montreal and passed on a message reportedly from his boss, that if Domfoam did not raise prices in Montreal, Carpenter would target Domfoam's customers. The Domfoam employee called Mr. Calderoni from Foamex the next day and passed on the message from Mr. Nelson. Mr. Calderoni stated it was not good news and he would need to discuss it with the people to whom he reports.

#### THE OFFENCE – CARPET CUSHION

23. From January 1, 1999 to March 11, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1)(c) of the *Competition Act*, RSC 1985, c C-34 by conspiring, combining, agreeing or arranging to lessen competition, unduly, with respect to the sale and supply of carpet cushion products within Canada.
24. From March 12, 2010 to July 27, 2010, Domfoam/Valle engaged in conduct contrary to s. 45(1) (a) of the *Competition Act*, 2009, c. 2, s. 410 by conspiring, agreeing or arranging, with one or more competitors, to fix, maintain, increase or control the price for the supply of carpet cushion products within Canada.
25. For the purpose of forming and carrying out the alleged conspiracy, Domfoam/Valle, Carpenter and Vita established a practice whereby the members of the alleged cartel would communicate about the amount and effective date of price increases in the sale and supply of carpet cushion in Canada. They would agree to use the same or similar effective dates and the same or similar price increase ranges, which had the overall effect of unduly lessening competition in Canada. The information regarding the price increase percentages and effective dates would be included in the price increase letters sent to customers and would constitute a price baseline, which would be used as a starting point for customer negotiations.
26. This conduct would occur approximately one to four times per year and typically followed an increase in the price of scrap foam, which consequently resulted in carpet cushion price increase notifications being sent to customers by United States-based carpet cushion manufacturers. These United States-based notifications would, in turn, have the effect of triggering communications among the members of the alleged carpet cushion cartel in Canada. Such communications included telephone calls, blackberry messages, emails, meetings and the exchange of price increase letters via email and facsimile.

27. The exchanges of information among Domfoam/Valle, Carpenter and Vita, were for the purpose of coordinating the amount and effective date of price increases to be announced to their customers. Information in the possession of the Commissioner of Competition indicates that this coordination was viewed as necessary by the alleged carpet cushion cartel members and gave them assurance that all parties to the alleged cartel would follow suit. Such assurance was needed because, if a party to the alleged cartel "went to market" alone, Domfoam/Valle, Carpenter and Vita would be concerned that the price increase would not succeed, as customers, in some cases, might switch to that foam manufacturer who did not increase its price.
28. The conspiracy enabled the carpet cushion manufacturers to coordinate and implement price increases to their respective customers. To this end, customers received price increase letters on or near the same day, with similar or identical percentage increases and effective implementation dates. Information in the possession of the Commissioner of Competition indicates that the price increase letters to customers were viewed by the members of the alleged carpet cushion cartel as an assurance that all carpet cushion producers were proceeding with the same or similar price increases with the same or similar effective implementation dates. Once the letters were out in the marketplace, the alleged carpet cushion cartel members were in a stronger position to negotiate with their large customers, given that all carpet cushion producers were at similar price levels. After the price increase letters were out, Domfoam/Valle would typically negotiate with customers over specific increase amounts. Sometimes the price increases were fully implemented as written in the letters. At other times, the price increases were successful only in part or not at all. Even if successful, in whole or in part, there were times when the agreed upon price increases did not hold. That is to say, the price increases would abate.

#### **EXAMPLES OF COMMUNICATIONS BETWEEN COMPETITORS - CARPET CUSHION**

29. A Domfoam employee had competitor contacts with Dan Temple, Regional Manager, Western Region, for Carpenter. The Domfoam employee and Mr. Temple had pricing discussions, and would exchange price increase information by fax.
30. The Domfoam employee and Mr. Temple used the term "popcorn" as a code name for chipped foam. Carpenter had a "no discussion with competition" policy, so he and Mr. Temple disguised the name with "popcorn." The Domfoam employee believes they used this term as they knew it was not right to be discussing pricing with competitors. The Domfoam employee would not use this term in any other instances other than in relation to the price of that product, and always with Mr. Temple.

31. The Domfoam employee would exchange pricing notifications and intentions with Mr. Temple. The Domfoam employee would tell Mr. Temple that Domfoam/Valle was intending to go up in price and that he had not seen any notifications from Mr. Temple's employer, Carpenter. Mr. Temple would also make these types of phone calls to the Domfoam employee. A day or two later, the Domfoam employee would receive notification of Carpenter's price increases from an outside fax machine located, for example, at UPS or Staples. Such notifications were never from a Carpenter fax machine. The Domfoam employee only ever received Carpenter price increase letters in this way, and if the Domfoam employee received a Carpenter price increase letter faxed from a UPS store, he was 99.9% sure it was from Mr. Temple.

**DOMFOAM/VALLE ACKNOWLEDGES THAT THE BUREAU HAS IN ITS POSSESSION A WIRETAP RECORDING RELATING TO THE FOLLOWING:**

32. An employee with a competitor of Domfoam/Valle, who is also cooperating with the investigation, would exchange pricing information with Michael Lajambe, District Manager, Eastern Canada, for Carpenter. The competitor's employee received a telephone call from Mr. Lajambe in June of 2010 where Mr. Lajambe told the competitor's employee that Carpenter was sending out their price increase letter the next day with an effective date of July 19<sup>th</sup> and a 12% percentage price increase. Mr. Lajambe offered to fax the price increase letter to Domfoam/Valle's competitor.
33. During this conversation, Mr. Lajambe commented that he heard Domfoam/Valle's competitor had a new boss who did not want his employees communicating with competitors. The competitor's employee confirmed this was true. Mr. Lajambe stated his bosses were the same way. Mr. Lajambe and the competitor's employee then discussed the possibility of a third price increase with Mr. Lajambe, stating that he felt the prices were too low. Mr. Lajambe then confirmed the fax number to send him the respective price increase letter.

**OTHER CONSIDERATIONS**

34. Domfoam/Valle has agreed to cooperate and to plead guilty to offences under section 45(1) (c) of the *Competition Act*, RSC 1985, c C-34, for the period from January 1, 1999 to March 11, 2010, and section 45(1) (a) of the *Competition Act*, 2009, c. 2, s. 410, for the period from March 12, 2010 to July 27, 2010. Such cooperation and willingness to plead guilty is saving the costs of further investigation and trial, which would otherwise have been incurred by the Government of Canada.
35. The cooperation of Domfoam/Valle will assist the Government of Canada in its investigation and subsequent prosecution of other individuals and corporations for violations of the *Competition Act* in relation to the sale and supply of slab and carpet cushion in Canada.



**CONCLUSION**

36. Domfoam/Valle admits the foregoing pursuant to section 655 of the *Criminal Code* solely for the purpose of dispensing with proof of such facts at trial in this proceeding.

37. Domfoam/Valle acknowledges, on the basis of the facts set out herein, with respect to the agreement alleged in the indictment, that all constituent elements of indictable offences under both sections 45(1)(c) of the *Competition Act*, RSC 1985, c C-34 and 45(1)(a) of the *Competition Act*, 2009, c. 2, s. 410 have been established.

38. This document may be executed in counterparts.

Domfoam/Valle  
By its duly authorized counsel

  
\_\_\_\_\_  
Brian Heller (Heller, Rubel)

This 5<sup>th</sup> day of December, 2011  
JANUARY 2012

Her Majesty the Queen  
By its duly authorized officer

  
\_\_\_\_\_  
Robert Morn

This 5 day of December, 2012  
January

# **EXHIBIT E**

# EXHIBIT <sup>a</sup> E<sup>n</sup>

## COUR SUPÉRIEURE

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N° : 500-06-000524-104

DATE : October 28, 2013

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PRESIDED BY : THE HONORABLE JEAN-YVES LALONDE, J.C.S.

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### OPTION CONSOMMATEURS

Petitioner

And

KARINE ROBILLARD

*Designated Person*

v.

PRODUITS VITAFOAM CANADA LIMITÉE  
VITAFOAM INC.  
CARPENTER CANADA CO.  
CARPENTER CO.  
A-Z SPONGE & FOAM PRODUCTS LTD.  
DOMFOAM INTERNATIONAL INC.  
VALLE FOAM INDUSTRIES (1995) INC.  
FUTURE FOAM INC.  
FLEXIBLE FOAM PRODUCTS INC.  
LES INDUSTRIES FOAMEXTRA INC.  
LEGGETT & PLATT INC.  
MOHAWK INDUSTRIES INC.  
HICKORY SPRINGS MANUFACTURING COMPANY  
WOODBIDGE FOAM CORPORATION

*Respondents*

And

DELOITTE & TOUCHE INC.  
FONDS D'AIDE AUX RECOURS COLLECTIFS

*Mises-en-cause*

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JUDGMENT

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63280

1. **WHEREAS** Option consommateurs has brought before this Court a Motion for the approval of the settlement agreement entered into notably with the Respondents Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd. (the "Domfoam Defendants");
2. **CONSIDERING** the Motion before the Court;
3. **CONSIDERING** the exhibits in the file;
4. **CONSIDERING** also the agreement entered into on January 10<sup>th</sup>, 2012 between notably the Petitioner and the Domfoam Defendants, filed as part of Exhibit R-1 (the "Settlement Agreement");
5. **CONSIDERING** the submissions of the counsel for the parties and the representations made on all sides;
6. **CONSIDERING** the letter filed as Exhibit R-2 and dated October 21, 2013 from Coupons Parent inc. stating that it does not want to be excluded from the Proceedings and;
7. **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;

**FOR THESE REASONS, THE COURT:**

8. **GRANTS** the present *Requête pour l'approbation d'une transaction*;
9. **DECLARES** that the definitions set forth in the Settlement Agreement apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the <sup>P</sup>parties to the Settlement Agreement, and that the other Respondents, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of the Judgment; JKL  
JKS
10. **DECLARES** that, subject to all of the other provisions of the Judgment, the Settlement Agreement is valid, fair, reasonable and in the best interest of the Québec Settlement

Québec Settlement Class Members, and constitute a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all <sup>P</sup> parties and all <sup>JL- J.C.S.</sup> members described thereto;

11. **APPROVES** the Settlement Agreement in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of the Judgment;
12. **DECLARES** that, subject to the other provisions of the Judgment, the Settlement Agreement, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to the Judgment as Schedule "A" and shall form an integral part of the Judgment and shall be binding on all <sup>P</sup> parties; <sup>JL- J.C.S.</sup>
13. **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Settlement Agreement, the terms of the present Judgment shall prevail;
14. **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
15. **DECLARES** that any Québec Settlement Class Member who makes a claim under the Settlement Agreement shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
16. **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, shall be binding on every Québec Settlement Class Member who has not validly opted-out of the action;
17. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members expressly waive and renounce the benefit of solidarity with respect to any share of liability, including without limitation liability arising from *in solidum*

obligations, that can be attributed in any way to the Releasees in respect of the Québec Proceedings (if any), in capital, interest and/or costs;

18. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members expressly waive and renounce, to the Releasees' exclusive benefit, to claim or receive payment from the Non-Settling Defendants or any other person of any amount representing any share of liability that can be attributed in any way to the Releasees in respect of the Québec Proceeding (if any), in capital, interests and/or costs;
19. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members release the Non-Settling Defendants and any other person in respect of any share of liability that can be attributed in any way to the Releasees in respect of the Québec Proceeding (if any), in capital, interests and costs;
20. **DECLARES** that the Plaintiffs in Québec and the Québec Settlement Class Members will bear the Releasees' share in the contribution in respect of the Québec Proceeding (if any) that would result from the insolvency of a Non-Settling Defendant or any other Person;
21. **DECLARES** that in the event that any person brings an action in warranty or any other claim to obtain from the Releasees an amount representing the share of liability attributed to the Releasees in the Québec Proceeding (if any) and the Plaintiffs, the Domfoam Defendants, the Individual Settling Parties and the other Releasees are not able to obtain the dismissal of such an action or claim through a preliminary motion at first instance before the Québec Court, then the Plaintiffs in Québec and the Québec Settlement Class Members shall undertake to indemnify the Releasees and to save the Releasees harmless in respect of any damage, harm, loss or cost reasonably incurred in respect of such action or claim, provided that any such indemnity will only be paid out of any present or future undistributed settlement or judgment amount collected from the Non-Settling Defendants or named or unnamed co-conspirator or any other person for the benefit of the

Plaintiffs and the Québec Settlement Class Members in respect of the Québec Proceeding, provided however that the payment of this indemnity shall not affect the ability of the Plaintiffs to seek interim distributions of settlement funds subject to court approval;

22. **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment;
23. **DECLARES** that Domfoam Defendants shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;
24. **DECLARES** that, notwithstanding the terms of section 4.5(23) of the Settlement Agreement, in the event that:
  - i. the Plaintiffs allege a material breach by one or more of the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties (a "Non-Cooperating Party" or the "Non-Cooperating Parties") of their obligations under section 4.5 of the Settlement Agreement;
  - ii. the Plaintiffs apply to the Ontario Court for specific performance of such obligations by the Non-Cooperating Party or Parties;
  - iii. the Ontario Court finds that the Non-Cooperating Party or Parties have materially breached section 4.5 of the Settlement Agreement and orders specific performance (the "Cooperation Performance Order"); and
  - iv. the Non-Cooperating Party or Parties fail to comply with the Cooperation Performance Order;

the Settlement Agreement shall not be terminated as to the Non-Cooperating Party or Parties.

25. **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court and this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
26. **DECLARES** that Coupons Parent has not opted out of the Proceedings;
27. **THE WHOLE** without costs.

  
JEAN-YVES LALONDE, J.C.S.



# **EXHIBIT F**

# EXHIBIT <sup>^ F ^</sup>

Court File No. CV-10-15164

ONTARIO  
SUPERIOR COURT OF JUSTICE

The Honourable Madam ) Tuesday, the 11th day  
Justice Leitch ) of February, 2014  
BETWEEN:

"HII NEIGHBOR" FLOOR COVERING CO. LIMITED

Plaintiffs

-and-

HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM  
INDUSTRIES (1995), INC., DOMFOAM INTERNATIONAL, INC., THE  
CARPENTER CO., CARPENTER CANADA CO., WOODBRIDGE FOAM  
CORPORATION, FLEXIBLE FOAM PRODUCTS, INC., FOAMEX  
INNOVATIONS, INC., FUTURE FOAM, INC., LEGGETT & PLATT, INC.,  
VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM, INC., DEAN  
BRAYIANNIS, BRUCE SCHNEIDER, ROBERT MACGEE  
and MICHAEL LAJAMBE

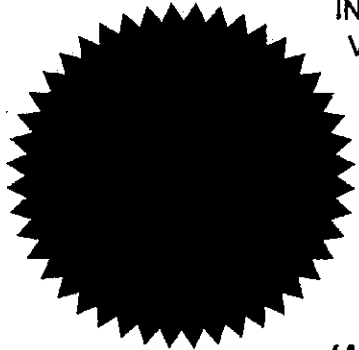
Defendants

Proceeding Under the *Class Proceedings Act, 1992*

**ORDER**  
**(Approval of Domfoam Settlement Agreement – General Foam)**

**THIS MOTION** made by the Plaintiff in the Ontario General Foam Action for an Order approving the settlement agreement entered into with the defendants Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge Products Ltd. (the "Domfoam Defendants") and Dean Brayianis (the "Brayianis Defendant"; collectively the "Settling Defendants"), was heard on October 25, 2013 at the Court House, 80 Dundas Street, London, Ontario, by way of teleconference.

**ON READING** the materials filed, including the partial settlement agreement made on January 10, 2012 as between the plaintiffs, the Domfoam Defendants, the Brayianis Defendant, John Howard and Tony Vallecoccia (the "Individual Settling Parties"), Bruce Bradley, Michael Cappuccino, Pietro (Peter) Foti, Duke Greenstein, Dale Mcneill, James William Sproule, Robert Valle, and Fred Zickmantel (the "Other Individual Settling Parties") attached to this Order as **Schedule**



"A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff, the Settling Defendants, the Individual Settling Parties and the Other Individual Settling Parties (collectively the "Parties"), and counsel for the Non-Settling Defendants in the Ontario General Foam Action;

**AND ON BEING ADVISED** that the Parties consent to this Order and on hearing submissions from counsel for the non-settling defendants:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement and the definitions set out in the Order of Justice Leitch dated July 24, 2013 apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario General Foam Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the Plaintiff in the Ontario General Foam Action and the Ontario General Foam Settlement Class.
5. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario General Foam Settlement Class who does not validly opt out of the Ontario General Foam Action shall consent and shall be deemed to have consented to the discontinuance as against the Domfoam Defendants of any Other Actions he, she or it has commenced, without costs.
6. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario General Foam Settlement Class who does not validly opt out of the Ontario General Foam Action shall consent and shall be deemed to have consented to the dismissal as against the Brayianis Defendant and the other Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario General Foam Settlement Class who does not validly opt out of the Ontario General Foam Action shall be and is hereby discontinued against the Domfoam Defendants, without costs.

8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario General Foam Settlement Class who does not validly opt out of the Ontario General Foam Action shall be and is hereby dismissed against the Brayianis Defendant and the other Releasees, without costs and with prejudice.
9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario General Foam Settlement Class who does not validly opt out of the Ontario General Foam Action including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario General Foam Action.
10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
11. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.
12. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Ontario General Foam Settlement Class members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
13. **THIS COURT ORDERS AND DECLARES** that each Ontario General Foam Settlement Class member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
14. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which

were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who validly opts out of the Ontario General Foam Action).

15. **THIS COURT ORDERS** that if, in the absence of paragraph 14 above, the Ontario Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- (a) the Ontario Plaintiff and the Ontario General Foam Settlement Class members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed coconspirators that are not Releasees that portion of any damages (including punitive damages, if any) restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the Ontario General Foam Action or otherwise;
- (b) the Ontario Plaintiff and the Ontario General Foam Settlement Class members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario General Foam Action that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario General Foam Action that are not Releasees, only those claims for damages, costs and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario General Foam Action that are not Releasees to the Ontario Plaintiff and the Ontario General Foam Settlement Class members, if any, and, for greater certainty, the Ontario General Foam Settlement Class members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario General Foam Action who are not Releasees, to the extent provided by law; and
- (c) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario General Foam Action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be

determined as if the Releasees are parties to the Ontario General Foam Action and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario General Foam Action and shall not be binding on the Releasees in any other proceedings.

16. **THIS COURT ORDERS** that if, in the absence of paragraph 14 hereof, the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the Ontario General Foam Action.
17. **THIS COURT ORDERS** that this Order is without prejudice to the right of the Non-Settling Defendants to assert in this action that the Domfoam Defendants should be treated as Releasees for the purposes of paragraphs 15 and 16 herein, and to the right of the other Parties to oppose this assertion. Nothing in this paragraph 17 shall amend the definition of Releasees for the purpose of this Order and this Settlement Agreement or shall otherwise detract or derogate from the rights of the Domfoam Defendants and the Individual Settling Parties under this Order and this Settlement Agreement.
18. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Ontario Court determined as if the Brayianis Defendant remained a party to the Ontario General Foam Action, and on at least ten (10) days' notice to counsel for the Brayianis Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
  - (a) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure*, O.Reg. 194, from the Brayianis Defendant;
  - (b) oral discovery of the Brayianis Defendant, the transcript of which may be read in at trial;
  - (c) leave to serve a request to admit on the Brayianis Defendant in respect of factual matters; and/or

- (d) production of the Brayianis Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
19. **THIS COURT ORDERS** that the Brayianis Defendant retains all rights to oppose such motion(s) brought under paragraph 18. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 18, the Ontario Court may make such orders as to costs and other terms as it considers appropriate.
20. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 18 above on the Brayianis Defendant by service on counsel of record for the Brayianis Defendant in the Ontario General Foam Action.
21. **THIS COURT ORDERS** that for greater certainty, nothing in this Order shall be construed to limit or derogate the ability of the Non-Settling Defendants to seek discovery as against the Individual Settling Parties as non-parties to the Ontario General Foam Action under the Ontario *Rules of Civil Procedure*.
22. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role, and the Domfoam Defendants and the Brayianis Defendant acknowledge the jurisdiction of the Ontario Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.
23. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Ontario General Foam Settlement Class member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the Ontario General Foam Action.
24. **THIS COURT ORDERS** that, notwithstanding the terms of section 4.5(23) of the Settlement Agreement, in the event that:
- (a) the Plaintiffs allege a material breach by one or more of the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties (a "Non-Cooperating Party" or the "Non-Cooperating Parties") of their obligations under section 4.5 of the Settlement Agreement;
  - (b) the Plaintiffs apply to the Ontario Court for specific performance of such obligations by the Non-Cooperating Party or Parties;

- (c) the Ontario Court finds that the Non-Cooperating Party or Parties have materially breached section 4.5 of the Settlement Agreement and orders specific performance (the "Cooperation Performance Order"); and
- (d) the Non-Cooperating Party or Parties fail to comply with the Cooperation Performance Order;

the Settlement Agreement shall not be terminated as to the Non-Cooperating Party or Parties.

- 25. **THIS COURT ORDERS** that the Domfoam Defendants and the Brayianis Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
- 26. **THIS COURT ORDERS** that the Settlement Amount, plus any accrued interest, be held in trust by the Escrow Agent, subject to the Trust Agreement made as of February 15, 2013, for the benefit of the Ontario General Foam Settlement Class, pending further order of the Courts.
- 27. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the B.C. Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved the Quebec Court and the B.C. Court.
- 28. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario General Foam Action be and is hereby discontinued against the Domfoam Defendants without costs and with prejudice.
- 29. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario General Foam Action be and is hereby dismissed against the Brayianis Defendant without costs and with prejudice.

Date: February 26, 2014

  
THE HONOURABLE JUSTICE LEITCH

ENTERED AT WINDSOR	
In Book No.	25
re Document No.	338
on	March 20 14
by	SL



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**CANADIAN POLYURETHANE FOAM CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

Made as of January 10, 2012

Between

**“HI! NEIGHBOR” FLOOR COVERING CO. LIMITED, MAJESTIC MATTRESS MFG.  
LTD, TRILLIUM PROJECT MANAGEMENT LTD., OPTION CONSOMMATEURS  
and KARINE ROBILLARD**

(the “Plaintiffs”)

and

**DOMFOAM INTERNATIONAL, INC., VALLE FOAM INDUSTRIES (1995) INC.,  
A-Z SPONGE & FOAM PRODUCTS LTD.**

(the “Domfoam Defendants”)

and

**DEAN BRAYIANNIS**

(the “Brayiannis Defendant”)

and

**BRUCE BRADLEY, MICHAEL CAPPUCCINO, PIETRO (PETER) FOTI,  
DUKE GREENSTEIN, JOHN HOWARD, DALE MCNEILL,  
JAMES WILLIAM SPROULE, ROBERT VALLE,  
TONY VALLECOCCIA and FRED ZICKMANTEL**

(the “Individual Settling Parties”)

## TABLE OF CONTENTS

	Page
<b>SECTION 1 – DEFINITIONS .....</b>	<b>7</b>
<b>SECTION 2 - SETTLEMENT APPROVAL .....</b>	<b>18</b>
2.1 Best Efforts .....	18
2.2 Motions for Approval from Restructuring Court.....	19
2.3 Motions to Approve the Notice of Approval Hearings.....	19
2.4 Motions for Certification/Authorization and for Approval of the Settlement .....	19
2.5 Pre-Motion Confidentiality .....	20
2.6 Sequence of Motions.....	20
<b>SECTION 3 - SETTLEMENT EFFECT .....</b>	<b>21</b>
3.1 Settlement Has Continuing Effect in Event of Creditor Protection.....	21
<b>SECTION 4 – SETTLEMENT BENEFITS .....</b>	<b>23</b>
4.1 Payment of Settlement Amount .....	23
4.2 Assignment of Certain Claims relating to the U.S. Urethane Settlement .....	24
4.3 No Further Settlement Payments, Transfers or Assignments .....	25
4.4 Taxes and Interest .....	25
4.5 Cooperation – Scope of Cooperation.....	26
<b>SECTION 5– DISTRIBUTION OF THE SETTLEMENT AMOUNT,     ASSIGNMENT PROCEEDS, AND ACCRUED INTEREST .....</b>	<b>42</b>
5.1 Distribution Protocol.....	42
5.2 No Responsibility for Administration or Fees .....	43
<b>SECTION 6 – OPTING OUT .....</b>	<b>43</b>
6.1 Procedure for Opting Out.....	43
6.2 Opt Out Report.....	44
6.3 Right to Terminate Based on Opt Outs.....	45
<b>SECTION 7 - RELEASES AND DISMISSALS .....</b>	<b>45</b>
7.1 Release of Releasees .....	45
7.2 Covenant Not To Sue.....	45
7.3 No Further Claims.....	45
7.4 Discontinuance of Proceedings against the Domfoam Defendants .....	46
7.5 Discontinuance of Other Actions against the Domfoam Defendants .....	46
7.6 Tolling of Limitation Periods as against the Domfoam Defendants.....	47

**TABLE OF CONTENTS**  
**(Continued)**

	<b>Page</b>
7.7 Dismissal of the Ontario Proceedings against the Brayiannis Defendant.....	47
7.8 Dismissal of Other Actions against the Releasees.....	47
7.9 Impact of Discontinuance and Dismissals .....	48
7.10 Releases and Covenants Not to Sue.....	48
<b>SECTION 8 - BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS .....</b>	<b>49</b>
8.1 British Columbia and Ontario Bar Orders .....	49
8.2 Quebec Waiver or Renunciation of Solidarity Order .....	50
8.3 Material Term .....	52
<b>SECTION 9 – EFFECT OF SETTLEMENT.....</b>	<b>52</b>
9.1 No Admission of Liability .....	52
9.2 Agreement Not Evidence.....	53
9.3 No Further Litigation.....	53
<b>SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY .....</b>	<b>54</b>
10.1 Settlement Class and Common Issue.....	54
10.2 Certification or Authorization Without Prejudice in the Event of Termination.....	54
<b>SECTION 11 – NOTICE TO SETTLEMENT CLASS.....</b>	<b>54</b>
11.1 Notice Required .....	54
11.2 Form, Publication and Distribution of Notice.....	55
11.3 Notice of Distribution .....	55
<b>SECTION 12 – ADMINISTRATION AND IMPLEMENTATION .....</b>	<b>55</b>
12.1 Mechanics of Administration.....	55
12.2 Information and Assistance.....	56
<b>SECTION 13 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES.....</b>	<b>56</b>

**TABLE OF CONTENTS**  
**(Continued)**

	<b>Page</b>
<b>SECTION 14 - TERMINATION OF SETTLEMENT AGREEMENT .....</b>	<b>57</b>
14.1 Right of Termination.....	57
14.2 If Settlement Agreement is Terminated.....	60
14.3 Allocation of Monies in the Trust Account Following Termination .....	62
14.4 Survival of Certain Releases Following Termination.....	63
14.5 Survival of Provisions after Termination.....	64
<b>SECTION 15 - MISCELLANEOUS .....</b>	<b>64</b>
15.1 Releasees Have No Liability for Administration.....	64
15.2 Motions for Directions.....	65
15.3 Headings, etc.....	65
15.4 Computation of Time.....	65
15.5 Ongoing Jurisdiction.....	66
15.6 Governing Law .....	67
15.7 Entire Agreement .....	67
15.8 Amendments .....	67
15.9 Binding Effect.....	67
15.10 Counterparts.....	68
15.11 Negotiated Agreement .....	68
15.12 Language.....	68
15.13 Transaction.....	69
15.14 Recitals.....	69
15.15 Schedules .....	69
15.16 Acknowledgements.....	69
15.17 Authorized Signatures.....	70
15.18 Notice.....	70
15.19 Date of Execution .....	73

**CANADIAN POLYURETHANE FOAM CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

**RECITALS**

A. WHEREAS the Ontario Plaintiffs and the B.C. Plaintiffs have respectively commenced the Ontario Proceedings and the B.C. Proceedings which allege that the Defendants, including the Domfoam Defendants, participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and common law;

B. AND WHEREAS the Ontario Plaintiffs have named the Brayianis Defendant, an employee of the Domfoam Defendants, as an individual defendant in the Ontario Proceedings;

C. AND WHEREAS the Quebec Plaintiffs have commenced the Quebec Proceeding which alleges that one Defendant and other unnamed co-conspirators participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act* and the civil law, but whereas the Quebec Plaintiffs have not pleaded the Domfoam Defendants or the Brayianis Defendant as named parties to the Quebec Proceeding;

D. AND WHEREAS the Domfoam Defendants believe that they are not liable in respect of the claims as alleged in the Proceedings, and whereas the Domfoam Defendants believe that they have good and reasonable grounds to oppose certification/authorization of the Proceedings as class proceedings and have good and reasonable defences in respect of the merits of the Proceedings;

E. AND WHEREAS the Domfoam Defendants assert that they would actively pursue and vindicate their defences in respect of certification/authorization and the merits during the course of the certification/authorization process, during the course of

discovery and during the course of trial if the Plaintiffs continued the Proceedings against them in the respective Courts;

F. AND WHEREAS the Domfoam Defendants are currently facing very difficult financial circumstances and are currently operating in a precarious and unprofitable financial position, and whereas the Domfoam Defendants intend to file for creditor protection and/or insolvency relief in Canada and/or the U.S. in the near future, including but not limited to a filing under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or under related legislation in Canada and/or the U.S.;

G. AND WHEREAS in light of the anticipated filing by the Domfoam Defendants for creditor protection and/or insolvency relief in Canada and/or the U.S., the Plaintiffs and Class Counsel have determined that it is in the best interests of the Settlement Class to reach a resolution with the Domfoam Defendants whereby the Proceedings will be discontinued without prejudice as against the Domfoam Defendants, whereby the Plaintiffs and the Settlement Class Members will preserve their rights to assert claims in respect of the Domfoam Defendants in the Restructuring Process, whereby the Plaintiffs and the Settlement Class Members will secure access to cooperation and discovery from the Domfoam Defendants and whereby the Plaintiffs and the Settlement Class Members will otherwise preserve their rights to pursue full joint and several liability as against the Non-Settling Defendants in the ongoing Proceedings;

H. AND WHEREAS in addition, the Plaintiffs and Class Counsel have determined that there would be substantial benefits for the Settlement Class in securing access to cooperation from the Brayiannis Defendant and the Individual Settling Parties who are current and/or former officers, employees and agents of the Domfoam Defendants, and whereas the Plaintiffs and Class Counsel have determined that it is in the best interests of the Plaintiffs and the Settlement Class to reach a resolution with the Brayiannis Defendant and the Individual Settling Parties as part of a settlement with the Domfoam Defendants;

I. AND WHEREAS, despite their belief that they have good and reasonable grounds to oppose certification/authorization of the Proceedings as class proceedings, and have good and reasonable defences in respect of the merits, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and to achieve a resolution of all claims asserted or which could have been asserted against them by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy involving the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, subject to the preservation of certain ongoing rights of the Plaintiffs and the Settlement Class Members in respect of the discontinuance as against the Domfoam Defendants and in respect of the Restructuring Process as specifically set out in this Settlement Agreement;

J. AND WHEREAS as part of this resolution, the Domfoam Defendants have agreed to cooperate with the Plaintiffs and Class Counsel by providing truthful information (to the extent that such information is in the possession, custody or control of the Domfoam Defendants and/or is accessible to the Domfoam Defendants following a filing for creditor protection and/or insolvency protection in Canada or in the U.S.) related to the sale and distribution of Foam Products in Canada and/or the claims that have been asserted by the Plaintiffs and Class Counsel against the Non-Settling Defendants and other named or unnamed co-conspirators in the Proceedings;

K. AND WHEREAS, as part of this resolution, certain of the Individual Settling Parties, namely the Contributing Individual Settling Parties, have agreed to make a settlement payment for the benefit of the Settlement Class in exchange for a full and final release, in light of their potential risks of personal liability as residents of Canada that are subject to the jurisdiction of the Courts, the risks inherent in uncertain, complex and protracted litigation, and to avoid the further expense, inconvenience, and burden of this litigation, on the condition that the Individual Settling Parties receive a full and final release of all claims asserted or which could have been asserted against them by the

Plaintiffs on their own behalf and on behalf of the classes they seek to represent in the Proceedings;

L. AND WHEREAS, as part of this resolution, the Brayianis Defendant and the Individual Settling Parties have agreed to cooperate with the Plaintiffs and Class Counsel by providing truthful information related to the sale and distribution of Foam Products in Canada and/or the claims that have been asserted by the Plaintiffs and Class Counsel against the Non-Settling Defendants and other named or unnamed co-conspirators in the Proceedings;

M. AND WHEREAS, as part of this resolution, in recognition of the existence of certain notice costs related to the implementation of this Settlement Agreement, the Domfoam Defendants have agreed to assign their potential interest in respect of certain limited and future distribution proceeds arising from a claim of the Domfoam Defendants in connection with the U.S. Urethane Proceedings up to a fixed maximum amount, on the understanding that any and all risk related to the validity or enforceability of such assignment or the collectability of such proceeds shall be borne entirely by the Plaintiffs and/or the Settlement Class and any failure of the assignment or any inability to recover such proceeds shall not give rise to any right of termination under this Settlement Agreement;

N. AND WHEREAS counsel for the Domfoam Defendants, counsel for the Brayianis Defendant, counsel for the Individual Settling Parties and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

O. AND WHEREAS as a result of these settlement discussions and negotiations, the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of the Courts;



P. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed discontinuance of proceedings against the Domfoam Defendants, the implications of a filing by the Domfoam Defendants for creditor protection and/or insolvency relief, the value of the Settlement Amount to be paid by the Individual Settling Parties, the potential value of the Assignment, the value of cooperation to be provided by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals and the risks associated with recovery and collectability of any potential judgment, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent in the Proceedings;

Q. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the significant value of the cooperation of the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree to render or make available to the Plaintiffs and/or Class Counsel as "first-in" settling defendants at an early stage of these Proceedings pursuant to this Settlement Agreement, as well as the attendant litigation and other risks in light of the potential defences that may be asserted by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties and the anticipated filing by the Domfoam Defendants for creditor protection and/or insolvency relief in Canada and/or the U.S.;

R. AND WHEREAS the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties are entering into this Settlement Agreement in order to achieve a nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs and the classes that they seek to represent in the Proceedings in the Courts in respect of this matter, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

S. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without any admission of liability, all of the Proceedings as against the Domfoam Defendants and the Brayianis Defendant and any potential claims against the Individual Settling Parties relating to these Proceedings;

T. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings;

U. AND WHEREAS the Quebec Plaintiffs shall amend the Quebec Proceeding to name the Domfoam Defendants as Defendants in the Quebec Proceeding;

V. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the B.C. and Ontario Plaintiffs have agreed to consent to a discontinuance of the B.C. and Ontario Proceedings as against the Domfoam Defendants, and the Quebec Plaintiffs have agreed to the settlement out of court of the Quebec Proceeding with the Domfoam Defendants subject to the terms of this Settlement Agreement and subject to the Final Orders;

W. AND WHEREAS for the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Ontario Plaintiffs have agreed to consent to a dismissal of the Ontario Proceedings as against the Brayianis Defendant in the Ontario Courts;

X. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in the respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the B.C. and Ontario Proceedings shall be discontinued without prejudice as to the Domfoam Defendants, shall be settled with prejudice as to the Brayianis Defendant and the Individual Settling Parties, without

costs as to the Plaintiffs, the classes they seek to represent, the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties, and that the Quebec Proceeding shall be settled out of court and without costs, subject to the approval of the Courts, on the following terms and conditions:

## **SECTION 1 – DEFINITIONS**

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) ***Administration Expenses*** mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices, the Escrow Agent, the Opt Out Administrator, the opt out process and claims administration but excluding Class Counsel Fees.
- (2) ***Approval Hearings*** mean the hearings to approve the motions brought by Class Counsel before each of the Courts for orders:
  - (a) certifying or authorizing the Proceedings as class proceedings in accordance with the *Ontario Class Proceedings Act*, the *B.C. Class Proceedings Act* and the *Quebec Code of Civil Procedure*; and
  - (b) approving the settlement provided for in this Settlement Agreement in accordance with the *Ontario Class Proceedings Act*, the *B.C. Class Proceedings Act* and the *Quebec Code of Civil Procedure*.
- (3) ***Assignment*** means an assignment, in the form executed and attached hereto as Schedule “C”, whereby the Domfoam Defendants shall absolutely and unconditionally assign and transfer to the Plaintiffs, in trust for the Settlement Class, any potential right, title and interest that the Domfoam Defendants, or any one or more of them, may have in respect of the potential distribution proceeds arising from the U.S. Urethane Settlement as a result of a claim or claims that any

Domfoam Defendants have filed or may file as part of the U.S. Urethane Settlement that has been approved by the U.S. Courts as of the Execution Date, provided that any such assignment shall be strictly limited to a maximum amount or sum of the first two hundred thousand Canadian dollars (CAD \$200,000) that any Domfoam Defendants may receive as distribution proceeds as part of the U.S. Urethane Settlement.

- (4) ***Bankruptcy and Insolvency Act*** means the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3.
- (5) ***Brayiannis Defendant*** means Dean Brayianis.
- (6) ***B.C. Class Counsel*** means Branch MacMaster LLP and Camp Fiorante Matthews Mogerman.
- (7) ***B.C. Class Proceedings Act*** means the *Class Proceedings Act*, RSBC 1996, c. 50.
- (8) ***B.C. Court*** means the British Columbia Supreme Court.
- (9) ***B.C. Plaintiffs*** mean Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd.
- (10) ***B.C. Proceedings*** mean the proceedings commenced by Majestic Mattress Mfg. Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. VLC-S-S-106362, filed on September 24, 2010, and by Trillium Project Management Ltd. in the form of a Notice of Civil Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. S-106213, filed on September 15, 2010.
- (11) ***B.C. Settlement Class*** means: all Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons.
- (12) ***B.C. Settlement Class Members*** mean: all Persons included in the B.C. Settlement Class who do not validly opt out of the B.C. Proceedings.

- (13) ***Canadian Polyurethane Foam Class Actions National Settlement*** means the national settlement contemplated by this Settlement Agreement.
- (14) ***Claims Administrator*** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims process, in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (15) ***Class Counsel*** means B.C. Class Counsel, Quebec Class Counsel and Ontario Class Counsel who act as class counsel in the Proceedings.
- (16) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, HST and/or GST, and other applicable taxes or charges of Class Counsel.
- (17) ***Common Issue*** in each Proceeding means: Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?
- (18) ***Companies' Creditors Arrangement Act*** means the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended.
- (19) ***Competition Act*** means the *Competition Act*, RSC 1985, c. C-34, as amended.
- (20) ***Confidential Opt Out Agreement*** means the confidential agreement which sets out the Confidential Opt-Out Threshold.
- (21) ***Confidential Opt Out Threshold*** means a threshold in respect of Opt Outs as agreed upon by the Plaintiffs and the Domfoam Defendants in a separate document delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (22) ***Confidentiality Order*** means any order with respect to confidentiality or the sealing of information that is issued by the Ontario Court, the Quebec Court

and/or the B.C. Court, and any amendments thereto, and any other confidentiality order and undertaking relating to the Proceedings.

- (23) ***Contributing Individual Settling Parties*** mean John Howard, Robert Valle, Tony Vallecoccia and Fred Zickmantel.
- (24) ***Courts*** mean the Ontario Court, the Quebec Court and the B.C. Court.
- (25) ***Defendants*** mean the individuals and entities named as defendants in the Proceedings as set out in Schedule "A", as well as any named or unnamed co-conspirator who may be added as a defendant in the Proceedings in the future.
- (26) ***Distribution Protocol*** means the plan developed by Class Counsel for holding or distributing the Settlement Proceeds and accrued interest, in whole or part, for or to Settlement Class Members, as approved by the Courts which may, if directed by the Courts, permit the Plaintiffs and Class Counsel to use the Settlement Proceeds for the continued prosecution of the Proceedings or to protect against adverse costs awards, or require the Settlement Proceeds to be held in trust until the resolution of the Proceedings, in whole or in part.
- (27) ***Documents*** mean all papers, computer or electronic records, or other materials within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.
- (28) ***Domfoam Defendants*** means Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd.
- (29) ***Effective Date*** means the date when (i) the Final Orders have been received from all the Courts approving this Settlement Agreement, and (ii) the Opt Out Deadline has expired and any rights to terminate this Settlement Agreement under section 6.3 of this Settlement Agreement have expired.
- (30) ***Escrow Agent*** means the Person reasonably agreed to by the Domfoam Defendants and Class Counsel to hold and administer the Trust Account.

- (31) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest, the Domfoam Defendants and the Individual Settling Parties, and the legal representatives, heirs, successors and assigns of each of the foregoing, any judge of a Court who has heard or will hear any motion or application in respect of the Proceedings and his or her immediate family.
- (32) ***Execution Date*** means the date that this Settlement Agreement is executed by all parties as indicated on the cover page of this Settlement Agreement.
- (33) ***Final Order*** means a final order, judgment or equivalent decree entered by a Court in respect of the certification or authorization of a Proceeding as a class proceeding for the purposes of this settlement and/or the approval of this Settlement Agreement and implementing it in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the order, judgment or equivalent decree upon a final disposition of all appeals.
- (34) ***Foam Products*** mean polyurethane foam and any and all products that contain polyurethane foam.
- (35) ***Individual Settling Parties*** mean the Contributing Individual Settling Parties and Bruce Bradley, Michael Cappuccino, Pietro (Peter) Foti, Duke Greenstein, Dale McNeill and James William Sproule.
- (36) ***ISP Release Payment*** means the amount of 20% of the Plaintiffs' purchases of polyurethane foam from the Domfoam Defendants in Canada during the Settlement Class Period, to a maximum of six hundred thousand Canadian dollars (CAD \$600,000).
- (37) ***Non-Settling Defendant*** means a Defendant in the Proceedings that is not a Domfoam Defendant or a Brayianis Defendant.

- (38) ***Notice of Approval Hearings*** mean the form or forms of notice, reasonably agreed to by the Plaintiffs, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this Settlement Agreement; and (ii) the dates and locations of the Approval Hearings.
- (39) ***Notice of Certification and Settlement Approval*** means the form or forms of notice, reasonably agreed to by the Plaintiffs, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the certification or authorization of the Proceedings as class proceedings; (ii) the approval of this Settlement Agreement by the Courts; (iii) the process for opting out of the Proceedings; (iv) the Opt Out Deadline; and (v) if applicable, the process by which Settlement Class Members may apply to obtain compensation from the Settlement Proceeds.
- (40) ***Notices*** mean the Notice of Approval Hearings, the Notice of Certification and Settlement Approval, and notice of termination.
- (41) ***Ontario Class Counsel*** means Sutts, Strosberg LLP.
- (42) ***Ontario Class Proceedings Act*** means the *Class Proceedings Act*, S.O. 1992, c. 6.
- (43) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (44) ***Ontario Plaintiff*** means “Hi! Neighbor” Floor Covering Co. Limited.
- (45) ***Ontario Proceedings*** mean the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Statement of Claim filed in the Ontario Superior Court (Windsor Registry), Court File No. CV-10-15164, filed on September 15, 2010 and the proceeding commenced by “Hi! Neighbor” Floor Covering Co. Limited by Statement of Claim filed in the Ontario Superior Court (Windsor Registry), Court File No. CV-11-17279, filed on December 30, 2011.



- (46) ***Ontario Settlement Class*** means: all Persons resident in Canada who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the B.C. Settlement Class and the Quebec Settlement Class.
- (47) ***Ontario Settlement Class Members*** mean: all Persons included in the Ontario Settlement Class who do not validly opt out of the Ontario Proceedings.
- (48) ***Opt Out*** means a member of a Settlement Class who has submitted a timely and valid written election to opt out of the Proceedings in accordance with orders of the Courts.
- (49) ***Opt Out Administrator*** means the Person proposed by Class Counsel and appointed by the Courts to receive the Opt Out Forms and report on the opt out process.
- (50) ***Opt Out Deadline*** means the date which is sixty (60) days after the date on which the Notice of Certification and Settlement Approval is first published, or such other date that has been agreed by the Parties and ordered by the Courts.
- (51) ***Opt Out Form*** means the form, to be reasonably agreed to by the Parties after the Settlement Agreement is executed, that shall be used for the purpose of implementing the opt out procedure set out in section 6 of this Settlement Agreement.
- (52) ***Other Actions*** mean actions or proceedings, other than the Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (53) ***Party and Parties*** mean the Plaintiffs, the Settlement Class Members, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties.
- (54) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative,

trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives or assignees.

- (55) ***Plaintiff or Plaintiffs*** mean “Hi! Neighbor” Floor Covering Co. Limited, Majestic Mattress Mfg. Ltd, Trillium Project Management Ltd., Option Consommateurs and Karine Robillard, individually and collectively.
- (56) ***Proceedings*** mean the B.C. Proceedings, the Ontario Proceedings and the Quebec Proceeding.
- (57) ***Proportionate Liability*** means the proportion of any judgment that, had they not settled, a Court would have apportioned to the Releasees.
- (58) ***Purchase Price*** means the purchase price actually paid by Settlement Class Members for Foam Products purchased during the Settlement Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.
- (59) ***Quebec Class Counsel*** means Belleau Lapointe.
- (60) ***Quebec Code of Civil Procedure*** means the *Code of Civil Procedure*, RSQ, c. C-25.
- (61) ***Quebec Court*** means the Superior Court of Quebec.
- (62) ***Quebec Plaintiffs*** mean Option Consommateurs and Karine Robillard.
- (63) ***Quebec Proceeding*** means the proceeding commenced by Karine Robillard in the form of a motion for authorization to institute a class proceeding (Requête pour autorisation d’exercer un recours collectif) in the Quebec Court, Court File No. 500-06-000524-104, filed on October 1, 2010.
- (64) ***Quebec Settlement Class*** means: all Persons resident in Quebec who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and any legal person established for a private interest, partnership or

association which at any time between October 1, 2009 and October 1, 2010 had under its direction or control more than 50 persons bound to it by contract of employment or that is not dealing at arm's length with Option Consommateurs or Karine Robillard.

- (65) ***Quebec Settlement Class Members*** mean: all Persons included in the Quebec Settlement Class who do not validly opt out of the Quebec Proceeding.
- (66) ***Released Claims*** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from January 1, 1999 to the date hereof in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, Foam Products, or relating to any conduct alleged (or which could have been alleged) in the Proceedings or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada and including, without limitation, any claim for harm, damage or other relief in connection with oppressive or wrongful conduct under federal or provincial corporate statutes or at common or civil law arising from or in connection with

any unlawful horizontal or vertical anti-competitive conduct alleged (or which could have been alleged) in the Proceedings or the Other Actions. For greater certainty, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, breach of warranty or similar claims between the Parties relating to Foam Products.

- (67) **Releasees** mean, jointly and severally, individually and collectively, the Individual Settling Parties and the Brayianis Defendant together with the present and former officers, directors, employees, managers, members, partners, agents, shareholders (in their capacity as shareholders, whether as direct or indirect shareholders), attorneys, trustees, servants and legal representatives of the Domfoam Defendants, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding the Domfoam Defendants and excluding the Non-Settling Defendants. For greater certainty, the term Releasees as defined for purposes of this Settlement Agreement shall include Global Upholstery Co. Limited and Valdomco Ltd., both of which are shareholders of Domfoam International Inc.
- (68) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members on behalf of themselves and any Person claiming by or through them as a present or former, direct or indirect parent, subsidiary, division, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or legal representative of any kind.
- (69) **Restructuring Court** means the Ontario Court that is appointed to oversee the Restructuring Process in Canada.
- (70) **Restructuring Process** means the process associated with the filing and implementation for creditor protection and/or insolvency relief in Canada and/or in the U.S., including but not limited to the process of filing a claim as a creditor under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S..

- (71) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (72) **Settlement Amount** means the sum of one million two hundred and twenty-six thousand Canadian dollars (CAD \$1,226,000).
- (73) **Settlement Class** means all Persons included in the Ontario Settlement Class, the Quebec Settlement Class and the B.C. Settlement Class.
- (74) **Settlement Class Members** mean the Ontario Settlement Class Members, Quebec Settlement Class Members and B.C. Settlement Class Members.
- (75) **Settlement Class Period** means the period from January 1, 1999 to the Execution Date.
- (76) **Settlement Proceeds** mean the Settlement Amount and any proceeds from the Assignment.
- (77) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of the Escrow Agent for the benefit of Settlement Class Members.
- (78) **U.S. Plaintiff** means the plaintiffs in the U.S. Proceedings.
- (79) **U.S. Proceedings** mean the class action proceedings pending before the United States District Court for the Northern District of Ohio under the caption *In re Polyurethane Foam Antitrust Litigation*, Master File No.: 10-MLS-2196 (JZ), MDL No. 2196, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to Foam Products that are pending or that may be commenced before the federal or state courts of the U.S.
- (80) **U.S. Settlement** means the settlement of any direct purchaser class actions in the U.S. Proceedings, the settlement of any indirect purchaser class actions in the

U.S. Proceedings, the settlement of any direct purchaser actions or opt out actions and any other settlement of the U.S. Proceedings.

- (81) ***U.S. Urethane Proceedings*** mean the class action proceedings pending before the United States District Court for the District of Kansas under the caption *In re Urethane Antitrust Litigation*, Master File No.: 04-MD-01616-JWL, MDL No. 1616, and including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions involving similar allegations relating to urethane products that are pending or that may be commenced before the federal or state courts of the U.S.
- (82) ***U.S. Urethane Settlement*** means the settlement of any direct purchaser class actions in the U.S. Urethane Proceedings and/or the settlement of any indirect purchaser class actions in the U.S. Urethane Proceedings that exists as of the Execution Date.

## **SECTION 2 - SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

(1) The Parties shall respectively take all reasonable steps to expeditiously effectuate this settlement and to secure the prompt discontinuance of the Proceedings as against the Domfoam Defendants, including cooperating in the Domfoam Defendants' efforts to obtain any approvals required by the Restructuring Court regarding the approval and implementation of this Settlement Agreement, and cooperating in the Plaintiffs' efforts to obtain any approval or orders required from the Courts regarding the approval or implementation of the Settlement Agreement, including orders certifying the Settlement Class for settlement purposes and approving the form and distribution of the Notices contemplated by section 11 of this Settlement Agreement.

(2) Following the Execution Date and prior to, or in conjunction with, the motions contemplated by section 2.3 of this Settlement Agreement, the Quebec Plaintiffs shall

amend the Quebec Proceeding to name the Domfoam Defendants as defendants to the Quebec Proceeding.

## **2.2 Motions for Approval from Restructuring Court**

At a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs and/or the Domfoam Defendants shall bring any motions before the Restructuring Court which are reasonably necessary to obtain an order permitting the obtaining of approval and implementation of this Settlement Agreement. The Domfoam Defendants shall cooperate with the Plaintiffs in respect of any such motions and in respect of obtaining any such relief from the Restructuring Court.

## **2.3 Motions to Approve the Notice of Approval Hearings**

(1) Following receipt of any orders referred to in section 2.2 or in the event such relief is not required from the Restructuring Court, at a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs shall bring motions before each of the Courts for orders approving the Notice of Approval Hearings described in section 11.1.

(2) The British Columbia, Quebec and Ontario orders approving the Notice of Approval Hearings shall be in the form reasonably agreeable to the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties.

## **2.4 Motions for Certification/Authorization and for Approval of the Settlement**

(1) As soon as practicable after the orders referred to in section 2.3 are granted, after the Notice of Approval Hearings has been published, the Plaintiffs shall bring motions before each of the Courts for orders certifying or authorizing the Proceedings commenced in their respective jurisdictions as a class proceeding for settlement purposes and for orders approving this Settlement Agreement.

(2) The Ontario order approving this Settlement Agreement referred to in section 2.4(1) shall be in the form attached hereto as Schedule "B1" except that paragraphs 2, 4,

5, 6, 7, 12, 13, 14, 15, 16, 23, 24, 25, 26, 27, 28, 31, 32, 33 and 34 of the Ontario order need only be substantially in the form set out in Schedule "B1".

(3) The Quebec and British Columbia orders approving the Settlement Agreement referred to in section 2.4(1) shall be in the form attached hereto respectively in Schedules "B2" and "B3", except that paragraphs 1, 2, 3, 4, 5, 6, 9, 10, 11, 15, 24, 25, 26, 28 and 29 of the Quebec order and paragraphs 2, 4, 5, 6, 7, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 29, 30, 31, 32 and 35 of the British Columbia order need only be substantially in the form set out in Schedules "B2" and "B3". The Quebec and British Columbia orders shall mirror the substance and, where possible, the form of the Ontario order.

(4) The failure of any Court to approve the content of the orders as contemplated herein shall give rise to a right of termination by the Domfoam Defendants and/or any or all of the Individual Settling Parties pursuant to section 14 of this Settlement Agreement.

## **2.5 Pre-Motion Confidentiality**

Until the Plaintiffs serve and file the materials for the first of the motions required by sections 2.2 and/or 2.3, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Domfoam Defendants, the Individual Settling Parties and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law. Once the first of the motions required by section 2.2 has been brought, the Parties shall otherwise remain subject to the other provisions of this Settlement Agreement governing confidentiality, including without limitation the provisions of the Confidential Schedule "C" and the Confidential Opt Out Agreement.

## **2.6 Sequence of Motions**

(1) The Plaintiffs in Quebec and British Columbia shall not proceed with the respective hearings of the motions to approve the Notice of Approval Hearings unless and until the Ontario Court approves the Notice of Approval Hearings. The motions to



approve the Notice of Approval Hearings may be filed in Quebec and British Columbia, but, if necessary, Quebec Class Counsel and B.C. Class Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision in respect of the approval of the Notice of Approval Hearings. The Domfoam Defendants may agree to waive this provision.

(2) The Plaintiffs in Quebec and British Columbia shall not proceed with the respective hearings of motions to certify and/or authorize the Quebec and B.C. Settlement Class and approve this Settlement Agreement unless and until the Ontario Court certifies the Ontario Settlement Class and approves the Settlement Agreement. The approval motions may be filed in Quebec and British Columbia, but, if necessary, Quebec Class Counsel and B.C. Class Counsel will seek an adjournment of their hearings to permit the Ontario Court to render its decision in respect of certification of the Ontario Settlement Class and approval of the Settlement Agreement. The Domfoam Defendants may agree to waive this provision.

(3) Notwithstanding section 2.6 of this Settlement Agreement, in the event that the Plaintiffs and Domfoam Defendants reasonably agree and the Courts determine that it is appropriate to conduct coordinated or simultaneous Approval Hearings in respect of the Proceedings before each of the Courts, the motions to approve the Notice of Approval Hearings and/or the motions to certify and/or authorize the Settlement Class and approve this Settlement Agreement may be heard in a coordinated or simultaneous manner by the Courts.

### **SECTION 3 - SETTLEMENT EFFECT**

#### **3.1 Settlement Has Continuing Effect in Event of Creditor Protection**

(1) In the event that the Domfoam Defendants file for and/or obtain any form of creditor protection and/or insolvency relief in Canada and/or the U.S., including but not limited to a filing or granting of protection under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation, the Parties agree that this Settlement Agreement shall remain in full effect. For greater certainty, the existence of such a filing or the granting of creditor protection

in favour of the Domfoam Defendants shall not give rise to any right of termination by any Party under section 14 of this Settlement Agreement provided the Domfoam Defendants are not otherwise in breach of this Settlement Agreement.

(2) Notwithstanding the existence of any automatic or other stay of proceedings entered or otherwise triggered by the filing for any form of creditor protection and/or insolvency relief in Canada and/or the U.S., and subject to any Order issued by the Courts or the Restructuring Court, the Parties shall fully and completely perform the terms of this Settlement Agreement, except that all motion practice, discovery rights, trial proceedings and other proceedings in the Proceedings shall be indefinitely stayed as against the Domfoam Defendants and the Brayiannis Defendant. The Domfoam Defendants and the Brayiannis Defendant shall engage their reasonable efforts to ensure that any Restructuring Process shall not impede the hearings or implementation of this Settlement Agreement, and will make any applications that are reasonably required within the Restructuring Process in order to implement this Settlement Agreement. Notwithstanding anything in this Settlement Agreement to the contrary, including but not limited to this Settlement Agreement's provisions relating to the release of the Released Claims granted by the Releasers in favour of the Releasees and the discontinuance of proceedings as against the Domfoam Defendants, nothing in this Settlement Agreement shall preclude the Plaintiffs, or any member of the Settlement Class, individually or collectively, from filing against the Domfoam Defendants a claim in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada and/or the U.S. to the extent that such claim is based upon, arising out of or relating to facts, occurrences, transactions or other matters alleged in the Proceedings. To the extent permitted by law, the Domfoam Defendants shall not object to the filing by the Plaintiffs, or any member of the Settlement Class, of any such claim against the Domfoam Defendants in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada or the U.S., and further agree that nothing in this Settlement Agreement shall in any way impair or limit such claim against the Domfoam Defendants or the ability of such claimant(s) to seek recovery in any such creditor protection, restructuring or other bankruptcy proceeding in Canada or the U.S. for any such claim(s) against the Domfoam Defendants.

(3) Notwithstanding the provisions of sections 3.1(1) and (2), the Plaintiffs, Class Counsel and the Settlement Class Members, individually or collectively, shall not be permitted to file a claim or otherwise challenge the validity, legality, or continuing effect of the release of the Released Claims granted by the Releasors in favour of the Releasees pursuant to this Settlement Agreement or the discontinuances of the Proceedings as against the Domfoam Defendants provided, however, that the Domfoam Defendants shall not rely on such release of the Released Claims and/or discontinuances as a defence to or limitation on any claim filed on behalf of Plaintiffs, Class Counsel or any Settlement Class Member in any creditor protection, restructuring, insolvency or other bankruptcy proceeding in Canada or in the U.S. as against the Domfoam Defendants, and the Domfoam Defendants covenant and agree that no such defence or limitation will be asserted against such a claim against the Domfoam Defendants. For purposes of clarity, the release of the Released Claims granted by the Releasors pursuant to this Settlement Agreement shall remain in effect in favour of the Releasees in any creditor protection, restructuring, insolvency and/or other bankruptcy proceeding in Canada and/or the U.S. or in any other proceeding in Canada, the U.S. or elsewhere, and the Releasees shall be fully entitled to assert and rely upon the release of the Released Claims as a defence to or limitation on any claim in any proceeding in Canada, the U.S. or elsewhere.

#### **SECTION 4- SETTLEMENT BENEFITS**

##### **4.1 Payment of Settlement Amount**

(1) Within thirty (30) business days of the Execution Date, the Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent for deposit into the Trust Account, in full satisfaction of the Released Claims against the Releasees.

(2) The Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent in accordance with the applicable contribution shares set out in Confidential Schedule "C" to this Settlement Agreement.

#### **4.2 Assignment of Certain Claims relating to the U.S. Urethane Settlement**

(1) On the Execution Date, and subject to any order of the Restructuring Court or the Courts, the Domfoam Defendants shall deliver the Assignment to the Escrow Agent or shall otherwise make arrangements to place the Assignment in escrow until such time as the Final Orders have been granted and the Effective Date has occurred.

(2) The Domfoam Defendants shall notify the administrator of the U.S. Urethane Settlement of the existence of the Assignment. The Parties agree that to the extent that there is a distribution of funds payable to the Domfoam Defendants prior to the Effective Date, and subject to any order of the Restructuring Court or the Courts, the Parties shall jointly request that the administrator of the U.S. Urethane Settlement forward any such funds up to the maximum amount of the Assignment to the Escrow Agent for deposit into the Trust Account. To the extent necessary or to the extent required by law, the Domfoam Defendants may seek advance directions or an order from the Restructuring Court or the Courts in respect of any such communications or requests of the administrator of the U.S. Urethane Settlement, and the Parties agree to be bound by any such directions or order from the Restructuring Court or the Courts.

(3) The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties do not make any representation, covenant or promises in respect of the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment, and the Plaintiffs and the Settlement Class shall bear any and all risk relating to the validity or enforceability of the Assignment or the collectability of the proceeds from the Assignment. In the event that the Assignment is terminated, is not approved or otherwise fails to come into effect, the Parties agree that such event shall not give rise to any right of termination under this Settlement Agreement. However, nothing in this section shall be treated as a waiver, forbearance, or abandonment of the Plaintiffs' rights and/or interests accruing under the Assignment. The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree to make reasonable efforts and provide cooperation to assist in the implementation of the Assignment.

#### **4.3 No Further Settlement Payments, Transfers or Assignments**

(1) Subject to sections 4.1 and 4.2, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall have no obligation to pay any amount in addition to the Settlement Amount or to pay, assign or transfer any amount beyond the proceeds contemplated by the Assignment, for any reason, pursuant to or in furtherance of this Settlement Agreement. For greater certainty, but without limiting the generality of the foregoing, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall have no responsibility or liability as a result of any decrease or depreciation of the value of the funds in the Trust Account or any inability or failure of the Plaintiffs to receive the proceeds contemplated by the Assignment, howsoever caused, including, but not limited to, a decrease or depreciation in the value of any investments purchased by the Escrow Agent or the Claims Administrator, or the payment of any Class Counsel Fees or any Administration Expenses.

(2) The Escrow Agent shall maintain the Trust Account as provided for in this Settlement Agreement. The Escrow Agent shall not pay out all or part of the monies in the Trust Account, nor deliver the Assignment, except in accordance with the Settlement Agreement or in accordance with an order of the Courts, and if necessary an order of the Restructuring Court, obtained on notice to the Domfoam Defendants and the Individual Settling Parties, and in any event, after all appeals related thereto have been disposed of.

#### **4.4 Taxes and Interest**

(1) Except as hereinafter provided, all interest earned on the Settlement Proceeds shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to section 4.4(3), all taxes payable on any interest which accrues on the Settlement Proceeds in the Trust Account or otherwise in relation to the Settlement Proceeds shall be the responsibility of the Settlement Class. The Escrow Agent shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Proceeds in the Trust Account, including any obligation to report taxable

income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Proceeds shall be paid from the Trust Account.

(3) The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case: (i) the applicable interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Contributing Individual Settling Parties who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Escrow Agent, and (ii) the applicable interest earned on the proceeds from the Assignment in the Trust Account or otherwise shall be paid to the Domfoam Defendants, or such other party that the Restructuring Court may direct, who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Escrow Agent or such other applicable third party that is supervising the escrow.

#### **4.5 Cooperation – Scope of Cooperation**

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Settlement Agreement, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree to provide cooperation to Class Counsel in accordance with the requirements of this section of the Settlement Agreement.

(2) The Parties respectively acknowledge and agree that all information and Documents provided by the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties or their respective counsel to Class Counsel, the Plaintiffs and the Plaintiffs' experts under this Settlement Agreement may be used by Class Counsel, the Plaintiffs and the Plaintiffs' experts in connection with the investigation, prosecution and settlements of the claims in the Proceedings including, without limitation, the prosecution of the claims in the Proceedings against the Non-Settling Defendants and

named or unnamed co-conspirators, provided that such information and Documents shall not be used directly or indirectly for any other purpose, including the prosecution of any claim against the Releasees. The Parties further acknowledge and agree that all information and Documents provided by the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties or their respective counsel to Class Counsel, the Plaintiffs, and the Plaintiffs' experts under this Settlement Agreement shall be held and treated in strict confidence in accordance with this Settlement Agreement and any applicable Confidentiality Order, and shall not be otherwise disclosed to any person in any manner, directly or indirectly, by Class Counsel, the Plaintiffs or the Plaintiffs' experts in any way for any reason except in accordance with this Settlement Agreement and any applicable Confidentiality Order or with the express prior written consent of the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties or their respective counsel. Class Counsel, the Plaintiffs and the Plaintiffs' experts shall take all reasonable steps and precautions to ensure and maintain the confidentiality of information and Documents and any related work product of Class Counsel and the Plaintiffs' experts.

(3) The cooperation that is to be provided by the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties under this Settlement Agreement shall be limited to the allegations contained in the Proceedings, including an alleged unlawful conspiracy to raise, fix, maintain or stabilize the price of Foam Products in Canada and/or to allocate markets and customers for the sale of Foam Products in Canada, contrary to Part VI of the *Competition Act*, civil and/or common law.

(4) On the Execution Date or at a later time mutually agreed upon by Class Counsel and the Domfoam Defendants, the Domfoam Defendants shall instruct counsel for the Domfoam Defendants to preserve the following Documents and to maintain a copy of such Documents that will remain in the possession of counsel for the Domfoam Defendants for the purpose of compliance by the Domfoam Defendants with section 4.3 of this Settlement Agreement: (i) all pre-existing business Documents that have been produced as of the Execution Date to any governmental authority in Canada in connection with that governmental authority's investigation of potential price-fixing

relating to the sale of Foam Products in Canada or elsewhere, and (ii) all pre-existing business Documents that have been produced as of the Execution Date to the U.S. Plaintiffs in the U.S. Proceedings as part of their discovery obligations in the U.S. Class Proceedings or as part of a U.S. Settlement and that relate to the allegations in the Proceedings.

(5) Within ten (10) days of the Execution Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

- (a) through a meeting or meetings between or among counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to be scheduled at a reasonable time and place and for a total duration that does not exceed five (5) hours in the aggregate, provide a preliminary verbal evidentiary proffer, which will include information relating to a general description of the polyurethane foam industry and information relating to participation of the Domfoam Defendants and the Individual Settling Parties in the events that are the subject matter of the Proceedings (the "Initial Proffer"). The Domfoam Defendants, the Individual Settling Parties, Class Counsel and the Plaintiffs shall reach agreement in advance with respect to the participants at the Initial Proffer, and Class Counsel and the Plaintiffs acknowledge in advance that the information that will be provided by the Domfoam Defendants and the Individual Settling Parties during the Initial Proffer shall be limited in light of the fact that the Courts have not considered nor approved Final Orders. During the course of the Initial Proffer, counsel for the Domfoam Defendants and the Individual Settling Parties may use or refer to certain Documents. Class Counsel shall be entitled to view these Documents during the Initial Proffer, but Class Counsel agree that they shall not be permitted to make or retain a copy of such Documents at such time. The Parties further agree that there shall be no audio or video recording and no written transcription or record of any statements made or information



provided by counsel for the Domfoam Defendants and the Individual Settling Parties at the Initial Proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the Initial Proffer are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings.

(6) At a reasonable time after the Execution Date, and upon reasonable advance notice, and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

(a) subject to the receipt of any necessary consent by governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, produce to Class Counsel all pre-existing business Documents produced to any governmental authority in Canada in connection with that governmental authority's investigation of potential price-fixing relating to the sale of Foam Products in Canada or elsewhere, and all pre-existing business Documents produced to the U.S. Plaintiffs in the U.S. Proceedings as part of their discovery obligations in the U.S. Proceedings or as part of a U.S. Settlement and that relate to the allegations in the Proceedings.

(7) Within thirty (30) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties and subject to the other provisions of this section, the Domfoam Defendants and the Individual Settling Parties shall:

(a) through a meeting or meetings between counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to

be scheduled at a reasonable time and place and for a total duration that does not exceed fifteen (15) hours in the aggregate, provide a verbal evidentiary proffer, which will include information relating to the allegations in the Proceedings including, without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of Foam Products in Canada (the "Second Proffer"). The Domfoam Defendants, the Individual Settling Parties, Class Counsel and the Plaintiffs shall reach agreement in advance with respect to the participants at the Second Proffer. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information provided by counsel for the Domfoam Defendants or counsel of the Individual Settling Parties at the Second Proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the Second Proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the Second Proffer are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings;

- (b) make reasonable efforts to provide existing electronic transactional data relating to sales of Foam Products during the Settlement Class Period by the Domfoam Defendants to direct purchasers that involved a billing address or a shipping address in Canada. The Domfoam Defendants represent that they are in the possession of some electronic transactional data relating to various sales of Foam Products by the Domfoam Defendants relating to Canada for part of the Settlement Class Period, which data includes Purchase Price information in respect of purchases by putative members of the Settlement Class who purchased Foam Products directly from the Domfoam Defendants during part of the Settlement Class Period. Counsel for the Domfoam

Defendants agrees to be reasonably available as necessary to respond to Class Counsel's questions regarding the set(s) of electronic transactional data produced by the Domfoam Defendants. If counsel for the Domfoam Defendants is unable to provide an adequate response to Class Counsel's questions, the Domfoam Defendants shall direct that a current employee of the Domfoam Defendants be reasonably available to Class Counsel to respond to Class Counsel's questions. The inability of the employee to respond to Class Counsel's questions or the failure of the current employee to agree to make him or herself available to or otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the Domfoam Defendants' obligations under this Settlement Agreement; and

- (c) subject to the receipt of any necessary consent by governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, produce any further Documents that fall within the description of section 4.5(6) of this Settlement Agreement and that have been identified as of the Effective Date, and make reasonable efforts to produce further pre-existing business Documents that have been identified, collected and organized by the Domfoam Defendants as of the Effective Date relating to the allegations in the Proceedings. The Domfoam Defendants represent that they have identified, collected and organized certain Documents relating to the Proceedings, but the Domfoam Defendants have not conducted or completed a comprehensive Document collection or review in light of the fact that the Proceedings remain at an early stage and discovery has not commenced in the Proceedings. The inability or failure of the Domfoam Defendants to conduct or complete a comprehensive Document collection or review as of the Effective Date shall not constitute a breach or violation of the Domfoam Defendants' obligations under this Settlement Agreement.

- (8) Within sixty (60) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual

Settling Parties, and subject to the other provisions of this section, the Brayianis Defendant and the Individual Settling Parties shall:

- (a) at the request of Class Counsel and upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, make themselves available for interviews to provide information, including Documents that are in the personal possession, power or control of the Brayianis Defendant or the Individual Settling Parties, relating to the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the Proceedings, at a location chosen by the Individual Settling Parties in their sole discretion. Each such interview shall take place on a single day and shall last no more than eight (8) hours, including reasonable breaks, except for good cause, and counsel for the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall be entitled to attend such interviews. The reasonable costs incurred by, and the reasonable expenses of, the Brayianis Defendant and the Individual Settling Parties in relation to such interviews shall be the responsibility of the Brayianis Defendant and the Individual Settling Parties. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information during such interview, and that Class Counsel may only make written notes of their own thoughts and impressions at such interviews for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The Parties agree that any such written notes and any other communications, information and Documents relating to the interview are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings.

(9) Within sixty (60) days of the Effective Date or at a time mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants shall:

- (a) at the request of Class Counsel and upon reasonable notice, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, and subject to any order of the Restructuring Court, engage reasonable efforts to make available up to three (3) current directors, officers or employees of the Domfoam Defendants (other than the Brayianis Defendant and the Individual Settling Parties) who have knowledge of the allegations in the Proceedings to provide information relating to the allegations in the Proceedings in a personal interview with Class Counsel and/or experts retained by Class Counsel in the Proceedings, at a location chosen by the Domfoam Defendants in their sole discretion or, in the alternative, if no such choice is made, at a location to be reasonably agreed between Class Counsel and the director, officer or employee being interviewed. Each such interview shall take place on a single day and shall last no more than eight (8) hours, including reasonable breaks, except for good cause, and counsel for the Domfoam Defendants and the Individual Settling Parties shall be entitled to attend such interviews. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information during such interview, and that Class Counsel may only make written notes of their own thoughts and impressions at such interviews for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Class. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such interviews shall be the responsibility of the Domfoam Defendants. The Parties agree that any such written notes and any other communications, information and Documents relating to the interview are privileged, shall be kept strictly

confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings. If any such current directors, officers or employees of the Domfoam Defendants (other than the Brayiannis Defendant or the Individual Settling Parties) refuses to provide information, or otherwise cooperate, the Domfoam Defendants shall engage their reasonable efforts to make such person available for an interview but the failure or refusal of any such current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such a failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(10) At a time following the Effective Date and to be mutually agreed upon by Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, and subject to the other provisions of this section, the Brayiannis Defendant and the Individual Settling Parties shall, at the request of Class Counsel and upon reasonable notice in circumstances where there is a reasonable necessity for the evidence of the Brayiannis Defendant and/or Individual Settling Parties in the prosecution of the Proceedings, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, make themselves reasonably available to provide evidence at trial of the Proceedings in Canada, or to be reasonably available to provide an affidavit or declaration and attend at a cross-examination in support of the certification or authorization motion in the Proceedings or in the event of a summary judgment motion brought against the Plaintiffs in the Proceedings.

(11) At a time following the Effective Date and to be mutually agreed upon by Class Counsel, the Domfoam Defendants and the Individual Settling Parties, and subject to the other provisions of this section, the Domfoam Defendants shall, at the request of Class Counsel and upon reasonable notice in circumstances where there is a reasonable necessity for the evidence of the current directors, officers or employees of the Domfoam Defendants in the prosecution of the Proceedings, and subject to any legal restrictions under any applicable domestic or foreign laws, and subject to the consent of governmental authorities in Canada or an order of the Courts overruling any objection by such governmental authorities, and subject to any order of the Restructuring Court, engage reasonable efforts to make three (3) current directors, officers or employees of the Domfoam Defendants (other than the Brayiannis Defendant and the Individual Settling Parties) who have knowledge of the allegations in the Proceedings reasonably available to provide evidence at trial of the Proceedings in Canada, or to be reasonably available to provide an affidavit or declaration and attend at a cross-examination in support of the certification or authorization motion in the Proceedings or in the event of a summary judgment motion brought against the Plaintiffs in the Proceedings. If any current director, officer or employee of the Domfoam Defendants (other than the Brayiannis Defendant or the Individual Settling Parties) refuses to cooperate under this section, the Domfoam Defendants shall engage their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Plaintiffs. The failure or refusal of any such current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(12) Subject to the rules of evidence, the other provisions of this Settlement Agreement and any Confidentiality Order, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties further agree to engage in reasonable efforts to produce acceptable affidavits or other testimony in the Proceedings from the Individual Settling Parties, the Brayianis Defendant and/or up to three (3) current directors, officers or employees of the Domfoam Defendants who are qualified to establish for admission into evidence any information or Documents produced by the Individual Settling Parties, the Brayianis Defendant and/or the Domfoam Defendants in accordance with this section of this Settlement Agreement, provided that Class Counsel, counsel for the Domfoam Defendants, counsel for the Brayianis Defendant, and counsel for the Individual Settling Parties, acting reasonably, agree that such evidence from such Individual Settling Parties, the Brayianis Defendant and/or such current directors, officers or employees of the Domfoam Defendants is reasonably necessary for the prosecution of the Proceedings and may be presented to the Courts. The reasonable costs incurred by, and the reasonable expenses of, such Individual Settling Parties, the Brayianis Defendant and/or such current directors, officers or employees of the Domfoam Defendants in relation to such cooperation shall be the responsibility of the Individual Settling Parties, the Brayianis Defendant, the Domfoam Defendants and/or the current directors, officers or employees. If any such current director, officer or employee of the Domfoam Defendants (other than the Brayianis Defendant or the Individual Settling Parties) refuses to cooperate under this section, the Domfoam Defendants shall engage their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Plaintiffs. The failure or refusal of any such current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Domfoam Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement. In the event of such failure or refusal of any specific current director, officer or employee to agree to make him or herself available or to otherwise cooperate with the Plaintiffs, the Plaintiffs may seek orders from the Ontario Court requiring such current director, officer and/or



employee to provide such information or otherwise cooperate pursuant to this Settlement Agreement.

(13) If, in the course of the Proceedings, the Plaintiffs, the Settlement Class Members and/or Class Counsel conclude that it is reasonably necessary to disclose or provide information or Documents obtained from the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties which are not otherwise publicly available to the Non-Settling Defendants or any affiliates of the Non-Settling Defendants, or to file such information or Documents in the Proceedings, and such disclosure is not otherwise prohibited by this Settlement Agreement or a Confidentiality Order, then the Plaintiffs, the Settlement Class Members and/or Class Counsel shall provide the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties with an advance written description of the information or Documents that is to be provided to the Non-Settling Defendants or their affiliates or filed with the Courts within a reasonable amount of time in advance of the proposed disclosure, in order that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may take steps to protect their interests in respect of such information or Documents in accordance with this Settlement Agreement and/or any Confidentiality Order. For greater certainty, the rights of the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties under this section are in addition to and shall not derogate from any rights that the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties may have under any Confidentiality Order relating to the Proceedings.

(14) The provisions set forth in section 4.5 of this Settlement Agreement shall constitute the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery and/or evidentiary disclosure from the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and the Releasees for the purposes of any certification and/or authorization motion and/or any other motion, for discovery and/or for trial in connection with the Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery and/or evidentiary disclosure as against the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties and/or the Releasees in connection with the

Proceedings, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(15) The obligations of the Domfoam Defendants under section 4.5 of this Settlement Agreement, including but not limited to any subsequent requests by the Plaintiffs and/or Class Counsel for the production or access to information and Documents relating to the Domfoam Defendants shall be contingent upon the ability of the Domfoam Defendants to lawfully and/or practically meet such obligations or requests subject to the filing or granting of creditor protection and/or insolvency relief under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S. In particular but without limitation, none of the obligations in this section shall obligate the Domfoam Defendants to provide access to, produce or otherwise make available information or Documents that the Domfoam Defendants are no longer able or permitted to access as a result of the filing or granting of creditor protection and/or insolvency relief in Canada and/or the U.S. The Domfoam Defendants agree that they shall not seek any limitations or restriction from the Restructuring Court on their ability to cooperate in accordance with this Settlement Agreement, provided that the Parties agree that the Domfoam Defendants remain subject to any order from the Restructuring Court. The Plaintiffs and the Domfoam Defendants may, if necessary, respectively seek advance directions or an order from the Restructuring Court or the Courts in respect of compliance with these cooperation provisions during or after the Restructuring Process, and the Parties agree to be bound by any such directions or order from the Restructuring Court or the Courts.

(16) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties to disclose or produce (i) any communications, discussions or agreements between the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties and government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain, (ii) any information or Documents created for or by government authorities in Canada or elsewhere in connection with any regulatory or

criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain and (iii) any notes, transcripts, testimony or other information or Documents relating to meetings or interviews with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products that are not otherwise lawfully in the public domain, however, for greater certainty, this section shall not detract or derogate from any obligation of the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties under section 4.5 of this Settlement Agreement to produce pre-existing business Documents that belong to the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties and that were created prior to and independently from any regulatory or criminal investigation relating to Foam Products.

(17) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Domfoam Defendants, the Brayianis Defendant, the Individual Settling Parties or any Releasees to perform any act which would violate any provincial, federal or foreign law, to disclose or produce any information or Documents prepared by or for counsel for the Domfoam Defendants or the Brayianis Defendant or the Individual Settling Parties or the Releasees, or to disclose or produce any information or Documents in breach of any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Domfoam Defendant or a Brayianis Defendant. If any information or Documents protected by any privilege and/or by any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction are accidentally or inadvertently produced by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties, the Plaintiffs and Class Counsel shall promptly return such information and/or Documents to the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties and such information and/or Documents shall not be disclosed or used, directly or

indirectly, except with the express prior written consent of the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties, and the production of such information and/or Documents shall in no way be construed to constitute a waiver of privilege or protection by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties in connection with such information and/or Documents.

(18) Notwithstanding their obligations to cooperate as set forth in section 4.5 of this Settlement Agreement, if the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties reasonably believe that any of their applications or agreements with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to Foam Products (without admitting that any such applications or agreements exist) would be endangered by the production or disclosure of information or Documents which would otherwise be required to be produced to Class Counsel or the Plaintiffs pursuant to the terms of this Settlement Agreement, the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties may withhold such information or Documents. To the extent that the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties withhold such information or Documents, pursuant to this section of this Settlement Agreement, the Domfoam Defendants and/or the Individual Settling Parties shall, within thirty (30) days from the date that such information or Documents would otherwise be produced to Class Counsel pursuant to this Settlement Agreement, provide to Class Counsel a description of the type of information or Document to be withheld, and the basis for withholding such information or Documents. The Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties shall work in good faith with such government authorities to obtain permission to disclose the information or Documents being withheld. If, on the date which is twelve (12) months from the execution of this Settlement Agreement and sixty (60) days from the date that such information or Documents would otherwise be produced to Class Counsel pursuant to this Settlement Agreement, information or Documents continue to be withheld by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties pursuant to this section, the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties shall forthwith provide such information or Documents to Class Counsel

and/or the Plaintiffs, unless any of the Courts, pursuant to motions filed by the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties or otherwise, orders to the contrary.

(19) Subject to the other provisions of section 4.5 of this Settlement Agreement, the obligations of the Brayiannis Defendant and the Individual Settling Parties to produce Documents pursuant to section 4.5 shall be a continuing obligation to make reasonable additional productions to the extent that the Brayiannis Defendant and the Individual Settling Parties collect and identify further Documents following the initial production milestones set out above and that fall within the categories of documentary cooperation that are set out in section 4.5 of this Settlement Agreement.

(20) A material factor influencing the Domfoam Defendants', the Brayiannis Defendant's and the Individual Settling Parties' decision to execute this Settlement Agreement is their desire to limit the burden and expense of the Proceedings. Accordingly, Class Counsel and the Plaintiffs agree to exercise good faith in seeking cooperation from the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties, and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties.

(21) The Plaintiffs may seek directions and/or orders from the Ontario Court relating to their rights under section 4.5 should the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Defendants not act reasonably in terms of its/their obligations under section 4.5 or act in a manner that is inconsistent with the spirit and intent of section 4.5.

(22) The Domfoam Defendants', the Brayiannis Defendant's and the Individual Settling Parties' obligation to cooperate as particularized in section 4.5 of this Settlement Agreement shall not be affected by the release provisions contained in section 7 of this Settlement Agreement.

(23) The Domfoam Defendants', the Brayiannis Defendant's and the Individual Settling Parties' obligation to cooperate under this Settlement Agreement shall cease at the date of final judgment in the Proceedings as against all Defendants. Following the Effective Date, in the event the Plaintiffs allege a material breach by the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties of their obligations under section 4.5 of this Settlement Agreement, the non-breaching Party shall have the right to apply to the Ontario Court for specific performance in respect of such obligation. If the Ontario Court finds that a Party, including the Brayiannis Defendant or any Individual Settling Parties, has materially breached section 4.5 of this Settlement Agreement and orders specific performance as to that Party, and that Party nonetheless fails to comply with such order, this Settlement Agreement shall be terminated as to that, and only that, Party. In the event that the Ontario Court finds the Brayiannis Defendant or any Individual Settling Parties not to have materially breached section 4.5 of this Settlement Agreement, then this Settlement Agreement shall remain in effect as to that Brayiannis Defendant or as to that Individual Settling Party. Following the Effective Date, in no event shall any Party be permitted to unilaterally terminate this Settlement Agreement on the basis of actual or alleged breach of section 4.5 of this Settlement Agreement. Furthermore, in no event shall the Brayiannis Defendant's or any Individual Settling Party' actual or alleged breach of any of the obligations of section 4.5 of this Settlement Agreement in any way apply, alter, negate or have any effect whatsoever on (i) the discontinuance of the Proceedings with respect to the Domfoam Defendants, or (ii) the full and final release of Released Claims contemplated by this Agreement as to any other Releasees.

**SECTION 5 – DISTRIBUTION OF THE SETTLEMENT AMOUNT,  
ASSIGNMENT PROCEEDS, AND ACCRUED INTEREST**

**5.1 Distribution Protocol**

(1) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties acknowledge that the Settlement Class includes Persons who purchased Foam Products directly from the Defendants as well as Persons who purchased Foam Products indirectly from third parties, and that this Settlement Agreement makes no determination as to

which Settlement Class Members are entitled to distribution from the Trust Account or as to the formula for determining the allocation of the monies in the Trust Account.

(2) After the Effective Date, at a time wholly within the discretion of Class Counsel, Class Counsel shall seek orders from the Courts approving the Distribution Protocol. Class Counsel shall engage in reasonable consultation with counsel for the Domfoam Defendants and the Individual Settling Parties regarding the terms of the Distribution Protocol. Subject to any amendments by the Courts, the Settlement Class Members shall be compensated pursuant to the Distribution Protocol. After the Effective Date and after the Courts have approved the Distribution Protocol, the remaining monies in the Trust Account shall be transferred by the Escrow Agent to the Claims Administrator for payment in accordance with the Distribution Protocol.

#### **5.2 No Responsibility for Administration or Fees**

The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

### **SECTION 6 -- OPTING OUT**

#### **6.1 Procedure for Opting Out**

(1) A Person may opt out of the Proceedings by completing and signing the Opt Out Form, and by sending the Opt Out Form, by pre-paid mail, courier or fax to the Opt Out Administrator at an address and coordinates to be identified in the Notice of Certification and Settlement Approval contemplated by section 11.1 of this Settlement Agreement.

(2) A Person who wishes to opt out of the Proceedings must provide the following to the Opt Out Administrator as part of the Opt Out Form:

- (a) an executed statement requesting that the Person opting out be excluded from the Settlement Class in the Canadian Polyurethane Foam Class Actions National Settlement;

- (b) the full name, current address and telephone number of the Person who is opting out and any former names which are relevant to its purchase of Foam Products in Canada during the Settlement Class Period;
  - (c) the name(s), if known, of each entity from whom the Person purchased Foam Products in Canada during the Settlement Class Period; and
  - (d) particulars of the Purchase Price, if known, and volume, if known, of Foam Products purchased from each such entity during the Settlement Class Period.
- (3) An election to opt out will only be effective if the Opt Out Form is postmarked on or before the Opt Out Deadline.

## **6.2 Opt Out Report**

The Opt Out Administrator shall use the information provided by the Domfoam Defendants pursuant to section 12.2(2) to supplement and confirm the information received pursuant to section 6.1(2) of this Settlement Agreement. Within thirty (30) days of the Opt Out Deadline, the Opt Out Administrator shall provide to counsel for the Domfoam Defendants, counsel for the Individual Settling Parties and Class Counsel, to the extent that such information is known by the Opt Out Administrator, the following information in respect of each Person, if any, who has opted out of the Proceedings:

- (a) the Person's full name, current address and telephone number;
- (b) the reasons for opting out, if given;
- (c) the name(s), if known, of each entity from whom the Person purchased Foam Products during the Settlement Class Period;
- (d) for each such entity, the Purchase Price, if known, and volume, if known, of Foam Products purchased during the Settlement Class Period; and
- (e) a copy of all information provided in the opt out process by the Person electing to opt out.



### **6.3 Right to Terminate Based on Opt Outs**

(1) The Domfoam Defendants and/or the Individual Settling Parties may terminate this Settlement Agreement in the event that the volume of Foam Products purchased by members of the Settlement Class who opt out of the Proceedings or the number and identity of members of the Settlement Class who opt out of the Proceedings exceeds the Confidential Opt Out Threshold.

(2) To terminate this Settlement Agreement based on Opt Outs, the Domfoam Defendants and/or the Individual Settling Parties shall give a written notice of termination to Class Counsel no later than twenty-one (21) days after the receipt of the report contemplated by section 6.2 of this Settlement Agreement.

## **SECTION 7 - RELEASES AND DISMISSALS**

### **7.1 Release of Releasees**

Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers forever and absolutely release the Releasees from the Released Claims.

### **7.2 Covenant Not To Sue**

Notwithstanding section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Releasees but instead covenant not to sue and undertake not to make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

### **7.3 No Further Claims**

The Releasers shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand

against any Releasees or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasees in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

**7.4 Discontinuance of Proceedings against the Domfoam Defendants**

The B.C. Proceedings and the Ontario Proceedings shall be discontinued without costs as against the Domfoam Defendants. The Quebec Proceeding shall be settled, without costs and without reservation as against the Domfoam Defendants, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court. The Parties agree that any such discontinuance and/or declaration of settlement out of court shall not alter, negate or otherwise have any effect on the releases in favour of the Releasees that are set out in section 7 of this Settlement Agreement. For greater certainty, the Parties agree that such discontinuances and/or declarations of settlement out of court shall not impair the Settlement Class' ability to file claims in any creditor protection or insolvency proceedings in Canada and/or the U.S. relating to the Domfoam Defendants, or to seek to enforce the Assignment as against the Domfoam Defendants or any legal representative of the Domfoam Defendants.

**7.5 Discontinuance of Other Actions against the Domfoam Defendants**

(1) Upon the Effective Date, all Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any Settlement Class Member who does not opt out shall be deemed discontinued against the Domfoam Defendants.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the B.C. Settlement Class who does not opt out shall be deemed to irrevocably consent to the discontinuance of his, her or its Other Actions against the Domfoam Defendants.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without

cost and without reservation, of his, her or its Other Actions against the Domfoam Defendants.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Domfoam Defendants without costs and without reservation.

**7.6 Tolling of Limitation Periods as against the Domfoam Defendants**

Following the discontinuance and settlement of the Proceedings set out in section 7.4, all applicable limitation periods for the filing of claims, defences, counterclaims and/or third party claims by the Plaintiffs or the Settlement Class Members shall be suspended or tolled as to the Domfoam Defendants. For greater certainty, the Parties do not agree to the tolling or suspension of any applicable limitation periods that may govern potential claims by the Non-Settling Defendants or named or unnamed co-conspirators as against the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties or any other party.

**7.7 Dismissal of the Ontario Proceedings against the Brayiannis Defendant**

The Ontario Proceedings shall be dismissed, without costs and with prejudice as against the Brayiannis Defendant.

**7.8 Dismissal of Other Actions against the Releasees**

(1) Upon the Effective Date, all Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any member of the Settlement Class who does not opt out shall be deemed dismissed against the Brayiannis Defendant, the Individual Settling Parties or the Releasees without costs and with prejudice.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the B.C. Settlement Class who does not opt out shall be deemed to irrevocably consent to the dismissal of his, her or its Other Actions against the Brayiannis Defendant, the Individual Settling Parties or the Releasees.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without cost and without reservation, of his, her or its Other Actions against the Brayianis Defendant, the Individual Settling Parties or the Releasees.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Brayianis Defendant, the Individual Settling Parties or the Releasees, without costs and without reservation.

#### **7.9 Impact of Discontinuance and Dismissals**

The Parties agree that the discontinuances, declarations of settlement, dismissals, and consents set out in section 7.4, 7.5, 7.6, 7.7 and 7.8 of this Settlement Agreement shall not alter, negate or otherwise have any impact or effect on the releases of the Released Claims by the Releasers in favour of the Releasees that are set out in sections 7.1, 7.2 and 7.3 of this Settlement Agreement.

#### **7.10 Releases and Covenants Not to Sue**

The form and content of the releases and covenants not to sue contemplated in sections 7.1, 7.2 and 7.3 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties and the failure of any Court to approve the releases or covenants not to sue contemplated herein shall give rise to a right of termination by the Domfoam Defendants and the Individual Settling Parties pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the releases and/or covenants not to sue contemplated herein, or if any Court approves the releases and/or covenants not to sue contemplated herein in a materially modified form.

## **SECTION 8 - BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS**

### **8.1 British Columbia and Ontario Bar Orders**

The Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree that the British Columbia and Ontario orders approving this Settlement Agreement must include a bar order in respect of the B.C. Proceedings and the Ontario Proceedings. The bar order shall be in a form reasonably agreed to by the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties, and shall include:

- (a) a provision that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by an Opt Out);
- (b) a provision governing the rights of the Plaintiffs and the Settlement Class Members to assert claims against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees in respect of the Proceedings or otherwise, provided that under such a provision, if a Court determines there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise between co-conspirators, the Plaintiffs and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the Proceedings or

otherwise, and the Court shall have full authority to determine the Proportionate Liability of the Releasees at trial or other disposition of the Proceedings, whether or not the Releasees appear at trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceedings and shall not be binding on the Releasees in any other proceedings; and

- (c) a provision governing the ability of the Non-Settling Defendants to bring a motion to seek discovery of the Brayianis Defendant for the purposes of the continuation of the Proceedings, provided that under such a provision, the Brayianis Defendant shall retain and reserve all of his rights to oppose such a motion.

## 8.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties agree that the Quebec order approving this Settlement Agreement must include an order that provides for a waiver or renunciation of solidarity. The waiver or renunciation of solidarity order shall be in a form reasonably agreed to by the Plaintiffs, the Domfoam Defendants and the Individual Settling Parties, provided that the Quebec Court must take notice of the following undertaking and the order must include the following terms:

- (a) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity with respect to any share of liability, including without limitation liability arising from *in solidum* obligations, that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interest and/or costs;
- (b) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce, to the Releasees' exclusive benefit, to claim or receive payment from the Non-Settling Defendants or any other

person of any amount representing any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and/or costs;

- (c) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members release the Non-Settling Defendants and any other person in respect of any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and costs; and
- (d) a provision that the Plaintiffs in Quebec and the Quebec Settlement Class Members will bear the Releasees' share in the contribution in respect of the Quebec Proceeding (if any) that would result from the insolvency of a Non-Settling Defendants or any other Person.

(2) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties further agree that the Quebec order approving this Settlement Agreement must also include a provision that in the event that any person brings an action in warranty or any other claim to obtain from the Releasees an amount representing the share of liability attributed to the Releasees in the Quebec Proceeding (if any) and the Plaintiffs, the Domfoam Defendants, the Individual Settling Parties and the other Releasees are not able to obtain the dismissal of such an action or claim through a preliminary motion at first instance before the Quebec Court, then the Plaintiffs in Quebec and the Quebec Settlement Class Members shall undertake to indemnify the Releasees and to save the Releasees harmless in respect of any damage, harm, loss or cost reasonably incurred in respect of such action or claim, provided that any such indemnity will only be paid out of any present or future undistributed settlement or judgment amount collected from the Non-Settling Defendants or named or unnamed co-conspirators or any other person for the benefit of the Plaintiffs and the Quebec Settlement Class Members in respect of the Quebec Proceeding. This indemnity shall not affect the ability of the Plaintiffs to seek interim distributions of settlement funds subject to court approval.

### **8.3 Material Term**

The form and content of the bar orders and the waiver or renunciation of solidarity order contemplated in sections 8.1 and 8.2 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Domfoam Defendants and the Individual Settling Parties and the failure of any Court to approve the bar orders or the waiver or renunciation of solidarity order contemplated herein shall give rise to a right of termination by the Domfoam Defendants and the Individual Settling Parties pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the bar order and/or waiver or renunciation of solidarity order contemplated herein, or if any Court approves the bar order and/or waiver or renunciation of solidarity order contemplated herein in a materially modified form.

## **SECTION 9 – EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties or by any Releasee, or of the truth of any of the claims or allegations contained in the Proceedings, the Other Actions or any other pleading filed by the Plaintiffs or any other Settlement Class Member.



## **9.2 Agreement Not Evidence**

The Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

## **9.3 No Further Litigation**

(1) No Plaintiff and no Class Counsel may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims, except in relation to the continued investigation and prosecution of the Proceedings, or any new proceedings, as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees. However, this subsection shall not be operative to the extent that it is inconsistent with B.C. Class Counsel's obligations under Rule 4.7 of the British Columbia Professional Conduct Handbook.

(2) For greater certainty, section 9.3(1) does not apply to the involvement of any Person in the continued investigation and prosecution of the Proceedings as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees. In addition, section 9.3(1) does not apply in respect of any claim in respect of the Domfoam Defendants that may be filed in any creditor protection, restructuring or other bankruptcy proceeding in Canada or the U.S. relating to the Domfoam Defendants pursuant to section 3 of this Settlement Agreement.

**SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

**10.1 Settlement Class and Common Issue**

(1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings as against the Domfoam Defendants and the Brayiannis Defendant solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that the Plaintiffs will seek to define is the Common Issue and the only classes that they will assert are the Settlement Class. The Plaintiffs acknowledge that the Domfoam Defendants and the Brayiannis Defendant agree to the definition of the Common Issue for purposes of settlement only.

**10.2 Certification or Authorization Without Prejudice in the Event of Termination**

In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that any prior certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, or any amended certification of a Proceeding as a class proceeding pursuant to this Settlement Agreement, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation.

**SECTION 11 – NOTICE TO SETTLEMENT CLASS**

**11.1 Notice Required**

The proposed Settlement Class shall be given the following Notices: (i) Notice of Approval Hearings; (ii) Notice of Certification and Settlement Approval; and (iii)

termination of this Settlement Agreement if it is terminated after notice provided in accordance with (i) above or as otherwise ordered by the Courts.

#### **11.2 Form, Publication and Distribution of Notice**

(1) The form of the Notices referred to in section 11.1 and the manner of publication and distribution shall be as reasonably agreed to by the Plaintiffs and the Domfoam Defendants or in such form or manner as approved by the Courts.

(2) The Plaintiffs, the Domfoam Defendants and the Individual Settling Parties shall engage in reasonable efforts to work with the parties to the U.S. Settlement and with the Non-Settling Defendants to the Proceedings to coordinate the form, publication and distribution of the Notices pursuant to this Settlement Agreement with the provision of notice for any other settlements that have or may be reached in the Proceedings or the U.S. Proceedings so that, to the extent possible, the Settlement Class receives effective notice on a timely basis and at a reasonable cost.

#### **11.3 Notice of Distribution**

Except to the extent provided for in this Settlement Agreement, the form of notice in respect to the administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

### **SECTION 12 – ADMINISTRATION AND IMPLEMENTATION**

#### **12.1 Mechanics of Administration**

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

## **12.2 Information and Assistance**

- (1) The Domfoam Defendants will make reasonable efforts to compile a list of the names and addresses of Persons in Canada who purchased Foam Products from the Domfoam Defendants in Canada during the Settlement Class Period.
- (2) The information required by section 12.2(1) shall be delivered to Class Counsel within thirty (30) business days of the Execution Date.
- (3) Class Counsel may use the information provided under section 12.2(2) to advise Persons in Canada who purchased Foam Products from the Domfoam Defendants in Canada during the Settlement Class Period of this Settlement Agreement and the date of the Approval Hearings before the Courts.
- (4) If this Settlement Agreement is not approved, terminated, or otherwise fails to come into effect, all information provided by the Domfoam Defendants pursuant to section 12.2(2) shall be returned or destroyed forthwith in accordance with section 14.2(1)(f), no record of the information so provided shall be retained by Class Counsel in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

## **SECTION 13— CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

- (1) The Escrow Agent shall pay the reasonable costs of the notices referred to in section 11 of this Settlement Agreement, any reasonable costs associated with receiving the written elections to opt out and the costs of the Escrow Agent from the Trust Account.
- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement, or at such other time as they shall determine in their sole discretion, provided that Class Counsel agree that they shall not be paid Class Counsel Fees from the Settlement Amount in the event this Settlement Agreement is not approved, is terminated

or otherwise fails to take effect, provided that they may seek payment of professional fees in respect of their representation of the Plaintiffs from the ISP Release Payment contemplated by sections 14.2(1)(g)(A) and 14.4 of this Settlement Agreement. The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall take no position with respect to Class Counsel's motion for payment of Class Counsel Fees.

(3) Except as provided in sections 13(1) and 13(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties shall not be liable for any fees, disbursements or taxes, including but not limited to Class Counsel Fees and any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or the Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

## **SECTION 14 - TERMINATION OF SETTLEMENT AGREEMENT**

### **14.1 Right of Termination**

(1) The Plaintiffs and Class Counsel shall have the right to terminate this Settlement Agreement, in the event that:

- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Class, and the Court's order or judgment has become a Final Order;
- (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;
- (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order;

- (d) the Domfoam Defendants do not make an application for creditor protection and/or insolvency relief in Canada and/or in the U.S., including but not limited to an application under the *Companies' Creditors Arrangement Act*, the *Bankruptcy and Insolvency Act*, the U.S. Bankruptcy Code and/or related legislation in Canada or the U.S., within thirty (30) days of the Execution Date; or
  - (e) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders.
- (2) The Domfoam Defendants and/or the Individual Settling Parties shall further have the right to terminate this Settlement Agreement in the event:
- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Class, and the Court's order or judgment has become a Final Order;
  - (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;
  - (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order;
  - (d) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders;
  - (e) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 2.4(2) and 2.4(3) of this Settlement Agreement;
  - (f) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 7.1, 7.2, 7.3, 8.1 and 8.2 of this Settlement Agreement; or

(g) the Confidential Opt Out Threshold is exceeded and the Domfoam Defendants and/or the Individual Settling Parties provide written notice of termination in accordance with section 6.3(2) of this Settlement Agreement.

(3) To exercise a right of termination under section 14.1(1) or 14.1(2), a terminating party shall deliver a written notice of termination pursuant to section 15.18 of this Settlement Agreement. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 14.4, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in the Proceedings or any litigation.

(4) Subject to section 14.1(5), any order, ruling or determination made by any Court that is not substantially in the form of its respective order annexed as Schedule "B1", "B2" or "B3" shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the Domfoam Defendants' termination and/or the Individual Settling Parties' termination of this Settlement Agreement, provided however that the Domfoam Defendants and/or the Individual Settling Parties may agree to waive this provision.

(5) Any order, ruling or determination made by any Court with respect to Class Counsel Fees and/or Distribution Protocol shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(6) For greater certainty, the Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties acknowledge and agree that they shall not rely on any future ruling or proceedings arising from or in connection with the pending appeals before the Supreme Court of Canada in respect of *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* (Supreme Court of Canada File #34283) and *Pro-Sys Consultants Ltd. v. Microsoft Corporation* (Supreme Court of Canada File #34282) as a ground or basis for terminating this Settlement Agreement pursuant to sections 14.1(1) and 14.1(2) or otherwise at law.

**14.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs, Class Counsel, the Domfoam Defendants, the Brayianis Defendant and the Individual Settling Parties agree:

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying or authorizing any of the Proceedings as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of any Proceedings as a class proceeding that has occurred after the date of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue, and any prior procedural or substantive ruling in respect of the ongoing Proceedings that has occurred after the date of this Settlement Agreement, shall be without prejudice to any position that the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties may later take on any procedural or substantive issue in the ongoing Proceedings or any other litigation;
- (d) any appearance, attendance, filing or any other action or step taken by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties may later take in respect of the jurisdiction of the Courts or any other court (with the exception of the jurisdiction of the B.C. Court), including a motion by one or more of



the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties seeking to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over such defendant in the Proceedings or any other litigation;

- (e) the Parties shall negotiate in good faith to determine a new timetable, if the Proceedings are to continue against the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties;
- (f) within ten (10) days of such termination or failure having occurred, Class Counsel shall destroy all Documents or other information provided by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties as cooperation under this Settlement Agreement, or containing or reflecting information derived from such Documents or other information, and to the extent that Class Counsel has disclosed any Documents or other information provided by the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties to any other person (including Plaintiffs' experts), shall recover and destroy such Documents and other information. Class Counsel shall provide the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties with a written certification by Class Counsel of such destruction. Nothing contained in this subsection shall be construed to require Class Counsel to destroy any of their work product; and
- (g) each Class Counsel shall forthwith deliver consents in writing to counsel for the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties authorizing the Domfoam Defendants, the Brayianis Defendant and/or the Individual Settling Parties to bring motions before each of the Courts for orders:
  - (A) directing that the balance of the Settlement Amount in the Trust Account less the ISP Release Payment shall be paid to the Contributing Individual Settling Parties, in accordance with section

14.3 of this Settlement Agreement, and that, subject to any contrary order of the Courts, the ISP Release Payment be paid to or held for the benefit of the Plaintiffs (individually in their capacity as named Plaintiffs only);

- (B) directing that the balance of the proceeds from the Assignment in the Trust Account shall be paid to the Domfoam Defendants, in accordance with section 14.3 of this Settlement Agreement;
- (C) declaring that this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 14.4 of this Settlement Agreement); and
- (D) setting aside any order certifying or authorizing the Proceedings as a class proceedings on the basis of this Settlement Agreement.

#### **14.3 Allocation of Monies in the Trust Account Following Termination**

(1) For greater certainty, if this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that the Assignment shall be terminated and shall have no legal effect.

(2) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Escrow Agent shall return to the Contributing Individual Settling Parties all monies from the Settlement Amount in the Trust Account including all accrued interest less the ISP Release Payment, and shall return to the Domfoam Defendants all monies from the proceeds of the Assignment received in the Trust Account as of the applicable date including all accrued interest but less the costs of the Escrow Agent and the Opt Out Administrator and the Notices that have been incurred but not paid to date, provided however, if the proceeds of the Assignment received as of the applicable date including all accrued interest are not sufficient to cover such costs, then the Escrow Agent may apply or deduct any such remaining costs (up to a maximum amount of three-hundred and seventy-five thousand Canadian dollars (CAD \$375,000)) against the Settlement Amount including all accrued

interest less the ISP Release Payment. The Escrow Agent shall remit such monies to the Contributing Individual Settling Parties and/or the Domfoam Defendants within thirty (30) business days of such termination or event having occurred. The ISP Release Payment shall be held or distributed pursuant to the Court's discretion under section 14.2(1)(g)(A).

#### **14.4 Survival of Certain Releases Following Termination**

Notwithstanding sections 14.2 and 14.3 of this Settlement Agreement, in the event that the Contributing Individual Settling Parties comply with their obligations of payment under section 4.1 of this Settlement Agreement and the Individual Settling Parties and the Brayianis Defendant comply with their obligations of cooperation set out in section 4.5 of this Agreement prior to the Approval Hearings, but this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason that does not arise as a result from a breach of the Individual Settling Parties or the Brayianis Defendant, and the Courts approve an order under section 14.2(1)(g)(A) directing that the ISP Release Payment can be paid to, or held for the benefit of, the Plaintiffs (individually in their capacity as named Plaintiffs only), the provisions of sections 14.2, 14.3, 14.4 and 14.5 shall apply and bind the Parties, but the Plaintiffs excluding Option Consommateurs (individually in their capacity as named Plaintiffs only) shall still be deemed to have fully, finally and forever released, relinquished and discharged all Released Claims against the Releasees, shall covenant not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting any such Released Claims against the Releasees so long as the Individual Settling Parties and the Brayianis Defendant continue to provide cooperation pursuant to section 4.5 of this Agreement. Section 7.2 applies to any release under this section. For greater certainty, nothing in this section purports to affect the rights of any other Settlement Class Members as against the Individual Settling Parties and the Brayianis Defendant, and the Individual Settling Parties and the Brayianis Defendant will not object to the addition or substitution of plaintiffs to allow for the continuation of the Proceedings as proposed class proceedings, will not raise limitations or estoppel arguments as against any other putative member of

the Settlement Class arising from this section, nor will they raise conflict of interest arguments as against the Plaintiffs or Class Counsel arising from this section, provided the Plaintiffs (including Option Consommateurs) and Class Counsel shall not in any circumstance use any information or Documents obtained or derived in respect of the Individual Settling Parties and the Brayiannis Defendant pursuant to section 4.5 of this Settlement Agreement for the purpose of asserting any claims relating to the Released Claims against any Releasees in any proceeding or other forum, unless such information or Documents are lawfully obtained through other means.

#### **14.5 Survival of Provisions after Termination**

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the provisions of sections 4.5(2), 4.5(11), 9, 10.2, 11, 12.2(4), 13(1), 14 and 15(18) (and any additional provisions governing confidentiality and any addition provisions governing cooperation to the extent that there is continuing cooperation) shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of sections 4.5(2), 4.5(11), 9, 10.2, 11, 12.2(4), 13(1), 14 and 15(18) (and any additional provisions governing confidentiality and any additional provisions governing cooperation to the extent that there is continuing cooperation) within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **SECTION 15 - MISCELLANEOUS**

#### **15.1 Releasees Have No Liability for Administration**

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or the Distribution Protocol.

### **15.2 Motions for Directions**

- (1) Class Counsel, the Domfoam Defendants, the Brayiannis Defendant and/or the Individual Settling Parties may apply to the Courts for directions in respect of this Settlement Agreement.
- (2) Class Counsel may apply to the Courts for directions in respect of the Distribution Protocol.
- (3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties, except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

### **15.3 Headings, etc.**

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### **15.4 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

### **15.5 Ongoing Jurisdiction**

- (1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Proceeding.
- (2) No Party shall ask a Court to make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other relevant Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding sections 15.5(1) and 15.5(2), the Ontario Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Quebec Settlement Class Member or a B.C. Settlement Class Member shall be determined by the Ontario Court.
- (4) For the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties agree to submit to the jurisdiction of the Courts solely for the purpose of implementing, administering and enforcing this Settlement Agreement. The Parties acknowledge and confirm that the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties do not attorn to the Courts for any other purpose or proceeding and that the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties otherwise reserve all of their other existing jurisdictional rights.
- (5) The Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties may apply to the Ontario Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

#### **15.6 Governing Law**

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

#### **15.7 Entire Agreement**

This Settlement Agreement, including the Confidential Opt Out Agreement, constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **15.8 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### **15.9 Binding Effect**

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Domfoam Defendants, the Brayiannis Defendant and the Individual Settling Parties shall be binding upon all of the Releasees.

#### **15.10 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### **15.11 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **15.12 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, if required by law or by the Courts, the Domfoam Defendants and the Individual Settling Parties shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

(2) The cost of translating the Notices, claims forms, Opt Out Forms or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required by law or by the Courts, be paid by the Domfoam Defendants and the Individual Settling Parties.



**15.13 Transaction**

The Parties agree that this Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

**15.14 Recitals**

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

**15.15 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

**15.16 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

**15.17 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

**15.18 Notice**

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

**For the Plaintiffs and for Class Counsel in the Proceedings:**

Harvey T. Strosberg, Q.C. and  
Heather Rumble Peterson

SUTTS, STROSBURG LLP  
600-251 Goyeau Street  
Windsor, ON N9A 6V4

Tel: 519-258-9333  
Fax: 519-258-9527  
Email: [harvey@strosbergco.com](mailto:harvey@strosbergco.com)  
[hpeterson@strosbergco.com](mailto:hpeterson@strosbergco.com)

Daniel Belleau and  
Maxime Nasr

BELLEAU LAPOINTE  
306 Place d'Youville, Suite B-10  
Montreal, QC H2Y 2B6

Tel: 514-987-6700  
Fax: 514-987-6886  
Email: [dbelleau@belleaulapointe.com](mailto:dbelleau@belleaulapointe.com)  
[mnasr@belleaulapointe.com](mailto:mnasr@belleaulapointe.com)

Ward Branch and  
Luciana Brasil

BRANCH MACMASTER  
1410 – 777 Hornby Street  
Vancouver, BC V7G 3E2

Tel: 604-654-2966  
Fax: 604-684-3429  
Email: [wbranch@branmac.com](mailto:wbranch@branmac.com)  
[lbrasil@branmac.com](mailto:lbrasil@branmac.com)

J.J. Camp, Q.C. and  
Reidar Mogerman

CAMP FIORANTE MATTHEWS  
MOGERMAN  
400 – 856 Homer St.  
Vancouver, B.C. V6B 2W1

Tel: 604-689-7555  
Fax: 604-689-7554  
Email: [jjcamp@cfmlawyers.ca](mailto:jjcamp@cfmlawyers.ca)  
[rmogerman@cfmlawyers.ca](mailto:rmogerman@cfmlawyers.ca)

**For the Domfoam Defendants:**

Christopher P. Naudie

OSLER, HOSKIN & HARCOURT LLP  
P.O. Box 50  
1 First Canadian Place  
Toronto, ON M5X 1B8  
Tel: 416-862-6811  
Fax: 416-862-8666  
Email: [cnaudie@osler.com](mailto:cnaudie@osler.com)

**For Tony Vallecoccia and John Howard:**

Robert Tanner

TANNER & GUINEY  
130 Adelaide Street West, Suite 3425  
P.O.Box 34  
Toronto, Ontario  
M5H 3P5  
Tel: 416-862-7745  
Fax: 416-862-7874  
Email: [rgtanner@tannerguiney.com](mailto:rgtanner@tannerguiney.com)

**For Bruce Bradley, Dean Brayiannis,  
Michael Cappuccino, Pietro (Peter) Foti,  
Duke Greenstein, Dale McNeill, James  
William Sproule, Robert Valle and Fred  
Zickmantel:**

Jack Berkow

BERKOW COHEN LLP  
141 Adelaide Street West  
Suite 400  
Toronto, Ontario  
M5H 3L5  
Tel: 416-364-4900  
Fax: 416-364-3865  
Email: [jberkow@berkowcohen.com](mailto:jberkow@berkowcohen.com)

**15.19 Date of Execution**

The Parties have executed this Settlement Agreement as of the date on the cover page.

**"HI! NEIGHBOR" FLOOR COVERING CO.  
LIMITED, MAJESTIC MATTRESS MFG. LTD.,  
TRILLIUM PROJECT MANAGEMENT LTD.,  
OPTION CONSOMMATEURS and KARINE  
ROBILHARD, by their counsel**

By:

[Redacted Signature]

Name: Branch MacMaster LLP  
Title: Counsel in the B.C. Proceedings

By:

[Redacted Signature]

Name: Sitts, Strosberg LLP  
Title: Counsel in the Ontario Proceedings

By:

\_\_\_\_\_  
Name: Camp Fiorante Matthews Mogerman  
Title: Counsel in the B.C. Proceedings

By:

\_\_\_\_\_  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**15.19 Date of Execution**

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**"HI! NEIGHBOR" FLOOR COVERING CO. LIMITED, MAJESTIC MATTRESS MFG. LTD, TRILLIUM PROJECT MANAGEMENT LTD., OPTION CONSOMMATEURS and KARINE ROBILLARD, by their counsel**

By:

\_\_\_\_\_  
Name: Branch MacMaster LLP  
Title: Counsel in the B.C. Proceedings

By:

\_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceedings

By:

\_\_\_\_\_  
Name: Camp Fiorante Matthews Wegerman  
Title: Counsel in the B.C. Proceedings

By:

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Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

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OPTION CONSOMMATEURS and KARINE  
ROBILLARD, by their counsel**

By:

\_\_\_\_\_  
Name: Branch MacMaster LLP  
Title: Counsel in the B.C. Proceedings

By:

\_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceedings

By:

\_\_\_\_\_  
Name: Camp Fiorante Matthews Mogerman  
Title: Counsel in the B.C. Proceedings

By:

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Name: Belleau Lapointe  
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LIMITED, MAJESTIC MATTRESS MFG. LTD,  
TRILLIUM PROJECT MANAGEMENT LTD.,  
OPTION CONSOMMATEURS and KARINE  
ROBILLARD, by their counsel**

By:

\_\_\_\_\_  
Name: Branch MacMaster LLP  
Title: Counsel in the B.C. Proceedings

By:

\_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceedings

By:

\_\_\_\_\_  
Name: Camp Fiorante Matthews Mogerma  
Title: Counsel in the B.C. Proceedings

By:

\_\_\_\_\_  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

By:

\_\_\_\_\_  
Name: Andrew Morganti  
Title: Counsel in the Ontario Proceedings



**DOMFOAM INTERNATIONAL, INC., by its counsel**

By: \_\_\_\_\_

Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**VALLE FOAM INDUSTRIES (1995) INC., by its  
counsel**

By: \_\_\_\_\_

Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**A-Z SPONGE & FOAM PRODUCTS LTD., by its  
counsel**

By: \_\_\_\_\_

Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**BRUCE BRADLEY**

By: \_\_\_\_\_

**DEAN BRAYIANNIS**

By: \_\_\_\_\_

**DOMFOAM INTERNATIONAL, INC., by its counsel**

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**VALLE FOAM INDUSTRIES (1995) INC., by its  
counsel**

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**A-Z SPONGE & FOAM PRODUCTS LTD., by its  
counsel**

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**BRUCE BRADLEY**

By:

\_\_\_\_\_  


**DEAN BRAYIANNIS**

By:

\_\_\_\_\_

**DOMFOAM INTERNATIONAL, INC.,** by its counsel

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**VALLE FOAM INDUSTRIES (1995) INC.,** by its  
counsel

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**A-Z SPONGE & FOAM PRODUCTS LTD.,** by its  
counsel

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**BRUCE BRADLEY**

By:

\_\_\_\_\_

**DEAN BRAYIANNIS**

By:

\_\_\_\_\_

**MICHAEL CAPPUCCINO**

By: \_\_\_\_\_  
\_\_\_\_\_

**PIETRO (PETER) FOTI**

By: \_\_\_\_\_

**DUKE GREENSTEIN**

By: \_\_\_\_\_

**JOHN HOWARD**

By: \_\_\_\_\_

**DALE MCNEIL**

By: \_\_\_\_\_

**MICHAEL CAPPUCCINO**

By: \_\_\_\_\_

**PIETRO (PETER) FOTI**

By: 

**DUKE GREENSTEIN**

By: \_\_\_\_\_

**JOHN HOWARD**

By: \_\_\_\_\_

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**MICHAEL CAPPUCCINO**

By: \_\_\_\_\_

**PIETRO (PETER) FOTI**

By: \_\_\_\_\_

**DUKE GREENSTEIN**

By: 

**JOHN HOWARD**

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**DALE MCNEIL**

By: \_\_\_\_\_

**MICHAEL CAPPUCCINO**

By: \_\_\_\_\_


**PIETRO (PETER) FOTI**

By: \_\_\_\_\_

**DUKE GREENSTEIN**

By: \_\_\_\_\_

**JOHN HOWARD**

By: \_\_\_\_\_  
  
D

**DALE MCNEIL**

By: \_\_\_\_\_

**MICHAEL CAPPUCCINO**

By: \_\_\_\_\_

**PIETRO (PETER) FOTI**

By: \_\_\_\_\_

**DUKE GREENSTEIN**

By: \_\_\_\_\_

**JOHN HOWARD**

By: \_\_\_\_\_

<sup>PA</sup>  
**DALE MCNEILL**

By: 



**JAMES WILLIAM SPROULE**

By:



**ROBERT VALLE**

By:

\_\_\_\_\_

**TONY VALLECOCCIA**

By:

\_\_\_\_\_

**FRED ZICKMANTEL**

By:

\_\_\_\_\_

**JAMES WILLIAM SPROULE**

By: \_\_\_\_\_

**ROBERT VALLE**

By: \_\_\_\_\_

**TONY VALLECOCCIA**

By: \_\_\_\_\_

**FRED ZICKMANTEL**

By: \_\_\_\_\_

**JAMES WILLIAM SPROULE**

By: \_\_\_\_\_

**ROBERT VALLE**

By: \_\_\_\_\_

**TONY VALLECOCCIA** / 4

By: 

**FRED ZICKMANTEL**

By: \_\_\_\_\_

**JAMES WILLIAM SPROULE**

By: \_\_\_\_\_

**ROBERT VALLE**

By: \_\_\_\_\_

**TONY VALLECOCCHIA**

By: \_\_\_\_\_

**FRED ZICKMANTEL**

By: \_\_\_\_\_

*Jan 12, 2012*

SCHEDULE "A"

Proceedings

#	Court and File No.	Plaintiffs Counsel	Style of Cause	
1	Supreme Court of British Columbia (Vancouver Registry)  (Court File No. VLC-S-S-106362)	Branch MacMaster LLP	<i>Majestic Mattress Mfg., Ltd. v. Vitafoam Products Canada Limited et al.</i>	Vitafoam Products Canada Limited, Vitafoam Incorporated, Hickory Springs Manufacturing Company, Valle Foam Industries (1995) Inc., Domfoam International, Inc., A-Z Sponge & Foam Products Ltd., The Carpenter Company, Woodbridge Foam Corporation, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc., and Future Foam, Inc.
2	Supreme Court of British Columbia (Vancouver Registry)  (Court File No. S-106213)	Camp Fiorante Matthews Mogerman	<i>Trillium Project Management Ltd. v. Hickory Springs Manufacturing Company et al.</i>	Hickory Springs Manufacturing Company, Valle Foam Industries, Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., The Woodbridge Group, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations Canada, Inc., Future Foam, Inc., Vitafoam Products Canada Limited and Vitafoam, Inc.

#	Court and File No.	Plaintiffs Counsel	Style of Cause	
3	Ontario Superior Court of Justice (Windsor)  (Court File No. CV-10-15164)	Sutts, Strosberg	<i>"Hi! Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company</i>	Hickory Springs Manufacturing Company, Valle Foam Industries (1995), Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., Woodbridge Foam Corporation, Flexible Foam Products, Inc., Foamex Innovations, Inc., Future Foam, Inc., Leggett & Platt, Inc., Vitafoam Products Canada Limited, Vitafoam, Inc., Dean Brayiannis, Bruce Schneider, Robert Magee and Michael Lajambe
4	Ontario Superior Court of Justice (Windsor)  (Court File No. CV-11-17279)	Sutts Strosberg	<i>"Hi! Neighbor" Floor Covering Co. Limited v. Hickory Springs Manufacturing Company</i>	Hickory Springs Manufacturing Company, Valle Foam Industries (1995), Inc., Domfoam International, Inc., The Carpenter Co., Carpenter Canada Co., Flexible Foam Products, Inc., Foamex Innovations, Inc., Future Foam, Inc., Leggett & Platt, Inc., Mohawk Industries Inc., Vitafoam Products Canada Limited, Vitafoam, Inc., Woodbridge Foam Corporation, David Carson, Louis Carson, Dean Brayiannis, Bruce Schneider, Michael Lajambe and Robert Magee

#	Court and File No.	Plaintiffs' Counsel	Style of Cause	
5	Superior Court of Québec (Montreal)  (Court File No. 500-06-000524- 104)	Belleau Lapointe	<i>Karine Robillard c. Produits Vitafoam Canada Limitée et al., et Vitafoam Inc.</i>	Produits Vitafoam Canada Limitée, and Vitafoam Inc.

**SCHEDULE "B1"**

Court File No. CV-11-15164

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**"HI NEIGHBOR" FLOOR COVERING CO. LIMITED**

**Plaintiff**

**- and -**

**HICKORY SPRINGS MANUFACTURING COMPANY,  
VALLE FOAM INDUSTRIES (1995), INC., DOMFOAM INTERNATIONAL, INC.,  
THE CARPENTER CO., CARPENTER CANADA CO.,  
WOODBIDGE FOAM CORPORATION, FLEXIBLE FOAM PRODUCTS, INC.,  
FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC.,  
LEGGETT & PLATT, INC., VITAFOAM PRODUCTS CANADA LIMITED,  
VITAFOAM, INC., DEAN BRAYIANNIS, BRUCE SCHNEIDER,  
ROBERT MACGEE and MICHAEL LAJMABE**

**Defendants**

*Proceeding under the Class Proceedings Act 1992*

Court File No. CV-11-17279

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**"HI NEIGHBOR" FLOOR COVERING CO. LIMITED**

**Plaintiff**

**- and -**

**HICKORY SPRINGS MANUFACTURING COMPANY,  
VALLE FOAM INDUSTRIES (1995), INC., DOMFOAM INTERNATIONAL, INC.,  
THE CARPENTER CO., CARPENTER CANADA CO.,  
FLEXIBLE FOAM PRODUCTS, INC., FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC.,  
VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM, INC., WOODBIDGE FOAM  
CORPORATION, DAVID CARSON, LOUIS CARSON,  
DEAN BRAYIANNIS, BRUCE SCHNEIDER,  
MICHAEL LAJMABE and ROBERT MAGEE**

**Defendants**

*Proceeding under the Class Proceedings Act 1992*



THE HONOURABLE )  
 )  
JUSTICE LEITCH ) of , 2011

**ORDER**

**THIS MOTION** made by the Plaintiff in the Ontario Proceedings for an Order approving the settlement agreement entered into with the Defendants Domfoam International, Inc., Valle Foam Industries (1995) Inc. (the “Domfoam Defendants”) and Dean Brayianis (the “Brayianis Defendant”), was heard this day at the Court House, 80 Dundas Street, London, Ontario.

**ON READING** the materials filed, including the settlement agreement attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for the Plaintiff, counsel for the Domfoam Defendants, counsel for the Brayianis Defendant and counsel for the Non-Settling Defendants in the Ontario Proceedings; and

**AND ON BEING ADVISED** that (a) the Plaintiffs in the Ontario Proceedings consent to this Order; and (b) the Domfoam Defendants and the Brayianis Defendant consent to this Order:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Ontario Proceedings are certified as class proceedings as against the Domfoam Defendants and the Brayianis Defendant for settlement purposes only.
3. **THIS COURT ORDERS** that the Ontario Settlement Class for the purpose of the Ontario Proceedings is defined as:

All Persons resident in Canada who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the B.C. Settlement Class and the Quebec Settlement Class.

4. **THIS COURT ORDERS** that “Hi! Neighbor” Floor Covering Co. Limited is appointed as the representative plaintiff for the Ontario Settlement Class for the Ontario Proceedings.

5. **THIS COURT ORDERS** that the following issue is common to the Ontario Settlement Class for the Ontario Proceedings:

Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?

6. **THIS COURT ORDERS** that any person who wishes to opt out of the Ontario Proceedings must do so by sending a written election to opt-out, together with the information required in the Settlement Agreement, to the Opt Out Administrator, postmarked on or before the date which is sixty (60) days from the date of the first publication of the Notice of Certification and Settlement Approval.
7. **THIS COURT ORDERS** that any member of the Ontario Settlement Class who has validly opted out of the Ontario Proceedings is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Ontario Proceedings.
8. **THIS COURT ORDERS** that any member of the Ontario Settlement Class who has not validly opted out of the Ontario Proceedings is bound by the Settlement Agreement and may not opt out of the Ontario Proceedings in the future.
9. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Settlement Class.
10. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
11. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and the Ontario Settlement Class.
12. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall

consent and shall be deemed to have consented to the discontinuance as against the Domfoam Defendants of any Other Actions he, she or it has commenced, without costs.

13. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall consent and shall be deemed to have consented to the dismissal as against the Brayianis Defendant and the other Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
14. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall be and is hereby discontinued against the Domfoam Defendants, without costs.
15. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings shall be and is hereby dismissed against the Brayianis Defendant and the other Releasees, without costs and with prejudice.
16. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Settlement Class who does not validly opt out of the Ontario Proceedings including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
17. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
18. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or

any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

19. **THIS COURT ORDERS AND DECLARES** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Ontario Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
20. **THIS COURT ORDERS AND DECLARES** that each Ontario Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
21. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who validly opts out of the Ontario Proceedings).
22. **THIS COURT ORDERS** that if, in the absence of paragraph 21 above, the Ontario Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - (a) the Ontario Plaintiff and the Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any) restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the Ontario Proceedings or otherwise;

- (b) for greater certainty, the Ontario Plaintiff and the Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, only those claims for damages, costs and interest attributable to the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees to the Ontario Plaintiff and the Ontario Settlement Class Members, if any; and
- (c) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Proceedings, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Proceedings and shall not be binding on the Releasees in any other proceedings.

23. **THIS COURT ORDERS** that if, in the absence of paragraph 21 hereof, the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the Ontario Proceedings.

24. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Ontario Court determined as if the Brayianis Defendant remained a party to the Ontario Proceedings, and on at least ten (10) days notice to counsel for the Brayianis Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* O.Reg. 194 from the Brayianis Defendant;

- (b) oral discovery of the Brayiannis Defendant, the transcript of which may be read in at trial;
  - (c) leave to serve a request to admit on the Brayiannis Defendant in respect of factual matters; and/or
  - (d) the production of the Brayiannis Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
25. **THIS COURT ORDERS** that the Brayiannis Defendant retains all rights to oppose such motion(s) brought under paragraph 24. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 24, the Ontario Court may make such orders as to costs and other terms as it considers appropriate.
26. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 24 above on the Brayiannis Defendant by service on counsel of record for the Brayiannis Defendant in the Ontario Proceedings.
27. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Domfoam Defendants and the Brayiannis Defendant acknowledge the jurisdiction of the Ontario Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.
28. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in this action.
29. **THIS COURT ORDERS** that the Domfoam Defendants and the Brayiannis Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
30. **THIS COURT ORDERS** that the Settlement Amount, plus any proceeds from the Assignment or any accrued interest, be held in trust by the Escrow Agent for the benefit of

the Settlement Class, pending further order of the Courts, which shall be sought by the Plaintiffs on a motion made without notice.

31. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the British Columbia Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved the Quebec Court and the B.C. Court.
32. **THIS COURT DECLARES** that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
33. **THIS COURT ORDERS** that the short-form and long-form of the Notice of Certification and Settlement Approval are hereby approved substantially in the form attached respectively hereto as Schedules "B" and "C".
34. **THIS COURT ORDERS** that the plan for dissemination for the short-form and long-form of the Notice of Certification and Settlement Approval (the "Plan of Dissemination") are hereby approved in the form attached hereto as Schedule "D" and that the Notice of Certification and Settlement Approval shall be disseminated in accordance with the Plan of Dissemination.
35. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario Proceedings be and are hereby discontinued against the Domfoam Defendant without costs.
36. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario Proceedings be and are hereby dismissed against the Brayianis Defendant without costs and with prejudice.

Date:

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THE HONOURABLE JUSTICE

**SCHEDULE "B2"**

**SUPERIOR COURT**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000524-104

DATE: 2012

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**PRESIDED BY: THE HONOURABLE ●, J.S.C.**

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**OPTION CONSOMMATEURS**  
Petitioner

and

**KARINE ROBILLARD**  
Designated Person

vs.

**PRODUITS VITAFOAM CANADA LIMITÉE**

and

**VITAFOAM INC.**

and

●

**Respondents**

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**JUDGMENT**

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[1] **WHEREAS** Option consommateurs has brought before this Court a Motion for the approval of the settlement agreement entered into notably with the Respondents



Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge & Foam Products Ltd. (the "Domfoam Defendants").

- [2] **CONSIDERING** the Motion before the Court;
- [3] **CONSIDERING** the exhibits in the file;
- [4] **CONSIDERING** also the agreement entered into on ●, 2012 between notably the Petitioner and the Domfoam Defendants, filed as Exhibit ● (the "Domfoam Transaction");
- [5] **CONSIDERING** the submissions of the counsel for the parties and the representations made on all sides;
- [6] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;

**FOR THESE REASONS, THE COURT:**

- [7] **GRANTS** Option consommateur's Motion for Approval of the Domfoam Transaction;
- [8] **DECLARES** that the definitions set forth in the Domfoam Transaction apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the parties to the Domfoam Transaction, and that the other Respondents, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of this Judgment;
- [9] **AUTHORIZES** the bringing of the Quebec Proceeding as a class action as against the Domfoam Defendants for settlement purposes only;
- [10] **ASCRIBES** to Option consommateurs the status of class representative for the purpose of exercising the class action on behalf of the Quebec Settlement Class;
- [11] **IDENTIFIES** the Common Issue as the principal question of fact and of law to be treated collectively in the action;
- [12] **DECLARES** that, subject to all of the other provisions of the present Judgment, the Domfoam Transaction is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members, and constitute a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all parties and all members described thereto;
- [13] **APPROVES** the Domfoam Transaction in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of this Judgment,
- [14] **DECLARES** that, subject to the other provisions of this Judgment, the Domfoam Transaction, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to this Judgment as Schedule "A" and shall form an integral part of this Judgment and shall be binding on all Parties;

- [15] **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Domfoam Transaction, the terms of the present Judgment shall prevail;
- [16] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
- [17] **DECLARES** that any Quebec Settlement Class Member who makes a claim under the Domfoam Transaction shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
- [18] **ORDERS AND DECLARES** that this Judgment, including the Domfoam Transaction, shall be binding on every Quebec Settlement Class Member who has not validly opted-out of the action;
- [19] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity with respect to any share of liability, including without limitation liability arising from *in solidum* obligations, that can be attributed in any way to the Releasees in respect of the Quebec Proceedings (if any), in capital, interest and/or costs;
- [20] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members expressly waive and renounce, to the Releasees' exclusive benefit, to claim or receive payment from the Non-Settling Defendants or any other person of any amount representing any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and/or costs;
- [21] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members release the Non-Settling Defendants and any other person in respect of any share of liability that can be attributed in any way to the Releasees in respect of the Quebec Proceeding (if any), in capital, interests and costs;
- [22] **DECLARES** that the Plaintiffs in Quebec and the Quebec Settlement Class Members will bear the Releasees' share in the contribution in respect of the Quebec Proceeding (if any) that would result from the insolvency of a Non-Settling Defendant or any other Person;
- [23] **DECLARES** that in the event that any person brings an action in warranty or any other claim to obtain from the Releasees an amount representing the share of liability attributed to the Releasees in the Quebec Proceeding (if any) and the Plaintiffs, the Domfoam Defendants, the Individual Settling Parties and the other Releasees are not able to obtain the dismissal of such an action or claim through a preliminary motion at first instance before the Quebec Court, then the Plaintiffs in Quebec and the Quebec Settlement Class Members shall undertake to indemnify the Releasees and to save the Releasees harmless in respect of any damage, harm, loss or cost reasonably incurred in respect of such action or claim, provided that any such indemnity will only be paid out of any present or future undistributed settlement or judgment amount collected from the Non-Settling Defendants

or named or unnamed co-conspirator or any other person for the benefit of the Plaintiffs and the Quebec Settlement Class Members in respect of the Quebec Proceeding, provided however that the payment of this indemnity shall not affect the ability of the Plaintiffs to seek interim distributions of settlement funds subject to court approval;

- [24] **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment;
- [25] **APPROVES** the Notices attached to this Judgment as Schedules "B";
- [26] **ORDERS** that Notices attached to this Judgment as Schedule "B" shall be published according to the notice dissemination plan attached to this Judgment as Schedule "C";
- [27] **DECLARES** that the present proceedings are hereby settled with respect to the Domfoam Defendants, without costs;
- [28] **DECLARES** that Domfoam Defendants shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;
- [29] **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court and this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
- [30] **THE WHOLE** without costs.

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●, J.S.C.

**SCHEDULE A**

**See the «TRANSACTION» at the \_\_\_\_\_ following pages**

**SCHEDULE B**

**See the «NOTICE» at the \_\_\_\_\_ following pages**

**SCHEDULE C**

**See the «NOTICE DISSEMINATION PLAN» at the following page**

**SCHEDULE "B3"**

Court File No. VLC-S-S-106362

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**B E T W E E N:**

**MAJESTIC MATTRESS MFG, LTD.**

**Plaintiff**

**AND:**

**VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM INCORPORATED,  
HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES  
(1995) INC., DOMFOAM INTERNATIONAL, INC., A-Z SPONGE & FOAM PRODUCTS  
LTD., THE CARPENTER COMPANY, WOODBRIDGE FOAM CORPORATION,  
FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC., FOAMEX INNOVATIONS,  
INC., AND FUTURE FOAM, INC.**

**Defendants**

**BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50**

Court File No. S-106213

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**B E T W E E N:**

**TRILLIUM PROJECT MANAGEMENT LTD.**

**Plaintiff**

**AND:**

**HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES, INC.,  
DOMFOAM INTERNATIONAL, INC., THE CARPENTER CO., CARPENTER CANADA CO.,  
THE WOODBRIDGE GROUP, FLEXIBLE FOAM PRODUCTS, INC., SCOTTDEL INC.,  
FOAMEX INNOVATIONS CANADA, INC., FUTURE FOAM, INC., VITAFOAM PRODUCTS  
CANADA LIMITED AND VITAFOAM, INC.**

**Defendants**

**BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50**

**ORDER MADE AFTER APPLICATION**

BEFORE	)		)	
	)	JUSTICE ●	)	●/●/●
	)		)	

ON THE APPLICATION of the Plaintiffs, Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd.:

□ coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC on ●/●/● and on hearing Ward Branch and Luciana Brasil for the Plaintiff, Majestic Mattress Mfg, Ltd., J.J. Camp, Q.C. and Reidar Mogerma for the Plaintiff, Trillium Project Management Ltd., Christopher Naudie for the Defendants, Domfoam International, Inc., Valle Foam Industries (1995) Inc., A-Z Sponge & Foam Products Ltd., and [ LIST ADDITIONAL COUNSEL ]

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement attached as Schedule "A" and dated ● apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the B.C. Proceedings are certified as class proceedings as against the Domfoam Defendants and the Brayiannis Defendant for settlement purposes only.

3. **THIS COURT ORDERS** that the B.C. Settlement Class for the purpose of the B.C. Proceedings is defined as:

All Persons resident in British Columbia who purchased Foam Products in Canada during the Settlement Class Period, except Excluded Persons and Persons who are included in the Ontario Settlement Class and the Quebec Settlement Class.

4. **THIS COURT ORDERS** that Majestic Mattress Mfg, Ltd. and Trillium Project Management Ltd. are appointed as the representative plaintiffs for the B.C. Settlement Class for the B.C. Proceedings.

5. **THIS COURT ORDERS** that the following issue is common to the B.C. Settlement Class for the B.C. Proceedings:



Did the Domfoam Defendants, or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Domfoam Defendants, or any of them to the Settlement Class Members?

6. **THIS COURT ORDERS** that any person who wishes to opt out of the B.C. Proceedings must do so by sending a written election to opt-out, together with the information required in the Settlement Agreement, to the Opt Out Administrator, postmarked on or before the date which is sixty (60) days from the date of the first publication of the Notice of Certification and Settlement Approval.
7. **THIS COURT ORDERS** that any member of the B.C. Settlement Class who has validly opted out of the B.C. Proceedings is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the B.C. Proceedings.
8. **THIS COURT ORDERS** that any member of the B.C. Settlement Class who has not validly opted out of the B.C. Proceedings is bound by the Settlement Agreement and may not opt out of the B.C. Proceedings in the future.
9. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the B.C. Settlement Class.
10. **THIS COURT ORDERS** that the attached Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 and shall be implemented in accordance with its terms.
11. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff and all B.C. Settlement Class Members who have not validly opted out of this action.
12. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the B.C. Settlement Class who does not validly opt out of the B.C. Proceedings shall consent and shall be deemed to have consented to the discontinuance as against the Domfoam Defendants of any Other Actions he, she or it has commenced, without costs.

13. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the B.C. Settlement Class who does not validly opt out of the B.C. Proceedings shall consent and shall be deemed to have consented to the dismissal as against the Brayianis Defendant and the other Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
14. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in B.C. by any member of the B.C. Settlement Class who does not validly opt out of the B.C. Proceedings shall be and is hereby discontinued against the Domfoam Defendants, without costs.
15. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in B.C. by any member of the B.C. Settlement Class Member who does not validly opt out of the B.C. Proceedings shall be and is hereby dismissed against the Brayianis Defendant and the other Releasees, without costs and with prejudice.
16. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each B.C. Settlement Class Member who does not validly opt out of the B.C. Proceedings including those persons who are minors or mentally incapable and the requirements of Rules 20-2(2) and 20-2(17) of the *Supreme Court Civil Rules* are dispensed with in respect of the B.C. Proceedings.
17. **THIS COURT ORDERS AND DECLARES** that instead of releasing the claims against the Releasees, upon the Effective Date, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The use of the terms "Releasors", "Releasees" and "Released Claims" in this Order is a matter of form only for consistency with the Settlement Agreement.
18. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim

or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees or the continuation of the Ontario Additional Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

19. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings, the Ontario Additional Proceeding or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who validly opts out of the B.C. Proceedings).
  
20. **THIS COURT ORDERS** that if, in the absence of paragraph 19 above, the B.C. Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - (a) the B.C. Plaintiffs and the B.C. Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any) restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the B.C. Proceedings or otherwise;
  - (b) for greater certainty, the B.C. Plaintiffs and the B.C. Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators, only those claims for damages, costs and interest attributable to the several liability of the Non-Settling

Defendants and/or named or unnamed co-conspirators that are not Releasees to the B.C. Plaintiffs and the B.C. Settlement Class Members, if any; and

- (c) the B.C. Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the B.C. Proceedings, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the B.C. Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the B.C. Proceedings and shall not be binding on the Releasees in any other proceedings.

21. **THIS COURT ORDERS** that if, in the absence of paragraph 19 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the B.C. Proceedings.

22. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the B.C. Court determined as if the Brayianis Defendant remained parties to the B.C. Proceedings and on at least ten (10) days notice to counsel for the Brayianis Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and a list of documents in accordance with the *Supreme Court Civil Rules* from the Brayianis Defendant;
- (b) oral discovery of the Brayianis Defendant, the transcript of which may be read in at trial;
- (c) leave to serve a notice to admit on the Brayianis Defendant in respect of factual matters; and/or

- (d) the production of the Brayiannis Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
23. **THIS COURT ORDERS** that the Brayiannis Defendant retains all rights to oppose such motion(s) brought under paragraph 22. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 22, the B.C. Court may make such orders as to costs and other terms as it considers appropriate.
24. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 22 above on the Brayiannis Defendant by service on counsel of record for the Brayiannis Defendants in the B.C. Proceedings.
25. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Domfoam Defendants and the Brayiannis Defendant acknowledge the jurisdiction of the B.C. Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.
26. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any B.C. Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in this action.
27. **THIS COURT ORDERS** that the Domfoam Defendants and the Brayiannis Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
28. **THIS COURT ORDERS** that the Settlement Amount, plus any proceeds from the Assignment and any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Courts, which shall be sought by the Plaintiffs on a motion made without notice.
29. **THIS COURT DECLARES** that approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court, and the terms of this Order shall not be

effective unless and until the Settlement Agreement is approved the Ontario Court and the Quebec Court.

30. **THIS COURT DECLARES** that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
31. **THIS COURT ORDERS** that the short-form and long-form of the Notice of Certification and Settlement Approval are hereby approved substantially in the form attached respectively hereto as Schedules "B" and "C".
32. **THIS COURT ORDERS** that the plan for dissemination for the short-form and long-form of the Notice of Certification and Settlement Approval (the "Plan of Dissemination") are hereby approved in the form attached hereto as Schedule "D" and that the Notice of Certification and Settlement Approval shall be disseminated in accordance with the Plan of Dissemination.
33. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the B.C. Proceedings be and are hereby dismissed against the Domfoam Defendants without costs and with prejudice.
34. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the B.C. Proceedings be and are hereby dismissed against the Brayianis Defendant without costs and with prejudice.
35. **THIS COURT ORDERS** that the endorsement of this Order by counsel for the Non-Settling Defendants shall be dispensed with.

**THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:**

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Signature of lawyer for the Plaintiff,  
Majestic Mattress Mfg, Ltd.

Ward Branch and Luciana Brasil

---

Signature of lawyer for the Plaintiff,  
Trillium Project Management Ltd.

J.J. Camp and Reidar Mogerman

---

Signature of lawyer for the Domfoam Defendants

Christopher Naudie

By the Court

---

Registrar

**SCHEDULE "C"**

**CONFIDENTIAL SCHEDULE REGARDING AMOUNTS CONTRIBUTED BY  
CONTRIBUTING INDIVIDUAL SETTling PARTIES**

1. The Contributing Individual Settling Parties shall pay the Settlement Amount to the Escrow Agent in accordance with the following respective individual contribution shares:
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
2. The Parties to the Settlement Agreement respectively agree to keep the contents of this Schedule "C" strictly confidential, except where the Parties consent to such disclosure or where such disclosure is required by law.
3. In addition, the Parties to the Settlement Agreement agree to be bound by the confidentiality provisions of the Settlement Agreement in respect of the information contained in this Confidential Schedule "C".



"HI NEIGHBOR" FLOOR COVERING CO. LIMITED

Plaintiff

v. HICKORY SPRING MANUFACTURING COMPANY,

et al.

Defendants

Court File No. CV-10-15164  
Court File No. CV-11-17279

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDINGS COMMENCED AT WINDSOR  
Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**SUTTS, STROSBURG LLP**  
Lawyers  
600 - 251 Goyeau Street  
Windsor, ON N9A 6V4

**HEATHER RUMBLE PETERSON**  
LSUC #: 2467IV

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**ANDREW J. MORGANTI**  
LSUC# 57895E  
119 Spadina Avenue, Suite 604  
Toronto, ON M5V 2L1

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Fax: 416.800.2171

**LAWYERS FOR THE PLAINTIFF**

FILE: 76-189-000

# **EXHIBIT G**

# EXHIBIT "G"

Court File No. CV-11-17279

ONTARIO  
SUPERIOR COURT OF JUSTICE

The Honourable Madam ) Tuesday, the 11<sup>th</sup> day  
Justice Leitch ) of February, 2014

BETWEEN:

"HII NEIGHBOR" FLOOR COVERING CO. LIMITED

Plaintiffs

-and-

HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES (1995), INC., DOMFOAM INTERNATIONAL, INC., THE CARPENTER CO., CARPENTER CANADA CO., FLEXIBLE FOAM PRODUCTS, INC., FOAMEX INNOVATIONS, INC., FUTURE FOAM, INC., LEGGETT & PLATT, INC., MOHAWK INDUSTRIES, INC., VITAFOAM PRODUCTS CANADA LIMITED, VITAFOAM, INC., WOODBRIDGE FOAM CORPORATION, DAVID CARSON, LOUIS CARSON, DEAN BRAYIANNIS, BRUCE SCHNEIDER, MICHAEL LAJAMBE and ROBERT MAGEE

Defendants:

Proceeding Under the *Class Proceedings Act, 1992*

## ORDER

(Approval of Domfoam Settlement Agreement – Carpet Underlay)

**THIS MOTION** made by the Plaintiff in the Ontario Carpet Underlay Action for an Order approving the settlement agreement entered into with the defendants Domfoam International, Inc., Valle Foam Industries (1995) Inc. and A-Z Sponge Products Ltd. (the "Domfoam Defendants") and Dean Brayiannis (the "Brayiannis Defendant"; collectively the "Settling Defendants"), was heard on October 25, 2013 at the Court House, 80 Dundas Street, London, Ontario, by way of teleconference.

**ON READING** the materials filed, including the partial settlement agreement made on January 10, 2012 as between the plaintiffs, the Domfoam Defendants, the Brayiannis Defendant, John Howard and Tony Vallecoccia (the "Individual Settling Parties"), Bruce Bradley, Michael Cappuccino, Pietro (Peter) Foti, Duke Greenstein, Dale McNeill, James William Sproule, Robert Valle, and Fred

Zickmantel (the "Other Individual Settling Parties") attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff, the Settling Defendants, the Individual Settling Parties and the Other Individual Settling Parties (collectively the "Parties"), and counsel for the Non-Settling Defendants in the Ontario Carpet Underlay Action;

**AND ON BEING ADVISED** that the Parties consent to this Order and on hearing submissions from counsel for the non-settling defendants:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement and the definitions set out in the Order of Justice Leitch dated July 24, 2013 apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Ontario Carpet Underlay Settlement Class.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the Plaintiff in the Ontario Carpet Underlay Action and the Ontario Carpet Underlay Settlement Class.
5. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario Carpet Underlay Settlement Class who does not validly opt out of the Ontario Carpet Underlay Action shall consent and shall be deemed to have consented to the discontinuance as against the Domfoam Defendants of any Other Actions he, she or it has commenced, without costs.
6. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any member of the Ontario Carpet Underlay Settlement Class who does not validly opt out of the Ontario Carpet Underlay Action shall consent and shall be deemed to have consented to the dismissal as against the Brayianis Defendant and the other Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Carpet Underlay Settlement Class who does not validly opt out of the Ontario Carpet

Underlay Action shall be and is hereby discontinued against the Domfoam Defendants, without costs.

8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Ontario Carpet Underlay Settlement Class who does not validly opt out of the Ontario Carpet Underlay Action shall be and is hereby dismissed against the Brayianis Defendant and the other Releasees, without costs and with prejudice.
9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each member of the Ontario Carpet Underlay Settlement Class who does not validly opt out of the Ontario Carpet Underlay Action including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Carpet Underlay Action.
10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
11. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.
12. **THIS COURT ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those Ontario Carpet Underlay Settlement Class members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
13. **THIS COURT ORDERS AND DECLARES** that each Ontario Carpet Underlay Settlement Class member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

14. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who validly opts out of the Ontario Carpet Underlay Action).
  
15. **THIS COURT ORDERS** that if, in the absence of paragraph 14 above, the Ontario Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
  - (a) the Ontario Plaintiff and the Ontario Carpet Underlay Settlement Class members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed coconspirators that are not Releasees that portion of any damages (including punitive damages, if any) restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the Ontario Carpet Underlay Action or otherwise;
  
  - (b) the Ontario Plaintiff and the Ontario Carpet Underlay Settlement Class members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario Carpet Underlay Action that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario Carpet Underlay Action that are not Releasees, only those claims for damages, costs and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario Carpet Underlay Action that are not Releasees to the Ontario Plaintiff and the Ontario Carpet Underlay Settlement Class members, if any, and, for greater certainty, the Ontario Carpet Underlay Settlement Class members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the Ontario Carpet Underlay Action who are not Releasees, to the extent provided by law; and

- (c) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Carpet Underlay Action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Carpet Underlay Action and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Carpet Underlay Action and shall not be binding on the Releasees in any other proceedings.
16. **THIS COURT ORDERS** that if, in the absence of paragraph 14 hereof, the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the Ontario Carpet Underlay Action.
17. **THIS COURT ORDERS** that this Order is without prejudice to the right of the Non-Settling Defendants to assert in this action that the Domfoam Defendants should be treated as Releasees for the purposes of paragraphs 15 and 16 herein, and to the right of the other Parties to oppose this assertion. Nothing in this paragraph 17 shall amend the definition of Releasees for the purpose of this Order and this Settlement Agreement or shall otherwise detract or derogate from the rights of the Domfoam Defendants and the Individual Settling Parties under this Order and this Settlement Agreement.
18. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Ontario Court determined as if the Brayianis Defendant remained a party to the Ontario Carpet Underlay Action, and on at least ten (10) days' notice to counsel for the Brayianis Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:
- (a) documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure*, O.Reg. 194, from the Brayianis Defendant;
  - (b) oral discovery of the Brayianis Defendant, the transcript of which may be read in at trial;

- (c) leave to serve a request to admit on the Brayianis Defendant in respect of factual matters; and/or
  - (d) production of the Brayianis Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
19. **THIS COURT ORDERS** that the Brayianis Defendant retains all rights to oppose such motion(s) brought under paragraph 18. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 18 the Ontario Court may make such orders as to costs and other terms as it considers appropriate.
20. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 18 above on the Brayianis Defendant by service on counsel of record for the Brayianis Defendant in the Ontario Carpet Underlay Action.
21. **THIS COURT ORDERS** that for greater certainty, nothing in this Order shall be construed to limit or derogate the ability of the Non-Settling Defendants to seek discovery as against the Individual Settling Parties as non-parties to the Ontario Carpet Underlay Action under the Ontario *Rules of Civil Procedure*.
22. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role, and the Domfoam Defendants and the Brayianis Defendant acknowledge the jurisdiction of the Ontario Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.
23. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Ontario Carpet Underlay Settlement Class member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the Ontario Carpet Underlay Action.
24. **THIS COURT ORDERS** that, notwithstanding the terms of section 4.5(23) of the Settlement Agreement, in the event that:
- (a) the Plaintiffs allege a material breach by one or more of the Domfoam Defendants, the Brayianis Defendant or the Individual Settling Parties (a "Non-Cooperating Party" or the "Non-Cooperating Parties") of their obligations under section 4.5 of the Settlement Agreement;



- (b) the Plaintiffs apply to the Ontario Court for specific performance of such obligations by the Non-Cooperating Party or Parties;
- (c) the Ontario Court finds that the Non-Cooperating Party or Parties have materially breached section 4.5 of the Settlement Agreement and orders specific performance (the "Cooperation Performance Order"); and
- (d) the Non-Cooperating Party or Parties fail to comply with the Cooperation Performance Order;

the Settlement Agreement shall not be terminated as to the Non-Cooperating Party or Parties.

- 25. **THIS COURT ORDERS** that the Domfoam Defendants and the Brayianis Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
- 26. **THIS COURT ORDERS** that the Settlement Amount, plus any accrued interest, be held in trust by the Escrow Agent, subject to the Trust Agreement made as of February 15, 2013, for the benefit of the Ontario Carpet Underlay Settlement Class, pending further order of the Courts.
- 27. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the Quebec Court and the B.C. Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved the Quebec Court and the B.C. Court.
- 28. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario Carpet Underlay Action be and is hereby discontinued against the Domfoam Defendants without costs and with prejudice.
- 29. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, the Ontario Carpet Underlay Action be and is hereby dismissed against the Brayianis Defendant without costs and with prejudice.

Date: February 26, 2014

  
THE HONOURABLE JUSTICE LEITCH

ENTERED AT WINDSOR	
In Book No.	25
re Document No.	341
on	March 20 2014
by	ER

"HI! NEIGHBOR" FLOOR COVERING CO. LIMITED

Plaintiff

v. HICKORY SPRING MANUFACTURING COMPANY,  
et al.

Defendants

Court File No. CV-10-15164  
Court File No. CV-11-17279

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**PROCEEDINGS COMMENCED AT WINDSOR**

*Proceeding under the Class Proceedings Act, 1992*

**ORDER**

**SUTTS, STROSBURG LLP**

Lawyers

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Windsor, ON N9A 6V4

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**LAWYERS FOR THE PLAINTIFF**

FILE: 76-189-000

# **EXHIBIT H**

**EXHIBIT** "H"

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY  
  
MAR 19 2014  
  
ENTERED  
Between

Court File No. VLC-S-S-106362

*In the Supreme Court of British Columbia*

**Majestic Mattress Mfg. Ltd.**

Plaintiff

and

**Vitafoam Products Canada Limited, Vitafoam Incorporated,  
Hickory Springs Manufacturing Company, Valle Foam  
Industries (1995) Inc., Domfoam International, Inc., A-Z  
Sponge & Foam Products Ltd., The Carpenter Company,  
Woodbridge Foam Corporation, Flexible Foam Products, Inc.,  
Scottdel Inc., Foamex Innovations, Inc. and Future Foam, Inc.**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.BC 1996, c. 50

Court File No. S-106213

*In the Supreme Court of British Columbia*

Between

**Trillium Project Management Ltd.**

Plaintiff

and

**Hickory Springs Manufacturing Company, Valle Foam  
Industries, Inc., Domfoam International, Inc., Carpenter Co.,  
Carpenter Canada Co., The Woodbridge Group, Flexible  
Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc.,  
Foamex Innovations Canada, Inc., Future Foam, Inc.,  
Vitafoam Products Canada Limited and Vitafoam, Inc.**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.BC 1996, c. 50

**ORDER MADE AFTER APPLICATION  
APPROVAL OF DOMFOAM SETTLEMENT AGREEMENT**

BEFORE THE HONOURABLE MR. JUSTICE  
BOWDEN

)  
)  
)

25/Oct/2013  
9/Dec/2013  
and  
10/Mar/2014

ON THE APPLICATION of the Plaintiffs, Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd. coming on for hearing at the Courthouse, 800. Smithe Street, Vancouver, BC, on 25/Oct/2013, 9/Dec/2013 and 10/Mar /2014, and on hearing Reidar Mogerman and Julie Facchin, counsel for the Plaintiffs; Christopher Naudie for the Defendants, Domfoam International, Inc. ("Domfoam"), Valle Foam Industries (1995) Inc. ("Valle Foam"), A-Z Sponge & Foam Products Ltd. ("A-Z"; together with Domfoam and Valle Foam, the "Domfoam Defendants"); Robert Tanner for Tony Vallecoccia and John Howard (the "Individual Settling Parties"); Jack Berkow for Bruce Bradley, Michael Cappuccino, Pietro (Peter) Foti, Duke Greenstein, Dale Mcneill, James William Sproule, Robert Valle and Fred Zickmantel (the "Other Individual Settling Parties") and Dean Brayiannis (the "Brayiannis Defendant"); and on hearing submissions from counsel for the non-settling defendants;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this Order, the definitions set out in the partial Settlement Agreement made on January 10, 2012 as between the plaintiffs, the Domfoam Defendants, the Brayiannis Defendant, the Individual Settling Parties and the Other Individual Settling Parties attached as Schedule "A" (the "Settlement Agreement") and the definitions set out in the Order of Justice Bowden dated July 30, 2013 apply to and are incorporated into this Order .
2. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
3. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c 50 and shall be implemented in accordance with its terms.
4. The Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all BC Settlement Class Members who have not validly opted out of this action.
5. Any member of the BC Settlement Class who has validly opted out of the BC Proceedings is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the BC Proceedings.
6. Upon the Effective Date, any member of the BC Settlement Class who does not validly opt out of the BC Proceedings shall consent and shall be deemed to have consented to the discontinuance as against the Domfoam Defendants of any Other Actions he, she or it has commenced, without costs.
7. Upon the Effective Date, any member of the BC Settlement Class who does not validly opt out of the BC Proceedings shall consent and shall be deemed to have consented to the dismissal as against the Brayiannis Defendant and the other Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.

8. Upon the Effective Date, each Other Action commenced in BC by any member of the BC Settlement Class who does not validly opt out of the BC Proceedings shall be and is hereby discontinued against the Domfoam Defendants, without costs.

9. Upon the Effective Date, each Other Action commenced in BC by any member of the BC Settlement Class Member who does not validly opt out of the BC Proceedings shall be and is hereby dismissed against the Brayianis Defendant and the other Releasees, without costs and with prejudice.

10. This Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member who does not validly opt out of the BC Proceedings including those persons who are minors or mentally incapable and the requirements of Rules 20-2(2) and 20-2(17) of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Proceedings.

11. Instead of releasing the claims against the Releasees, upon the Effective Date, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The use of the terms "Releasors", "Releasees" and "Released Claims" in this order is a matter of form only for consistency with the Settlement Agreement.

12. Each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

13. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this order (unless such claim is made in respect of a claim by a Person who validly opts out of the BC Proceedings).

14. If, in the absence of paragraph 13 above, the BC Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- (a) the BC Plaintiffs and the BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any) restitutionary award,

disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise, in respect of the BC Proceedings or otherwise;

- (b) the BC Plaintiffs and the BC Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the BC Proceedings that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the BC Proceedings that are not Releasees, only those claims for damages, costs and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the BC Proceedings that are not Releasees to the BC Plaintiffs and the BC Settlement Class Members, if any, and, for greater certainty, the BC Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the BC Proceedings who are not Releasees, to the extent provided by law; and
- (c) the BC Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceedings, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceedings and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceedings and shall not be binding on the Releasees in any other proceedings.

15. If, in the absence of paragraph 13 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of and assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the BC Proceedings.

16. This Order is without prejudice to the right of the Non-Settling Defendants to assert in this action that the Domfoam Defendants should be treated as Releasees for the purposes of paragraphs 14 and 15 herein, and to the right of the other Parties to oppose this assertion. Nothing in this Paragraph 16 shall amend the definition of Releasees for the purpose of this Order and this Settlement Agreement or shall otherwise detract or derogate from the rights of the Domfoam Defendants and the Individual Settling Parties under this Order and this Settlement Agreement.

17. A Non-Settling Defendant may, on motion to the BC Court determined as if the Brayianis Defendant was a party to the BC Proceedings and on at least ten (10) days

notice to counsel for the Brayiannis Defendant, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and a list of documents in accordance with the *Supreme Court Civil Rules* from the Brayiannis Defendant;
- (b) oral discovery of the Brayiannis Defendant, the transcript of which may be read in at trial;
- (c) leave to serve a notice to admit on the Brayiannis Defendant in respect of factual matters; and/or
- (d) the production of the Brayiannis Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

18. The Brayiannis Defendant retains all rights to oppose such motion(s) brought under paragraph 17. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 17, the BC Court may make such orders as to costs and other terms as it considers appropriate.

19. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 17 above on the Brayiannis Defendant by service on counsel of record for the Brayiannis Defendant in the BC Proceedings.

20. For greater certainty, nothing in this order shall be construed to limit or derogate the ability of the Non-Settling Defendants to seek discovery as against the Individual Settling Parties as non-parties to the BC Proceedings under the B.C. *Supreme Court Civil Rules*.

21. For purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Domfoam Defendants and the Brayiannis Defendant acknowledge the jurisdiction of the BC Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.

22. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in this action.

23. Notwithstanding the terms of section 4.5(23) of the Settlement Agreement, in the event that:

- (a) the Plaintiffs allege a material breach by one or more of the Domfoam Defendants, the Brayiannis Defendant or the Individual Settling Parties (a "Non-Cooperating Party" or the "Non-Cooperating Parties") of their obligations under section 4.5 of the Settlement Agreement;



- (b) the Plaintiffs apply to the Ontario Court for specific performance of such obligations by the Non-Cooperating Party or Parties;
- (c) the Ontario Court finds that the Non-Cooperating Party or Parties have materially breached section 4.5 of the Settlement Agreement and orders specific performance (the "Cooperation Performance Order"); and
- (d) the Non-Cooperating Party or Parties fail to comply with the Cooperation Performance Order;

the Settlement Agreement shall not be terminated as to the Non-Cooperating Party or Parties.

24. The Domfoam Defendants and the Brayiannis Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.

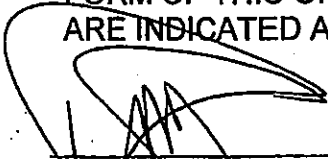
25. The Settlement Amount, plus any accrued interest, shall be held in trust by the Escrow Agent, subject to the Trust Agreement made as of February 15, 2013, for the benefit of the Settlement Class, pending further order of the Courts.

26. Approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court, and the terms of this order shall not be effective unless and until the Settlement Agreement is approved the Ontario Court and the Quebec Court.

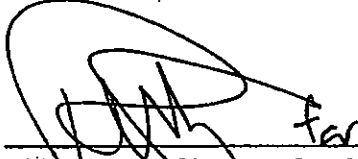
27. Except as aforesaid, the BC Proceedings be and are hereby discontinued against the Domfoam Defendants without costs and with prejudice.

28. Endorsement of this order by counsel for the Non-Settling Defendants is dispensed with.

THE FOLLOWING PARTIES AND INDIVIDUAL SETTLING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



\_\_\_\_\_  
Signature of lawyer for the Plaintiff,  
Trillium Project Management Ltd.  
Reidar Mogerman

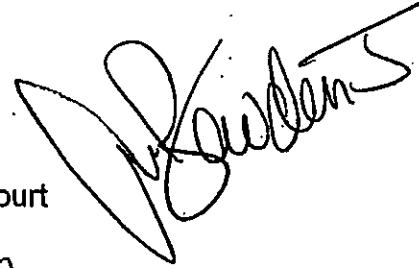


\_\_\_\_\_  
Signature of lawyer for the Plaintiff,  
Majestic Mattress Mfg. Ltd.

Ward K. Branch



\_\_\_\_\_  
Signature of lawyer for the Defendants  
Domfoam International, Inc., Valle Foam  
Industries (1995) Inc., A-Z Sponge &  
Foam Products Ltd.  
Christopher Naudie



By the Court

  
\_\_\_\_\_  
Registrar

# **EXHIBIT I**

# EXHIBIT <sup>n</sup> I <sup>n</sup>

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

MAR 19 2014

ENTERED

Between

Court File No. VLC-S-S-106362

*In the Supreme Court of British Columbia*

**Majestic Mattress Mfg. Ltd.**

Plaintiff

and

**Vitafoam Products Canada Limited, Vitafoam Incorporated, Hickory Springs Manufacturing Company, Valle Foam Industries (1995) Inc., Domfoam International, Inc., A-Z Sponge & Foam Products Ltd., The Carpenter Company, Woodbridge Foam Corporation, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc. and Future Foam, Inc.**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, c. 50

Court File No. S-106213

*In the Supreme Court of British Columbia*

Between

**Trillium Project Management Ltd.**

Plaintiff

and

**Hickory Springs Manufacturing Company, Valle Foam Industries, Inc., Domfoam International, Inc., Carpenter Co., Carpenter Canada Co., The Woodbridge Group, Flexible Foam Products, Inc., Scottdel Inc., Foamex Innovations, Inc., Foamex Innovations Canada, Inc., Future Foam, Inc., Vitafoam Products Canada Limited and Vitafoam, Inc.**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, c. 50.

**ORDER MADE AFTER APPLICATION  
(APPROVAL OF DISTRIBUTION PROTOCOL, APPOINTMENT OF CLAIMS  
ADMINISTRATOR, AND APPROVAL OF FEE AGREEMENTS & DISBURSEMENTS)**

BEFORE THE HONOURABLE MR. JUSTICE  
BOWDEN

)  
)

25/Oct/2013

ON THE APPLICATION of the Plaintiffs, Majestic Mattress Mfg. Ltd. and Trillium Project Management Ltd. coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 25/Oct/2013 and on hearing Reidar Mogerman and Julie Facchin, counsel for the Plaintiffs; Christopher Naudie for the Defendants, Domfoam International, Inc. ("Domfoam"), Valle Foam Industries (1995) Inc. ("Valle Foam"), A-Z Sponge & Foam Products Ltd. ("A-Z"; together with Domfoam and Valle Foam, the "Domfoam Defendants"); Robert Tanner for Tony Vallecoccia and John Howard (the "Individual Settling Parties"); and Jack Berkow for Bruce Bradley, Michael Cappuccino, Pietro (Peter) Foti, Duke Greenstein, Dale McNeill, James William Sproule, Robert Valle and Fred Zickmantel (the "Other Individual Settling Parties") and Dean Brayannis (the "Brayannis Defendant")

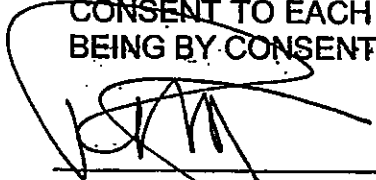
THIS COURT ORDERS that:

1. Except to the extent they are modified by this order, the definitions set out in the partial Settlement Agreement made on January 10, 2012 as between the plaintiffs, the Domfoam Defendants, the Brayannis Defendant, the Individual Settling Parties and the Other Individual Settling Parties attached as **Schedule "A"** (the "Settlement Agreement") and the definitions set out in the Order of Justice Bowden dated July 30, 2013 apply to and are incorporated into this Order;
2. Camp Fiorante Matthews Mogerman is appointed as Claims Administrator after the Effective Date on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Settlement Agreement;
3. The Distribution Protocol attached as **Schedule "B"** is approved;
4. The following retainer agreements are hereby approved, pursuant to s. 38(2) of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50:
  - (a) between Camp Fiorante Matthews Mogerman and the plaintiff Trillium Project Management Ltd., dated August 13, 2013, a copy of which is attached as **Schedule "C"** to this order; and
  - (b) between Branch McMaster and the plaintiff Majestic Mattress Mfg. Ltd., dated August 30, 2010, a copy of which is attached as **Schedule "D"** to this order;
5. disbursements in the amount of \$203,268.63 plus applicable taxes are awarded to Class Counsel in respect of the prosecution of the Proceedings, and shall be paid to Class Counsel from the Settlement Amount after the Effective Date and pursuant to the terms of the Settlement Agreement;
6. the fees and disbursements of the Escrow Agent shall be paid from the Settlement Amount;
7. Class Counsel may bring a further application at a time within their own discretion for approval of fees to be awarded in respect of the Settlement Amount

payable pursuant to the terms of the Settlement Agreement or any other funds received;  
and

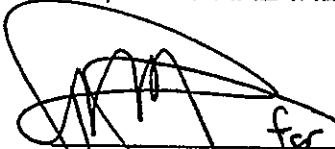
8. endorsement of this Order by the Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND  
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS  
BEING BY CONSENT:



Signature of lawyer for the Plaintiff,  
Trillium Project Management Ltd.

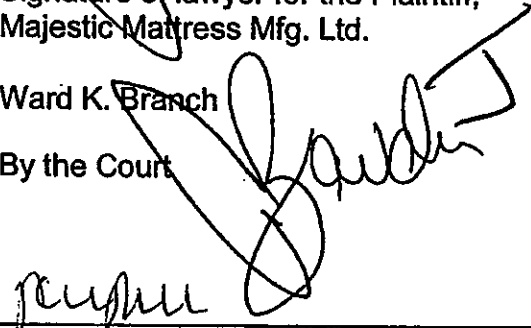
Reidar Mogerman



Signature of lawyer for the Plaintiff,  
Majestic Mattress Mfg. Ltd.

Ward K. Branch

By the Court



Registrar

# **EXHIBIT J**

**EXHIBIT "J"**

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.**

**APPLICANTS**

**EIGHTH REPORT OF THE MONITOR  
DATED DECEMBER 13, 2013**



42. Further exchanges of correspondence regarding the appropriate valuation of the Class Proofs of Claim between counsel for the Companies and Class Counsel continued subsequent to August 2013. The Class Plaintiffs take the position that the Class Proofs of Claim should be valued in the aggregate amount of \$97,500,000 on a joint and several basis for the following reasons:

- (a) Given that both Domfoam and Valle Foam pled guilty to certain offences under the *Competition Act*, the Class Plaintiffs maintained that it is a virtual certainty that as a result of such guilty plea, in conjunction with the facts admitted by Valle Foam and Domfoam in the Statement of Admissions, the Class Plaintiffs will be able to prove liability against the Companies on a Class-wide basis under Section 36 of the *Competition Act*. It is the position of the Class Plaintiffs that pursuant to Section 36(2) of the *Competition Act*, a guilty plea is rebuttable evidence of that party's liability in a civil action;
- (b) A-Z Foam acted in concert with Domfoam and Valle Foam and should therefore be jointly and severally liable with Domfoam and Valle Foam for the full amount of the Class Proofs of Claim;
- (c) The fact that the Companies participation in the cartel lasted for more than 10 years demonstrates that the Companies were effective in charging prices higher than what otherwise would have been the case absent the cartel;
- (d) The Class Plaintiffs maintained that in a price-fixing class action proceeding, the appropriate measure of damages is the aggregate overcharge received by the Defendant or paid by the Plaintiff. In this case, the gain obtained by the Companies will be the mirror image of the total loss suffered by the Class. Since both direct and indirect purchasers are included in the Class, the volume of commerce is determined by the amount of the relevant product sold into the Canadian market, which amounted to \$975,000,000 in sales by Domfoam and Valle Foam, plus the sales of A-Z Foam, during the relevant period. This volume of commerce, multiplied by the appropriate overcharge, determines the aggregate quantum of the Class Claim;
- (e) The Class Plaintiffs further maintained that the Companies must have been successful in implementing their conspiracy, and that a 10% proxy should be utilized for the price fixing overcharge, such that the value of the Class Proofs of Claim is 10% of the total volume of commerce sold to customers in Canada by the Companies, i.e. 10% of \$975,000,000 or \$97,500,000. The Class Plaintiffs argued that a 10% proxy is

appropriate since it is the practice of the Competition Bureau and of the U.S. Department of Justice to establish fines using a baseline of 20% of the volume of commerce to arrive at the appropriate fine. Of that amount, 10% is considered to be the estimate of the damages flowing from the overcharges, whereas the additional 10% is assessed for deterrence purposes;

- (f) The Class Plaintiffs submitted that, based on certain studies, the use of a 10% proxy for a price fixing overcharge is reasonable and consistent (or slightly below) the average overcharge found across price-fixing conspiracies in other historical cases; and
- (g) Even if prices would have risen absent the wrongful behaviour, the collusion among conspiracy members ensured that none of the cartel members absorbed some or all of the price increases which would have occurred in any event as a means to gain market share from other competitors in the industry.

43. The Companies dispute that the Companies should be liable to the Class Plaintiffs on a joint and several basis in the amount of \$97.5 million. It is the position of the Companies that:

- (a) It is not certain that the guilty plea by Domfoam and Valle Foam to an offence under the *Competition Act* would result in a finding of liability on a class-wide basis under the *Competition Act* in the Canadian Class Actions. The Companies stressed that Section 36(2) of the *Competition Act* only creates a rebuttable presumption of a contravention of the Act. In addition, a plea of guilty under Section 45 of the *Competition Act* is not an admission that any alleged price increases were implemented or that the alleged conspiracy was successful. The Companies noted that in the Statement of Admissions, Domfoam and Valle Foam indicate that certain discussions did not result in the implementation of a price increase;
- (b) In addition, the Companies maintained that the Class Plaintiffs had misread the bulletins and policy guidance of the Commissioner, and in the sentencing submissions as part of the plea, the Commissioner had disclaimed that it had performed any factual analysis of the alleged overcharge;
- (c) The Companies also argued that the Class Plaintiffs had arbitrarily assumed the existence of a 10% overcharge based on certain misapplied guidance and that the Class Plaintiffs had not conducted any factual analysis of the potential overcharge in this case, whereas

the Companies had certain information indicating that any discussions with competitors were discrete and did not result in a baseline price increase across the entire Class period;

- (d) The Companies should not be subject to joint and several liability for the claims of the Class Plaintiffs since there is no statutory language or other judicial authority under Section 36 of the *Competition Act* that suggests that liability under the statute is joint and several. The Companies also take the position that there is no evidence to support a finding of joint and several liability between the Companies or among the other defendants;
- (e) The Companies further maintain that during the period in which the alleged conspiracy had existed, the underlying price increases at issue were driven not by collusion but by the rising cost of raw materials and other input costs associated with the production of slab and foam. Since these inputs would have increased the price of slab and foam in any event notwithstanding the existence of certain discussions, and given that many of the price increases which the Companies attempted to implement were not successful either in whole or in part, the Companies disputed the existence of a baseline price increase across the entire Class period;
- (f) The Companies were small players in the foam and slab manufacturing business and were not price leaders but merely price followers. To the extent the Companies obtained any commercial advantage from the alleged behaviour, it amounted to only receiving certain limited advance notice of price increases which would be implemented by certain larger competitors, with the result that any potential damage to the Class was limited.

44. Following extensive negotiations between counsel to the Companies and counsel to the Class Plaintiffs, the parties have agreed to resolve the valuation of the Class Proofs of Claim on the following basis:

- (a) The Class Proofs of Claim will be valued at the total amount of CDN \$40 million, which includes any and all Claims that have or may be asserted on behalf of Class members as against the Companies in the BC, Ontario and Quebec Proceedings;
- (b) There will be no set-off against the foregoing amount in respect of any funds received by the class from the Individual Settling Parties under the Settlement Agreement;
- (c) Pursuant to Section 4.2 of the Settlement Agreement, the Companies agreed to assign to the Class Plaintiffs the Companies' right to receive any proceeds from the class action

# **EXHIBIT K**

Exhibit K

Deloitte & Touche Inc., CCAA Monitor of  
 3113736 Canada Ltd.  
 (formerly Valle Foam Industries (1995) Inc.)  
 Statement of Receipts and Disbursements  
 For the period March 29, 2012 to April 21, 2014

Receipts

Sale of assets	\$	1,560,000.00
Accounts Receivable - Collected by Purchaser		3,699,723.31
Accounts Receivable - Collected by Applicants		90,880.73
Reimbursement of Legal Fees (net of payment of post-filing obligations)		631,451.21
Insurance Refund		51,297.00
Interest Earned		98,168.66
Class Action Settlement (net)		383,754.65
Loan Repayment & Interest from 4362063 Canada Ltd.		838,261.00
Total cash receipts	\$	<u>7,353,536.56</u>

Disbursements

CCAA Monitor's Fees		204,567.68
HST on CCAA Monitor's Fees		26,593.80
Legal Fees and Disbursements		670,567.09
HST Paid on Legal and Disbursements		79,292.17
Other Disbursements (Newspaper Notices, Bank Charges)		5,810.44
HST on Disbursements		640.47
PST Paid on D&O Premium		2,070.00
D&O Insurance premium		25,875.00
Post-filing Claims Paid		127,022.58
Total cash disbursements	\$	<u>1,142,439.23</u>

Cash on hand as at April 21, 2014	\$	<u>6,211,097.33</u>
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# **EXHIBIT L**

Exhibit L

Deloitte & Touche Inc., CCAA Monitors of  
 4362063 Canada Ltd.  
 (formerly Domfoam International Inc.)  
 Statement of Receipts and Disbursements  
 For the period March 29, 2012 to April 21, 2014

Receipts

Sale of assets	\$	4,050,879.66
Funds received from Domfoam RBC bank accounts		296,932.86
Interest earned		52,547.70
Class Action Settlement (net)		258,274.62
Total cash receipts	\$	<u>4,658,634.84</u>

Disbursements

CCAA Monitor's Fees		204,567.66
HST on CCAA Monitor's Fees		25,750.36
Legal Fees and Disbursements		1,196,428.38
HST Paid on Legal and Disbursements		81,498.65
Other Disbursements (Newspaper Notices, bank charges)		5,787.71
HST on Disbursements		640.47
PST Paid on D&O Premium		2,070.00
D&O Insurance premium		25,875.00
Loan Payment & Interest to 3113736 Canada Ltd.		838,261.00
Total cash disbursements	\$	<u>2,380,879.23</u>

Cash on hand as at April 21, 2014	\$	<u><u>2,277,755.61</u></u>
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# **EXHIBIT M**



Exhibit M

Deloitte & Touche Inc., CCAA Monitors of  
of A-Z Sponge & Foam Products Ltd.  
Statement of Receipts and Disbursements  
For the period March 29, 2012 to April 21, 2014

Receipts

Sale of assets	\$	842,278.49
Funds received from A-Z bank account		304,564.36
Insurance Refund		8,517.80
Interest Earned		13,409.53
Class Action Settlement (net)		36,783.38
Total cash receipts	\$	<u>1,205,553.56</u>

Disbursements

CCAA Monitor's Fees		45,459.44
HST on CCAA Monitor's Fees		5,909.73
Legal Fees and Disbursements		272,233.72
HST Paid on Legal and Disbursements		18,612.24
Other Disbursements (Newspaper Notice, bank charges)		1,306.89
HST on Disbursements		272.50
PST Paid on D&O Premium		460.00
D&O Insurance premium		5,750.00
Post-filing claims paid		125,399.48
Total cash disbursements	\$	<u>475,404.00</u>

Cash on hand as at April 21, 2014 \$ 730,149.56

# **EXHIBIT N**

# EXHIBIT "N"

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.

APPLICANTS

AFFIDAVIT OF CATHERINE HRISTOW  
(Sworn April 22, 2014)

I, CATHERINE HRISTOW, of the Town of Richmond Hill, in the Province of Ontario,  
MAKE OATH AND SAY AS FOLLOWS:

1. I am a Chartered Professional Accountant, a Certified Management Accountant and Chartered Insolvency and Restructuring Professional qualified to practice in the Province of Ontario and am a Vice President of Deloitte Restructuring Inc. ("Deloitte"), the Court-Appointed monitor (the "Monitor") of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc. ("Valle Foam")), 4362063 Canada Ltd. (formerly Domfoam International Inc. ("Domfoam")) and A-Z Sponge & Foam Products Ltd. ("A-Z Foam") (collectively, the "Applicants" or the "Companies") and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto as Exhibit "A" are true copies of the invoice for fees and disbursements incurred by Deloitte in the course of the CCAA administration of the Company between December 7, 2013 and April 11, 2014 (the "Passing of Accounts Period").

3. The total fees of the Monitor during the Passing of Accounts Period amount to \$29,645.00, together with expenses and disbursements in the amount of \$32.00 and harmonized sales tax ("HST") in the amount of \$3,858.01 totalling \$33,535.01.

4. To the best of my knowledge, the rates charged by Deloitte throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Toronto market for the provision of similar services.

5. The hourly billing rates outlined in Exhibit "A" to this affidavit are comparable to the hourly rates charged by Deloitte for services rendered in relation to similar proceedings.

6. The fees of the Monitor have been allocated on a percentage basis to Valle Foam, Domfoam and A-Z at 45%, 45% and 10% respectively as agreed with the Applicants.

7. Attached as Exhibit "A" to the Affidavit of Grant Moffat sworn and filed in support of the within motion are the full particulars of the fees and disbursements of Thornton Grout Finnigan LLP, counsel to the Monitor, which have been incurred during the period December 1, 2013 to March 31, 2014.


8. Thornton Grout Finnigan LLP rendered services throughout these proceedings in a manner consistent with instructions from the Monitor. The Monitor has approved all such accounts and I verily believe that the fees and disbursements of Thornton Grout Finnigan LLP are fair and reasonable in the circumstances.

9. I make this affidavit in support of a motion by the Monitor for, *inter alia*, approval of the fees and disbursements of the Monitor.

**SWORN BEFORE ME**  
at the City of Toronto, in the  
Province of Ontario this 22nd  
day of April, 2014

)  
)  
)  
)

  
Catherine A. Hristow )

  
A commissioner for taking oaths, etc.  
Anna Koronec, a Commissioner, etc.,  
Province of Ontario  
for Deloitte Restructuring Inc.,  
Trustee in Bankruptcy,  
Expires July 10, 2016.

**EXHIBIT "A"**

**REFERRED TO IN THE AFFIDAVIT OF CATHERINE HRISTOW**  
*(Sworn April 22, 2014)*



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**Commissioner**

Anna Koroneos, a Commissioner, etc.,  
Province of Ontario  
for Deloitte Restructuring Inc.,  
Trustee In Bankruptcy,  
Expires July 10, 2016.



Deloitte Restructuring Inc.  
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Suite 1700  
Toronto ON M2N 6L7  
Canada

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www.deloitte.ca

3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.)  
4362063 Canada Ltd. (formerly Domfoam International Inc.)  
A-Z Sponge & Foam Products Ltd.  
c/o Deloitte Restructuring Inc.  
181 Bay Street, Suite 1400  
Toronto, ON M5J 2V1

Date: February 4, 2014  
Invoice No: 3482841  
Client/Mandate No: 921001/1000001  
Partner: Paul Casey

Attention: Mr. Paul Casey

HST Registration No: 122893605

For professional services rendered in connection with Deloitte Restructuring Inc., acting as Court-Appointed *Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36)* ("CCAA") Monitor of Valle Foam Industries (1995) Inc, ("Valle Foam") Domfoam International Inc. ("Domfoam") and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period December 7, 2013 to January 31, 2014.

Date	Professional	Description
12/9/2013	Brown, Rose	Deposit funds at the bank and record same in Ascend.
12/11/2013	Hristow, Catherine	Review Monitor's Eighth Report and supporting documentation; correspondence with D. Ullmann; review statements of receipts and disbursements.
12/12/2013	Brown, Rose	On-going trust account banking administration, and disbursement processing.
12/12/2013	Casey, Paul	Review of Monitor's Eighth Report; discussion with C. Hristow.
12/12/2013	Hristow, Catherine	Continue with revisions to the Eighth Report; review of class action documentation; prepare support documentation for the Eighth Report; telephone attendance and email correspondences with G. Moffat; correspondence with S. Nassabi; correspondence with D. Ullmann; discussions with R. Brown regarding statement of receipts and disbursements; discussion with P. Casey.
12/12/2013	Mingie, Susan	Quality review of the Eighth Report and correspondence with C. Hristow.
12/13/2013	Casey, Paul	Meeting with C. Hristow to discuss revisions the Eighth Report of the Monitor; sign and issue Report.
12/13/2013	Hristow, Catherine	Discussion with P. Casey; revisions to the Eighth Report; correspondence with G. Moffat; finalize the Eighth Report; correspondence with S. Nassabi.
12/16/2013	Hristow, Catherine	Review letter from Non-Settling Defendants; correspondence with G. Moffat.
12/17/2013	Hristow, Catherine	Attendance in court regarding extension hearing; various discussions with R. Brown regarding cheques to be issued; correspondence with S. Damiani regarding loan payment; correspondence with C. Faria regarding posting information to the website.

3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.)  
 4362063 Canada Ltd. (formerly Domfoam International Inc.)  
 A-Z Sponge & Foam Products Ltd.  
 c/o Deloitte Restructuring Inc.  
 February 4, 2014  
 Page 2

12/18/2013	Brown, Rose	Instruct bank to cash in portion of investments and deposit funds in the bank account; record information in Ascend; prepare disbursements cheques.
12/18/2013	Damiani, Stefano	Review email from C. Hristow with respect to intercompany advances; review reports of the Monitor and emails from G. Ross of Domfoam; prepare interest schedule.
12/18/2013	Hristow, Catherine	Review loan payout; correspondences with J. Ehrman and M. Whitmer regarding extension and the Monitor's Eighth Report; review various legal invoices; authorize collapse of Domfoam and A-Z investments; correspondence with S. Nassabi.
12/19/2013	Brown, Rose	On-going trust account banking administration, and disbursement processing.
12/20/2013	Brown, Rose	Issue cheques, and record same in the general ledger.
12/20/2013	Hristow, Catherine	Correspondence with R. Brown regarding cheques to be deposited.
12/23/2013	Brown, Rose	On-going trust account banking administration, and disbursement processing.
1/6/2014	Hristow, Catherine	Review correspondence regarding U.S. settlements.
1/7/2014	Brown, Rose	Confirm with bank that the CIBC draft cleared; discussion with C. Hristow.
1/7/2014	Hristow, Catherine	Discussion with R. Brown; correspondence with S. Nassabi.
1/10/2014	Brown, Rose	On-going trust account banking administration, and disbursement processing.
1/10/2014	Hristow, Catherine	Review correspondence from S. Nassabi; telephone attendance with G. Moffat; review correspondence from D. Ullmann; discussion with R. Brown regarding settlement cheques; review statement of receipts and disbursements.
1/13/2014	Brown, Rose	Attend at the bank and deposit cheque; prepare letter to obtain U.S. dollar bank draft; record entries in Ascend.
1/13/2014	Hristow, Catherine	Telephone attendance with S. Nassabi.
1/21/2014	Brown, Rose	Attend at the bank and deposit cheque and record same in Ascend.
1/21/2014	Brown, Rose	Completion of on-going trust account banking administration, and disbursement processing.
1/22/2014	Hristow, Catherine	Correspondence with S. Nassabi; review and approve bank reconciliations.
1/24/2014	Brown, Rose	Correspondence with the bank to renew investments.

3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.)  
 4362063 Canada Ltd. (formerly Domfoam International Inc.)  
 A-Z Sponge & Foam Products Ltd.  
 c/o Deloitte Restructuring Inc.  
 February 4, 2014  
 Page 3

**Summary of Fees**

<b>Professional</b>	<b>Position</b>	<b>Hours</b>	<b>Rate</b>	<b>Fees</b>
Casey, Paul	Partner	2.5	\$ 650.00	\$ 1,625.00
Mingie, Susan	Partner	0.5	\$ 650.00	325.00
Hristow, Catherine	Director	22.0	\$ 570.00	12,540.00
Damiani, Stefano	Manager	1.6	\$ 425.00	680.00
Brown, Rose	Trust Administrator	7.7	\$ 160.00	1,232.00
<b>Total hours and professional fees</b>		<u>34.3</u>		\$ 16,402.00
<b>Blended hourly rate</b>			\$ 478.19	
<b>Disbursements</b>				32.00
<b>Total Fees and Disbursements</b>				\$ 16,434.00
HST @ 13%				2,136.42
<b>Total Amount Due</b>				<b>\$ 18,570.42</b>

**Allocation of fees**

<b>Entity</b>	<b>Professional Fees</b>	<b>Disbursements</b>	<b>Taxes</b>	<b>Total</b>
Valle Foam Industries (1995) Inc. (45%)	\$ 7,380.90	\$ 14.40	\$ 961.39	\$ 8,356.69
Domfoam International Inc. (45%)	7,380.90	14.40	961.39	8,356.69
A-Z Sponge & Foam Products (10%)	1,640.20	3.20	213.64	1,857.04
<b>Totals</b>	<b>\$ 16,402.00</b>	<b>\$ 32.00</b>	<b>\$ 2,136.42</b>	<b>\$ 18,570.42</b>





Deloitte Restructuring Inc.  
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Suite 1700  
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3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.)  
4362063 Canada Ltd. (formerly Domfoam International Inc.)  
A-Z Sponge & Foam Products Ltd.  
c/o Deloitte Restructuring Inc.  
181 Bay Street, Suite 1400  
Toronto, ON M5J 2V1

Date: April 21, 2014  
Invoice No: 3538875  
Client/Mandate No: 921001/1000001  
Partner: Paul Casey

Attention: Mr. Paul Casey

HST Registration No: 122893605

## Invoice

For professional services rendered in connection with Deloitte Restructuring Inc., acting as Court-Appointed Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36) ("CCAA") Monitor of 3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc. ("Valle Foam")), 4362063 Canada Ltd. (formerly Domfoam International Inc. ("Domfoam")), and A-Z Sponge & Foam Products Ltd. ("A-Z") (collectively the "Companies") for the period February 1, 2014 to April 11, 2014.

Date	Professional	Description
2/4/2014	Hristow, Catherine	Correspondence with R. Slattery.
2/5/2014	Hristow, Catherine	Review legal accounts.
2/7/2014	Casey, Paul	Review and sign legal invoices for payment.
2/7/2014	Hristow, Catherine	Review and approve legal invoices for payment.
2/14/2014	Hristow, Catherine	Review correspondence from G. Moffat of Thornton Grout Finnigan ("TGF"); filing documents; telephone attendance with CRA regarding clearance certificate.
2/18/2014	Hristow, Catherine	Review correspondence from S. Nassabi regarding settlement conferences.
2/20/2014	Hristow, Catherine	Review correspondence from S. Nassabi.
2/28/2014	Brown, Rose	Completion of on-going trust account banking administration, and disbursement processing.
3/5/2014	Hristow, Catherine	Travel to and attend settlement conference.
3/17/2014	Brown, Rose	Completion of on-going trust account banking administration, and disbursement processing.
3/19/2014	Hristow, Catherine	Attendance in small claims Court for settlement conference; correspondence and discussion with G. Moffat; correspondence and discussion with D. Ullmann.
3/20/2014	Hristow, Catherine	Review draft letter to Revenu Quebec; email correspondence with D. Ullmann.
3/21/2014	Hristow, Catherine	Review documents on the Monitor's website; correspondence with R. Brown regarding newspaper notices; correspondences with S. Nassabi regarding information for settlements; correspondence with P. Birthistle.

3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.)  
 4362063 Canada Ltd. (formerly Domfoam International Inc.)  
 A-Z Sponge & Foam Products Ltd.  
 c/o Deloitte Restructuring Inc.  
 April 21, 2014  
 Page 2

<b>Date</b>	<b>Professional</b>	<b>Description</b>
3/25/2014	Brown, Rose	Trust Banking Administration - renewal of investments.
3/26/2014	Hristow, Catherine	Review correspondence from Revenu Quebec; email correspondence with G. Moffat; review statement of receipts and disbursements; email correspondence with C. Caruso regarding settlement conference; email correspondence with P. Birthistle.
3/27/2014	Hristow, Catherine	Telephone attendance with G. Moffat; review documentation and correspondence regarding Revenu Quebec's claims and forward same to G. Moffat; review class action claim documentation.
3/31/2014	Hristow, Catherine	Review correspondence from C. Naudie; correspondence with G. Moffat.
4/1/2014	Brown, Rose	Completion of on-going trust account banking administration, and disbursement processing.
4/1/2014	Hristow, Catherine	Correspondence with P. Birthistle; telephone attendance with G. Moffat; correspondence with R. Brown regarding legal invoices.
4/7/2014	Brown, Rose	Completion of on-going trust account banking administration, and disbursement processing.
4/7/2014	Hristow, Catherine	Review supplier invoices for approval and payment and sign cheques; review correspondence from G. Moffat; correspondence with D. Ullmann.
4/8/2014	Hristow, Catherine	Telephone attendance with G. Moffat; review claims for Valle and A-Z; correspondence with G. Moffat; correspondence with A. Tartaglia of Skadden Arps; telephone attendance and correspondence with D. Ullmann; commence draft of Court report.
4/10/2014	Hristow, Catherine	Review translated correspondence from Revenu Quebec; continue drafting the Ninth Report to the Court and affidavit of fees.
4/11/2014	Hristow, Catherine	Continue drafting Ninth Report to the Court.

3113736 Canada Ltd. (formerly Valle Foam Industries (1995) Inc.)  
 4362063 Canada Ltd. (formerly Domfoam International Inc.)  
 A-Z Sponge & Foam Products Ltd.  
 c/o Deloitte Restructuring Inc.  
 April 21, 2014  
 Page 3

**Summary of Fees**

<b>Professional</b>	<b>Position</b>	<b>Hours</b>	<b>Rate</b>	<b>Fees</b>
Casey, Paul	Senior Vice President	0.2	\$650.00	\$ 130.00
Hristow, Catherine	Vice President	22.5	\$570.00	12,825.00
Brown, Rose	Trust Administrator	1.8	\$160.00	288.00
<b>Total hours and professional fees</b>		<u>24.5</u>		\$ 13,243.00
<b>Blended hourly rate</b>			<b>\$540.53</b>	
HST @ 13%				1,721.59
<b>Total Amount Due</b>				<b>\$ 14,964.59</b>

**Allocation of fees**

<b>Entity</b>	<b>Professional Fees</b>	<b>Taxes</b>	<b>Total</b>
Valle Foam Industries (1995) Inc. (45%)	\$ 5,959.35	\$ 774.71	\$ 6,734.06
Domfoam International Inc. (45%)	5,959.35	774.72	6,734.07
A-Z Sponge & Foam Products (10%)	1,324.30	172.16	1,496.46
<b>Totals</b>	<b>\$ 13,243.00</b>	<b>\$ 1,721.59</b>	<b>\$ 14,964.59</b>

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)**

Proceedings commenced at **Toronto**

**AFFIDAVIT OF CATHERINE HRISTOW**  
*(Sworn April 22, 2014)*

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat** (LSUC# 32380L)  
Tel: 416-304-0599  
Fax: 416-304-1313  
Email: [gmoffat@tgf.ca](mailto:gmoffat@tgf.ca)

Lawyers for the Monitor

# **EXHIBIT O**

# EXHIBIT "O"

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.

APPLICANTS

AFFIDAVIT OF GRANT MOFFAT  
(Sworn April 22, 2014)

I, GRANT MOFFAT, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a barrister and solicitor qualified to practice law in the Province of Ontario and am a partner with Thornton Grout Finnigan LLP ("TGF"), lawyers for Deloitte Restructuring Inc. in its capacity as monitor (the "**Monitor**") of the property, assets and undertakings of Valle Foam Industries (1995) Inc., Domfoam International Inc. and A-Z Sponge & Foam Products Ltd. and, as such, I have knowledge of the matters to which I hereinafter depose. Unless I indicate to the contrary, the facts herein are within my personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.

2. Attached hereto as Exhibit "A" are true copies of the invoices forwarded to the Monitor by TGF for fees and disbursements incurred by TGF in the course of the within proceeding for the period December 1, 2013 to March 31, 2014.

3. Attached hereto as Exhibit "B" is a schedule summarizing each invoice in Exhibit "A", the total billable hours charged per invoice, the total fees charged per invoice and the average hourly rate charged per invoice.

4. Attached hereto as Exhibit "C" is a schedule summarizing the respective years of call and billing rates of each of the solicitors at TGF who acted for the Monitor.

5. To the best of my knowledge, the rates charged by TGF throughout the course of these proceedings are comparable to the rates charged by other law firms in the Toronto market for the provision of similar services.

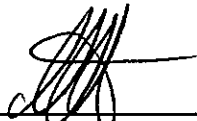
6. The hourly billing rates outlined in Exhibit "C" to this affidavit are comparable to the hourly rates charged by TGF for services rendered in relation to similar proceedings.


7. I make this affidavit in support of a motion by the Monitor for, *inter alia*, approval of the fees and disbursements of the Monitor's counsel.

**SWORN BEFORE ME**

at the City of Toronto, in the  
Province of Ontario this 22<sup>nd</sup>  
day of April, 2014.

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)

  
\_\_\_\_\_  
**Grant B. Moffat**

  
\_\_\_\_\_  
A commissioner for taking oaths, etc.

**Annette Melinda Fournier, a Commissioner, etc.,  
Province of Ontario, for Thornton Grout Finnigan LLP,  
Barristers and Solicitors.  
Expires February 7, 2017.**

Notary Public for Ontario, Commission Expires 02/07/2017  
Annette Melinda Fournier, a Commissioner, etc.,  
Province of Ontario, for Thornton Grout Finnigan LLP,  
Barristers and Solicitors.  
Expires February 7, 2017.

# EXHIBIT "A"

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

(the "Applicants")

## TWENTY-THIRD BILL OF COSTS OF THE MONITOR

### For the period ending December 31, 2014

Dec-02-13	Review correspondence from Court regarding Sixth Report; review draft Report; telephone call with C. Hristow;	0.40	GBM
Dec-03-13	Telephone call with C. Hristow;	0.20	GBM
Dec-04-13	Review correspondence from C. Naudie regarding non-settling Defendants seeking discovery rights; review factum and book of authorities regarding same;	0.80	GBM
	Draft Eighth Report; review overcharge submissions and companies' response to same; review approval order in class proceedings;	5.20	GBM
Dec-05-13	Review correspondence from C. Naudie regarding December 9 settlement approval motion and discovery rights of non-settling defendants; meeting with J. Porter regarding same; consider scope of stay; correspondence to C. Naudie regarding same; review revised draft order approving settlements; review settlement agreement regarding same;	2.60	GBM
	Revise Eighth Report;	2.40	GBM
	Review settlement agreement and draft approval order regarding bar claims provision and joint and several liability for NSD's; review factum of NSD's; correspondence to and from C. Naudie regarding NSD's request for discovery rights; revise Eighth Report regarding same;	2.60	GBM
Dec-06-13	Review draft factum regarding December 9, 2013 motion on discovery rights in Ontario and B.C. proceedings; review caselaw regarding same; telephone call with P. Casey; correspondence with C. Naudie; revise Eighth Report;	4.20	GBM



	Revise report; correspondence with C. Hristow;	0.60	GBM
Dec-09-13	Correspondence with C. Naudie regarding Monitor's position on settlement approval motion;	0.20	GBM
	Correspondence to C. Naudie regarding stay of proceedings and NSD's discovery rights; review Eighth Report regarding same;	0.40	GBM
	Revise Eighth Report;	1.10	GBM
Dec-10-13	Review correspondence regarding settlement approval hearing; revise report; consider form of order for stay extension; telephone call with R. Slattery;	1.40	GBM
	Telephone call with C. Naudie; redact draft report for delivery to R. Mogerman and W. Branch; correspondence with R. Mogerman and W. Branch; review correspondence from C. Naudie;	1.30	GBM
Dec-11-13	Review requested revisions to description of settlement with class on claim valuation; review revised settlement letter; telephone call with C. Naudie regarding same; correspondence with C. Naudie; telephone call with C. Hristow regarding revisions to Eighth Report;	4.90	GBM
	Review settlement approval orders; correspondence with C. Naudie and R. Mogerman;	0.40	GBM
Dec-12-13	Review correspondence regarding Revenu Quebec claim; review Quebec approval order; review draft Report regarding settlement approval; review service list; telephone call with C. Hristow; revise Report; review further revisions from C. Naudie; revise Report; review draft provisions of affidavit regarding class actions; correspondence with class counsel; correspondence to and from C. Hristow regarding statement of receipts and disbursements and professional fees; revise Report; correspondence to and from class counsel regarding approval of provisions of Report describing settlement of claim valuation;	6.60	GBM
	Prepare fee affidavit and exhibits thereto; revise Eighth Report; prepare index and compile all exhibits;	1.50	AF
Dec-13-13	Correspondence with C. Hristow regarding report; correspondence with R. Mogerman regarding same; correspondence with W. Branch; telephone call with R. Slattery; review revised report; telephone call with C. Hristow; review revised exhibits; review correspondence from R. Mogerman; telephone call with R. Slattery regarding court approval of valuation;	2.50	GBM
	Finalize Eighth Report and compile same for service and filing; e-mail to service list; e-mail to class action service list; prepare Affidavit of Service;	2.10	AF
Dec-16-13	Review motion record and draft order; review Eighth Report; correspondence with R. Slattery; review amended Sixth Report;	1.00	GBM

	Review correspondence from non-settling defendants regarding lifting of stay; review Eighth Report regarding same; correspondence from C. Hristow; review revised order for stay extension motion; correspondence from C. Naudie;	0.60	GBM
	Compile Amended Sixth Report with exhibits;	0.40	AF
Dec-17-13	Attend stay extension motion; review correspondence to NSD's regarding discovery rights; review Revenu Quebec correspondence;	1.70	GBM
Dec-18-13	Review settlement letter; review NSD correspondence regarding discovery rights;	0.40	GBM
Dec-19-13	Review correspondence from W. Branch; review Eighth Report and settlement letter; correspondence with W. Branch;	0.60	GBM
Dec-20-13	Review caselaw regarding Harmonized Sales Tax priority; consider terms of Initial Order; review report regarding same;	0.90	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	
Grant B. Moffat	43.00	\$700.00	30,100.00	
Annette Fournier (Law Clerk)	4.00	\$250.00	1,000.00	
<b>TOTAL FEE HEREIN</b>			<b>\$31,100.00</b>	
<b>HST on Fees</b>			<b>\$4,043.00</b>	
<b>Total Fees and HST</b>				<b>\$35,143.00</b>
<b><u>Disbursements:</u></b>				
Photocopies			\$169.75	
<b>Total Taxable Disbursements</b>			<b>\$169.75</b>	
<b>HST on Disbursements</b>			<b>\$22.07</b>	
<b>Total Non-Taxable Disbursements</b>			<b>\$0.00</b>	
<b>Total Disbursements and HST</b>				<b>\$191.82</b>
<b>Total Fees, Disbursements &amp; HST</b>				<b>\$35,334.82</b>
<b>OUR ACCOUNT HEREIN</b>				<b>\$35,334.82</b>

ThorntonGroutFinnigan LLP

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

Grant B. Moffat

HST No. 87042 1039RT  
Matter No. 533-029  
Invoice No. 27750  
Date: Jan 15/14

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6.00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

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 FOAM SPONGE & FOAM PRODUCTS LTD.

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

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

Proceedings commenced at Toronto

**TWENTY-THIRD BILL OF COSTS OF THE MONITOR**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat (LSUC# 32380L)**  
Tel: 416-304-0599  
Fax: 416-304-1313  
Email: gmoffat@tgf.ca

Lawyers for the Monitor

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 FOAM SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**TWENTY-FOURTH BILL OF COSTS OF THE MONITOR**

For the period ending January 31, 2014

Jan-08-14	Review correspondence regarding CRA and Revenu Quebec claims; review report regarding same;	0.50	GBM
Jan-09-14	Correspondence with W. Branch; correspondence with D. Ullman; telephone call with C. Hristow;	0.40	GBM
	Review correspondence regarding CRA claim; review Eighth Report regarding same;	0.50	GBM
Jan-21-14	Review caselaw regarding venue for appeal of Revenu Quebec claim;	1.30	GBM
Jan-22-14	Consider jurisdiction of provincial taxing authority to determine quantum of claim; review caselaw regarding same;	1.30	GBM
Jan-29-14	Correspondence with W. Branch; correspondence with D. Ullman;	0.20	GBM

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Grant B. Moffat	4.20	\$725.00	3,045.00
<b>TOTAL FEE HEREIN</b>			<b>\$3,045.00</b>
<b>HST on Fees</b>			<b><u>\$395.85</u></b>

**Total Fees and HST** **\$3,440.85**

**OUR ACCOUNT HEREIN** **\$3,440.85**

**ThorntonGroutFinnigan LLP**

Per:

  
\_\_\_\_\_  
Grant B. Moffat

HST No. 87042 1039RT

Matter No. 533-029  
Invoice No. 27877  
Date: Feb 14/14

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6.00% per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

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 FOAM SPONGE & FOAM PRODUCTS LTD.

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

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

Proceedings commenced at **Toronto**

**TWENTY-FOURTH BILL OF COSTS OF THE  
MONITOR**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat (LSUC# 32380L)**  
Tel: 416-304-0599  
Fax: 416-304-1313  
Email: gmoffat@tgf.ca

Lawyers for the Monitor

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 FOAM SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

**TWENTY-FIFTH BILL OF COSTS OF THE MONITOR**

**For the period ending February 28, 2014**

Feb-04-14	Review correspondence regarding Revenu Quebec claim;	0.40	GBM
Feb-11-14	Telephone call with former employee of Valle Foam regarding status of claims process;	0.20	GBM
	Review reasons of Leitch, J. approving settlement; correspondence with C. Naudie and C. Hristow regarding same;	0.60	GBM
Feb-13-14	Correspondence with class counsel; review correspondence from C. Naudie regarding documentary production;	0.40	GBM
Feb-18-14	Review correspondence from C. Naudie and J. Facchin regarding B.C. settlement approval orders; review revisions to orders;	0.40	GBM
Feb-19-14	Review correspondence from Revenu Quebec; review prior assessment and correspondence regarding quantum of Revenu Quebec claim; telephone call with C. Hristow;	1.00	GBM
Feb-24-14	Review correspondence regarding production of documents in class action settlement; review correspondence regarding claims process; telephone call with C. Hristow; correspondence with W. Branch regarding claims process and timing of distribution; consider comfort letters required to carry out distributions without clearance certificates; review claims submitted regarding same; review Ontario Statutes imposing liability on Monitor if distribution made without clearance certificates;	4.40	GBM
Feb-25-14	Review settlement approval materials for B.C. action; review correspondence regarding same from NSD's; review legislation regarding monitor obligation on distribution;	2.20	GBM
Feb-26-14	Review correspondence regarding amendments to B.C. orders; review legislation regarding barring liability for distribution without clearance certificates; review caselaw regarding same;	2.10	GBM

Feb-28-14      Review Revenu Quebec documentation regarding resolution of claim; 0.80      GBM  
 consider distribution issues with Revenue Quebec and CRA;

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	
Grant B. Moffat	12.50	\$725.00	9,062.50	
<b>TOTAL FEE HEREIN</b>			<b>\$9,062.50</b>	
<b>HST on Fees</b>			<b><u>\$1,178.13</u></b>	
<b>Total Fees and HST</b>				<b>\$10,240.63</b>
<b>OUR ACCOUNT HEREIN</b>				<b><u>\$10,240.63</u></b>

Thornton Grout Finnigan LLP



Per:

Grant B. Moffat

IIST No. 87042 1039RT

Matter No. 533-029  
 Invoice No. 28017  
 Date: Mar 24/14

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6.00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

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 FOAM SPONGE & FOAM PRODUCTS LTD.

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

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

Proceedings commenced at **Toronto**

**TWENTY-FIFTH BILL OF COSTS OF THE MONITOR**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat (LSUC# 32380L)**  
Tel: 416-304-0599  
Fax: 416-304-1313  
Email: gmoffat@tgf.ca

Lawyers for the Monitor



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 FOAM SPONGE & FOAM PRODUCTS LTD.

(the "Applicants")

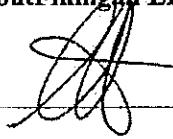
**TWENTY-SIXTH BILL OF COSTS OF THE MONITOR**

**For the period ending March 31, 2014**

Mar-05-14	Review Quebec caselaw regarding validity of assessment in context of appeal to taxing authority and impact on claim valuation;	1.20	GBM
Mar-13-14	Review correspondence regarding Revenu Quebec claim; review file regarding same; consider priority of HST claim; correspondence with W. Branch regarding same;	1.20	GBM
	Meeting with L. Nicholson regarding clearance certificates required for distribution; review correspondence regarding same; consider comfort letter with CRA and other B.C. and Quebec statutes of concern;	1.10	GBM
Mar-14-14	Review caselaw regarding barring claims under Quebec taxing statutes;	1.00	GBM
Mar-19-14	Telephone call with D. Ullman; telephone call with C. Hristow; telephone call with L. Nicholson regarding venue for determination of Revenu Quebec claim; review caselaw addressing inter-jurisdictional immunity;	3.50	GBM
	Call with G. Moffat;	0.20	LN
Mar-20-14	Reviewing proof of claim, various correspondence with Revenu Quebec and the notice of dispute; researching the various Quebec taxing statutes; reviewing caselaw on jurisdiction of tax court to quantify tax claims in CCAA proceeding;	5.90	LN
Mar-24-14	Meeting with L. Nicholson regarding potential for liability under Quebec statutes in connection with distribution to unsecured creditors; review statute and caselaw regarding same;	1.80	GBM
	Telephone call with R. Slattery; review correspondence from C. Hristow regarding Revenu Quebec claim;	0.40	GBM

	Discussions with G. Moffat; reviewing Quebec case law regarding jurisdiction of bankruptcy court;	0.80	LN
Mar-25-14	Review caselaw regarding filing of late claims;	0.90	GBM
	Review caselaw regarding jurisdiction of provincial taxing authority;	0.70	GBM
Mar-26-14	Review correspondence regarding Revenu Quebec claim; telephone call with C. Hristow;	0.50	GBM
	Review caselaw regarding jurisdiction of court to bar claims against Monitor; correspondence with W. Branch regarding Revenu Quebec claim;	1.40	GBM
Mar-27-14	Telephone call with D. Winters regarding comfort letter; telephone call with C. Hristow regarding same; review Revenu Quebec claim; review caselaw regarding bar claims jurisdiction;	1.90	GBM
Mar-28-14	Review correspondence regarding Revenu Quebec claim; review statute regarding venue to determine claim;	1.40	GBM
Mar-31-14	Meeting with L. Nicholson regarding venue to determine Revenu Quebec claim; review caselaw regarding jurisdiction to determine provincial claim;	1.80	GBM
	Review correspondence from C. Naudie; telephone call with C. Hristow;	0.50	GBM
	Researching Quebec Sales Tax Act and Quebec tax administration in respect of personal liability for a Monitor and jurisdiction of courts under the statutes;	3.60	LN
	<b><u>Lawyer</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>
			<b><u>Amount</u></b>
	Grant B. Moffat	19.30	\$725.00
	Lee Nicholson (Student)	10.50	\$225.00
	<b>TOTAL FEE HEREIN</b>		<b>\$16,355.00</b>
	<b>HST on Fees</b>		<b><u>\$2,126.15</u></b>
	<b>Total Fees and HST</b>		<b>\$18,481.15</b>
	<b><u>Disbursements:</u></b>		
	Computer Research		\$8.40
	Telephone		\$9.24
	Taxi		\$22.12
	<b>Total Taxable Disbursements</b>		<b>\$39.76</b>
	<b>HST on Disbursements</b>		<b>\$5.17</b>
	<b>Total Non-Taxable Disbursements</b>		<b><u>\$0.00</u></b>
	<b>Total Disbursements and HST</b>		<b><u>\$44.93</u></b>
	<b>Total Fees, Disbursements &amp; HST</b>		<b>\$18,526.08</b>
	<b>OUR ACCOUNT HEREIN</b>		<b><u>\$18,526.08</u></b>

**ThorntonGroutFinnigan LLP**

Per:   
Grant B. Moffat

HST No. 87042 1039RT

Matter No. 533-029  
Invoice No. 28099  
Date: Apr 15/14

Terms: Payment due upon receipt. Any disbursements not posted to your account on the date of this statement will be billed later. In accordance with Section 35 of The Solicitor's Act, interest will be charged at the rate of 6.00 % per annum on unpaid fees, charges or disbursements calculated from a date that is one month after this Statement is delivered.

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 FOAM SPONGE & FOAM PRODUCTS LTD.

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

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

Proceedings commenced at Toronto

**TWENTY-SIXTH BILL OF COSTS OF THE MONITOR**

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

**Grant B. Moffat (LSUC# 32380L)**  
Tel: 416-304-0599  
Fax: 416-304-1313  
Email: gmoffat@tgf.ca

Lawyers for the Monitor

## EXHIBIT "B"

**Calculation of Average Hourly Billing Rates of  
Thornton Grout Finnigan LLP  
for the period December 1, 2013 to March 31, 2014**

<b>Invoice No.</b>	<b>Fees</b>	<b>Disbursements</b>	<b>HST</b>	<b>Hours</b>	<b>Average Rate</b>	<b>Total</b>
27750	\$ 31,100.00	\$ 169.75	\$ 4,065.07	47.0	\$ 661.70	\$ 35,334.82
27877	3,045.00	0.00	395.85	4.2	725.00	3,440.85
28017	9,062.50	0.00	1,178.13	12.5	725.00	10,240.63
28099	16,355.00	39.76	2,131.32	29.8	548.83	18,526.08
<b>TOTALS:</b>	<b>\$59,562.50</b>	<b>\$ 209.51</b>	<b>\$7,770.37</b>			<b><u>\$67,542.38</u></b>

## EXHIBIT "C"

### Billing Rates of Thornton Grout Finnigan LLP

For the period December 1, 2013 to December 31, 2013

	<u>Rate</u>	<u>Year of Call</u>
Grant B. Moffat	\$700	1991
Annette Fournier	\$250	Law Clerk

For the period January 1, 2014 to March 31, 2014

	<u>Rate</u>	<u>Year of Call</u>
Grant B. Moffat	\$725	1991
Lee Nicholson	\$225	Student-at-Law

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)**

Proceedings commenced at **Toronto**

**AFFIDAVIT OF GRANT B. MOFFAT**  
*(Sworn April 22, 2014)*

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Toronto-Dominion Centre  
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M5K 1K7

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Lawyers for the Monitor

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)**

Proceedings commenced at **Toronto**

**NINTH REPORT OF THE MONITOR**  
(Dated April 24, 2014)

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 1K7

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Lawyers for the Monitor