

**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

**RESPONDING AND CROSS-MOTION RECORD OF THE APPLICANTS
Motion Returnable August 18, 2020**

August 10, 2020

BLANEY MCMURTRY LLP
Lawyers
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

David T. Ullmann (LSO #42357I)
Tel: (416) 596-4289
Fax: (416) 594-2437

Varoujan Arman (LSO #60025K)
Tel: (416) 596-2884
Fax: (416) 593-2960

Lawyers for the Applicants

TO: SERVICE LIST

SERVICE LIST
(as at April 22, 2020)

TO:	<p>DELOITTE RESTRUCTURING INC. 181 Bay Street, Suite 1400 Toronto ON M5J 2V1</p> <p>Catherine Hristow 416-601-6415 christow@deloitte.ca</p> <p>Paul Casey paucasey@deloitte.ca</p>
AND TO:	<p>THORNTON GROUT FINNIGAN LLP TD West Tower, TD Centre 100 Wellington Street West, Suite 3200 Toronto ON M5K 1K7</p> <p>Grant B. Moffat 416-304-0599 416-304-1313 fax gmoffat@tgf.ca</p> <p>Lawyers for the Monitor, Deloitte Restructuring Inc.</p>
AND TO:	<p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, Ontario M5C 3G5</p> <p>David T. Ullmann 416-596-4289 416-594-2437 fax dullmann@blaney.com</p> <p>Alexandra Teodorescu 416-596-4279 416-593-5437 fax ateodorescu@blaney.com</p> <p>Lawyers for the Applicants</p>

AND TO:	<p>TANNER & GUINEY 130 Adelaide Street West Suite 3425 Toronto ON M5H 3P5</p> <p>Robert G. Tanner 416-862-7745 416-862-7874 fax rgtanner@tannerguiney.com</p> <p>Lawyers for Tony Vallecoccia</p>
AND TO:	<p>ATTORNEY GENERAL OF CANADA c/o Department of Justice Ontario Regional Office The Exchange Tower, Box 36 130 King Street West Suite 3400 Toronto ON M5X 1K6</p> <p>Jacqueline Dais-Visca 416-952-6010 416-973-0809 fax jacqueline.dais-visca@justice.gc.ca</p>
AND TO:	<p>KRONIS, ROTSZTAIN, MARGLES, CAPPEL LLP 25 Sheppard Ave. West Suite 1100 Toronto, ON M2N 6S6</p> <p>Mark J. Lieberman (416) 225-8750 , ext. 252 (416) 225-2593 fax mlieberman@krmc-law.com</p> <p>Lawyers for Bayer Inc.</p>

AND TO:	BRANCH MACMASTER LLP 1410 – 777 Hornby Street Vancouver BC V7G 3E2 Luciana P. Brasil 604-654-2999 604-684-3429 fax lbrasil@branmac.com Lawyers for “Hi! Neighbor” Floor Covering Co. Limited, Majestic Mattress Mfg. Ltd., Trillium Project Management Ltd., Option Consummateurs and Karine Robillard
AND TO:	MINISTRY OF FINANCE (ONTARIO) LEGAL SERVICES BRANCH 33 King Street West 6 th floor Oshawa ON L1H 8H5 Kevin J. O’Hara 905-433-6934 905-436-4510 fax kevin.ohara@fin.gov.on.ca
AND TO:	KAMINSKY & COMPANY Associated Lawyers 7525 King George Boulevard Suite 220 Surrey BC V3W 5A8 Hargo Mundi 604-591-7877 ext. 114 604-591-1978 fax hsm@kaminskyco.com Lawyers for 0932916 BC Ltd.
AND TO:	REVENU QUEBEC 3800, rue de Marly Secteur 5-1-8 Quebec G1X 4A5 Jacques Duperron 866-374-7286 fax Jacques.duperron@revenuquebec.ca

AND TO:	REVENU QUEBEC Complexe Desjardins Secteur D231L0, C. P.3000 Montreal QC H5B 1A4 Yvon Julien yvon.julien@revenuquebec.ca
AND TO:	REVENU QUEBEC Complexe Desjardins, secteur D221LC C. P.5000, succursale Desjardins Montreal QC H5B 1A7 Normand Berube 514-287-6161 514-873-8992 fax Normand.Berube@revenuquebec.ca
AND TO:	SUTTS STROSBERG LLP 600 Westcomt Place 215 Goyeau Street Windsor ON N9A 6V4 Harvey T. Strosberg Harvey@strosbergco.com Heather Rumble Peterson hpeterson@strosbergco.com 519-561-6248 519-561-6203 fax Lawyers for Ontario Class Plaintiffs

AND TO:	<p>CAMP FIORANTE MATTHEWS MOGERMAN #400-856 Homer Street Vancouver BC V6B 2W5</p> <p>J.J.Camp, Q.C. jjcamp@cfmlawyers.ca</p> <p>Reider Mogerman rmogerman@cfmlawyers.ca</p> <p>Sharon L. Wong swong@cfmlawyers.ca</p> <p>604-689-7555 604-689-7554 fax</p> <p>Lawyers for B.C. Class Plaintiffs</p>
AND TO:	<p>BERKOW YOUD LEV-FARRELL DAS LLP 141 Adelaide Street West Suite 400 Toronto ON M5H 3L5</p> <p>Jack Berkow jberkow@byldlaw.com</p> <p>Scott Crocco scrocco@byldlaw.com</p> <p>416-364-4900 416-364-3865 fax</p> <p>Lawyers for Remaining Individual Settling Parties</p>
AND TO:	<p>BLACK & ASSOCIATES 2175 King Road King City ON L7B 1G3</p> <p>Laith Hahn 905-893-8050 905-893-8025 fax lhahn@blackandassociates.ca</p> <p>Lawyers for Quality & Company Inc.</p>

AND TO:	REVENU QUEBEC Complexe Desjardins, secteur D221LC C.P. 5000, succursale Place-Desjardins Montreal QC H5B 1A7 Jean Duval 514-287-8821 514-285-5348 fax jean.duval@revenuquebec.ca
AND TO:	MINISTRY OF JUSTICE Legal Services Branch 1675 Douglas Street Suite 400 Victoria BC V8W 9J7 Rikki Schierer (assistant to David Hatter (retired)) 778-974-4574 250-387-0700 fax Rikki.Schierer@gov.bc.ca Lawyers for BC Ministry of Finance
AND TO:	CHUBB INSURANCE COMPANY OF CANADA 1250, boul. René-Lévesque Ouest, bureau 2700 Montréal QC H3B 4W8 Catherine Rayle-Doiron 514-938-2300, 5325 514-938-2288 fax crayledoiron@chubb.com
AND TO:	FRED TAYAR & ASSOCIATES INC. Professional Corporation 65 Queen St. West Suite 1200 Toronto, Ontario M5H 2M5 Fred Tayar 416-363-1800 416-363-3356 fax fred@fredtayar.com Lawyers for Domfoam Inc.

AND TO:	KAMACHI LAW GROUP 15240 56 Ave., Suite 205 Surrey, British Columbia V3S 5K7 Dave Kamachi 604-813-6493 604-909-2683 fax dmk@kamachilaw.com Lawyers for 0932916 BC Ltd.
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E-MAIL SERVICE LIST

christow@deloitte.ca; paucasey@deloitte.ca; gmoftat@tgf.ca; dullmann@blaney.com;
ateodorescu@blaney.com; rgtanner@tannerguiney.com; jacqueline.dais-visca@justice.gc.ca;
mliberman@krmc-law.com; lbrasil@branmac.com; kevin.ohara@fin.gov.on.ca;
hsm@kaminskyco.com; Jacques.duperron@revenuquebec.ca; yvon.julien@revenuquebec.ca;
Normand.Berube@revenuquebec.ca; Harvey@strosbergco.com; hpeterston@strosbergco.com;
jjcamp@cfmlawyers.ca; rmogerman@cfmlawyers.ca; swong@cfmlawyers.ca;
jberkow@byldlaw.com; scrocco@byldlaw.com; lhahn@blackandassociates.ca;
jean.duval@revenuquebec.ca; Rikki.Schierer@gov.bc.ca; crayledoiron@chubb.com;
fred@fredtayar.com; dmk@kamachilaw.com

COURIER SERVICE LIST
(as at April 22, 2020)

TO:	DALE McNEILL 245 Wheelihan Way Campbellville, ON L0P 1B0
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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

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Applicants

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TAB 1

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

ONTARIO
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R.S.C. 1985, c.C-36, AS AMENDED

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A-Z SPONGE & FOAM PRODUCTS LTD.

(the "**Applicants**")

NOTICE OF CROSS-MOTION

THE RESPONDING PARTIES, 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995)), 4362063 Canada Ltd. (formerly known as Domfoam International Inc.), and A-Z Sponge & Foam Products Ltd. (collectively, the "**Applicants**") will make a cross-motion to the Honourable Justice Conway of the Commercial List at 10:00 a.m. on Tuesday, August 18, 2020, or as soon thereafter as the motion can be heard, by Zoom video conference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING:

This motion is to be heard orally by Zoom video conference. The Zoom particulars are set out at Schedule "A" hereto.

THE MOTION IS FOR:

- (a) an order directing the moving party, Domfoam Inc. (the "**Purchaser**"), to forthwith deposit with the Monitor (as that term is defined below), the sum of \$1,399,002.24

(the “**Additional Disputed Funds**”) that it received by cheque dated October 11, 2019 from RicePoint Administration Inc. on behalf of the Polyether Polyol Price Fixing Settlement, to be held by the Monitor pending resolution of the within dispute between the Purchaser and the Applicants;

- (b) costs of the within motion on a substantial indemnity basis; and
- (c) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (a) on January 12, 2012, the Applicants sought and were granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”). Deloitte Restructuring Inc. was appointed to act as the monitor (the “**Monitor**”);
- (b) each of the Applicants are claimants in a U.S. class action proceeding regarding price fixing for a product known as “Polyether Polyol” (the “**US Urethane Proceeding**”). A settlement was entered into with one of the defendants in the US Urethane Proceeding, The Dow Chemical Company, for \$834 million USD for distribution to the class members (the “**Polyols Settlement**”). Domfoam is holding \$3,741,639.62 USD (in excess of \$5 million CAD) (the “**Initial Disputed Funds**”) from these proceeds which, but for the Purchaser’s claim to these funds are to be distributed to creditors;

The Purchaser's Claim

- (c) the Purchaser initially brought a motion directing the Applicants to pay the Initial Disputed Funds to the Purchaser. The motion was later effectively converted to a trial of an issue or a hybrid form of motion by way of the Endorsement of The Honourable Justice Conway dated October 7, 2019;
- (d) the Purchaser's position is that it bought the proceeds of the Polyols Settlement (and therefore the Initial Disputed Funds and the Additional Disputed Funds) when it bought certain assets of Domfoam in 2012. Domfoam's position is that the Polyols Settlement was excluded from the sale and therefore nothing is owing to the Purchaser. Domfoam also asserts that the Purchaser is estopped and barred in a variety of ways from attempting to pursue any funds from the Polyols Settlement now, seven years after the asset purchase;
- (e) in October 2019, the Purchaser received a cheque for the Additional Disputed Funds (of \$1,399,002.24) from RicePoint Administration Inc., a class action claims administrator. The Additional Disputed Funds are class action settlement proceeds from a Canadian class action settlement wherein the Applicants are claimants. For some reason which remains unclear, this cheque was sent to the Purchaser, either through error by RicePoint Administration Inc., or because the Purchaser may have submitted a claim;
- (f) the Initial Disputed Funds, which are in excess of \$5 million CAD, are being held in trust by the Monitor and is therefore being safely held by a Court monitor in

“neutral” territory. These funds are clearly in dispute, as are the Additional Disputed Funds, which puts both tranches of funds in exactly the same category;

- (g) just like the Initial Disputed Funds, the entitlement of the Additional Disputed Funds are also in dispute as between the parties;
- (h) despite repeated requests, the Purchaser has failed to agree to pay the Additional Disputed Funds to the Monitor to be held in trust pending resolution of the dispute or order of the Court. Further, the Additional Disputed Funds are not even being held by the Purchaser’s legal counsel in trust. Rather, the funds are simply being held by the Purchaser itself with zero accountability or oversight. The Purchaser has similarly refused or failed to pay the funds into its counsel’s trust account. Counsel for the Purchaser has advised that the Purchaser reserves the right to take the position that “there is no reason to hold those funds without using them”;
- (i) accordingly, the Additional Disputed Funds are not safe or secure, and it is in the interests of justice that the Additional Disputed Funds also be held by the Monitor in trust for safekeeping pending the resolution of this dispute;
- (j) Section 11 of the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36;
- (k) Rules 1.04, 2.03, 37.06 and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, O. Reg. 194, as amended; and
- (l) such further and other grounds as counsel may advise.

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

- (a) the Affidavit of Linc Rogers, Chief Restructuring Officer, sworn August 9, 2020;
- (b) the Affidavit of Tony Vallecoccia sworn October 16, 2018;
- (c) the pleadings and proceedings herein including past Motion Records and Monitor's Reports filed in the *CCAA* proceeding; and
- (d) such further and other material as counsel may advise and this Court may permit.

August 10, 2020

BLANEY McMURTRY LLP
Lawyers
Suite 1500 - 2 Queen Street East
Toronto, ON M5C 3G5

David T. Ullmann LSO #42357I
Tel: (416) 596-4289
Fax: (416) 594-2437

Varoujan Arman LSO #60025K
Tel: (416) 596-2884
Fax: (416) 593-2960

Lawyers for the Applicants

TO: SERVICE LIST

Schedule A

Join Zoom Meeting

<https://us02web.zoom.us/j/87974255336?pwd=OUROOEVnWS8wNDdNQWt5SXo2WnNrQT09>

Meeting ID: 879 7425 5336

Passcode: 318353

One tap mobile

+16699006833,,87974255336#,,,,,0#,,318353# US (San Jose)

+19292056099,,87974255336#,,,,,0#,,318353# US (New York)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

Meeting ID: 879 7425 5336

Passcode: 318353

Find your local number: <https://us02web.zoom.us/j/87974255336?pwd=OUROOEVnWS8wNDdNQWt5SXo2WnNrQT09>

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 3113736
CANADA LTD., 4362063 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.
(the "**Applicants**")

**AFFIDAVIT OF LINC ROGERS,
CHIEF RESTRUCTURING OFFICER**

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

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

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

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

Background

4. I understand from a review of the Motion Record of Deloitte Restructuring Inc. in its capacity as court-appointed monitor (in such capacity, the “**Monitor**”) in support of the motion that resulted in my appointment as CRO, that prior to my appointment, counsel for the Applicants, Blaney McMurtry LLP (“**Blaneys**”) was unable to obtain instructions from the Applicants. I understand that this was a result of the incapacity of the Applicants’ former Chief Executive Officer, Tony Vallecoccia, who had suffered serious medical issues. I understand that there were no other directors or officers available, and as a result, a CRO had to be appointed in order that instructions could be provided to resolve the dispute (the “**Dispute**”) between the Applicants and the purchaser of certain assets of Domfoam (formerly known as 4037057 Canada Inc., at the time of acquisition, but, now known as Domfoam Inc.) (the “**Purchaser**”).

5. As I understand it, based on my review of relevant court documents, the Dispute can be summarized in pertinent part as follows: after the completion of an asset sale to the Purchaser by Domfoam (the “**Domfoam Transaction**”), Domfoam received certain funds in connection with the settlement of certain class action litigation (the “**Disputed Funds**”). The Purchaser takes the position it acquired the right to the Disputed Funds as part of the Domfoam Transaction. The Applicants take the position the Disputed Funds were excluded from the Domfoam Transaction and such funds remain the property of Domfoam.

6. Accordingly, if the matter cannot be resolved consensually a judicial determination is required as to: (i) whether the Disputed Funds were acquired by the Purchaser or remain part of Domfoam’s estate; and (ii) what evidence is relevant to such determination. Pending resolution of the Dispute, the Disputed Funds are being held by the Monitor.

7. On July 28, 2020, in connection with a motion returnable on August 18, 2020, the Purchaser served a Motion Record seeking various interim relief in connection with the Dispute (the “**Purchaser’s Motion Record**”). The Purchaser’s Motion Record was supported by an affidavit of Mindy Tayar sworn July 27, 2020 (the “**Tayar Affidavit**”).

8. I swear this affidavit: (a) in response to the Purchaser’s Motion Record; and (b) in support of the Applicants’ cross-motion for an order requiring the Purchaser to pay to the Monitor the sum of \$1,399,002.24 (the “**Additional Disputed Funds**”) that it received by cheque dated October 11, 2019 from RicePoint Administration Inc. on behalf of the “Polyether Polyol Price Fixing Settlement” (i.e. the class action settlement referenced above). The Applicants propose that the Additional Disputed Funds be held by the Monitor pending resolution of the Dispute.

9. Domfoam’s position with respect to each head of relief requested by the Purchaser, as set out in the Purchaser’s Motion Record, follows below.

Striking of the Vallecoccia Affidavit

10. The Purchaser seeks an order striking the Affidavit of Tony Vallecoccia sworn October 16, 2018 (the “**Vallecoccia Affidavit**”) (Tab 7 of the Tayar Affidavit). The Vallecoccia Affidavit was sworn in response to a motion brought by the Purchaser to set aside the order of the Honourable Justice Wilton-Siegel, dated May 29, 2018 and directing the Applicants to pay the Disputed Funds to the Purchaser (the “**Disputed Funds Payment Motion**”) (Tab 4 of the Purchaser’s Motion Record). The Purchaser’s Motion Record does not disclose the grounds on which this relief should be granted. Accordingly, the Applicants object to the granting of this relief.

Enjoining the Filing of Further Evidence

11. In addition to seeking to strike the Vallecoccia Affidavit, the Purchaser seeks an order enjoining Domfoam from filing further evidence in connection with the Dispute. The Purchaser's Motion Record does not disclose the grounds on which this relief should be granted.

12. While I cannot speculate as to what the undisclosed basis is to request such relief, I note that the Endorsement of Justice Conway dated October 7, 2019 (Exhibit "M" to the Tayar Affidavit) states at paragraph 3:

If the matter does not resolve at mediation, they [the parties] shall return to a 1 hr CC before me (to be scheduled through the CL office) for directions on how this motion will proceed and what evidence (written and VV) will be put before the court. [emphasis added]

13. Accordingly, it appears that the Court has yet to rule on the logistics of how the balance of the Dispute is to be heard and this is properly the subject of a subsequent case conference. If the Purchaser is prepared to set out the basis on which it believes that Domfoam should be unilaterally barred from filing evidence in support of its position, the Applicants would, of course, provide a complete response to any such properly constituted pleading.

Payment of Costs of Disputed Funds Motion

14. The Purchaser seeks an order that Domfoam pay the Purchaser's costs in the amount of \$54,888.73, in connection with the Disputed Funds Payment Motion.

15. The Court, however, did not grant the contested aspect of the Disputed Funds Payment Motion. By way of Endorsement, on September 11, 2019 (Exhibit “K” of the Tayar Affidavit) Justice Conway concluded that “I have decided to schedule a case conference to determine whether Mr. Tayar’s motion should best proceed as a motion or some form of trial procedure. There appears to be no issue that Justice Wilton-Siegel’s order re distribution of these funds be set aside and the entitlement to those be adjudicated.” [emphasis added]. As noted in the September 10, 2019 letter (Exhibit “J” of the Tayar Affidavit), it was Mr. Ullmann’s position that “the motion brought by Domfoam Inc. is a significant claim and as such is more properly the subject of a trial...”

16. The Applicants position is that the Purchaser is not entitled to its costs in connection with the Disputed Funds Payment Motion which did not, in fact, result in the payment of any Disputed Funds to the Purchaser. The Applicants position is that costs, if any, should be awarded in connection with the ultimate outcome of the adjudicated Dispute.

Request for Security for Costs

17. In the alternative to enjoining Domfoam from submitting further evidence in connection with the Dispute (it is not clear why this is posited in the alternative), the Purchaser makes the novel claim that Domfoam should pay \$213,132.90 on the basis that Domfoam, a CCAA debtor company, is insolvent. I note that the Purchaser is neither the defendant nor the respondent in connection with the Dispute. Rather, it is the moving party.

18. Based on my review of the Purchaser’s Motion Record, I understand the Purchaser’s position to be this: the only money that Domfoam has is the Disputed Funds. In the event that the

Purchaser is successful in the Dispute, all of the Disputed Funds will have to be paid to the Purchaser and thus Domfoam will not have sufficient funds to cover a costs award, should a cost award be granted in favour of the Purchaser. Although not clearly stated in the Purchaser's Motion Record, the Purchaser seems to suggest that the estate of the related party Valle Foam, should post the security for costs for and on behalf of Domfoam. As noted at paragraph 59 of the Monitor's Twenty-First Report dated October 18, 2019 (Exhibit "V" to the Tayar Affidavit) (the "**Twenty-First Report**") Valle Foam has been covering the professional fees of Domfoam and such accounts are to be reconciled by the Monitor at the appropriate time.

19. If it is ultimately determined that Valle Foam is obliged to cover a potential cost award in favour of the Purchaser, which is not conceded, I am advised by counsel to the Monitor that the Monitor is currently holding funds in respect of the Valle Foam estate in the approximate amount of \$2 million, well in excess of the \$213,132.90 security for costs claim now asserted by the Purchaser. Indeed, the Monitor's Twenty-Second Report dated April 22, 2020 (Exhibit "W" to the Tayar Affidavit) at paragraph 69 states that as at April 17, 2020, the Monitor was holding \$2,167,919.27 on behalf of Valle Foam. Accordingly, there is nothing preventing the Purchaser from asserting its position regarding Valle Foam, when and if it is ultimately successful in the Dispute. In short, the Applicants do not understand the basis for the Purchaser's request for security for costs and accordingly oppose the requested relief.

Affidavit of Documents

20. In addition to the various heads of relief sought by the Purchaser, I understand from a review of the Purchaser's Motion Record that the Purchaser has a complaint that the Applicants

did not serve a sworn Affidavit of Documents within the time prescribed by the Endorsement of Justice Conway dated October 7, 2019 (Exhibit “M” of the Tayar Affidavit).

21. The Purchaser’s Notice of Motion states: “More than nine months later [after Justice Conway’s Endorsement] the Vendor has not served an Affidavit of Documents”.

22. The Purchaser served a draft Affidavit of Documents, as the Tayar Affidavit discloses at Tab 2 of the Purchaser’s Motion Record. While Mr. Ullmann’s covering letter of January 20, 2020 is produced as Exhibit “T” to the Tayar Affidavit, Ms. Tayar only selectively quotes from it at paragraph 19 of the Tayar Affidavit. The full text of the letter reads as follows with the portions selectively quoted by Ms. Tayar underlined:

Enclosed you will find our draft affidavit of documents. It is being delivered to you in draft because we have discovered that we may have a capacity issue with Mr. Tony Vallecoccia. Apparently Mr. Vallecoccia has had a stroke which has likely left him unable to provide us with instructions, including reviewing and signing off on this affidavit. We had hoped that his condition might improve over the holiday period, but we have no information that this has happened.

As such, we are providing this to you in draft so that you can begin your review and prepare for the pending mediation, mindful of the fact that the affidavit may change when we are able to get complete instructions.

With respect to Mr. Vallecoccia’s capacity issues, we have reviewed this with the Monitor and intend to schedule a 9:30 with the court to discuss appropriate alternatives to ensure that the litigation and the CCAA are able to continue. We are intending to schedule this for later this week or early next week.

23. I am advised by Mr. Ullmann, and do verily believe, that following my appointment as CRO, Mr. Ullmann did not receive any written or any other request from Mr. Tayar for a sworn version of the Applicants’ Affidavit of Documents.

Additional Disputed Funds Held by Purchaser (Relief Sought by Cross-Motion)

24. As set out at paragraphs 14-15 of the Tayar Affidavit, by letter dated November 1, 2019, Mr. Tayar advised Mr. Ullmann that the Purchaser had recently received a cheque for \$1,399,002.24, being the “Additional Disputed Funds” (Exhibit “N” of the Tayar Affidavit). The Tayar Affidavit also sets out that Mr. Ullmann responded advising that the Applicants would “likely assert an interest in these funds” (Exhibit “P” of the Tayar Affidavit). That is, just like the Disputed Funds, as proceeds of the settlement of the class action litigation, Domfoam asserts that the Additional Disputed Funds were excluded from the Domfoam Transaction and thus remain property of Domfoam.

25. From my review of the Tayar Affidavit, it appears that no evidence has been filed regarding how the Purchaser (which now uses the Domfoam name) came into possession of the Additional Disputed Funds. Domfoam came into possession of the Disputed Funds as a result of filing a claim in the Canadian class action proceedings through its agent. It is not known if the Purchaser submitted an independent claim in the class action proceeding or took some other affirmative action in order to obtain the Additional Disputed Funds.

26. By letter dated April 14, 2020, Varoujan Arman, another lawyer with Blaneys, wrote to Mr. Tayar as follows:

This is further to your email to David Ullmann dated November 1, 2019, regarding the cheque received by your client in the amount of \$1,399,002.24. During our last conference call on January 30, 2020, Mr. Ullmann asked that you inquire as to the current location of these funds. We need to ensure that these funds are paid into your trust account for safe keeping. Please confirm in writing that these funds are being paid into your firm’s trust account in the very near future if that has not already occurred.

27. A copy of Mr. Arman's letter of April 14, 2020 is attached hereto and marked as **Exhibit "A"** to this affidavit.

28. Attached hereto and marked as **Exhibit "B"** to this affidavit is an email from Mr. Arman to Mr. Tayar dated April 24, 2020, following up for a response to his April 14, 2020 letter.

29. Attached hereto and marked as **Exhibit "C"** to this affidavit is a further email from Mr. Arman to Mr. Tayar dated May 1, 2020, again following up for a response to his April 14, 2020 letter.

30. Attached hereto and marked as **Exhibit "D"** to this affidavit is a further email from Mr. Arman to Mr. Tayar and his colleague Colby Linthwaite dated May 7, 2020, regarding a number of issues for discussion, which states, among other things:

We would also like to meet with you to discuss why it is that you have not responded to our letter of April 14, 2020, despite follow up, to confirm that your client has paid the \$1,399,002.24 it received into your firm's trust account. You have known for some time that our client asserts an interest in those funds. We are growing concerned about the whereabouts and safekeeping of these funds. Please immediately advise if the funds are in your firm's trust account. If the funds are not in your trust account already, please confirm the funds will be paid into trust by no later than end of business on May 13, 2020. Failing that, we expect to be instructed to bring a motion to have the funds paid into court, and in that case, costs will be sought against your client.

31. By responding email dated May 11, 2020, Mr. Linthwaite wrote to Mr. Arman as follows on the topic of the whereabouts of the Additional Disputed Funds:

The \$1.3 million is being held in an interest-bearing account. This information is intended to give your client comfort, but it is without prejudice to our client's right take the position that there is no reason to hold those funds without using them. There is no Mareva injunction in place. Our client is prepared to give Blaney's seven days notice of any change in our client's position. [emphasis added]

32. A copy of Mr. Linthwaite's email dated May 11, 2020 is attached hereto and marked as **Exhibit "E"** to this affidavit.

33. By further letter dated July 17, 2020, Mr. Arman wrote to Mr. Tayar, and advised that it was the Applicants' position that the Additional Disputed Funds should be held by the Monitor in trust for safekeeping until the Dispute is resolved or determined. Mr. Arman also advised that the Purchaser's position that it was reserving the right to change its position and use the funds on seven days' notice would be inappropriate, and that the obviously appropriate place for the funds to be safeguarded is the Monitor's trust account.

34. Finally, Mr. Arman advised that unless the Additional Disputed Funds were paid to the Monitor by July 24, 2020, the Applicants would bring a motion in this regard and would seek costs on a substantial indemnity basis, having provided ample opportunity to the Purchaser to avoid an unnecessary motion. A copy of Mr. Arman's letter of July 17, 2020 is attached hereto and marked as **Exhibit "F"** to this affidavit.

35. I am advised by Mr. Arman, and do verily believe, that he did not receive any response to his letter of July 17, 2020.

36. The Applicants have no knowledge of the financial wherewithal of the Purchaser. If the funds are dissipated, the Purchaser may have no ability to satisfy a claim against it should the Court conclude that Domfoam is the successful party in the Dispute. In such a scenario, it is the creditors of Domfoam who would ultimately be irreparably harmed and left without a viable remedy.

37. If Domfoam came into possession of additional funds subject to the Dispute I would immediately instruct that such funds be paid to the Monitor and undertake to do so, should any such circumstance arise. The Applicants respectfully request that the Purchaser, which is seeking relief from this Court, be held to the same standard.

38. I make this affidavit in opposition to the Purchaser's motion and in support of the Applicants' cross-motion and for no other purpose.

SWORN BEFORE ME at
the City of Toronto in the Province of
Ontario by Zoom video conference due to the
COVID-19 pandemic, on August 9, 2020



Commissioner for Taking Affidavits

}



LINC ROGERS

TAB A

This is Exhibit "A"
to the Affidavit of Linc Rogers
sworn August 9, 2020



Varoujan Arman
A Commissioner, etc.

Varoujan Arman
416-596-2884
varman@blaney.com

April 14, 2020

BY EMAIL

Fred Tayar
Fred Tayar & Associates
Professional Corporation
Barristers & Solicitors
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5

Dear Mr. Tayar:

Re: Domfoam Inc. and 4362063 Canada Ltd.

This is further to your email to David Ullmann dated November 1, 2019, regarding the cheque received by your client in the amount of \$1,399,002.24. During our last conference call on January 30, 2020, Mr. Ullmann asked that you inquire as to the current location of these funds. We need to ensure that these funds are paid into your trust account for safe keeping. Please confirm in writing that these funds are being paid into your firm's trust account in the very near future if that has not already occurred.

We look forward to hearing from you.

Yours very truly,

Blaney McMurtry LLP



Varoujan Arman

VA/da

TAB B

This is Exhibit "B"
to the Affidavit of Linc Rogers
sworn August 9, 2020



Varoujan Arman
A Commissioner, etc.

Debbie Alderson

From: Varoujan Arman
Sent: April 24, 2020 8:33 AM
To: 'fred@fredtayar.com'
Cc: David T. Ullmann; Debbie Alderson
Subject: RE: Domfoam Inc. and 4362063 Canada Ltd.
Attachments: 2020-04-14 LT Tayar re cheque.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Fred,

May I please hear back from you in reply to my letter of April 14? Copy attached here.

Regards,
Varoujan

Varoujan Arman
Partner

varman@blaney.com
☎416-596-2884 | ☎416-593-2960

From: Debbie Alderson
Sent: April 14, 2020 5:38 PM
To: 'fred@fredtayar.com' <fred@fredtayar.com>
Cc: Varoujan Arman <VArman@blaney.com>
Subject: Domfoam Inc. and 4362063 Canada Ltd.

Good afternoon,

Enclosed please find correspondence from Mr. Arman,

Regards,

Debbie Alderson



Debbie Alderson
Assistant

dalderson@blaney.com
☎416-593-1221 ext. 1973
@Blaney.com



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

TAB C

This is Exhibit "C"
to the Affidavit of Linc Rogers
sworn August 9, 2020



Varoujan Arman
A Commissioner, etc.

Debbie Alderson

From: Varoujan Arman
Sent: May 1, 2020 11:49 AM
To: 'fred@fredtayar.com'
Cc: David T. Ullmann; Debbie Alderson
Subject: RE: Domfoam Inc. and 4362063 Canada Ltd.
Attachments: 2020-04-14 LT Tayar re cheque.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Fred,

May I please hear back from you on this without further delay? Please respond to our letter of April 14 (copy attached). We need confirmation that the noted funds are being held safely by your firm in trust.

Regards,
Varoujan

Varoujan Arman
Partner

varman@blaney.com
☎416-596-2884 | ☎416-593-2960

From: Varoujan Arman
Sent: April 24, 2020 8:33 AM
To: 'fred@fredtayar.com' <fred@fredtayar.com>
Cc: David T. Ullmann <dullmann@blaney.com>; Debbie Alderson <DAlderson@blaney.com>
Subject: RE: Domfoam Inc. and 4362063 Canada Ltd.

Fred,

May I please hear back from you in reply to my letter of April 14? Copy attached here.

Regards,
Varoujan

Varoujan Arman
Partner

varman@blaney.com
☎416-596-2884 | ☎416-593-2960

From: Debbie Alderson
Sent: April 14, 2020 5:38 PM
To: 'fred@fredtayar.com' <fred@fredtayar.com>
Cc: Varoujan Arman <VArman@blaney.com>
Subject: Domfoam Inc. and 4362063 Canada Ltd.

Good afternoon,

Enclosed please find correspondence from Mr. Arman,

Regards,

Debbie Alderson



Debbie Alderson
Assistant

dalderson@blaney.com

☎416-593-1221 ext. 1973

🌐Blaney.com



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

TAB D

This is Exhibit "D"
to the Affidavit of Linc Rogers
sworn August 9, 2020



Varoujan Arman
A Commissioner, etc.

Debbie Alderson

From: Varoujan Arman
Sent: May 7, 2020 5:55 PM
To: 'Colby Linthwaite'; Fred Tayar
Cc: 'Grant Moffat'; David T. Ullmann; 'Robert G. Tanner'
Subject: RE: Domfoam

Follow Up Flag: Follow up
Flag Status: Flagged

Fred and Colby,

Thank you for your email. As you know, we wanted, and still want, to have a (virtual) meeting to try to discuss how this matter goes forward. We do not agree that examining Tony Vallecoccia is appropriate or, more importantly, of any value towards the pending Monitor's motion. Indeed, the purpose behind the Monitor's motion seems to be to enable the litigation to move forward, which we would have thought would be in our mutual interest. We were surprised by your opposition to it, especially since you have known for months that such a motion was coming.

We oppose any examination of Tony. As you know, Tony is not well and has not been able to provide us with useful instructions for some time. You yourself raised concerns about his memory when you last examined him. To the extent he is able to understand this matter at all, he has asked that he be removed from this process. Robert Tanner spoke with Tony three weeks ago, and reported that Tony advised that both his strength and his memory have been left significantly diminished. David and I spoke with Tony's wife last week to follow up on this. His wife advised that Tony is now under the care of psychiatrists, and he does not have capacity to serve as a director. She described his memory as being significantly challenged and confirmed again that he had suffered a heart attack last year. Although this was not expressly said in the Monitor's materials, this is the circumstance we are facing.

We cannot imagine what evidence you could extract from Tony which would assist you in opposing the Motion. If you persist in pursuing an examination without meeting with us to explain its purpose, it will be opposed and you will have to bring a motion. We encourage you to reconsider. We have no doubt that the court will protect Tony from a pointless interrogation which will likely only frustrate you and embarrass him.

Status of Funds Received by Domfoam Inc.

We would also like to meet with you to discuss why it is that you have not responded to our letter of April 14, 2020, despite follow up, to confirm that your client has paid the \$1,399,002.24 it received into your firm's trust account. You have known for some time that our client asserts an interest in those funds. We are growing concerned about the whereabouts and safekeeping of these funds. Please immediately advise if the funds are in your firm's trust account. If the funds are not in your trust account already, please confirm the funds will be paid into trust by no later than end of business on May 13, 2020. Failing that, we expect to be instructed to bring a motion to have the funds paid into court, and in that case, costs will be sought against your client.

Mediation Dates (May 25 and June 24 Reserved)

Given the adjournment of the Monitor's motion to appoint a CRO, the mediation dates need to be revisited. At a minimum, the May date is not going to be feasible, so we suggest that we update Justice Cumming, and perhaps also reserve an additional date in July in case it becomes necessary.

We are available to meet with you on Tuesday or Wednesday next week in the early afternoon on either day to discuss the above.

Regards,
 Varoujan

Varoujan Arman

Partner

varman@blaney.com

☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [mailto:colby@fredtayar.com]

Sent: May 7, 2020 2:53 PM

To: Varoujan Arman

Cc: Fred Tayar ; 'Grant Moffat' ; David T. Ullmann

Subject: RE: Domfoam

Varoujan,

Please respond respecting Mr. Vallecoccia's availability for examination. The applicant's refusal to do so, and its refusal to explain why it is refusing to do so, are holding up this case. Mr. Vallecoccia has both a corporate lawyer and a personal lawyer he is instructing. He is capable of swearing affidavits, and he therefore is quite capable of being examined as a witness.

Regards,

Colby Linthwaite

Barrister and Solicitor

Fred Tayar & Associates

Professional Corporation

65 Queen Street West, Suite 1200

Toronto, ON M5H 2M5

416.363.1800 ext. 300

This communication may contain solicitor/client privileged or confidential information and is intended for the sole use of the party/parties to whom or which it is addressed. Any other distribution, copying or disclosure is strictly prohibited and review by anyone other than the intended recipient shall not constitute a waiver of privilege. If you received this message in error, please notify us immediately by telephone or reply email and delete this message from your computer without reading or copying it.

From: Colby Linthwaite

Sent: Friday, May 1, 2020 4:44 PM

To: Varoujan Arman <VArman@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>

Subject: RE: Domfoam

Varoujan,

I did not misstate the facts. You did not raise the possibility that Mr. Vallecoccia might not "be capable of attending an examination" *for medical reasons*. The only reason you gave for a video conference perhaps not being possible was that the home-bound Mr. Vallecoccia might not have Zoom or the technological savvy (or access to people with such savvy) to make a video-conference work, to which I responded that he could attend at a Court reporter's office in order to be examined via video-link, which you acknowledged might be possible.

If you have evidence of Mr. Vallecoccia's illness, please provide it. Please also state what this additional information is.

Again, please confirm that Mr. Vallecoccia will be produced for his examination. Once we have that, we can discuss the rest of your agenda.

Yours,

Colby Linthwaite
 Barrister and Solicitor
 Fred Tayar & Associates
 Professional Corporation
 65 Queen Street West, Suite 1200
 Toronto, ON M5H 2M5
 416.363.1800 ext. 300

This communication may contain solicitor/client privileged or confidential information and is intended for the sole use of the party/parties to whom or which it is addressed. Any other distribution, copying or disclosure is strictly prohibited and review by anyone other than the intended recipient shall not constitute a waiver of privilege. If you received this message in error, please notify us immediately by telephone or reply email and delete this message from your computer without reading or copying it.

From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 4:28 PM
To: Colby Linthwaite <colby@fredtayar.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Colby,

Please don't misstate the facts. I indicated I would firstly speak with Mr. Tanner to determine whether Mr. Vallecoccia would even be capable of attending an examination. I was very careful to caution you that a video examination of Mr. Vallecoccia may not be possible.

We have additional information to share with you and a number of other topics we'd like to discuss, as evidenced by my agenda below. A phone call is the easiest way to handle this. Just two emails ago you agreed we could have a call early next week. So again, we are requesting your available times. I think we should budget 30 minutes.

Regards,
 Varoujan

Varoujan Arman
 Partner

varman@blaney.com
 ☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]
Sent: May 1, 2020 4:13 PM
To: Varoujan Arman <VArman@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Varoujan,

The Monitor's motion was adjourned for the purpose of an examination of Mr. Vallecoccia pursuant to Rule 39.03, to be followed by questions of the Monitor. When you, me and Grant finished our conference call of last week you said that you would speak to Mr. Tanner about dates for the examination of his client. No "issue" was mentioned.

Despite a number of requests going back months, we have not seen any evidence of Mr. Vallecoccia's alleged illness. If you have some, please provide it.

Please confirm that Mr. Vallecoccia will be produced for his examination. Once we have that, we can discuss the rest of your agenda.

Regards,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 3:55 PM
To: Colby Linthwaite <colby@fredtayar.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Colby,

Here is a proposed agenda for the call:

1. Monitor's motion for CRO and discussion of incapacity of Tony Vallecoccia, and need for and appropriateness of examination
2. Status of \$1,399,002.24 received by Domfoam Inc. and lack of response to our letter of April 14, 2020
3. Mediation dates

Please get back to me with your availability.

Regards,
Varoujan

Varoujan Arman
Partner
varman@blaney.com
☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]
Sent: May 1, 2020 3:27 PM
To: Varoujan Arman <VArman@blaney.com>; David T. Ullmann <DUllmann@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>
Subject: RE: Domfoam

Varojan,

We can set up a call for next week, but I'd like to know what the issue is before then, so that we can have an informed discussion.

Thanks.

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 2:52 PM
To: Colby Linthwaite <colby@fredtayar.com>; David T. Ullmann <DUllmann@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>
Subject: RE: Domfoam

Colby,

There are a few matters we'd like to speak with you and Fred about, that being one of them. Can you please let me know your availability for a call early next week?

Regards,
Varoujan

Varoujan Arman
Partner
varman@blaney.com
☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]
Sent: May 1, 2020 1:55 PM
To: David T. Ullmann <DUllmann@blaney.com>; Varoujan Arman <VArman@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>
Subject: Domfoam

David,

During the tele-hearing with Justice Conway, you said that there was an issue with the examination of Mr. Vallecoccia. Justice Conway prevented you from describing that issue, on the basis that counsel should work it out amongst themselves. I would like to comply with Justice Conway's direction. Please describe the issue. If you will not, then please provide Mr. Vallecoccia's availability for his examination.

Yours,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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TAB E

This is Exhibit "E"
to the Affidavit of Linc Rogers
sworn August 9, 2020



Varoujan Arman
A Commissioner, etc.

Debbie Alderson

From: Colby Linthwaite <colby@fredtayar.com>
Sent: May 11, 2020 10:31 AM
To: Varoujan Arman; Fred Tayar
Cc: 'Grant Moffat'; David T. Ullmann; 'Robert G. Tanner'
Subject: RE: Domfoam

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Varoujan,

The following will respond to your statements in the order in which they were made.

Our client is not bound by your estimation of whether the examination of Mr. Vallecoccia would be “of value”.

We have been trying to move this matter to a hearing for more than a year. It is your client - first with its request to examine new witnesses after having completed its cross, then by taking the position that discovery and a trial were necessary - that has delayed the matter.

We do not “know” that Tony is not well. This is because we have seen no evidence of an illness, despite many requests therefor. Commencing some months ago, Mr. Ullman said (verbally) to us that he had had recent trouble getting instructions from Mr. Vallecoccia. Mr. Ullman said at first that this may be because Mr. Vallecoccia had had a stroke and later because he had had a heart attack. It may be the case that Mr. Ullman had trouble getting instructions because Mr. Vallecoccia wanted to resign his directorship. Commencing the same number of months ago, we asked for evidence of the alleged illness, and have been ignored. There is no such evidence anywhere in the Court file, including the monitor’s recent report, which relies on hearsay from Mr. Vallecoccia’s attorney to the effect that Mr. Vallecoccia no longer wishes to be involved in the applicant’s affairs.

This is the first time it has been asserted that Tony’s memory has deteriorated.

When you, Grant Moffat, and I spoke three weeks ago about the examination of Mr. Vallecoccia, you did not raise the possibility that he was medically impaired, or that his memory was untrustworthy. You did say that your office had not spoken to Mr. Vallecoccia in quite some time.

Neither I nor Fred “raised concerns about” Mr. Vallecoccia’s memory when we examined him.

The \$1.3 million is being held in an interest-bearing account. This information is intended to give your client comfort, but it is without prejudice to our client’s right take the position that there is no reason to hold those funds without using them. There is no Mareva injunction in place. Our client is prepared to give Blaney's seven days notice of any change in our client's position.

We agree that until the issue of the examination of Mr. Vallecoccia and the appointment of a CRO has been resolved, the mediation cannot go ahead, and that Justice Cumming should be apprised of that.

Regards,

Colby Linthwaite

Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Varoujan Arman
Sent: Thursday, May 7, 2020 5:55 PM
To: Colby Linthwaite ; Fred Tayar
Cc: 'Grant Moffat' ; David T. Ullmann ; 'Robert G. Tanner'
Subject: RE: Domfoam

Fred and Colby,

Thank you for your email. As you know, we wanted, and still want, to have a (virtual) meeting to try to discuss how this matter goes forward. We do not agree that examining Tony Vallecoccia is appropriate or, more importantly, of any value towards the pending Monitor's motion. Indeed, the purpose behind the Monitor's motion seems to be to enable the litigation to move forward, which we would have thought would be in our mutual interest. We were surprised by your opposition to it, especially since you have known for months that such a motion was coming.

We oppose any examination of Tony. As you know, Tony is not well and has not been able to provide us with useful instructions for some time. You yourself raised concerns about his memory when you last examined him. To the extent he is able to understand this matter at all, he has asked that he be removed from this process. Robert Tanner spoke with Tony three weeks ago, and reported that Tony advised that both his strength and his memory have been left significantly diminished. David and I spoke with Tony's wife last week to follow up on this. His wife advised that Tony is now under the care of psychiatrists, and he does not have capacity to serve as a director. She described his memory as being significantly challenged and confirmed again that he had suffered a heart attack last year. Although this was not expressly said in the Monitor's materials, this is the circumstance we are facing.

We cannot imagine what evidence you could extract from Tony which would assist you in opposing the Motion. If you persist in pursuing an examination without meeting with us to explain its purpose, it will be opposed and you will have to bring a motion. We encourage you to reconsider. We have no doubt that the court will protect Tony from a pointless interrogation which will likely only frustrate you and embarrass him.

Status of Funds Received by Domfoam Inc.

We would also like to meet with you to discuss why it is that you have not responded to our letter of April 14, 2020, despite follow up, to confirm that your client has paid the \$1,399,002.24 it received into your firm's trust account. You have known for some time that our client asserts an interest in those funds. We are growing concerned about the whereabouts and safekeeping of these funds. Please immediately advise if the funds are in your firm's trust account. If the funds are not in your trust account already, please confirm the funds will be paid into trust by no later than end of business on May 13, 2020. Failing that, we expect to be instructed to bring a motion to have the funds paid into court, and in that case, costs will be sought against your client.

Mediation Dates (May 25 and June 24 Reserved)

Given the adjournment of the Monitor's motion to appoint a CRO, the mediation dates need to be revisited. At a minimum, the May date is not going to be feasible, so we suggest that we update Justice Cumming, and perhaps also reserve an additional date in July in case it becomes necessary.

We are available to meet with you on Tuesday or Wednesday next week in the early afternoon on either day to discuss the above.

Regards,
Varoujan

Varoujan Arman
Partner

varman@blaney.com

☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]

Sent: May 7, 2020 2:53 PM

To: Varoujan Arman <VArman@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>

Subject: RE: Domfoam

Varoujan,

Please respond respecting Mr. Vallecoccia's availability for examination. The applicant's refusal to do so, and its refusal to explain why it is refusing to do so, are holding up this case. Mr. Vallecoccia has both a corporate lawyer and a personal lawyer he is instructing. He is capable of swearing affidavits, and he therefore is quite capable of being examined as a witness.

Regards,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Colby Linthwaite

Sent: Friday, May 1, 2020 4:44 PM

To: Varoujan Arman <VArman@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>

Subject: RE: Domfoam

Varoujan,

I did not misstate the facts. You did not raise the possibility that Mr. Vallecoccia might not “be capable of attending an examination” *for medical reasons*. The only reason you gave for a video conference perhaps not being possible was that the home-bound Mr. Vallecoccia might not have Zoom or the technological savvy (or access to people with such savvy) to make a video-conference work, to which I responded that he could attend at a Court reporter’s office in order to be examined via video-link, which you acknowledged might be possible.

If you have evidence of Mr. Vallecoccia’s illness, please provide it. Please also state what this additional information is.

Again, please confirm that Mr. Vallecoccia will be produced for his examination. Once we have that, we can discuss the rest of your agenda.

Yours,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 4:28 PM
To: Colby Linthwaite <colby@fredtayar.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Colby,

Please don’t misstate the facts. I indicated I would firstly speak with Mr. Tanner to determine whether Mr. Vallecoccia would even be capable of attending an examination. I was very careful to caution you that a video examination of Mr. Vallecoccia may not be possible.

We have additional information to share with you and a number of other topics we’d like to discuss, as evidenced by my agenda below. A phone call is the easiest way to handle this. Just two emails ago you agreed we could have a call early next week. So again, we are requesting your available times. I think we should budget 30 minutes.

Regards,
Varoujan

Varoujan Arman
Partner

varman@blaney.com
☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]
Sent: May 1, 2020 4:13 PM
To: Varoujan Arman <VArman@blaney.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Varoujan,

The Monitor's motion was adjourned for the purpose of an examination of Mr. Vallecoccia pursuant to Rule 39.03, to be followed by questions of the Monitor. When you, me and Grant finished our conference call of last week you said that you would speak to Mr. Tanner about dates for the examination of his client. No "issue" was mentioned.

Despite a number of requests going back months, we have not seen any evidence of Mr. Vallecoccia's alleged illness. If you have some, please provide it.

Please confirm that Mr. Vallecoccia will be produced for his examination. Once we have that, we can discuss the rest of your agenda.

Regards,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>
Sent: Friday, May 1, 2020 3:55 PM
To: Colby Linthwaite <colby@fredtayar.com>
Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>; David T. Ullmann <DUllmann@blaney.com>
Subject: RE: Domfoam

Colby,

Here is a proposed agenda for the call:

1. Monitor's motion for CRO and discussion of incapacity of Tony Vallecoccia, and need for and appropriateness of examination
2. Status of \$1,399,002.24 received by Domfoam Inc. and lack of response to our letter of April 14, 2020
3. Mediation dates

Please get back to me with your availability.

Regards,
Varoujan

Varoujan Arman
Partner

varman@blaney.com

☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]

Sent: May 1, 2020 3:27 PM

To: Varoujan Arman <VArman@blaney.com>; David T. Ullmann <DUllmann@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>

Subject: RE: Domfoam

Varojan,

We can set up a call for next week, but I'd like to know what the issue is before then, so that we can have an informed discussion.

Thanks.

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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From: Varoujan Arman <VArman@blaney.com>

Sent: Friday, May 1, 2020 2:52 PM

To: Colby Linthwaite <colby@fredtayar.com>; David T. Ullmann <DUllmann@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>; 'Grant Moffat' <GMoffat@tgf.ca>

Subject: RE: Domfoam

Colby,

There are a few matters we'd like to speak with you and Fred about, that being one of them. Can you please let me know your availability for a call early next week?

Regards,
Varoujan

Varoujan Arman
Partner

varman@blaney.com

☎416-596-2884 | ☎416-593-2960

From: Colby Linthwaite [<mailto:colby@fredtayar.com>]

Sent: May 1, 2020 1:55 PM

To: David T. Ullmann <DUllmann@blaney.com>; Varoujan Arman <VArman@blaney.com>

Cc: Fred Tayar <fred@fredtayar.com>

Subject: Domfoam

David,

During the tele-hearing with Justice Conway, you said that there was an issue with the examination of Mr. Vallecoccia. Justice Conway prevented you from describing that issue, on the basis that counsel should work it out amongst themselves. I would like to comply with Justice Conway's direction. Please describe the issue. If you will not, then please provide Mr. Vallecoccia's availability for his examination.

Yours,

Colby Linthwaite
Barrister and Solicitor
Fred Tayar & Associates
Professional Corporation
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5
416.363.1800 ext. 300

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TAB F

This is Exhibit "F"
to the Affidavit of Linc Rogers
sworn August 9, 2020



Varoujan Arman
A Commissioner, etc.

Varoujan Arman
416-596-2884
varman@blaney.com

July 17, 2020

BY EMAIL

Fred Tayar
Fred Tayar & Associates
Professional Corporation
Barristers & Solicitors
65 Queen Street West, Suite 1200
Toronto, ON M5H 2M5

Dear Mr. Tayar:

Re: Domfoam Inc. and 4362063 Canada Ltd.

This is further to our letter of April 14, 2020, and subsequent emails exchanged with Colby Linthwaite of your office, regarding the cheque received by your client in the amount of \$1,399,002.24, being class action settlement proceeds. As you know, these funds are the subject of a dispute between our respective clients. It is our client's position that these funds should be held by the Monitor in trust, for safekeeping until the dispute between our respective clients is resolved or determined.

By email dated May 11, 2020, Mr. Linthwaite advised that the funds are being held by your client, and the information provided was without prejudice to your client's right to take the position that there is no reason to hold the funds without using them, and finally, that your client is prepared to provide us with seven days' notice of any change in position. This is not acceptable. The funds are clearly the subject of a dispute and it would be inappropriate for your client to spend or transfer any portion of the funds in any way. The obviously appropriate place for the funds to be safeguarded is the Monitor's trust account.

Given that the mediation failed to facilitate a consensual resolution of this matter, we are now instructed by the court-appointed Chief Restructuring Officer to bring a motion to require your client to pay the funds to the Monitor, to be held pending further order of the court. In that regard, we note that the balance of the funds in dispute between our clients are already being held by the Monitor. We will seek costs against your client on a substantial indemnity basis if forced to bring a motion. In an effort to avoid these unnecessary costs, and what ought to be an unnecessary motion, we are prepared to provide your client with one final indulgence to comply with this demand until July 24, 2020. Please confirm in writing before that time, that your client will pay the funds to the Monitor to be held until the determination of the dispute.

We look forward to hearing from you on or before the end of business on July 24, 2020. After that time, we will be preparing motion materials and costs will be insisted upon as a term of any subsequent resolution. This letter will be provided to the court (as will our April 14, 2020 letter) in support of our submissions on costs.

Yours very truly,

Blaney McMurtry LLP



Varoujan Arman

VA/da

cc: Grant Moffat, Linc Rogers

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**RESPONDING AND CROSS-MOTION RECORD OF
THE APPLICANTS**

BLANEY MCMURTRY LLP

Lawyers

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5

David T. Ullmann (LSO #423571)

Tel: (416) 596-4289

Fax: (416) 594-2437

Varoujan Arman (LSO #60025K)

Tel: (416) 596-2884

Fax: (416) 593-2960

Lawyers for the Applicants