

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

(the "Applicants")

MOTION RECORD OF THE APPLICANTS
(Re: Stay Extension, Returnable April 28, 2020)

Date: April 16, 2020

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(as at October 17, 2019)

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

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

(the “**Applicants**”)

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| 1. | Notice of Motion dated April 16, 2020 |
| 2. | Draft Order |

TAB 1

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

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CANADA LTD., 4362063 CANADA LTD., and A-Z SPONGE & FOAM PRODUCTS LTD.

(the "**Applicants**")

NOTICE OF MOTION
(Re: Stay Extension Returnable April 28, 2020)

THE MOVING PARTIES, 3113736 Canada Ltd. (formerly known as Valle Foam Industries (1995)) ("**Valle Foam**"), 4362063 Canada Ltd. (formerly known as Domfoam International Inc.) ("**Domfoam**"), and A-Z Sponge & Foam Products Ltd. ("**A-Z Foam**") (collectively, the "**Applicants**") will make a motion to a Judge presiding over the Commercial List at 11:00 a.m. on Tuesday, April 28, 2020, or as soon thereafter as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING:

This motion is to be heard orally by teleconference with the following call-in particulars:

1. Dial 416-933-3851
2. Enter Conference ID 3224065

THE MOTION IS FOR:

1. an Order substantially in the form contained at **Tab 2** hereto extending the Stay Period (as that term is defined in the Initial Order of the Honourable Mr. Justice

Newbould dated January 12, 2012) to and including October 30, 2020 and approving the Monitor's report, conduct, and fees; and

2. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

3. on January 12, 2012, the Applicants sought and were granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), as amended pursuant to the Order of the Honourable Mr. Justice Newbould (the "**Initial Order**");

4. Deloitte & Touche Inc., now known as Deloitte Restructuring Inc., was appointed in the Initial Order to act as monitor in these CCAA proceedings ("**Monitor**");

5. as a result of the sale of assets of the Applicants, Valle Foam changed its name to 3113736 Canada Ltd., and Domfoam changed its name to 4362063 Canada Ltd. The style of cause of these proceedings was changed by the Order of Justice Brown, dated June 15, 2012 to reflect the change of names;

6. the Order of the Honourable Mr. Justice Brown, dated June 15, 2012 established a process to identify pre- and post-filing claims against the Applicants and/or their officers and directors ("**Claims Process Order**");

7. the Meeting Order was approved by the Honourable Mr. Justice Penny on September 6, 2016, accepting Domfoam's Plan of Compromise and Arrangement

(“**Plan**”) for filing with the Court and authorizing Domfoam to seek approval of the Plan at the meeting of the creditors (“**Creditors’ Meeting**”);

8. the Creditors Meeting was held on October 19, 2016;

9. the Applicants achieved the required statutory “double majority” needed to approve the Plan. Proven Creditors holding 92% in number and 99% in value voted to approve the Resolution in favour of the Plan;

10. the Plan was sanctioned by way of Order from the Honourable Mr. Justice Hainey dated January 24, 2017;

11. the conditions precedent to Plan implementation have been satisfied or waived, and the Plan has been implemented;

12. each of the Applicants are claimants in a U.S. class action proceeding relating to 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, in which the defendant agreed to pay \$834 million USD for distribution to the class members, including the Applicants (“**Polyols Settlement**”);

13. on or about March 21, 2018, an initial distribution representing 85% of the total recovery from the Polyols Settlement was made to the class members, including the Applicants. The final distribution from the Polyols Settlement authorizing the distribution of the holdback was approved by the US Court on November 5, 2018 (“**Final Distribution Order**”). Per the Final Distribution Order, the funds will be disbursed once the appeal period with respect to the order expires;

14. the company that purchased the assets of Domfoam, Domfoam Inc. (formerly known as 4037047 Canada Inc.) (“**Purchaser**”), has brought a motion directing the Applicants to pay the proceeds recovered from the Polyols Settlement to the Purchaser. The Company takes the position that the Purchaser’s motion is without merit. This motion has not yet been heard, but a mediation has been scheduled for one of May 25 or June 24, 2020;

15. the Applicants may also be class members in a certified class action in Ontario relating to the price fixing of polyether polyols products purchased in Canada (“**Canadian Urethane Proceeding**”). Settlement funds are being held in trust for the benefit of the class members in the Canadian Urethane Proceeding. One of the Applicants recently received settlement funds, and another one of the Applicants is in the process of determining if it has any entitlement to receive any funds from the Canadian Urethane Proceeding;

16. Valle Foam continues its collection and enforcement efforts to pursue outstanding receivables;

Extension of Stay Period

17. the Initial Order granted a Stay Period until February 10, 2012;

18. the Stay Period granted under the Initial Order was subsequently extended for all of the Applicants from time to time by orders of the Court;

19. most recently, the Stay Period was extended to April 30, 2020, by the Order of the Honourable Justice Pattillo, dated October 23, 2019;

20. the Applicants have been acting and continue to act in good faith and with due diligence in these CCAA proceedings;

21. it is just and convenient and in the interests of the Applicants and their stakeholders that the requested Order be granted and the Stay Period extended;

22. although the Plan has been approved, the continuation of the stay of proceedings in the Domfoam estate is required to ensure the orderly collection and distribution of the remaining assets and settlement funds from the various class actions;

23. the proposed extension of the Stay Period is supported by the Monitor and there is no known opposition;

24. following the implementation of the Plan, the Monitor made a distribution of funds on hand to the creditors in accordance with the Plan and the Orders of this Court;

25. the provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

26. Rule 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, RSO 1990, Reg. 194, as amended, and section 106 of the Ontario *Courts of Justice Act*, RSO 1990, c C 43, as amended; and

27. such further and other grounds as counsel may advise.

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

28. the Twenty-Second Report of the Monitor, to be separately filed; and

29. such further and other material as counsel may advise and this Court may permit.

Date: April 16, 2020

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TO: SERVICE LIST

TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|----------------|---|-----------------------------------|
| THE HONOURABLE |) | TUESDAY, THE 28 TH DAY |
| |) | |
| JUSTICE CONWAY |) | OF APRIL, 2020 |

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

THIS MOTION made by the Applicants pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order, *inter alia*, extending the stay of proceedings in respect of the Applicants to and including October 30, 2020, was heard this day by teleconference at 330 University Avenue, Toronto, Ontario.

ON READING the Twenty-Second Report of Deloitte Restructuring Inc. (formerly Deloitte & Touche Inc.) (the “**Twenty-Second Report**”) in its capacity as the Court-appointed monitor (the “**Monitor**”) of the Applicants, and on hearing the submissions of counsel for 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 of Ariyana Botejue sworn April 16, 2020, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Twenty-Second Report is hereby abridged and validated and this Motion is properly returnable today without further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meaning set out in the Twenty-Second Report.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period granted under the Initial Order of Justice Newbould dated January 12, 2012 (the “**Initial Order**”) and as subsequently extended by, *inter alia*, the Order of the Honourable Justice Pattillo, dated October 23, 2019, is hereby extended from April 30, 2020 to and including October 30, 2020.

MONITOR’S REPORT, ACTIONS AND FEES

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

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel as set out in the Twenty-Second Report, the Affidavit of Catherine A. Hristow, sworn April 16, 2020, and the Affidavit of Grant Moffat, sworn April 16, 2020, are hereby authorized and approved.

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

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

Proceeding commenced at Toronto

ORDER

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Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**MOTION RECORD OF THE APPLICANTS
(Re: Stay Extension, Returnable April 28, 2020)**

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