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COURT FILE NUMBER 2001-05630  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY COM  
APPLICANTS IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Dec 11 2020

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DOMINION DIAMOND MINES ULC,  
DOMINION DIAMOND DELAWARE COMPANY LLC,  
DOMINION DIAMOND CANADA ULC, WASHINGTON  
DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND  
HOLDINGS, LLC, and DOMINION FINCO INC.

DOCUMENT **BENCH BRIEF OF CREDIT SUISSE AG**

**DOMINION STAY EXTENSION APPLICATION**

ADDRESS FOR SERVICE AND  
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1. This Brief is filed by Credit Suisse AG, Cayman Islands Branch, as agent (the “**Agent**”) for the first secured lenders (the “**First Lien Lenders**”) to Dominion Diamond Mines ULC (“**Dominion**”), Washington Diamond Investments, LLC and various of their direct and indirect subsidiaries in response to the Application filed by Dominion and the other applicants (collectively, the “**Applicants**”) seeking an extension of the Stay Period to December 15, 2020.

2. Although the Agent does not oppose the Applicants’ request for an extension of the Stay Period to December 15, 2020, the Agent’s support of Dominion’s efforts to identify and close a going concern transaction for the benefit of all stakeholders is conditional on receiving certain assurances during this period that material progress is being made.

3. The Agent’s collateral has already been eroded over the past six months in the interests of achieving a going-concern sale. The extent of such reduction in the form of operating disbursements through October 16, 2020 is approximately \$63 million since the commencement of these proceedings.<sup>1</sup> When the Applicants sought this Court’s protection on April 22, 2020, thereby staying the rights of the First Lien Lenders to realize on their collateral, the Applicants projected that they would be able to successfully achieve a sale transaction within a short period, thereby minimizing prejudice to their creditors, including the First Lien Lenders. These efforts have now failed.

4. While the Agent continues to believe that a going-concern solution is in the best interests of all stakeholders, the Agent should not be required to stand by while its collateral is further diminished if a going-concern outcome is likely to fail. Delaying the inevitable, even for a few

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<sup>1</sup> Seventh Report of the Monitor, dated October 27, 2020 (Seventh Monitor’s Report”) at para 32, representing total operating disbursements less the deduction for net taxes.

weeks, will only serve to further erode the First Lien Lenders' security and potential for realization in the event a going concern transaction does not materialize. Based on the Applicants' cash flow, almost \$72 million CAD will be spent in the forecast period. This cash and these assets utilized by the Applicants are not being replaced.<sup>2</sup>

5. It is therefore imperative to the Agent that any extension to the Stay Period be granted subject to the condition that the Applicants provide regular and transparent reports to the Monitor and the Agent during this period and work collaboratively with the Agent to demonstrate that concrete and marked progress toward a going concern transaction is being made. The extension should also be conditional on the Applicants' commitment to work cooperatively with the Agent and the Monitor during the proposed stay period to establish an alternate plan to effect an orderly wind down of their operations and a liquidation of their assets in the event a going concern resolution is not achievable.

6. The Agent also believes that it is important that the Monitor be heavily involved in all discussions with relevant stakeholders regarding the negotiation of any going concern transaction. The Monitor should report to the Agent and this Court in respect of the status of such negotiations, including the status of any ongoing negotiations with the sureties, in mid-November and at the end of November so that a pivot to a wind-down may occur before the expiry of the Stay Period, if appropriate.

**(a) The Impact of the CCAA Process on the First Lien Lenders**

7. As at April 22, 2020, when these CCAA proceedings commenced, Dominion and various other Applicants were indebted to the First Lien Lenders in the amount of US \$70 million in funded

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<sup>2</sup> Seventh Report at para 32.

debt and in excess of US \$82 million in undrawn and outstanding letters of credit, for a total exposure of more than US \$152 million.<sup>3</sup> These obligations are secured by first-priority liens on substantially all of the Applicants' assets.

8. Throughout these CCAA proceedings, the Agent and the First Lien Lenders have worked cooperatively and constructively with the Applicants, the Washington Group of Companies ("**Washington**"), the Second Lien Noteholders, the Government of the Northwest Territories, and various other stakeholders to maximize the value of, and ensure a going concern outcome for, the Applicants. The Agent and various of the First Lien Lenders provided interim financing to the Applicants, did not oppose the priming of their first lien security, supported this Court's approval of the Stalking Horse Bid, and supported and advocated for a broad and extensive marketing of the Applicants and their assets.

9. Unfortunately, on October 9, 2020, the Applicants announced that they did not intend to seek court approval of the Stalking Horse Bid, which was scheduled to be heard on October 14, 2020, because there was no transaction capable of being completed as a result of, among other things, the Purchaser failing to satisfy the surety condition.

10. The failure of the Applicant's sales and investment solicitation process to generate a going concern transaction for the Applicants has been, and continues to be, costly for the Agent and the First Lien Lenders. As at April 22, 2020 when these CCAA proceedings commenced, the Applicants held diamond collateral with a book value of approximately US \$180 million.<sup>4</sup> As at October 27, 2020, the value of this collateral has been reduced to US \$100.5 million<sup>5</sup> as a result

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<sup>3</sup> Affidavit of Kristal Kaye, sworn April 21, 2020 ("First Kaye Affidavit") at para 68.

<sup>4</sup> First Kaye Affidavit at para 15.

<sup>5</sup> \$134 million CAD at an exchange rate of \$0.75 USD

of various third party diamond sales completed by Dominion.<sup>6</sup> As the Ekati Mine remains on care and maintenance, no newly-mined diamonds or other replacement collateral in any form has been generated for the benefit of the First Lien Lenders.

11. Since commencement of these CCAA proceedings on April 22, 2020, the Applicants have incurred operating costs of approximately \$63 million CAD, of which almost \$18 million is comprised of professional fees.<sup>7</sup> Between October 17, 2020 and January 15, 2021, the Applicants expect to incur more than \$52 million CAD in operating disbursements, of which approximately \$8 million CAD relates to professional fees.<sup>8</sup> In addition to these operating disbursements, the Applicants expect to incur a further approximately \$19.5 million CAD in “startup disbursements” relating to diesel purchases and freight and winter road construction costs.<sup>9</sup>

12. These CCAA proceedings have been, and continue to be, extremely costly. This cost is being borne by the Agent and the First Lien Lenders in the continuing reduction of the value of their collateral to fund these proceedings. While the Agent remains supportive of a going concern transaction for the Applicants, they are not prepared to continue underwriting a further sale process for an indefinite period of time at the current burn-rate (without accounting for forecasted startup disbursements) of approximately \$17 million CAD per month / \$4 million CAD per week,<sup>10</sup> unless

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<sup>6</sup> Seventh Monitor’s Report at paras 26-27.

<sup>7</sup> Seventh Monitor’s Report at para 28, representing total operating disbursements less the deduction for net taxes.

<sup>8</sup> Seventh Monitor’s Report at para 32, representing total forecasted operating disbursements less the deduction for net taxes.

<sup>9</sup> Seventh Monitor’s Report at para 32.

<sup>10</sup> The total operating disbursements forecasted between October 17, 2020 and January 15, 2021 (excluding forecasted startup disbursements) divided by the total number of months and weeks in the forecast period.

they believe that there is a substantial likelihood that a favorable transaction will close in the very near term.

**(b) Requested Extension of the Stay Period**

13. For all of the foregoing reasons, while the Agent and First Lien Lenders remain supportive of a value-maximizing, going concern transaction for the Applicants, their support of an extension of the Stay Period to December 15, 2020 is conditional on receiving assurances that the safeguards discussed above will be implemented. Such measures will minimize the potentially severe prejudice of this further delay to the First Lien Lenders and allow them to explore their options if it becomes apparent that the Applicants' efforts are likely to fail.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29<sup>th</sup> DAY OF OCTOBER, 2020**

**OSLER, HOSKIN & HARCOURT LLP**



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